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## Third Committee

### Summary record of the 23rd meeting

Held at Headquarters, New York, on Wednesday, 20 October 2010, at 3 p.m.

*Chairman:* Mr. Tommo Monthe . . . . . (Cameroon)

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

**Agenda item 68: Promotion and protection of human rights** (*continued*) (A/65/336)

**(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms** (*continued*) (A/65/369, A/65/280 and Corr.1, A/65/340, A/65/256, A/65/119, A/65/227 and Add.1, A/65/224, A/65/257, A/65/156, A/65/171, A/65/263, A/65/285, A/65/322, A/65/287, A/65/258, A/65/207, A/65/223, A/65/282, A/65/281, A/65/321, A/65/273, A/65/222, A/65/274, A/65/288, A/65/310, A/65/255, A/65/254, A/65/260 and Corr.1, A/65/261, A/65/162, A/65/259, A/65/87 and A/65/284)

**(c) Human rights situations and reports of special rapporteurs and representatives** (*continued*) (A/65/391, A/65/367, A/65/370, A/65/364, A/65/368, A/65/331)

1. **Ms. McDougall** (Independent Expert on minority issues), introducing her report on implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (A/65/287), said that the link between minority rights and conflict prevention and resolution was clear and had been made by many. According to a recent survey, over 55 per cent of violent conflicts of significant intensity between 2007 and 2009 had had violations of minority rights or tensions between communities at their core. In a further 22 per cent of conflicts, minority rights had been raised in the course of the conflict. Evidence indicated that incorporating minority rights into early warning systems was essential. More typical early warning indicators, such as small arms flows and movements of displaced persons, tended to reflect situations that were already rapidly spiralling into violence. Attention to indications of a chronic disregard for minority rights could provide earlier warning of potential violence. However, not all such situations escalated into violence. Early warning systems needed to combine the collection of disaggregated quantitative data with more in-depth qualitative analysis to enable the identification of complex interactions between political, social and economic factors that helped in deciding whether violent conflict would break out, and if so, when.

2. Given the prevalence of conflicts involving minority issues, it would be highly beneficial for the principal United Nations agencies and departments working on conflict prevention to have permanent in-house expertise on minority issues, in a broader context than solely that of genocide, war crimes, ethnic cleansing and crimes against humanity. While there was already a substantial flow of information to early warning mechanisms within the United Nations system, the focus on minority rights should be strengthened.

3. She called attention to three priority areas for Governments: ensuring the meaningful participation of minorities in the political arena and their representation at all levels of the civil service, especially the police and the judiciary; protecting and preserving cultural identities; and eliminating even the perception of discrimination in access to jobs, education, land ownership, natural resources, political power or any other resource. There were many ways to accommodate the interests of diverse communities, and many examples of positive practices. The essential was that the State should provide channels for minority participation in decision-making and for raising minority issues and that it should reassess its efforts regularly and be aware of the different options available. International standards on non-discrimination, including the Declaration, placed an obligation on States to institute affirmative action policies to correct historical patterns of exclusion.

4. In closing, she called attention to the work of the Forum on Minority Issues, which provided an important United Nations platform for minorities and for the discussion of key minority issues and had, in its two sessions to date, made practical recommendations on the issues of minority education and minority political participation.

5. **Mr. Strohal** (Austria), welcoming the linkage made between the violation of minority rights and violent conflict, said that protecting minority rights was a tool for preventing conflict. The introduction of a gender perspective into the discussion in order to avoid double discrimination was also welcome. He asked how the proposed inter-agency guidance notes worked, how minority and gender information would be aggregated and what the future of the Forum on Minority Issues was expected to be.

6. **Mr. Pham** (Viet Nam) thanked the Independent Expert for her recent visit to his country and welcomed her recognition of the situation of ethnic groups. He asked how the preservation of minority languages could be supported.

7. **Mr. Giaufret** (European Union) asked how the relevant information on violation of minority rights could be pooled, whether there were any recommendations about early warning mechanisms in regions other than Africa, whether the violation of religious rights required special attention and whether any features of it had an impact on early warning mechanisms.

8. **Ms. McDougall** (Independent Expert on minority issues) said the United Nations had gathered an enormous amount of information on violations of minority rights. The main focus had been on information leading to early warnings of the worst crimes: genocide, war crimes, ethnic cleansing and crimes against humanity. However, she also recommended a broader focus encompassing lower-level situations. In order to avert violent conflict, more diplomatic and political attention was needed at an early stage, along with technical assistance. Inter-agency guidance notes would be beneficial; they existed with regard to indigenous peoples but not yet with regard to other minorities.

9. Understanding the lives of women in minority groups had revealed a great deal about minorities in general. Violence against women was sometimes an indicator of broader problems on the ground. She called for livelihood, family and education issues to be raised in order to enhance minority women's leadership. Great strides had been made on women's rights at the United Nations but more focus on minority women was required.

10. Statistics were a useful indicator of inequalities in such areas as education, employment, income and housing, problems in majority-minority relations and the impact of affirmative action programmes. She believed in the value of census and other socio-economic data.

11. The Forum on Minority Issues had been extremely successful and had created a constructive space for interaction between Governments, non-governmental organizations (NGOs) and minority representatives. Its recommendations were forward-looking and addressed to all. She hoped it would continue to play an

important role, based on more in-depth studies and an understanding of the work of specialized agencies.

12. Her visit to Viet Nam had been fruitful, revealing the key role of bilingual education for minority children with limited access to education. That education was of proven importance in the context of Viet Nam's focus on developing minority communities. There were over 130 different ethnic groups and many language groups were under threat. She hoped to be able to influence the United Nations Educational, Scientific and Cultural Organization and other United Nations agencies to spend more on preserving minority languages.

13. Very important work was under way on early warning signals, for example by the Special Advisers to the Secretary-General on the Prevention of Genocide and on the responsibility to protect. There was a very specific focus on the four worst crimes, but she made a plea for greater focus "upstream", in order to prevent grievances from descending into violent conflict. Regional organizations in Africa, the Americas and Europe were working on minority rights in relation to conflict; other regions would benefit from a closer study of that work.

14. **Mr. Ojea Quintana** (Special Rapporteur on the situation of human rights in Myanmar) said that the forthcoming national elections in Myanmar — the first in over 20 years — were meant to be part of an orderly transition to democracy. Many had chosen to participate, in the belief that the elections were the best opportunity to change the way Myanmar was governed.

15. It was therefore with disappointment that he had watched the electoral process, which remained deeply flawed. Freedom of expression, assembly and association had been further restricted, no prisoners of conscience had been released and parties not backed by the Government had been hampered. It was clear the process had not been inclusive. A number of ethnic parties and candidates had been excluded and elections cancelled for security reasons in 300 villages in ethnic areas. Tensions in ethnic areas had increased, as many ceasefire groups had refused to convert into Border Guard forces under the military. He called on all sides to avoid the spread of armed conflict in border areas.

16. Many concerned Member States had continued to call for free, fair, all-inclusive and transparent elections. At the minimum, the Government should heed the call of the Secretary-General and other United

Nations bodies to release all 2,000-plus prisoners of conscience.

17. The Government had rightly said that the elections were only one step in Myanmar's democratic transition process. True national reconciliation and a commitment to human rights were also necessary for any real transition. The twin legacies of political deadlock and armed conflict could only be overcome through genuine dialogue. Parallel transition and reconciliation processes would enable all stakeholders to be heard and Myanmar's people to take part in governance.

18. Justice and accountability were key to Myanmar's transition. National reconciliation required an end to impunity; the widespread and systematic human rights violations which had been occurring for decades must be stopped. The new Government would have to choose between helping to solve impunity and perpetuating the denial of human rights.

19. In his report (A/65/368) he elaborated on the proposal for a commission of inquiry into possible crimes against humanity or war crimes. Some Member States had expressed support for such a commission, while others had said it would be counterproductive and had advocated engagement instead. That was a false dichotomy, as such an investigation would not preclude international engagement with Myanmar's new Government. He cited the experience of the International Labour Organization (ILO), which in 1997 had investigated forced labour in Myanmar; after barring the commission of inquiry from visiting, the Government had later cooperated with the ILO and had passed a law banning forced labour in 1999.

20. Since beginning his mandate in May 2008, he had visited Myanmar three times, visiting Northern Rakhine State and Kayin State and holding talks with prisoners of conscience, senior officials and political party representatives. He reiterated his appreciation for the Government's cooperation but expressed regret that his last request to visit in August 2010 was not granted. He hoped to be able to start meaningful dialogue with Myanmar's new leaders immediately after the elections.

21. Myanmar's new Government would face many challenges, including ending armed conflict, improving the economy, building democracy and bringing about reconciliation. It would also need to release all prisoners of conscience. The people of Myanmar deserved a better future and the new Government must

show its willingness to abide by international human rights principles and to engage constructively with the United Nations.

22. **Mr. Kyaw** (Myanmar) said that he would not attempt to refute all of the unsubstantiated allegations contained in the Special Rapporteur's report. However, as Myanmar's neighbours could attest, it was very obviously not in a state of conflict. The establishment of a commission of inquiry into crimes against humanity or war crimes was unwarranted and totally unacceptable. International statistics showed that casualties from armed conflict in Myanmar represented less than 1 per cent of the regional total. Furthermore, the military did not enjoy impunity for human rights violations, as was alleged, and offenders were prosecuted under existing laws. Since 1999, severe punitive actions had been taken against 210 military personnel found guilty of serious violations.

23. Rather than dwelling on the negative, he wished to highlight some positive developments in Myanmar that had not been accurately portrayed in the report. Myanmar would be holding free and fair multiparty general elections in November 2010. Since 1989, the Government had released 115,000 prisoners for good conduct and further amnesties might be granted in the future, depending on the circumstances. In order to promote and protect human rights, the Government had established a human rights body, chaired by the Minister for Home Affairs, with which people could lodge human rights complaints. From January to August 2010, it had received 503 complaints, 101 of which had been found false. Remedial measures were being taken on 199 complaints, and 203 were still under investigation.

24. Concerning the revision of domestic laws recommended by the Special Rapporteur, under the Constitution of Myanmar, existing laws remained on the books until repealed by Parliament unless they were found to be unconstitutional. The ministries concerned were currently reviewing 342 existing domestic laws, including the 11 laws singled out by the Special Rapporteur. The new Constitution contained human rights provisions in conformity with international standards.

25. Myanmar had already submitted its universal periodic review report for consideration in January 2011. The UPR mechanism had proved a suitable platform for discussing the human rights situation in all

countries and should be used fully to promote dialogue among States. Finger-pointing and pressure did not resolve differences. Myanmar would continue to cooperate fully with the Human Rights Council.

26. **Mr. Wang Min** (China) expressed appreciation to Myanmar for having invited the Special Rapporteur to visit the country three times and for its cooperation with the relevant United Nations organs. China was disappointed that the Special Rapporteur had taken a subjective and accusatory approach to the upcoming elections, which represented a positive step towards democracy and long-term security and stability. It was firmly opposed to the proposal to set up an international commission of inquiry to investigate alleged crimes against humanity and war crimes there. At the current critical juncture in Myanmar's journey towards democracy, establishing such a commission could set back the democratic process and cause regional turbulence. It would also constitute a bad precedent for developing countries. As a close neighbour, China had a particular interest in Myanmar's early democratization, development and prosperity and hoped that the international community would provide constructive help. Time and again, sanctions and pressure had proved counterproductive. China urged the Special Rapporteur to assess the human rights situation in Myanmar in an objective, balanced and fair manner and to strengthen dialogue with the Government with a view to building mutual trust. It called upon the international community to give prudent, objective and constructive support to the upcoming elections.

27. **Mr. Sinhaseni** (Thailand) said that, first of all, the forthcoming elections in Myanmar should be seen not as an isolated event but as part of a long-term transition to democracy. Secondly, justice and accountability were important, but it was necessary to take a comprehensive approach that also reflected political and economic considerations and to ensure that the Government of Myanmar had full ownership of the process. Timing was crucial, as was sustainability. The first steps in any national reconciliation process were vital, and discussions had to be exhausted before the international community embarked on anything that could be even remotely interpreted as not conducive to national reconciliation or democratization or, worse, as destructive.

28. For Thailand, the migration and trafficking between it and Myanmar was not solely an issue of human rights violations but also, increasingly, one of

poverty and underdevelopment. Political development did not exist in a vacuum and could not be delinked from economic development. Thailand was therefore very encouraged to learn that Myanmar and the Economic and Social Commission for Asia and the Pacific (ESCAP) would be cooperating more closely and hoped that it and other neighbouring countries might have similar opportunities in the future.

29. **Ms. Chan Yu Ping** (Singapore) noted that although the Special Rapporteur had recommended that the United Nations should establish a commission of inquiry into crimes against humanity in Myanmar, he had not included that measure among the final conclusions and recommendations of his report (A/65/368). That was an important distinction, as the establishment of such a commission before the first elections in 20 years would be premature and potentially compromise the international community's long-term efforts to engage with the Government of Myanmar. He asked how the Special Rapporteur envisaged his mandate in the context of the political evolution of Myanmar after the elections.

30. **Mr. Vigny** (Switzerland) expressed appreciation for the Special Rapporteur's comprehensive consultation with the many stakeholders involved in the human rights situation in Myanmar. He urged the Government to allow the Special Rapporteur prompt entry to the country after the elections, particularly as he had not been allowed to visit before issuing his report. The report made clear that obstacles to a free and transparent election process had placed the credibility of the elections at stake. He asked the Special Rapporteur for his reaction to the Government's statement that it had taken measures in response to violations and there were therefore no grounds for a commission of inquiry into crimes against humanity.

31. **Mr. Michelsen** (Norway) said that his delegation was concerned by the continued gross and systematic human rights violations in Myanmar, as noted by the Special Rapporteur. The upcoming elections would not meet any international standards of fairness and transparency if the freedoms of opinion and expression, association and assembly were not respected. The Government had yet to show any positive will to remove restrictions on those fundamental rights, which also concerned freedom of the media. He called on the Government to allow free expression to all voices, cooperate fully with the United Nations, investigate

human rights abuses and assume its responsibility to protect the population from future violations.

32. **Mr. Lukiyantsev** (Russian Federation) said that his Government had repeatedly stated that constructive dialogue between the Government of Myanmar and the Special Rapporteur was essential to resolving the human rights issues in the country. His delegation regretted the tone and conclusions of the Special Rapporteur's report and categorically disagreed with the recommendation of establishing a commission to investigate crimes against humanity, as it would only worsen United Nations relations with the Government. The proposal was disproportionate to the situation in the country, which was not in a state of full-scale war or humanitarian catastrophe. Furthermore, endorsing such a commission would constitute an unprecedented measure in a General Assembly resolution and would send an inappropriate message to Myanmar in view of the upcoming elections.

33. **Mr. Vimal** (India) said that as a liberal, secular democracy, the Government of India attached great importance to human rights. As a neighbour to Myanmar, it encouraged a constructive process towards stability and reconciliation, and in that context, viewed the elections as a forward step. The Special Rapporteur's recommendation to establish a commission of inquiry into crimes against humanity had not been referenced at all in the Secretary-General's report on the human rights situation in Myanmar (A/65/367). He asked how such a measure would be compatible with the Secretary-General's long-term good offices process and whether it would have an adverse effect on the very people it was intended to help.

34. **Mr. Mohamed** (Maldives) said that his Government attached great importance to human rights. Indeed, its current Government had emerged as a pro-democracy movement and the President was a former prisoner of conscience. While the upcoming elections in Myanmar were encouraging, the continued imprisonment of political prisoners was of concern. The Maldives had unconditionally supported Human Rights Council resolution 13/25, which called for the release of all political prisoners and their inclusion in the political process. His delegation supported the Special Rapporteur's call for the Government of Myanmar to continue its efforts to cooperate with the United Nations system and create an environment conducive to a free and fair electoral process. He asked the Special Rapporteur what steps could be taken to

work with the authorities to ensure free and fair elections and what the international community could do to assist in the post-election reconciliation process.

35. **Mr. Schwaiger** (European Union) said that the European Union welcomed the Special Rapporteur's efforts and regretted that the Government of Myanmar had not allowed his follow-up visit. He asked for more details on how the election process had fallen short of international standards for free, fair and inclusive elections, in particular in areas that were home to ethnic minorities. He also wished to know what practical steps the Government should be taking to investigate human rights violations and fight impunity and what kind of assistance it could draw on from United Nations bodies to improve accountability. He wondered what immediate actions the newly elected Government would need to take to demonstrate that a turning point in the human rights situation had been reached. He also wished to know what issues needed further attention.

36. **Mr. Luangmuninthone** (Lao People's Democratic Republic) said that, as a neighbour, his country had observed good progress in the implementation of the seven-step road map to democracy by the Government of Myanmar and welcomed its decision to hold general elections. The registration of more than 40 political parties could be evidence of a commitment to holding free and fair elections, and the process should be observed closely. Establishing a commission of inquiry into war crimes would discourage constructive engagement between the Government and the international community, thus compromising the democratization process and national development.

37. **Mr. Bui The Giang** (Viet Nam) welcomed the many meetings the Special Rapporteur had held with all relevant sectors in Myanmar. While his delegation urged more active engagement by the Government with the United Nations, it also noted that the international community should avoid a one-sided perspective, as there were reasons why the Special Rapporteur could not be received for his last visit. The Special Rapporteur's report was unbalanced in that it did not reflect the fact that trade sanctions significantly limited the exercise of social and economic rights in Myanmar.

38. His Government shared the concern of other Member States that the establishment of a commission of inquiry on crimes against humanity would damage rather than build on the positive developments

acknowledged in the Secretary-General's report (A/65/367), particularly in the context of the upcoming elections. Such a commission would also be detrimental to the long-term efforts of the good offices mandate of the Secretary-General.

39. **Ms. Cargnel** (Argentina) said that the international community's growing concern over the human rights situation in Myanmar had been made clear by the numerous resolutions approved by the General Assembly and the Human Rights Council, which urged the Government to take steps to ensure a free electoral process. Given the lack of substantive action to investigate the serious human rights abuses committed, her delegation supported the Special Rapporteur's recommendation to establish a commission of inquiry into international crimes. The democratization process could not advance if impunity continued. While the upcoming elections created expectations for the improvement of the human rights situation, any positive change required the release of all political prisoners.

40. **Ms. Stefan** (Liechtenstein) said that her delegation had read the Special Rapporteur's report with concern and noted his recommendation to establish a commission of inquiry into international crimes. She asked him to elaborate on what the scope of the mandate and working methods for such a commission would be.

41. **Mr. Zakaria** (Malaysia) said that his Government welcomed the first elections in Myanmar in 20 years and emphasized the need for the process to be free and fair. The establishment of a commission of inquiry into crimes against humanity was premature and had not been discussed with the Association of Southeast Asian Nations (ASEAN). The international community should not take any actions that could be detrimental to the reconciliation process. The international community should consider providing aid that would facilitate domestic capacity to implement the seven-step road map to democracy. The focus should be on positive engagement to encourage progressive development in Myanmar.

42. **Mr. Barton** (United States of America) said that the Special Rapporteur's report painted a grim picture of the human rights situation in Myanmar, and his delegation regretted that the Special Rapporteur had not been permitted to complete his last visit. The upcoming elections would not be free, fair and

inclusive if they were held under the current conditions, which included the detention of over 2,100 political prisoners. In addition, minority states were not permitted to vote and long-standing political parties would not be participating.

43. His delegation shared the Special Rapporteur's concern regarding the lack of an independent judiciary and the harassment of lawyers seeking to protect political rights. He asked him to discuss the increasing tensions along the country's border and provide recommendations for resolving the long-term ethnic issues. He wished to know whether there had been any indication that the Government would repeal its legislative measures restricting freedom of the press and freedom of assembly. After careful consideration of the recommendation to create a commission of inquiry to investigate violations of international law, his Government had concluded that a properly structured commission could provide an opportunity to achieve the ultimate objectives of peaceful democracy and respect for human rights in Myanmar.

44. **Ms. Mann** (United Kingdom) said that her Government supported the plight of the people of Burma and called for those responsible for human rights violations to be held accountable. The Special Rapporteur would be playing an increasingly important role in that regard. Measures restricting the media and the democratic process made the results of the upcoming elections a foregone conclusion. The international community must look beyond the elections, which would not improve the human rights situation, and continue to urge the Burmese military authorities, albeit under a civilian guise, to release all political prisoners and promote national reconciliation. Her delegation endorsed the Special Rapporteur's call for the Government to take measures to investigate human rights violations and end impunity. Failing those actions, the international community had a responsibility to bring those responsible to justice, including through the use of international accountability structures if necessary.

45. **Mr. Minn** (Myanmar), speaking on a point of order, asked the Chairperson to request representatives to use his country's official name, as it had been named incorrectly by the representative of the United Kingdom.

46. **The Chair** appealed to all representatives to use the official United Nations names of countries.

47. **Ms. Mann** (United Kingdom) said that she would welcome details as to how the Special Rapporteur would work with the Government after the elections in order to meet the United Nations demands for respect for human rights. She would also appreciate his perspective on what steps the new Government should take to demand accountability for gross human rights violations, what his own plans were in that regard and on how the international community could support those efforts. She also wished to know whether he had plans to visit the country in the near future.

48. **Ms. Horsington** (Australia) said that her delegation welcomed the Special Rapporteur's focus on the upcoming elections in Myanmar, which must be free, fair, inclusive and credible. She urged the Government to adopt his recommendations on promoting freedom of assembly and to release all political prisoners without delay. Addressing and ending impunity must be a high priority for the new authorities installed after the elections, and her Government would be observing those developments with interest. In that regard, she asked the Special Rapporteur how he would continue to fill his mandate post elections.

49. **Mr. Hireš** (Czech Republic) said that his Government was concerned by the fact that grave human rights violations continued in Myanmar, particularly shortly before the elections. His delegation shared the assumption by the Special Rapporteur that many of the acts of political repression and military attacks against ethnic minorities could constitute international crimes under the Statute of the International Criminal Court. He asked what were the most efficient methods to combat the occurrence of those crimes and bring those responsible to justice, and what the international community's role would be in implementing them. His Government requested an in-depth debate on the Special Rapporteur's recommendation to establish a commission of inquiry on international crimes.

50. **Mr. Kodama** (Japan) said that his Government supported the mandate of the Special Rapporteur and appreciated the steps taken by the Government of Myanmar towards reconciliation, including arranging the visit of the Special Rapporteur with political prisoners and freeing the former Minister of Defence, U Tin Oo. The international community must acknowledge such positive steps and encourage further progress. However, it would be contrary to the democratization process if the Government held the

general elections without releasing political prisoners, including Daw Aung San Suu Kyi. His Government would continue to make high-level requests for the release of political prisoners, timely resumption of a substantive dialogue between Daw Aung San Suu Kyi and the National League for Democracy, and the holding of inclusive elections in Myanmar. His delegation believed that the four core human rights elements identified by the Special Rapporteur would be relevant after the elections and wished to know how he intended to engage with the Government to implement them.

51. **Ms. Sunderland** (Canada) said that the Special Rapporteur had raised serious allegations regarding the systematic violation of the human rights of the Burmese people, and those responsible must be held accountable. She encouraged the General Assembly to give serious consideration to his proposal to establish a commission of inquiry into war crimes and crimes against humanity. The Burmese regime had failed to implement the conditions for credible elections.

52. **Mr. Minn** (Myanmar), speaking on a point of order, reminded the representative of Canada to use his country's official name, and asked the Chair for his assistance in that regard.

53. **The Chair** asked for the cooperation of all representatives in using countries' official names.

54. **Ms. Sunderland** (Canada) urged the Government to allow independent foreign media to cover the upcoming elections. Failure to do so would be demonstration that it was a process designed to keep the current regime in power. She called for the release of all prisoners of conscience and for dialogue between members of the opposition and ethnic groups. She asked what factors, if any, could lead to meaningful change to the human rights situation in the country as a result of the elections, whether there was a possibility for genuine dialogue between the Government and the opposition and how the international community could facilitate that process.

55. **Mr. Yudha** (Indonesia) said that international efforts to encourage positive change in Myanmar were at an important juncture. The upcoming elections offered an opportunity for a new political dynamic that could lead to peaceful changes in the country. The domestic situation should be considered in its full complexity. The elections were a landmark event, considering they had not been held in 20 years. The

international community should avoid measures that would compromise the Secretary-General's good offices efforts and regard the elections as a unifying factor towards national reconciliation.

56. **Mr. Ojea Quintana** said that he understood that the Government of Myanmar might not accept parts of his report, which, he acknowledged, referred to matters that were difficult to implement, particularly with regard to holding State and non-State actors who had committed human rights violations accountable. Though complex, the issue of accountability must be an integral part of the transition to democracy in order for that process to be successful.

57. Ahead of the elections scheduled for November 2010, several outstanding issues remained, including the continued detention of prisoners of conscience, who had been excluded from the electoral process in which they had a legitimate role to play. Elections would not be held in the ethnic communities in border zones, and political parties in those areas were operating under serious restrictions. Moreover, the Government had done nothing to change the situation in terms of freedom of expression or freedom of association. It therefore remained to be seen whether elections would yield an improvement in the situation of human rights.

58. The transition process would entail not only elections but other processes, such as a debate on how to face the repercussions of decades of human-rights violations in Myanmar. Since 1992, when his mandate had been established, the General Assembly had heard reports from his many predecessors indicating that the violations had indeed been grave. In that connection, he emphasized the need for the General Assembly to state expressly that perpetrators of human rights violations in Myanmar must be held to account. While the primary responsibility for how accountability would be ensured fell to the Government, the international community must also summon the necessary political will to address the issue.

59. His proposal to establish an investigative commission was the product of over two years of serving as Special Rapporteur and must be considered carefully by the General Assembly. After meeting Government authorities and delegations in the region, he had not been able to conclude that the Government of Myanmar was seriously working to establish mechanisms to investigate human-rights violations.

60. As to what an investigative commission such as that proposed in his report would look like, he noted that the Secretary-General's office, with its vast experience with addressing grave human-rights situations worldwide, could have a major role, as could the Human Rights Council. The commission had not been conceived as an exclusively accusatory or punitive mechanism; it was incumbent on the Government to try to cooperate with the accountability process. Therefore, any commission or other means of holding human-rights violators accountable must attempt to work within the Government apparatus.

61. Myanmar had cooperated with him and he had been able to visit prisoners of conscience during three visits to the country. He greatly valued the opportunity for dialogue and cooperation extended by the Government and had always tried to reciprocate.

62. In previous reports to the General Assembly, his recommendations had centred on four elements of human rights: revision of domestic legislation; work towards real independence and impartiality of the judiciary branch; liberation of all prisoners of conscience, starting with those with serious ailments or of advanced age; and cooperation with the armed forces with a view to reforming their conduct, particularly in border zones and areas where conflict was ongoing and where there was evidence of possible violations of international humanitarian law.

63. Though Myanmar had not accepted his last request for a visit, he hoped that the new Government and authorities would re-establish cooperation with him and make a visit possible in 2011. In closing, he also expressed the hope that the General Assembly would seize the opportunity, at a crucial juncture in that country's history, to promote the human rights of the people of Myanmar.

64. **Mr. Falk** (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967) said that he had faced special difficulties in discharging the functions of his mandate; the most salient involved the non-cooperation of the Government of Israel, to a degree greater than that faced by his predecessor. Israel had refused to fulfil its obligations as a Member State of the United Nations by preventing him from visiting, periodically and without interference, the West Bank, East Jerusalem and Gaza, ever since it had expelled him on his last attempt to enter the country in December 2008. In addition, it had

adopted a similar posture of non-cooperation with respect to related United Nations undertakings, such as the Fact-Finding Mission on the Gaza Conflict and the panel appointed by the Human Rights Council to investigate the allegations surrounding the flotilla incident of 2010, resorting to defaming the messenger and the auspices instead of contesting and responding to the findings and recommendations of the reports.

65. The United Nations might also be faulted for its failure to respond more strongly to complaints arising from the Israeli pattern of non-cooperation and for its unwillingness to implement the recommendations in his prior reports and those of the Fact-Finding Mission. Such a failure encouraged the impression of Israeli impunity and of lack of will within the United Nations itself to take the obligations of international law seriously, or even to uphold those associated with its own Charter.

66. The mandate had also been hampered to some extent by the failure of the Human Rights Council to support his independence; pressure from the Palestinian Authority on that independence; and by widespread opposition to his proposal to reformulate the mandate to consider Palestinian violations of international human rights law in addition to Israeli ones. Since the realities of fact and law precluded any assertion of a false symmetry that apportioned responsibility to occupier and occupied equally, adjusting the mandate would take some account of charges of an impression of bias and unfairness embedded in the language but not in the works of the mandate. The Human Rights Council should be more vigilant in its protection of the independence of mandate holders so as to avoid setting an unfortunate precedent.

67. Turning to matters broached in his report, he noted that due to the very acute issues associated with the blockade of Gaza, there had been a tendency to overlook Israeli encroachments on the rights of the Palestinian people living in the West Bank and East Jerusalem. The cumulative effects of the settlements, the security wall and the extensive settler-only road network had been to establish a new political reality that converted the conditions of *de jure* occupation into *de facto* annexation. The extension of Jewish presence in East Jerusalem by way of unlawful settlements, house demolitions and revocations of Palestinian residence rights made it increasingly difficult to envisage a Palestinian capital in East Jerusalem, another widely assumed premise of the Quartet Road

Map to Israeli-Palestinian peace and expectations associated with past and present intergovernmental negotiations. That assessment was important since it had been assumed that the occupation was temporary and reversible, in accordance with Security Council resolution 242 (1967), the political and ethical foundation for the assumption at the heart of international negotiations on the conflict that Palestinian rights of self-determination would be satisfied by the establishment of an independent and sovereign Palestinian State on currently occupied territories. However, if the conditions in the occupied Palestinian territory were irreversible, it became misleading and diversionary to continue adherence to the “two-State consensus” as a means of satisfying the Palestinian right to self-determination.

68. To the extent that the annexationist perception was accurate, it lent credibility to the assertion that the Israeli occupation had features of “settler colonialism” and therefore ran counter to the rights of all peoples to live free of alien rule, a position affirmed in both international human rights covenants and international customary law. That view was furthered by the dual and discriminatory legal structure for the occupied Palestinians and the unlawfully present settler population, the restrictions on Palestinian mobility, permit and residence manipulations, and roads on which Palestinians were disallowed. He emphasized the apartheid features not to suggest comparisons with apartheid South Africa but rather to call attention to the anti-apartheid norm embodied in various international legal instruments.

69. The flurry of international attention to Gaza in recent years, coupled with reports of economic growth in the West Bank, had led many to believe that material conditions in the latter territory were acceptable. However, the daily realities of the people living in it were not sufficiently noticed. Recent studies conducted by a British NGO indicated that the conditions of 40,000 Palestinians living in a particular area of the West Bank were worse than in Gaza, and that the state of human necessities including health clinics, food, water and shelter had reached a crisis point.

70. Regarding settler violence in the West Bank and East Jerusalem, he expressed disappointment at the failure of the international community to respond adequately and at that of the Israeli occupying forces to fulfil their obligations to protect Palestinians and their property and to apprehend Israeli perpetrators.

71. The situation in Gaza remained disturbing from the perspective of human rights and international law despite the welcome partial easing of the blockade on Gaza in the aftermath of the attack on the flotilla carrying humanitarian assistance to Gaza. The entry of basic necessities to Gaza remained at one third the level prior to the establishment of the blockade in June 2007. Furthermore, the ongoing Israeli prohibition of exports from Gaza had destroyed more than 90 per cent of Gazan entrepreneurial activity, on which the territory's economy had relied. The blockade was a form of collective punishment, prohibited by the fourth Geneva Convention, and had been declared unlawful by the Human Rights Council mission tasked with investigating the flotilla incident on the reasoning that the suffering inflicted on civilians was disproportionate to any Israeli security justification. The mission had also found the attack on the flotilla to be contrary to international law and reliant on excessive force. The isolation of the population of Gaza for several years had exerted enormous psychological pressure that was contrary to the obligations of the occupying Power to ensure as much normalcy as possible for the occupied population.

72. After 43 years, it was time to acknowledge the distinctive and intolerable burdens of prolonged occupation on a civilian population. In his report, he urged a formal study of the human rights aspects of such occupation, paying particular attention to the plight of persons confined to refugee camps in the occupied territories and neighbouring countries, as well as to overall human rights. He also encouraged United Nations support for efforts to send humanitarian assistance directly to the people of Gaza in defiance of the persisting unlawful blockade, and for the boycott, divestment and sanctions campaign that sought to respond to the failure of Israel to uphold its obligations with respect to the Palestinian people. The campaign represented a recognition that neither Governments nor the United Nations were prepared or able to uphold Palestinian rights, whereas the Organization had, by contrast, endorsed the anti-apartheid campaign of the late 1980s. The United Nations must give greater tangible attention to the ordeal of the Palestinians, as it would be judged on whether it contributed to the realization of their right to self-determination.

73. **Ms. Rasheed** (Observer for Palestine) thanked the Special Rapporteur for his dedication and commitment to calling attention to the violations of the

human rights of the Palestinian people, despite the challenge of being denied access to the occupied Palestinian territories. She urged him to adhere to his mandate in reporting to the Human Rights Council and the General Assembly.

74. **Mr. Michelsen** (Norway) agreed that the Palestinians' full enjoyment of human rights depended on ending the occupation. At a time when the international community and key players were doing their utmost to bring the parties back to the negotiating table, development in and around East Jerusalem was a matter of grave concern. It was to an increasing degree severing ties between East Jerusalem and the remainder of the West Bank, and unless that situation was reversed, a negotiated, two-State solution might become impossible. Furthermore, while he welcomed Israel's June decision to ease the blockade of Gaza, it had not gone far enough. Poverty rates remained high, and substantial numbers of Gazans were still relying on food assistance and other humanitarian services. Israel needed to take gradual steps to open the borders permanently and allow the economy to develop through the free movement of people and goods.

75. **Ms. Simovich** (Israel) said that it was unfortunate that, yet again, the Special Rapporteur had presented a flawed, one-sided report based on an imbalanced mandate. The Special Rapporteur himself had told the Human Rights Council that the credibility and effectiveness of his reports might be enhanced if the mandate were expanded to encompass inquiry into Palestinian violations of international humanitarian law. General Assembly resolution 60/251, which had established the Human Rights Council in 2006, required it to review all special procedure mandates within one year of its first session. The fact that, in 2010, it had reviewed all mandates except for the one in question was an indication of its politicized nature. The Council's credibility and legitimacy hinged on the mandate of the Special Rapporteur, and Israel hoped that it would move quickly to correct a fundamental defect that continued to undermine the United Nations work in the field of human rights.

76. Israel had ratified the core human rights treaties. It had invited and received many special procedures mandate holders and was preparing for three more visits in early 2011. It had also appeared before and cooperated fully with the Human Rights Council Universal Periodic Review Committee. In short, it attached the utmost importance to its engagement with

the international community on human rights issues. While it could not cooperate with a rapporteur whose mandate was inherently biased, it was committed to investigating any allegations of wrongdoing, simply because those were its values.

77. **Mr. Zakaria** (Malaysia) said that attacks on the person and reporting of the Special Rapporteur were unwarranted and reflected a desire to deflect attention from the human rights situation in the occupied territories and to avoid answering the allegations. Malaysia was steadfast in its support for an independent Palestinian State and would continue to back all international efforts to find a just, lasting, comprehensive and peaceful settlement. It agreed with the Special Rapporteur's call for immediate implementation of the recommendations of the Goldstone report and with his recommendation that the Council should conduct a study of the legal, political, social, cultural and psychological impact of prolonged occupation. His delegation would be interested in hearing the Special Rapporteur elaborate on the idea of a non-violent "legitimacy war" and its practicality, given that it was certain to face some resistance in an intergovernmental setting.

78. **Mr. Ja'afari** (Syria) reminded the Committee that the issue of the occupied Palestinian territories was not new. Even the human rights mandate of the Special Rapporteur dated back to 1993, and the Palestinian issue itself had been on the United Nations agenda since its inception in 1945. General Assembly resolution 181 of 1947 had divided Palestine into two States, and unfortunately, only half of that resolution had been implemented. The Special Rapporteur was not the first United Nations official to be prevented from entering the occupied territories. Over the years, Israel had turned away dozens of fact-finding missions, dozens of investigation committees and dozens or even hundreds of special envoys.

79. His delegation fully supported the recommendations enumerated at the end of the report, but unlike the body of the report, they did not begin to convey the almost indescribable plight of the Palestinian people. It was the duty of the Committee to convey the report's clear message to the highest levels of the United Nations: the Security Council, the Secretary-General and the President of the General Assembly. The Israeli authorities must be held responsible for their actions towards the Palestinian people.

80. **Mr. Barton** (United States of America) said that, as his country had indicated before, it regretted that the mandate inherited by the Special Rapporteur extended only to reporting on Israel. The human rights situation in Israel, the West Bank and Gaza should be examined in the same way as human rights situations in other countries. Even within that mandate, however, the Special Rapporteur's report was one-sided. Beyond responding to specific violations, the Israeli Government had also made significant changes in its military operational guidelines to better protect civilians during conflict, including new procedures regarding the protection of civilians and the destruction of private property; the integration of humanitarian affairs officers into Israeli army battalions and new orders on the use of certain munitions. Those reforms, as well as Israel's investigations, prosecutions and public reports, were evidence of ongoing credible and serious domestic inquiries. The United States welcomed the efforts of the Palestinian National Authority to establish an investigation into the allegations of human rights violations in the Palestinian territories, as well as its efforts to follow up on the recommendations of the Palestinian Independent Investigation Commission. In his report, the Special Rapporteur had sought to minimize the responsibility of Hamas in the lead-up to the Gaza conflict and had failed to address real and serious abuses of international law by Hamas in Gaza, such as its refusal to allow the International Red Cross personal access to Israeli Corporal Gilad Shalit. Hamas was a terrorist organization that was unwilling to examine its deliberate, repeated violations of international law and its abuses of the human rights of Israelis and Palestinians alike.

81. **Mr. Falk** (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967) welcomed the support expressed by delegations for his mandate, which was beset by difficulties not faced by other mandates. The central issue that confronted the Committee was the degree to which responsibility would finally be taken for the situation in the occupied Palestinian territory. When would the United Nations regard its own Charter, international criminal law, or international human rights law as sufficiently significant to have the political courage to act on them, in the face of the suffering endured by the Palestinian people for decades? Furthermore, the matter of whether or not the Organization took its own reports seriously enough to

act on them would be a test of its credibility. Its failure to answer that question in the affirmative led people to believe that what happened in United Nations meetings was a matter of mere rhetoric that did not get translated into effective behaviour and would not be unless the Governments took the findings seriously.

82. He had been accused of being one-sided, but he pointed out that it was the reality that was one-sided. He would welcome an opportunity for a debate about the substance of the report, as its accuracy was beyond serious question. The accuracy of particular details notwithstanding, the situation was so stark and so grim that it was not a matter of reasonable controversy, hence his disappointment at the refusal of the representative of the United States of America — his own country — to refuse to acknowledge its gravity and the fact that it was irreconcilable with international law. Specifically, the representative had mentioned that his Government had been critical of the expansion of settlements but not of settlements themselves, which were unlawful under the Geneva Conventions. Treating an unlawful situation as if it were lawful by accepting the accumulation of unlawful facts year after year was a perversion of law.

*The meeting rose at 6.15 p.m.*