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COMMISSION ON HUMAN RIGHTS

Forty-eighth session

SUMMARY RECORD OF THE 6TH MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 30 January 1992, at 3 p.m.

Chairman: Mr. SOLT (Hungary)

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The meeting was called to order at 3.05 p.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (agenda item 4) (continued) (E/CN.4/1992/6 and 7)

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (agenda item 9) (continued) (E/CN.4/1992/11 and 12; E/CN.4/1991/14; A/46/65, 286 and 522)

1. Ms. CALANDRA (International Federation of Human Rights and France-Libertés, Fondation Danielle Mitterrand) said it was appropriate that, as decided at its previous session, the Commission on Human Rights should at its forty-eighth session accord high priority to the question of Western Sahara since careful examination of the situation revealed obstacles in the path of the painstaking efforts made by the international community to end a conflict which had lasted 16 years. She recalled that, at its forty-seventh session, the Commission had reaffirmed the inalienable right of the people of Western Sahara to self-determination and independence, a right which, if it was to be exercised legitimately, should be enjoyed in conditions of irreproachable legality and freedom. According to Security Council resolution 690 (1991) the two parties to the conflict, the Kingdom of Morocco and the Frente Popular para la Liberación de Saguía el-Hamra y de Río de Oro (Polisario Front), had recognized that the organization and supervision of the referendum was the entire and exclusive responsibility of the United Nations, through the Secretary-General's Special Representative with the support of the United Nations Mission for the Referendum in Western Sahara (MINURSO). One of the key aspects of the agreement between the United Nations Secretary-General and the two parties concerned the 1974 Spanish census, which they had both accepted as the only basis for compiling the electoral registers. Unfortunately, five months after the cease-fire marking the beginning of the transitional period had come into force, implementation of the United Nations peace plan had been held up by a considerable number of difficulties. The cease-fire had been violated on several occasions, the MINURSO staff were not yet at full strength and it had not been possible to deploy them at the rate envisaged, the Special Representative of the Secretary-General had been unable to install himself on the spot and had finally resigned, United Nations equipment was still being held up at Moroccan ports and airports, 40,000 people had been moved from Morocco to Western Sahara in order to inflate the electoral registers and the voting itself had been deferred to an as yet unspecified date.

2. The International Federation of Human Rights and France-Libertés called on the Commission on Human Rights at its forty-eighth session to reaffirm its support for the peace plan adopted by the Security Council in order to ensure that it would be rigorously and fully implemented, to appeal once more to the Kingdom of Morocco and the Polisario Front to show the cooperation and good will on which the peace process depended with a view to the early solution of the question of Western Sahara, to express its concern about any modification of those elements of the peace plan accepted by both parties to the conflict which might impede the organization of a fair and equitable referendum on self-determination, to insist that MINURSO should be provided with the

resources necessary to fulfil its mission, to decide to monitor developments in Western Sahara and to accord high priority to consideration of that question at its forty-ninth session. The attention of the Commission was also drawn to the fact that, in one of its most recent resolutions, the European Parliament had expressed the hope that members of parliaments and non-governmental organizations would be able, as international observers, to monitor the election process in Western Sahara on the spot.

3. Ms. PARK (Canada) said she was gratified by developments in the Middle East since the forty-seventh session of the Commission and the willingness shown by the two parties to the conflict to bring it to an end by entering into negotiations to establish peace in the region and form relationships based on the recognition of mutual interests and legitimate rights. Particularly welcome was the decision taken at the Moscow multilateral talks to create working groups to consider practical ways of improving the lives of people in the region including a refugee working group in which Canada would play a leading role, acting as host to the first meeting. It was to be hoped that the Commission's deliberations during its forty-eighth session would strengthen the hand of all those who favoured negotiations and were working for the success of the peace process.

4. It was now up to the peoples of the Middle East, Israelis and Palestinians in particular, to establish a new regional order. Such an order was inextricably linked to respect for the individual and collective rights of the two communities as formulated by international humanitarian law and the decisions of the collective bodies. As the Prime Minister of Canada, Mr. Brian Mulroney, had clearly expressed at recent meetings of the heads of State and Government of the Commonwealth and the French-speaking countries, human rights and the promotion of democratic values should henceforth occupy a central place in international relations, without any exception. It was beyond question that the resolution of the Arab-Israeli conflict and the Israeli-Palestinian conflict could be achieved only through the implementation of Security Council resolution 242 (1967) and that in the meantime the provisions of the Fourth Geneva Convention should be applied in the occupied territories. Respect for those provisions was an essential condition for progress in resolving the problem. However, despite efforts made by both sides to correct the most inhuman of the conditions in the occupied territories, the situation in the West Bank and Gaza Strip remained greatly disturbing. The policy of deporting Palestinians and establishing settlements continued, incarcerations contrary to the rule of law still took place and while most of the universities had been reopened (an indication of a willingness to reduce collective punishment) recent curfews in certain regions appeared out of proportion to the violent attacks on settlers.

5. Canada would continue to support all those on both sides who were striving to promote the rule of law. It was encouraged by the considerable cooperation between Palestinian and Israeli human rights organizations and commended their efforts, which were an indication of the quality of interaction possible between those communities. It also paid tribute to the International Committee of the Red Cross and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) for their

generous support. The Israelis and the Palestinians should make an additional effort to recognize the rights and the dignity of their neighbours and thus further their own cause. Canada, for its part, would spare no effort to assist them in their search for peace and dignity, since that was an essential condition for a secure future for all those involved. Her delegation, which had regretted the lack of consensus on the draft resolutions on the Question of Palestine submitted at the forty-seventh session of the Commission, hoped that the decisions that would be taken in 1992 would reflect the new spirit of realism and compromise that prevailed at the international level and was looking forward to working with other delegations to that end.

6. Mr. KOVALIOV (Russian Federation) said that the increasing number of countries acceding to international human rights instruments proved that most States in the world were aware of the universal value of human rights. However, the adoption of legal norms was not enough; they had to be implemented, and that should be the objective of the international community.

7. The right of peoples to self-determination was the most important of all the rights enshrined in international law and its realization was often considered to be an indispensable condition for and the guarantee of the enjoyment of individual rights and liberties, but the converse was also true. The creation of an independent State and the establishment of democratic principles which took into account the legitimate rights and interests of individuals was a complex and long-term task and constituted the most concrete form that the right to self-determination could take. That was the difficult path which the peoples of Russia had chosen, believing that the implementation of that right would affirm the importance of the individual and his rights and dignity in all walks of life. That was because over many decades the interests of the individual in the society of the former Soviet Union had been subjected to those of the State and the concept of human rights had always been rejected, to the extent that possession of the text of the Universal Declaration of Human Rights had, 10 years previously, been considered a crime punishable by a prison sentence. The stands taken by the international community had undoubtedly done much to promote the process of reform in Russia, which was duly grateful. Despite the numerous social and economic problems faced by the country, the Russian Parliament had already adopted a number of human rights laws and in particular a declaration of the rights and freedoms of the individual and citizen, and had established parliamentary control over respect for human rights through a specially-appointed ombudsman. The recently created constitutional court had been entrusted with extensive powers, including that of verifying the constitutionality of laws that had been passed and monitoring the application of human rights legislation. Its first decision had been to cancel a presidential decree merging the Ministry of the Interior and the security services, which had been considered unconstitutional. Furthermore, the legal system was being reformed and the Constitution had been modified, but clearly a great deal remained to be done before national legislation would be in conformity with the norms of international law.

8. At the international level, Russia also had to adapt its foreign policy and, in particular, accord priority to democratic values and respect for human rights, which was a factor in international cooperation and a universal

principle, independent of any ideology. Double standards should never be applied, even though it was necessary, when assessing the human rights situation in a country, to take into account its historical, national, geographical and cultural particularities and its actual economic and social situation. There was no such thing as a perfect State and individuals should be protected throughout the world. For its part, Russia was convinced of the correctness of such an approach and was receptive to objective criticism. It would apply that criterion to other States, particularly in its bilateral relations with Republics of the former Soviet Union, and in explaining its position in various international bodies.

9. In connection with agenda item 4, his delegation welcomed the fact that the positive changes which had taken place in the world during the past few years and the greater international efforts being made to resolve certain regional problems had facilitated the search for a political solution to the Middle East problem. It was to be hoped that the two parties to the conflict would show reason, moderation and a spirit of compromise and that further progress would be made during the multilateral talks in Moscow. The Commission should also contribute to those constructive efforts; in so doing it could count on the support of his delegation.

10. Mr. AMORIM (Brazil) observed that international events over the previous two years had once again brought the question of self-determination to the centre of world politics. The United Nations had already welcomed as new members a number of newly-independent States. That meant that the universal character of the United Nations was being enhanced by the addition of peoples who had previously been prevented from speaking with their own voice.

11. One of the main features of the concept of self-determination was that it was inextricably linked with human rights. That was because the full exercise of self-determination depended on the realization of other human rights. In that connection, the same importance should be accorded to the principle of self-determination as to the protection of the fundamental rights of minorities. Enjoyment of the right of self-determination could not be guaranteed simply by laying the foundations of political independence. Self-determination was a permanent right of peoples and should be exercised on a permanent basis. In order for that principle to be applied at the national level, the necessary conditions should be created for the will of the people to be heard and respected in free elections. On the other hand, if a people was to achieve self-determination it should be able to conduct its affairs free from outside interference. The restoration of the sovereignty of Kuwait was a remarkable example of the importance of United Nations initiatives in that regard.

12. As for the question of the violation of human rights in the occupied Arab territories, including Palestine, the documents before the Commission clearly showed that the human rights situation in the occupied territories continued to require the attention of the Commission. His Government, which had followed with keen interest efforts to achieve a negotiated solution to the Arab-Israeli problem and hoped that the international community would spare no effort in trying to reach a just and lasting solution to the question of

Palestine, deplored human rights abuses in the occupied territories and the deportation of Palestinians. It was to be deeply regretted that the Fourth Geneva Convention, which constituted the legal framework applicable de jure in the occupied territories, was not respected. The Commission, which had already condemned the installation of Israeli settlers in the occupied territories, should renew its demands on Israel in order to promote a definitive and satisfactory solution to the question of Palestine.

13. Mr. CALITIS (Observer for Latvia) recalled that, Latvia, which had been condemned by the two international criminals Hitler and Stalin, had lost its independence for over 50 years and thus its place in the United Nations. Fortunately, justice had finally triumphed and the State of Latvia was at present represented in the Commission. The Latvian people had suffered heavy losses, initially during the Second World War and then owing to the occupation of its territory by the Soviet army. Throughout all those years it had been denied the exercise of its right to self-determination. The Parliament of Latvia had recently ratified all international legal instruments concerning the right of peoples to self-determination and Latvia condemned human rights violations wherever they occurred. Latvians were the only people in Europe who had been unable to return to their pre-war demographic level and accounted for only 51 per cent of the population on Latvian territory. The Government of Latvia wholeheartedly supported the demands of oppressed peoples and intended to recognize the rights of all the ethnic groups living in Latvia. However, respect for international principles on Latvian territory was hampered by one obstacle, namely, the stationing there of armies of the former Soviet Union, which were a destabilizing factor in the Baltic region and indeed Northern and Eastern Europe as a whole. For that reason, his Government called on the international community to make every effort to require the withdrawal of those troops.

14. Mr. KHAN (Pakistan), referring to the situation in Afghanistan, said that although its people had succeeded, after an heroic struggle, in freeing their homeland from foreign occupation, Afghan territory was still being laid waste by continued armed conflict. It was incumbent upon the international community to make every possible effort to achieve peace in Afghanistan and to enable the millions of Afghan refugees to return to their homes. In that connection, Pakistan supported the United Nations Secretary-General's proposal, as well as the peace efforts embarked upon by all the parties concerned. The conflict in Afghanistan continued to impose an enormous social and economic burden on Pakistan in the form of the presence of more than 3 million Afghan refugees on its territory. The Government of Pakistan, which was deeply concerned by the sharp decline in international humanitarian assistance for those refugees, considered that it was the responsibility of the international community to extend assistance to them as long as they remained on Pakistani territory and a durable political solution had not been worked out.

15. Pakistan also regretted the fact that the right to self-determination of the Palestinian people continued to be denied and condemned the atrocities perpetrated by the Israeli authorities against innocent Palestinians. It also condemned the Israeli policy of establishing settlements and of expropriation in the occupied territories and demanded the dismantling of the Israeli

settlements in those territories. Pakistan had always supported the struggle of the Palestinian people and was convinced that a lasting solution to the problem of the Middle East would be elusive without total Israeli withdrawal from all occupied Palestinian and Arab territories and the restoration of the Palestinian people's right to self-determination. It welcomed the peace process under way in the Middle East and sincerely hoped that it would lead to a satisfactory solution of the problems in the region.

16. With regard to the apartheid regime, it was incompatible with the principles of the Charter of the United Nations and the Universal Declaration of Human Rights, since it permitted discrimination against the majority of the population. The Government of Pakistan was heartened to note the positive changes that had taken place in South Africa. Hundreds of political prisoners had been released, the ban on political organizations had been lifted and President De Klerk had endorsed the concept of a multi-party conference to promote constitutional reforms. Nevertheless, blacks in South Africa were still denied their fundamental rights to equality and self-rule. For that reason it was important to maintain international pressure on the Government of South Africa until the apartheid regime had been completely dismantled.

17. The Government of Pakistan had followed the initiative of the five permanent members of the Security Council on Cambodia and was confident that their efforts, with those of the ASEAN countries, would lead to a satisfactory solution of the question.

18. Pakistan was fully cognizant of its role as a member of the United Nations and of its obligations to the international community. It was deeply committed to the process of negotiation, consultation and dialogue which should enable the world eventually to find peace and prosperity.

19. Mr. OSMANY (Bangladesh) deplored the fact that violations of the fundamental rights of the Palestinian people and other Arabs in the occupied territories continued with impunity. In his letter accompanying the report of the Special Committee to Investigate Israeli Practices affecting the Human Rights of the Population of the Occupied Territories, the United Nations Secretary-General had observed that the Government of Israel continued to ignore requests for cooperation addressed to it. The report confirmed once again gross violations of human rights by the Israelis in those territories where political rights, the right to free movement, to education and to freedom of expression continued to be denied by the occupation authorities.

20. The growing role of the Security Council in defending and protecting human rights was commendable. The Government of Israel, a signatory to the International Covenant on Civil and Political Rights, could not ignore its legal obligations under that and other human rights instruments. In flouting its obligations, Israel was in danger of losing all credibility in international affairs. The peace process started in Madrid the previous year under the auspices of the United States and the former Soviet Union deserved to be supported. In that connection, the Commission had to be watchful and make sure that the negotiations were not allowed to cover up human rights violations by Israel in the occupied territories. Nor should the Middle East peace process be allowed to divert the Commission's attention from the serious

deterioration of the human rights situation in the territories. For that reason, until Israel fully respected the fundamental human rights of all Palestinians and other Arab inhabitants of the occupied territories, moral, ethical and legal pressures needed to be maintained, and the question should continue to be given the highest priority.

21. Mr. ROA KOURI (Cuba) said it was unfortunate that the radical changes which had taken place in the system of international relations during the past few years had led to the military and political predominance of a single super-Power. That situation did not auger well for the future of poor countries. His Government also deplored the fact that, during the Gulf conflict, the Security Council had imposed decisions alien to the spirit of the Charter of the United Nations, thus setting serious precedents for the security, sovereignty and independence of peoples.

22. He recalled that respect for the right of peoples to self-determination had always been a fundamental United Nations principle, and in that context the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples had marked a significant step forward. The right of all States to the full exercise of their sovereignty and the right of all peoples freely to choose their political, economic and social regime without outside interference had constituted the foundations of the international legal order since the end of the Second World War. The present situation required, more than ever before, respect for those principles in order to safeguard international peace and security.

23. The advent of a unipolar political and military world was fraught with the danger that a single political and social model would be imposed throughout the world. All the initiatives taken by the North had the effect of consolidating the new world order that was emerging. Some countries were trying to impose on others the doctrine of limited sovereignty and to interfere in their internal affairs on the pretext of emergency humanitarian aid or assistance in the electoral process. Attempts were being made to establish a multi-party political model within a neo-liberal market economy context and to impose a new kind of inter-country relationship that violated the principles of national sovereignty and independence. The Cuban people had built up a socialist democracy based on the participation of all citizens and intended to defend it resolutely against any attempt at destabilization.

24. Although colonialism had collapsed and a great number of countries had achieved independence, certain peoples and territories were still under alien domination which should be ended by the end of the century. Such was the case of Puerto Rico, still deprived of its right to self-determination and independence. The Government of Cuba urged that it should accede to the status of a free country. The United States still occupied part of Cuban territory - against the will of the people - where it had set up the naval base of Guantánamo. For more than 40 years the right to self-determination had been denied the Palestinian people, who had experienced the policy of repression and colonization of the Israeli occupation forces. There would be no lasting peace in the Middle East until Israel withdrew from the Occupied Arab Territories and the Palestinian people had their basic rights restored. It was to be hoped that the peace negotiations taking place would at last lead

to a settlement of the Arab-Israeli conflict. As for the question of Western Sahara, his delegation wholeheartedly supported the efforts of the Secretary-General and the work of MINURSO, established pursuant to Security Council resolution 690 (1991). It welcomed the political agreements reached in Afghanistan and the negotiations to resolve the situation in Cambodia. Lastly, with relation to southern Africa, it considered that the international community should make greater efforts to eliminate apartheid once and for all.

25. Referring to the question of mercenary activities, his delegation congratulated the Special Rapporteur appointed by the Commission, Mr. Bernales Ballesteros, for his report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (E/CN.4/1992/12). The report indicated that the activities of mercenaries continued to threaten the sovereignty of developing countries. The Cuban authorities agreed with the Special Rapporteur that the concept of mercenary activities should be defined and updated so as to include not only those who engaged directly in such activity but also those who sponsored it through the recruitment, financing, training or use of mercenaries. In that connection, the Special Rapporteur had recommended that it should apply to anyone, whether an individual or a body corporate, and that indirect intervention, covert operations and assistance to a party in conflict against the authority of the legitimate and constitutional Government should be condemned. Since it had itself been the victim of mercenary attacks carried out under the auspices of the United States of America, Cuba supported the recommendations of the Special Rapporteur, for it was aware of the close links between the activities of mercenaries and terrorist action designed to disrupt the life of citizens and overthrow legitimate authorities, as illustrated by the "dirty" wars waged in Nicaragua against the Sandinistas and against the constitutional Government of Angola, both of them organized and financed by the United States, as well as that waged by the racist regime in Pretoria against Mozambique.

26. Mr. HAFIANA (Libyan Arab Jamahiriya) noted that the question of the violation of human rights in the occupied Arab territories, including Palestine, had two main aspects. On the one hand, there were the numerous resolutions adopted by the Security Council since 1967, and particularly resolutions 252 (1968), 276 (1969), 298 (1971), 446 (1979), 465, 471, 476 and 478 (1980), 605 (1987), 607 and 608 (1988), 694 (1991) and 726 (1992), as well as Israel's rejection of the legitimate demands of the Palestinian people. On the other, there were the policies of the Israeli occupation authorities in the occupied Arab territories and Palestine which consisted of murdering old men, women and children, blowing up houses, confiscating land, depriving the inhabitants of Palestinian villages of water, plundering the property and cultural heritage of the Palestinians in order to obliterate their identity, arresting and torturing thousands of Palestinians and deporting individuals and groups. Those practices, which resembled those of the Nazis, had been confirmed by the reports of Amnesty International and other humanitarian organizations.

27. The numerous resolutions adopted by the Security Council and the United Nations General Assembly were provoked in some cases by Israel's annexation policies and the violations perpetrated in the occupied Arab

territories and Palestine, and in others by Israel's obstinate refusal to implement them. If those resolutions remained a dead letter it was also the fault of those who used their right of veto to protect Israel and support its policies. Their attitude prevented the Palestinian people from exercising their legitimate rights and encouraged Israel to pursue its policies of expansion and repression and to violate the basic human rights of the Palestinians and other Arabs living in the territories it occupied. The policies of the occupation authorities in the region threatened international peace and security and doomed to failure efforts made to restore peace, which should be based on justice.

28. In view of the Security Council and General Assembly resolutions that had been adopted, Israel could do one of two things: either it complied with the resolutions and ended human rights violations in the occupied Arab territories and Palestine by withdrawing from those regions, or it could refuse to comply with them, in which case and in accordance with the provisions of the Charter of the United Nations, the Security Council should require compliance by adopting specific measures and applying sanctions against Israel.

29. The point at issue was whether the Security Council was a body which acted in accordance with the principle of justice and equality for all, or one that had double standards, being severe towards the Arabs and tolerant to the Israelis. If that was the case, the situation would be extremely disturbing, since it would imply that the Security Council could adopt and implement resolutions that were unfair and contrary to the interests of peoples.

30. He noted that the Arabs who were taking part in the peace negotiations were victims. They were living as refugees in territory occupied by Israeli forces since 1967, suffering from hunger and disease, and handicapped by poverty and illiteracy. They could not negotiate on an equal footing with the Israelis, and would be obliged to agree to further concessions, which was impossible. The Arabs taking part in the negotiations had nevertheless shown good faith in the hope that Israel would agree to withdraw from the occupied Arab territories, recognize the right of the Palestinian people to self-determination and end the creation of settlements in the region. From start to finish they had encountered categorical refusals by the Israelis.

31. The question was not one of engaging in a futile argument or refusing peace based on justice, but rather the implementation by Israel of Security Council and General Assembly resolutions and a commitment by the United Nations to deal with all situations that threatened international peace, security and stability on the basis of respect for justice and equality between peoples and nations.

32. Mr. LONTAI (Hungary) said that the question of human rights was a priority issue for his Government which did not regard it as a domestic matter. Since it was willing to allow the international community to assess the human rights situation in Hungary, it could not remain silent when those rights were violated elsewhere by another State. His delegation noted with regret that the situation in the Arab territories occupied by Israel had scarcely changed since the previous session of the Commission on Human Rights. The occupation authorities blatantly violated their obligations under

international instruments, in particular the Fourth Geneva Convention. The Hungarian Government therefore urged the Government of Israel to respect the obligations it had assumed on ratifying various international conventions.

33. His delegation endorsed the assessment of the situation and the proposals made by Mr. de Santa-Clara Gomes on behalf of the European Community. Violence provoked violence and should be condemned wherever it occurred in the world. While considering the settlement of the occupied Arab territories to be illegal, the Hungarian Government recognized the right to emigrate and, where necessary, facilitated its enjoyment and condemned terrorist acts opposed to it. Hungary had learnt in the course of its history how easy it was artificially to heighten certain "natural" tensions between neighbouring peoples and how difficult it was and how long it took to reduce them. The Government of Hungary was following with great hopes the peace negotiations that had begun in Madrid. Their success called for a great deal of mutual tolerance and spirit of compromise, and could be facilitated by pressure on the part of the international community. For its part, it would spare no effort that could contribute to the restoration of peace in that region of the world.

34. Mr. ERMACORA (Austria) observed that that various opinions had been expressed on the subject of self-determination and considered that it was up to the Commission on Human Rights and the Centre for Human Rights to take note of them and identify their common denominator. Self-determination was one of the legal principles that had evolved the most during the century. With the eradication of colonialism, more than 100 States had emerged and maintained relations with one another on the basis of the principle of equality. In recent times, fundamental changes had swept through Central and Eastern Europe, and outside Europe other countries had claimed the right to self-determination.

35. Self-determination was the right of all peoples. A people could be defined as a social entity possessing a clear identity and its own characteristics and having a relationship with a territory. A distinction between peoples and ethnic, religious or linguistic minorities should be made on a case-by-case basis in the absence of any generally recognized definitions of those concepts. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations offered several ways of implementing the right to self-determination, including the establishment of a sovereign and independent State, free association, integration with an independent State or the elaboration of some other political status freely determined by the people. Reunification, as in the case of Germany, was another way of implementing that right. The complexity of the right to self-determination was clear in the cases of the former USSR and Yugoslavia. Nevertheless, Austria had supported the claims of the Slovene and Croat peoples to the right to self-determination which had been clearly expressed in national plebiscites in accordance with the Constitution of Yugoslavia. Austria, together with many other countries, had therefore recognized the new States of Slovenia and Croatia since they fulfilled the relevant criteria for statehood.

36. The claim of a people to self-determination was essentially a request addressed to the State and the international community to negotiate a common political future. It was up to the people to decide how that right was to be implemented. The legitimacy of the claim would be tested at the national and international level, however. For that reason there was a need for new procedures to deal properly with such claims, which would guarantee the participation of all in accordance with the principles of democracy, political freedom and freedom of choice through free elections whose outcome would be fully respected. A crucial aspect of the right to self-determination was to determine the precise will of the people concerned; one way was to hold plebiscites or general elections. The United Nations had just launched an extensive operation to allow the Cambodian people to express their political will in internationally-supervised elections. Similarly, in Western Sahara, MINURSO was preparing a referendum on the future status of the territory. Austria was contributing to both operations not only financially but also by providing personnel. Plebiscites to determine the future status of territories had been implemented or announced elsewhere - one example being the referendum on the question of national independence to be held in Bosnia-Herzegovina towards the end of February 1992. Austria believed that the United Nations and other international organizations should play an important role in organizing free and fair elections or plebiscites. It therefore welcomed the increasing preparedness of the United Nations system, including the Centre for Human Rights, to react positively to requests by States for such assistance, as in the case of Eritrea where a referendum on the future status of the territory was to be held at an early date.

37. The task of the Commission was to follow the development of the fundamental concept of self-determination and to draw realistic conclusions that might also be considered by other United Nations bodies dealing with human rights. In that regard, it was worth recalling the General Comments on Article 1 of the International Covenant on Civil and Political Rights that had been elaborated by the Human Rights Committee. In conclusion, he said it seemed that respect for human rights and fundamental freedoms lay at the very core of the principle of self-determination, which in turn contributed to the full observance of those rights.

38. Mr. ITO (Japan) said that the Commission's discussions on the question of the violation of human rights in the occupied Arab territories were of crucial importance, since after a period which had seen encouraging signs and disappointments a historical turning-point had been reached in the search for peace in the Middle East. In that complex situation, his delegation expressed its appreciation of the initiative and continuous efforts of the United States Government. It reiterated its position that, in order to achieve a just, lasting and comprehensive peace in the Middle East, Security Council resolutions 242 and 338 should be respected, and that the peaceful solution of the question of Palestine should be based on three basic principles, namely, Israel's withdrawal of its armed forces from all territories occupied since 1967, recognition of the Palestinian people's right to self-determination and recognition of Israel's right to exist. Japan believed that Israel, as the occupying Power, should bear responsibility for protecting the civilian population in the occupied territories and was obliged to comply with the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

39. In that connection, his delegation considered that the decision taken on 2 January 1992 by the Government of Israel to deport 12 Palestinians from the West Bank and the Gaza Strip ran counter to the efforts made to promote the peace process. Furthermore, that measure infringed international law on the treatment of residents in occupied territories and was contrary to humanitarian principles. Japan also urged Israel to put an end to its illegal settlement practices in the occupied territories which posed a threat to the peace process. It also considered that the international community should increase assistance to Palestinian refugees and Palestinian residents in the occupied territories. It had therefore contributed US\$ 10 million in cash to UNRWA for the year 1991 as well as food aid equivalent to 1 billion yen. Japan expected the Working Group dealing with refugee matters which had been established at the Moscow meeting to contribute to a solution of the problem of Palestinian refugees and hoped that, throughout the peace process which had begun in Madrid, respect for human rights in the Middle East would be a matter of priority.

40. Mr. WIRAJUDA (Indonesia) noted that recent changes in the former Eastern Bloc had renewed interest in the issue of self-determination. In terms of the decolonization of non-self-governing territories, the process of self-determination had been quite successful, with a few exceptions. In that connection, he emphasized that action to abolish colonialism constituted one of the fundamental principles set out in the preamble to the Indonesian Constitution.

41. The question of self-determination could be understood more easily if its true nature was analysed in a historical context. It was worth remembering that 1992 marked the five-hundredth anniversary of the beginnings of the modern history of colonization and the subjugation of peoples in the name of law and morality. By tracing the history of colonialism, it was possible to see how close were the links between the question of self-determination and racism and slavery. That was, moreover, the approach adopted by the human rights expert Mr. Asbjorn Eide who, in a recent study on racism (E/CN.4/Sub.2/1989/8 and Add.1), had pointed out that in Europe religious dogmas had preceded racist theories which had in turn legitimized colonialization through what were called legal principles of discovery. The new world order created after the Second World War aroused great expectations among peoples under foreign domination that they would be freed from unjustified subjugation since the principle of self-determination had often been expressed during the War. However, what was supposed to be their inherent right to self-determination had not been a priority when the Charter of the United Nations was drawn up. The preparatory work for the 1945 San Francisco Conference revealed that, with reference to article 73, self-determination in the sense of the right of peoples under foreign domination to independence was a controversial issue and that in point of fact the text of article 73 of the Charter fell short of that principle.

42. There was a tendency, in the debate on self-determination, to confuse the right to self-determination with the exercise of self-determination. According to the Declaration on the Granting of Independence to Colonial Countries and Peoples (United Nations General Assembly resolution 1514 (XV) of 15 December 1960), all peoples had the right to self-determination, which meant that colonial countries and peoples could, in exercising that right,

choose independence, integration or association with another State. By virtue of the right to self-determination they had the right to choose their own government and pursue their economic, social and cultural development as they saw fit. That was comparable to what was often called internal self-determination. In the progressive development of international law, the right to self-determination was considered a part of peremptory norms (jus cogens) under which treaty agreements between States and decisions of any institution for the purpose of maintaining the status quo of colonialism were null and void. It was as such that Indonesia regarded the claims of a former colonial Power to be the "administering Power" of its former colony.

43. The 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples made it clear that the right to self-determination was granted to peoples and not to a section of the population. It was certainly not meant to be granted to a handful of persons who had taken refuge in a Western country and set up what they would call a liberation movement, and claimed the right to independence for a portion of a State which had decolonized itself within the meaning of the right to self-determination under the 1960 Declaration. Finally, it should not be forgotten that, according to article 29, paragraph 3, of the Universal Declaration of Human Rights, the rights and liberties (contained in the Declaration) might in no case be exercised contrary to the purposes and principles of the United Nations, important elements of which were the maintenance of the territorial integrity and political independence of States.

44. Mr. SEMICHI (Algeria) said that the process of the emancipation of peoples under General Assembly resolution 1514 (XV), which contained the Declaration on the Granting of Independence to Colonial Countries and Peoples, had not yet ended since situations persisted in which peoples under foreign domination were denied the exercise of their national sovereignty. Such was the case of the Palestinian people whose national rights were still denied on their own territory, occupied by Israel which refused to meet its obligations under the Charter of the United Nations. At its forty-seventh session, the Commission on Human Rights had, in resolution 1991/6, requested the Secretary-General to provide it with all information pertaining to measures that Israel intended to take in compliance with its obligations and United Nations resolutions. That request had failed to elicit any response from Israel, which had thereby demonstrated once again its defiant attitude to the United Nations.

45. In South Africa, there were no grounds for asserting that the emancipation of the black majority of the country was imminent in the view of the slow pace at which apartheid as a system of racial exclusion was being dismantled. However, the commitment and determination recently shown by the Government of that country had aroused hopes that a democratic solution would be found and would effectively abolish the anachronistic institution of apartheid. The United Nations should therefore continue to encourage the dialogue with leaders in Pretoria and the legitimate representatives of the courageous South African people. In that regard, his delegation congratulated Mr. Bernales Ballesteros, Special Rapporteur on mercenary activities, for his report (E/CN.4/1992/12). Those criminal activities had been condemned by Governments and non-governmental organizations, since they were part of the

subversive activities carried out in southern Africa and elsewhere against independent States and national liberation movements in order to impede the process of the liberation of peoples. The Special Rapporteur had noted the close relationship that existed between apartheid and the presence in Africa of mercenaries who contributed to the implementation of that despicable policy.

46. The situation of the people of Western Sahara had been considered regularly by the United Nations bodies over many years in an attempt to find a permanent, just and lasting solution. The plan drawn up by the United Nations to resolve that question had been approved by both the General Assembly and the Security Council, and its implementation had been entrusted to the Secretary-General. His delegation supported that plan which provided for the organization of a referendum on self-determination that would allow the people of Western Sahara to express their wishes in complete freedom and thus arrive at a definitive solution of the problem.

47. Mr. RASAPUTRAM (Sri Lanka) noted that, despite some measure of optimism over the commencement of the Madrid process with the conference on peace in the Middle East, the situation in that region and the question of Palestine in particular regrettably remained unchanged despite the yearning of the Palestinian people to exercise their inalienable rights, including the right to an independent homeland. Those rights continued to be denied them and, as evidenced by documents before the Commission, particularly concerning the toll of those killed and wounded, including children, and the violence, harassment and other infringements of fundamental rights highlighted in document A/42/522, Palestinian and other Arab civilians in the occupied territories were being treated in an unacceptable way. Since the intifada, it had become obvious that Palestinians rejected the Israeli occupation and that the situation resulting from the occupation would not be resolved with time. Israel had furthered its occupation policies by establishing new settlements and expanding those already in existence and had exacerbated the situation even more by settling thousands of immigrants in the occupied territories.

48. His delegation, together with the world community, urged the Israeli authorities to abide by the Fourth Geneva Convention, especially article 49, paragraph 6, and reaffirmed the importance of Security Council resolutions 242 (1967) and 338 (1973) as a basis for a peaceful settlement. It welcomed the first moves towards a comprehensive solution of the Middle East problem as reflected in the Madrid peace conference, a process which was continuing in Moscow. However, the international community should not divert its attention from the unsatisfactory situation in the occupied territories. As the former United Nations Secretary-General, Mr. Javier Pérez de Cuéllar had said, a settlement in the Middle East depended on several key considerations, including the satisfactory solution of the Palestinian problem based on the recognition of the legitimate political rights of the Palestinian people, including self-determination.

49. Mr. LANUS (Argentina) recalled that being a member of the Commission imposed an often unpleasant duty on States, since they were sometimes obliged to choose between two imperatives which constituted the very basis of relations between sovereign States. On the one hand, they had to find a way

of interpreting the increasingly vocal wishes of international public opinion to have States that flagrantly violated human rights publicly condemned and, on the other hand, of respecting the undeniable right of every State to non-interference in its internal affairs. Those inescapable alternatives reflected the evolution of ideas and political realities in a world that was beginning to accept what had previously been unthinkable. It was in that context that Argentina had actively joined in the struggle to defend human rights as an indivisible whole, which implied ensuring complete respect for civil, political, social, cultural and economic rights as the only way of enabling individuals to develop in a climate of international cooperation and harmony.

50. For Argentina, the question of the violation of human rights in occupied Arab territories, including Palestine, had taken on new importance because, for the first time since the beginning of the conflict between Arabs and Israelis, a direct dialogue had been established with a large number of the leaders of Arab States. That did not, of course, imply that the human rights violations still being committed in all the occupied Arab territories, any more than the failure of the authorities of the Hebrew State to respect the 1949 Geneva Conventions, should be overlooked. However, the talks under way should prove that peace was possible in that region of the world and that the peoples whose roots there were so ancient could once again live together in peace.

51. Argentina reaffirmed that the establishment of new settlements should be halted because, consisting of immigrants from other regions with different customs, they were the source of new tensions which further compromised the likelihood of peace in the future. As for the deportation of Palestinian civilians, it was contrary to all the standards that should be respected by States and only increased hostility. The solution to the conflict should be based on Security Council resolutions 242 (1967) and 338 (1973) since there would be no peace in the region until the inalienable rights of the Palestinian people were recognized and the sovereignty of the State of Israel guaranteed within secure borders recognized by neighbouring countries. A historic threshold had been crossed in that respect with the conference that had taken place in Madrid in 1991. To conclude that agenda item, his delegation observed that, since their arrival in Argentina at the end of the nineteenth century, Arab and Jewish communities had coexisted in harmony and without any display of bitterness or enmity, and that even during the unfortunate events of 1967 and 1973 there had been no confrontation between them. Argentina sincerely hoped that a similar situation would be brought about in the territories which were at present the theatre of the Arab-Israeli conflict, and was convinced that peace was possible there.

52. In connection with agenda item 9, the right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation, his delegation believed that the international community should support the opening-up process which had begun in South Africa with a view to abolishing apartheid once and for all. It also welcomed the peace efforts being made through the United Nations in Cambodia, and expressed the hope that the process of decolonization which had begun in Western Sahara would be successful and that the referendum would take place as

planned under the auspices of the United Nations. In conclusion, it commended the report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (E/CN.4/1992/12), submitted by Mr. Bernales Ballesteros, and supported the extension of his mandate.

53. The CHAIRMAN gave the floor to those delegations which had asked to speak in exercise of the right of reply, or the equivalent of the right of reply.

54. Mr. RAVEN (United Kingdom of Great Britain and Northern Ireland) said that at the previous meeting the representative of Iraq had reacted to the statement made by the Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom by resorting to the usual method employed by those who had no argument to counter criticism levelled at them, namely, by attacking the author and refraining from dealing with the substance. The representative of Iraq had not replied to any of the points raised by the British Under-Secretary of State. In any case, the human rights situation in Iraq would be considered by the Commission subsequently, but it was clear that to shift responsibility for the appalling human rights situation in that country onto someone else was simply a classic diversionary tactic which would not deceive the international community.

55. Ms. RADIC (Yugoslavia), replying to the statement made at the present meeting by the representative of Austria, who had said that the Croats and Slovenes had seceded in accordance with the right to self-determination recognized by the Yugoslav Federal Constitution, said it was true that Yugoslavia, like the former Soviet Union, was one of the few countries to recognize that right in its Constitution. However from the standpoint of the Yugoslav Constitution, that right was considered to have already been exercised in the past. The secession of the Croats and Slovenes was therefore a unilateral act by those Republics. In fact the federal law of Yugoslavia did not recognize acts which changed the borders of the country unless they had been reached as a result of negotiations and agreements reached among all the Yugoslav peoples concerned. That principle had obviously been flouted in both the cases of secession in question.

56. The representative of Austria had also said that a plebiscite was to be organized in Bosnia-Herzegovina on the question of the sovereignty of that territory. Like the exercise of the right to self-determination, plebiscites were not the privilege of republics or their governments but that of the peoples who lived in the Republics. It was the Government of Bosnia-Herzegovina which had proposed organizing a plebiscite on the independence of a Republic that was inhabited in approximately equal proportions by Muslims, Croats and Serbs. The Serbs of Bosnia-Herzegovina would not agree to live in a sovereign Bosnia-Herzegovina imposed upon them - an opinion they had already expressed freely in an earlier referendum - but wished to remain in Yugoslavia. They had therefore refused to participate in the forthcoming plebiscite, preferring to continue to live in the Yugoslav State and did not recognize any unilateral act which might be imposed on Yugoslavia or any of its peoples outside of a negotiated, peaceful and comprehensive solution to the current Yugoslav problem.

57. Mr. KIM Chol Su (Observer for the Democratic People's Republic of Korea), replying to the accusations directed against his country by the United States representative at the previous meeting, said that the most wanton violation of the right to national self-determination was foreign interference, especially military aggression and occupation. It was common knowledge that, as a result of the occupation of the southern part of the Korean peninsula by the United States for nearly half a century, the Korean people had been unable to exercise its right to self-determination and sovereignty on a nationwide scale, and that 10 million families had been torn apart without knowing whether their relatives were alive or dead. The Democratic People's Republic of Korea wished to recall in that regard the historical facts, which were that the United States that pretended to be the defender of the right to self-determination and human rights had massacred hundreds of thousands of Koreans who had decided to establish their own government immediately after the United States' occupation of South Korea and had divided the Korean nation, causing untold suffering.

58. American-style democracy and freedom as characterized by brutal discrimination against its indigenous and black population, murder, drug abuse, crime, unemployment and hollow rights were unacceptable. The electoral system in the United States excluded millions of citizens through preconditions such as personal wealth, permanent residence, age and so on. In spite of that the United States tried to act as a human rights judge in the Commission, which should no longer be allowed.

59. The North Korean people had from the outset chosen their social and political system and were proud of it and of their democracy. If the United States intended, under a human rights banner, to undermine the system that the people loved they were deluding themselves. By using human rights as a pretext for its base political purposes in the very forum where the best way of defending those rights was being discussed, the United States showed how much it was accustomed to flout the right to self-determination of other nations.

The meeting rose at 5.55 p.m.