



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/SR.13
1 April 2005

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sixty-first session

SUMMARY RECORD OF THE 13th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 18 March 2005, at 3 p.m.

Chairperson: Mr. WIBISONO (Indonesia)

CONTENTS

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO
PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION
(continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.05-13053 (E) 220305 010405

The meeting was called to order at 3 p.m.

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (agenda item 5) (continued) (E/CN.4/2005/13, 14 and 23; E/CN.4/2005/NGO/2, 77, 89, 92, 148, 165, 203, 210, 212, 238, 253, 260, 279, 293, 296, 306, 308, 339 and 346)

1. Mr. PERVEZ ASHRAF (Pakistan) said that the right of peoples to self-determination was an inalienable right enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights. It shielded the vulnerable against aggression, occupation and domination, and its denial caused suffering and instability.
2. In 1948 the United Nations had conferred the right of self-determination on the people of Jammu and Kashmir, but the plebiscite envisaged by the Security Council had never been held. As the Jammu and Kashmir issue was not about territory or ideology but was a human problem, Pakistan emphasized the need to associate the Kashmiri people with the Pakistan-India peace process. When people were denied their freedom and basic rights, they waged a struggle, and when their peaceful struggle was suppressed by violence, they fought back with all means at their disposal. To dismiss the Kashmiri freedom struggle as “cross-border terrorism” was an oversimplification. Characterizing the issue as part of the global problem of terrorism was at best disingenuous and at worst dangerous.
3. Deep down, India’s liberal conscience told it that it had a case to answer on Kashmir. A full articulation of that realization could be the crossing of the Rubicon in the quest for peace. Pakistan had demonstrated its earnest desire to do so, thereby opening new vistas of opportunity for the people of South Asia. The improvement in relations between Pakistan and India should result in a tangible improvement in the human rights situation in Kashmir. According to independent estimates, more than 85,000 men, women and children had lost their lives, over 24,000 women had been widowed and 110,000 children orphaned since the start of the conflict.
4. Pakistan’s constructive proposals aimed at achieving a just resolution of the dispute included working out mutually acceptable modalities for associating the true representatives of the Kashmiri people with the dialogue process, and the appointment of high representatives of both countries with a mandate to promote a peaceful settlement in association with the people of Jammu and Kashmir.
5. The bus service between Muzaffarabad and Srinagar was a major humanitarian confidence-building measure and it had been agreed, in deference to the wishes of the Kashmiri people, that no passport or visa would be required for the crossing.
6. Pakistan sincerely hoped that the dialogue between India and Pakistan would lead to a just and lasting solution of the Kashmir issue. In the meantime, the international community had a responsibility to assist in ending human rights violations in Indian-held Kashmir.
7. Ms. CHE Ying (China) said that the right of self-determination was a basic right provided for in both International Human Rights Covenants and constituted a prerequisite for

the enjoyment of other rights and fundamental freedoms. Bullying the weak and small, attempting to subject them to political pressure or economic sanctions, and interfering in the affairs of others by force deserved the strongest condemnation by the international community.

8. The right to oppose foreign aggression, occupation and interference and to safeguard national sovereignty, independence and the dignity of the people was recognized in the 1993 Vienna Declaration and Programme of Action. However, the right of self-determination must not be used by people pursuing a hidden agenda as a subterfuge for splitting up sovereign States or provoking ethnic hatred. Such acts distorted the Charter of the United Nations and recognized norms of international law and must be resisted by the international community.

9. The restoration of the political rights of the Palestinian people, including the right of self-determination, the ending of foreign occupation and the establishment of an independent State in Palestine were the key to lasting peace in the Middle East. China welcomed the positive steps taken by the Palestinian Authority and Israel to end violence and hoped for an early resumption of comprehensive peace talks. It further hoped that the international community would play an even more active role in bringing about a comprehensive, just and lasting settlement in the Middle East on the basis of relevant United Nations resolutions and the principle of land for peace. China stood ready to continue playing a constructive role in that regard.

10. Mr. REYES RODRÍGUEZ (Cuba) said that current challenges to the exercise of self-determination by the peoples of the world were comparable only to those endured by the peoples of Asia, Africa and Latin America during the colonialist era. A hegemonic Power had arrogated to itself the right to intervene militarily, allegedly on pre-emptive grounds, in any country that it perceived as a threat to the world and its own national interests. The international community had witnessed the disastrous consequences of the first application of that imperialist doctrine. The territory of Iraq continued to be occupied by the United States, which was protecting the interests of major oil corporations and companies closely associated with the Republican Administration, torturing and killing thousands of innocent civilians.

11. The people of Cuba had suffered 46 years of United States action against their right of self-determination, including a mercenary invasion, the threat of nuclear bombardment, terrorist attacks, the illegal occupation of the part of Cuban territory where the Guantánamo naval base was located, and a genocidal blockade. But the Cuban people would fight to the last drop of their blood in order to defend that right and Cuba would win both the war of ideas and the war against aggression, relying on the dignity and courage of a people who supported the revolution and would continue to defend its independence, freedom, democracy and social justice.

12. Having suffered colonialism, foreign occupation and neocolonialism, Cuba could empathize with those who were still deprived of the right of self-determination. It fully supported the efforts of the people of Puerto Rico to exercise that right and join the community of sovereign nations of Latin America.

13. Cuba also demanded the immediate withdrawal of Israeli forces from all occupied Arab territories, particularly Palestine and the Syrian Golan, as well as full respect for the right of the Palestinian people to establish their own State with its capital in East Jerusalem.

14. In August 2004, the Cuban Government had denounced the pardon granted by the former President of Panama, Mireya Moscoso, to four terrorist mercenaries of Cuban origin who had been tried and sentenced by Panamanian courts for participating in a plot to assassinate the Cuban President that would have claimed the lives of thousands of Panamanian students and university staff. One of those pardoned had admitted his responsibility for a Cuban plane crash in 1976, in which 73 people had lost their lives, and his involvement in the bombing of tourist facilities in Cuba in 1997. Three others now enjoyed impunity in United States territory, and a fourth had gone into hiding somewhere in Central America. The possibility that they were hatching further terrorist plots against the Cuban people, using mercenaries paid by the Cuban-American mafia, could not be ruled out.

15. Mr. BOSCHWITZ (United States of America) said that the fundamental process that people used to exercise the right of self-determination, as guaranteed in article 1 of the International Covenant on Civil and Political Rights, was free and fair elections. The commitment to self-determination had been reflected in the past year in an inspiring worldwide movement towards democracy.

16. In January 2005, millions of brave Iraqis had defied terrorist threats to their lives to participate in their country's first democratic and transparent election in generations.

17. In December 2004, municipal elections had been held in the West Bank for the first time since 1976. International observers had deemed the elections for President of the Palestinian Authority to have been generally free and fair.

18. In November and December 2004, tens of thousands of Ukrainians had peacefully protested against fraud in the country's presidential elections, setting the stage for a Supreme Court decision to invalidate the second round and order a repeat which had brought Ukraine substantially closer to meeting international standards for democratic elections.

19. In October 2004, over 8 million Afghans had chosen their own leader for the first time despite threats, attacks and technical challenges. More than 40 per cent of registered voters had been women.

20. Indonesia had held a series of free and fair national elections in 2004, with an 80 per cent turnout for the country's first ever direct presidential elections.

21. In November 2003, Georgia's President had resigned, and presidential and parliamentary elections had been held in early 2004.

22. The Roadmap for Peace in the Middle East, sponsored by the United Nations, the European Union, the Russian Federation and the United States (the Quartet), envisioned two States - Israel and Palestine - living at peace side by side. Reformed democratized institutions were a necessary foundation for the future State of Palestine. The election of Mahmoud Abbas as President was a sign of hope in that regard, and opinion polls in the West Bank, Gaza and Israel reflected a sense of optimism. But although peace and stability appeared closer than at any time in living memory, the Arab Group in the Commission had tabled a resolution that was both intemperate and unhelpful to the peace process. He hoped it would be firmly rejected.

23. Attempts by some leaders to block free and fair elections would eventually be defeated. The United States called on all leaders to allow their citizens to exercise their right of self-determination through free and fair elections.
24. Mr. SINGH PURI (India) said that the right of peoples under alien subjugation freely to determine their political status had been recognized as a result of initiatives in which India, as a founder member of the Non-Aligned Movement, had played a leading role. The fact that a majority of States Members of the United Nations were former colonies demonstrated the success of the historic struggle for self-determination.
25. One glaring exception was Palestine. India remained steadfast in its solidarity with the people of Palestine as they struggled to achieve their goal of a sovereign independent State, with well-defined and secure borders, living at peace with the State of Israel.
26. He reaffirmed India's consistent view that self-determination was a right applicable to the peoples of non-self-governing colonies and trust territories. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States and the Vienna Declaration and Programme of Action recognized that any action aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or its political independence was incompatible with the purposes and principles of the Charter of the United Nations. The distinguishing features of the right of self-determination in the contemporary context were therefore: the right of the whole people to participate in free elections and to govern themselves through a representative Government; the right to participate in all walks of national life and national decision-making through democratic institutions; the achievement of fundamental rights on the basis of equality and non-discrimination, including for religious, ethnic, linguistic and other minorities; the full exercise of fundamental freedoms and respect for universal human rights norms and principles, including tolerance and pluralism; and the right to independence of action and opinion.
27. The right of self-determination could not be invoked to subvert and erode the political cohesion or territorial integrity of States Members of the United Nations, to encourage secession or to undermine pluralistic and democratic States. The view that only societies constituted on homogeneous lines could be tolerant and respect diversity and multiculturalism would fuel the forces of extreme nationalism and narrow chauvinism.
28. Mr. YIMER (Ethiopia), speaking on behalf of the African Group, said that the Group's position on the right of self-determination was influenced by its experience of colonialism and based on the provisions of instruments such as the Charter of the United Nations, the Vienna Declaration and Programme of Action, and General Assembly resolution 1514 (XV), which viewed the denial of the right of self-determination as a threat to international peace and security.
29. The African Group welcomed positive developments in recent months, including the Sharm el-Sheikh summit, the London meeting on Palestine and the presidential elections in the Occupied Palestinian Territory. According to recent opinion polls, public opinion in both Israel and Palestine supported efforts to resolve the issues comprehensively once and for all. The leadership on both sides thus enjoyed a clear mandate from civil society.

30. The African Group also welcomed the Advisory Opinion of the International Court of Justice to the effect that the construction of the so-called “security wall” in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime were contrary to international law, and that Israel, as the occupying Power, was under an obligation to cease construction. The Court had also found that the wall adversely affected negotiations on a final settlement and the enjoyment by the Palestinian people of their right of self-determination. The infringements of the rights of Palestinians resulting from the route of the wall could not be justified by military exigencies or the requirements of national security or public order. The Court had placed States under the obligation not to recognize the illegal situation arising from its construction and not to render any assistance in maintaining it.

31. The African Group reiterated that only a just, comprehensive and lasting peace through negotiations and dialogue could end the crisis in the Middle East. It underscored the inalienable right of the Palestinian people to an independent State existing side by side with Israel and encouraged the efforts of the Quartet to ensure implementation of the Roadmap approved by Security Council resolution 1515 (2003).

32. Mr. TEKLE (Eritrea) said that his people had a long history of struggle against colonialism, racism and ethnic discrimination and thus supported the cause of all those who continued to suffer abuse and humiliation. The right to self-determination implied freedom from colonialism and denoted the right of States to determine their political status and freely to pursue their political, economic, social and cultural development. Also, General Assembly resolution 1803 (XVII) confirmed the rights of peoples and nations to permanent sovereignty over their own natural resources. As integral parts of almost all international instruments, those provisions governed contemporary international relations. Any action that would curtail a nation’s control over its territories and resources would be in violation of all relevant international instruments and engender insecurity, instability and conflict. Any attempt to coerce a State into compromising its sovereignty, territorial integrity, unity and independence was illegal and contrary to peaceful coexistence and development. The rule of law, the sanctity of international and bilateral agreements, respect for the principles enshrined in the Charter of the United Nations, and the commitment to international agreements were the building blocks for peace.

33. The people of Eritrea would not forsake their right to freedom for any reason and rejected any negotiation or treaty that would subvert the final and binding decision of the Boundary Commission, the implementation of which was guaranteed by the United Nations. His Government was unwilling to place at risk the rights of the Eritrean people and to conspire in an attempt to destroy the intricate web of laws and institutions that had preserved peace, security and stability worldwide. If necessary, the Eritrean people would fight to defend both their interests and rights and those laws and institutions. The liberation of all people from the scourge of war was only possible through respect for the rule of law and internationally agreed standards. Those who sought to uphold the values and traditions that had contributed to the advancement of human civilization, and who urged others to adhere to those values, must themselves respect them to show the sincerity of their commitment.

34. Mr. AL-ASKAR (Observer for Kuwait) said that the right of self-determination was an inalienable right and all impediments to its full exercise should be eliminated.

35. The Palestinian people had for decades been denied the right of self-determination and to full enjoyment of political rights, in accordance with the Charter of the United Nations and successive declarations and resolutions, particularly Commission on Human Rights resolution 2004/3, which required the current session to consider the situation in occupied Palestine as a matter of high priority. Kuwait reaffirmed the inalienable, permanent and unqualified right of the Palestinian people to self-determination and to establish a sovereign and independent Palestinian State with its capital in Jerusalem, in accordance with the Commission resolution and relevant Security Council resolutions.

36. It was to be hoped that the current efforts by the international community to reactivate the peace process would bear fruit and that the aspiration of the Palestinian people to exercise all their legitimate rights would finally be realized.

37. Ms. HOCH (Observer for Liechtenstein) said that the implementation of the right to self-determination could be a powerful instrument for peace-building. The right to self-determination, as described in the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States, provided the appropriate legal framework for developing varying degrees of self-administration and self-governance, which could effectively help prevent claims of independence.

38. The existing definition of mercenaries as contained in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries was inadequate to address contemporary challenges, such as the proliferation of commercially motivated military activities and the parallel emergence of an international privatized military industry. The report of the Special Rapporteur on mercenaries (E/CN.4/2005/14) gave no indication of the extent of that industry's activities and failed to address the consequences those activities had had in some instances.

39. The use of mercenaries had a considerable impact on legal issues affecting human rights activities and thus warranted attention. Agents working for the privatized military industry often operated in a legal vacuum and were accountable neither to the judiciary of the State in which they operated, nor to that of the State on whose behalf they acted. The resulting implications for the enjoyment of human rights must be addressed either in conjunction with other questions relating to the role and responsibilities of non-State actors or separately. The legal issues surrounding that question must be clarified as a matter of urgency and, given the global scale of the phenomenon, the United Nations was the appropriate forum for that purpose.

40. Mr. ABU-KOASH (Observer for Palestine) said that his delegation was pleased to be in the presence of the representatives of a large number of countries that had thrown off the shackles of occupation and exercised their right to self-determination. The Palestinian people continued to be denied that right by the occupying power, Israel. In 1988, the Palestinian people had accepted a two-State solution that had left them with a mere 22 per cent of their homeland. Israel's vigorous military and expansionist policies aimed at creating a de facto situation where Palestinians were left with only half of that already reduced figure and deprived of all sovereignty.

41. Israel's continued retention of the Occupied Palestinian Territory and its activities in that territory had no legal validity. Pursuant to international law, Israel was a belligerent occupying

power and bound to observe the relevant provisions of that law. The concept of an “administrator” - a name chosen by Israel itself - was unknown in international law. Moreover, Israel did not limit itself to mere administration, but instead had proceeded to the illegal annexation of Jerusalem and acted as if it were entitled to full sovereignty over the Occupied Palestinian Territory. Israel had confiscated Palestinian lands in violation of international law and had built settlements for part of its population, in flagrant breach of article 49 of the Fourth Geneva Convention.

42. The Palestinian people’s right to self-determination had been affirmed repeatedly by the Commission on Human Rights. Those who sought to promote and enforce freedom and respect for human rights throughout the world could no longer overlook the ongoing violations of that people’s rights. In spite of its continuous defiance of international law, Israel had been granted exemption from the rule of respect for the fundamental values enshrined in international instruments.

43. The Palestinian people were determined to free themselves from Israeli occupation and were grateful to all those who had supported them in that ongoing struggle, including Israeli citizens who opposed their Government’s anti-Palestinian policies. His people had demonstrated their capacity for independence in conducting fair and democratic presidential and municipal elections; legislative elections would be held in June 2005. They had worked relentlessly to restructure and rebuild their economy and institutions. However, those efforts had been undermined by an aggressive occupier whose daily practice on the ground engendered hatred and instability. Respect for human rights and recognition of the right to self-determination were crucial to peace and security, and the injustice inflicted on the Palestinian people precipitated instability in many parts of the world. While a comprehensive body of agreements recognized Palestinians’ right to self-determination, the status quo reflected the harsh reality of a people yearning for independence but forced to go through a lengthy and arduous process of negotiations with Israel.

44. Mr. AL-RIYAMI (Observer for Oman) said that the right of self-determination was a pillar of the international system established by the Charter of the United Nations and the Universal Declaration of Human Rights and a particularly important right for peoples suffering under the yoke of foreign occupation. The failure of the Government of Israel to apply those principles and its use of force against a people that were seeking to defend their national territory constituted a challenge to the international community, which aspired to promote security and stability for all peoples in the region. In defiance of that community, Israel continued to ignore the many resolutions adopted by different United Nations bodies, denying the Palestinian people the right of self-determination and to live in dignity like other peoples.

45. The right to resist foreign occupation was a sacred right enshrined in international law and custom. Oman supported the just and lawful struggle of peoples to exercise that right and joined its fellow Arab and Islamic States and other peace-loving countries in staunchly supporting the Palestinian people in their struggle to secure their legitimate national rights. It called on all relevant international bodies and, in particular, the Fourth Committee of the General Assembly, to take effective action to compel Israel to comply with international law, and to devise a mechanism to assist the Palestinian people in exercising their right of self-determination.

46. Oman believed that dialogue and negotiation were the best means of achieving a just and lasting peace in the region and establishing an independent Palestinian State living alongside the State of Israel.

47. Mr. LEVANON (Observer for Israel) said that Israel had recognized the legitimate rights of the Palestinian people over 25 years previously and had entered into several agreements that focused on bringing an end to the conflict and implementing those rights. The new process launched on the occasion of the Sharm el-Sheikh summit held on 8 February 2005 envisaged the implementation of the two-State solution and the Palestinian people's right to self-determination. It was regrettable that the members of the Commission had thus far ignored those positive developments and had failed to revise their attitudes.

48. Israel supported the right to self-determination of peoples worldwide, including the Palestinian people, and in turn expected full recognition of the right of the Jewish people to de facto and de jure self-determination. The recent positive developments in the region showed that violence and terrorism had failed, and both Palestinians and Israelis had embarked on a new path. He urged the Commission to encourage those efforts by sending a clear message of support and hope. It was surprising that no attention had been paid to progress in the region. The relentless condemnation of Israel threatened to undermine that progress and could only serve the cause of extremists. He appealed to the Commission to silence the negative voices in its midst and work towards true change.

49. Mr. AL-FAIHANI (Observer for Bahrain) said that the encouraging developments in the political environment in the Middle East had thus far had no concrete impact on the implementation of the right to self-determination of the Arab people under occupation. His Government was hopeful that the current positive developments would provide an opportunity for putting an end to the suffering of the Palestinian people. Peace in the Middle East could only be achieved by granting the Palestinian people their legitimate rights, and his Government strongly supported all efforts towards that goal.

50. He appealed to the Commission to focus on promoting the rights of the Arab people under occupation, including the Palestinian people. The denial of those rights constituted a violation of international norms and principles and would result in further instability. Israeli violations committed against the Palestinians must be halted. The absence of peace and stability would only strengthen extremism, hinder economic development and prevent the development of human rights and fundamental freedoms.

51. Attaining peace in the region required international action, in which the Commission had an important role to play. The occupation authority must cooperate in finding a peaceful solution to the conflict. The time had come to overcome the hatred and instability caused by the occupation and to ensure that future generations in the Middle East could live in peace.

52. Mr. JAAFARI (Observer for the Syrian Arab Republic) said that the Charter of the United Nations and international human rights law guaranteed all States an unfettered right to self-determination. Moreover, the history of the General Assembly was closely bound up with the implementation of that principle since the adoption of landmark resolution 3236 (XXIX) on the question of Palestine in 1974.

53. The right of return, as set forth in General Assembly resolution 194 (III), was an indivisible part of the right to self-determination and to the establishment of an independent Palestinian State. Moreover, the path to a comprehensive and lasting peace in the Middle East did not require any roadmaps but only Israeli compliance with United Nations resolutions and with the framework established by the Madrid Peace Conference and the Arab Peace Initiative. However, Israel did not want peace but sought to fragment the peace process and to reduce it to talk about clearing away individual road blocks while maintaining the occupation. It had no respect for international law, as witnessed by its attitude to the recent Advisory Opinion of the International Court of Justice. It persisted in building the separation wall and annexing large segments of East Jerusalem, thereby depriving the Palestinian people of their rights and dashing all hopes for peace in the region.

54. The international community must now, more than ever before, take stock of the manoeuvres of the Israeli Government, which was seeking to conceal its continued occupation of Arab lands in Palestine, Lebanon and the Golan by using duplicitous language to divert attention from the expansion of Israeli settlements and the erosion of Palestinian land and rights.

55. He reminded the observer for Israel, who had referred to the right of the Jewish people to self-determination, of General Assembly resolution 181 (II) of 1947, which had partitioned Palestine into an Arab and a Jewish State.

56. Mr. JAZAIRY (Observer for Algeria) said that in the fifth year of the second International Decade for the Eradication of Colonialism, the issue of self-determination for the people of Western Sahara remained unresolved. Over 50 relevant United Nations resolutions, as well as the United Nations peace initiative known as the “Baker plan” and its various amended versions, had thus far failed to bear fruit.

57. Only recently, family visits and telephone links had been established between the people of Western Sahara who lived in Moroccan-occupied territory and those who had found asylum in Algeria, separated for over 30 years, in the framework of an agreement signed between the Moroccan Government and the Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro (POLISARIO) on the implementation of confidence-building measures.

58. In accordance with its commitment to the implementation of peoples’ right to self-determination, the United Nations must give fresh impetus to Security Council resolution 1570 (2004) and to the implementation of the “Baker plan”.

59. The United Nations had welcomed the recent decision of one African State to grant the right to self-determination to a population living in one of its provinces. At the same time, another State on the same continent claimed sovereignty over a neighbouring territory, thus denying its people the right to self-determination. In spite of that denial of justice, the people of Western Sahara had pursued their aspirations of nationhood in a non-violent fashion for nearly two decades. He called on the Commission to acknowledge that the right to self-determination was indivisible and that the path of non-violence chosen by the people of Western Sahara was an appropriate and effective way for peoples to realize that right.

60. Mr. NEUER (United Nations Watch) said that his organization supported peoples' right to self-determination, but was doubtful that those States which used the Commission on Human Rights as a forum to attack Israel were motivated by a true concern for human rights.

61. Israel had officially recognized the right of the Palestinian people to self-determination on numerous occasions and had once again taken to trading land in the hope of peace. The resolutions and rhetoric asserting what had already been accepted thus served only to perpetuate a long-standing campaign to demonize Israel and the Jewish people and squandered precious United Nations resources. Proceedings such as the exclusive scrutiny of Israel under a separate agenda item cast Israel as the world's leading human rights violator, and the automatic annual adoption of anti-Israel resolutions gave that false image a veneer of international credibility. Singling out Israel in such a way violated the provision of the Charter of the United Nations that guaranteed equal rights for all nations.

62. The Secretary-General had recently confirmed that the bias preventing full and equal participation by the Jewish State in the work of the United Nations must be corrected, and Human Rights Watch had recently criticized the Commission for its failure to condemn Palestinian terrorism. States and non-State actors must join their voices and publicly oppose such selectivity. One-sided resolutions encouraged extremists and thus undermined the Middle East peace process. It would be impossible to restore the Commission's credibility if its human rights agenda remained captive to an anti-Israel political agenda. He called on the Commission to use the reform process to address urgent human rights situations around the world and to stop subverting the principles of equality, peace and human rights.

63. Mr. KHAN (Interfaith International) said that the United Nations resolution of 13 August 1948 had not offered the best option, that of an independent Kashmir, and 57 years of negotiations had not resolved the question of the country's status, which meant that the issue of self-determination was still relevant.

64. History had shown that an independent Kashmir would be economically viable. Moreover, India and Pakistan would do better to spend the money they devoted to the maintenance of their occupying forces on the welfare of the peoples of their two countries. Furthermore, since many of the over 20 political parties in favour of Kashmiri independence could not participate fully in the political process because of the country's partition, withdrawal of all the occupying forces would also enable the people of both parts of the country to express their views on self-determination in a referendum, which was the only real way to solve the issue.

65. Ms. MASSAGEE (Al-Haq, Law in the Service of Man) said that ongoing Israeli actions would preclude the Palestinians' ability to realize their right to self-determination. The continued unlawful construction of the separation wall on Palestinian land was resulting in the annexation of more of the West Bank. Israel was also providing aid and assistance for the expansion of settlements there, in breach of international law. Those settlements served as a means for the appropriation of Palestinian land, water and other natural resources. Several hundred kilometres of link roads to settlements cut through the Occupied Palestinian Territory, but the Palestinians were not allowed to use them. All those measures would in practice prevent the Palestinians from exercising the self-determination crucial to the enjoyment of other fundamental human rights. They also jeopardized the territorial contiguity of any future

Palestinian State and would hamper the Palestinians' economic, social and cultural development. The Commission should call on all parties to the negotiation process to ensure that any political solution was consonant with international law, so that the fundamental right of the Palestinians to self-determination could become a reality.

66. Mr. PAGE (World Federation of Trade Unions) said that the inalienable rights of millions of human beings to live in security, enjoy the fruits of their labours and decide on their future without external interference were being flouted. Both the Commission and international law were threatened with a loss of credibility, because the United States had decided to impose its views and values on the rest of the world. Such a situation undermined international security, since it was impossible to predict which country would be the next target of conduct, which was hardly conducive to cooperation between peoples and nations.

67. For that reason it was necessary to withstand the arrogance of countries like the United States and its allies, which used the pretext of the fight against terrorism to justify violations of international law and crimes against humanity. Such violations included the war against Iraq and threats against the peoples of Syria, Lebanon, Iran, Cuba, Venezuela and the Democratic People's Republic of Korea.

68. Violations of the right to self-determination and to sovereignty over natural resources should not be tolerated. The Commission's authority would be strengthened if it condemned unilateralism in international relations and reaffirmed the right to resist all forms of foreign domination and exploitation. It should not be forgotten that many legitimate representatives of their States had once been dubbed "terrorists", because they had fought against colonialism, foreign occupation and apartheid. Preservation of human dignity demanded respect for State integrity.

69. Mr. PARY (World Peace Council) said that since the Anglo-American coalition had unleashed its lethal aggression against the Iraqi people two years earlier, the world had succumbed to a spiral of violence and insecurity and human rights violations were increasing in a growing number of countries. New "preventive" attacks were being plotted against the sovereign States of the so-called "axis of evil". The United States administration and its allies were using bombs and missiles to deal with international disputes, in breach of the Charter of the United Nations and in overt contempt of the Security Council. The United Nations, despite its weaknesses, was, however, the only multinational forum which could resolve international conflicts.

70. Iraq had been devastated by war. More than 100,000 civilians had lost their lives and a priceless age-old cultural, historical and religious heritage had been destroyed.

71. Mr. KHAN (World Peace Council), speaking on behalf of the people of Gilgit-Baltistan, said that, in that area, the worst possible abuses of civil, political, economic, social and cultural rights were taking place away from the glare of international media attention. For 50 years, the people of Azad Kashmir had not been allowed to exercise their right to vote in a free, fair manner. The Constitution required all candidates to swear an oath accepting Kashmir's accession to Pakistan. Handpicked nominees of the military regime in Islamabad were thrust upon the people as presidents and prime ministers of Azad Kashmir. Hundreds of political leaders and activists had been arrested on trumped-up charges, tortured and even killed.

72. Ms. TANGIORA (Women's International League for Peace and Freedom), speaking on behalf of the Gana An Dgwisani (Bushmen) of Botswana's Central Kalahari Game Reserve, said that, in 2002, most of the Bushmen resident in the game reserve had been forcibly evicted and moved to resettlement camps. Those who had refused to leave had been denied water and medical supplies and banned from subsistence hunting. Both groups were in a desperate plight, with alcoholism, violence and HIV/AIDS taking their toll. The First People of Kalahari, a San human rights organization, had challenged their eviction in proceedings before the domestic courts but, as the Gwi San were not sanguine about the prospect of winning their case, they were considering the option of referring it to the international courts.

73. The Gana and Gwi San looked to the Commission on Human Rights to exert pressure on the Botswana Government to allow them to return home, since there had been no follow-up to the action promised by the Permanent Forum on Indigenous Issues. The Central Kalahari Game Reserve was the last area of any size where the traditional San culture still survived.

74. The most recent game census gave the lie to the Government's claim that the San were overhunting the reserve. It should, however, be noted that two months after the eviction had taken place, the southern two thirds of the reserve had been leased to two mining companies. The international community must not let one of the world's oldest cultures disappear for the sake of a few diamonds.

75. Mr. BARNES (Indigenous World Association) said that the Indigenous Peoples and Nations Coalition and the communities from Alaska and the Na Koa Ikaika O Ka La Hui, the Kanaka Maoli Tribunal and many Hawaiian communities yearned for freedom and self-determination. After being on the list of Non-Self-Governing Territories, Alaska and Hawaii had been illegally annexed by the United States of America in 1959 against the will of the First Nations living there. The American military occupiers and white settlers had been allowed to vote without the consent of the First Nations. Hence annexation had not been democratically decided, but had been an expression of colonialism. The colonized peoples of Alaska and Hawaii invoked Articles 1, 2, 55, 56, 73 and 74 of the Charter of the United Nations and rejected continuing occupation by the United States of America.

76. His association urged the Commission to address those unresolved disputes in an appropriate manner and protested against the ongoing exploitation of Alaska for oil extraction and logging. The Commission must call for an immediate freeze on the expropriation of land and resources in Alaska and Hawaii.

77. Ms. VERA (American Association of Jurists) said that one year after the coup d'état engineered by France and the United States, the situation in Haiti was an utter disaster. Only US\$ 90 million of the US\$ 1,080 million pledged at the donors' conference had been disbursed and 50 per cent of that sum was earmarked for the preparation of elections in the last quarter of the year.

78. The troops which Latin American Governments had dispatched to Haiti in the hope of influencing the international community's decisions regarding the future of the country had become mere passive spectators, because decision-making authority lay with the major powers, which did not want democracy, well-being or self-determination in Haiti.

79. The United Nations Stabilization Mission in Haiti (MINUSTAH) had been unable to disarm the gangs which the new Government had since incorporated into the police force. Human rights violations were part of daily life in the impoverished suburbs of several towns. The life of Yvon Neptune, the former Prime Minister, was in danger since he had started a hunger strike in protest at being held without charge in solitary confinement in Puerto Príncipe prison.

80. In Iraq, the United States and its closest allies were violating international law, human rights and humanitarian law on a scale not witnessed since the Second World War. The military occupation was aimed at appropriating the country's natural and economic resources, and its economy had been converted to ultra-liberalism without the Iraqis having any say in the matter. It was unacceptable that the Security Council should condone that situation.

81. Ms. ENAV (Women's International Zionist Organization) said that, although it was true that the State of Israel had risen from the ashes of the Holocaust, the wings that had carried it out of the dust had been the wings of Zionism. That movement, which incarnated the Jewish people's right to self-determination in their ancient homeland, had come into being because of anti-Semitism. The opening of the new Holocaust museum in Berlin was simultaneously a reminder of the tragedy that had beset the Jews of Europe because they could find no refuge and a timely warning at a time when there was a frightening upsurge of anti-Semitism reminiscent of the early Nazi era. Hence an attack on Zionism was equal to an assault on the Jewish people's right to self-preservation and to have a refuge from the hostility of the world.

82. It was imperative for the Commission to find ways and language to encourage the resumption of the peace process. It was not enough to demand the Palestinian people's right of self-determination, while attempting to deny the Israeli people that right.

83. Mr. GILANI (Jammu and Kashmir Council for Human Rights) said that, while the Commission had listened to what India and Pakistan had to say about the self-determination of Kashmir, the genuine voice of the Kashmiri people had not been heard. As a result of an invasion, the people of Jammu and Kashmir had found themselves living under three administrations. Self-determination presupposed a climate that was free of violence, an accountable political culture and a parliament and Government which had been elected in all three parts of Kashmir. Allowing India and Pakistan to retain their influence would be detrimental to the interests of the people of Jammu and Kashmir. It would be wrong to hold peace and security hostage to self-determination and vice versa. Self-determination was a principle enshrined in the Charter of the United Nations; India, Pakistan and the international community should therefore review their obligations in that respect.

84. Ms. SHAWL (International Islamic Federation of Student Organizations) said that the right to self-determination was a peremptory norm of international law, and that all people faced with occupation and repression were therefore entitled to the right of self-defence. The peoples of Jammu and Kashmir, who had been accorded the right to self-determination under Security Council resolutions and the Partition Plan, had, however, endured five decades of Indian repression and were therefore convinced that India would probably never honour its commitments to the country.

85. The Kashmiri people had been forced to abandon their peaceful struggle and become militant after the murder by Indian forces of Kashmiri protesters in 1989. Since then, more than 80,000 Kashmiris had been killed in the ensuing reign of terror, while many more languished in Indian prisons where they were tortured and put to death. There had been numerous cases of gang rape of Kashmiri women by Indian soldiers, and entire villages had been deliberately burned to the ground.

86. The Kashmiri people's noble struggle for freedom had been labelled "terrorism", although nothing could be further from the truth. It was to be hoped that the initiation of a comprehensive dialogue between India and Pakistan would lead to a resolution of the dispute in accordance with the wishes of the Kashmiri people. In the meantime, it should not be forgotten that Indian atrocities against that people continued unabated. The international community should therefore ensure that an immediate end be put to the gross and systematic violations of the rights of the Kashmiri people.

87. Mr. MARIASHIN (B'nai B'rith International), also speaking on behalf of the Coordinating Body of Jewish Organizations, said that, on the sixtieth anniversary of the end of the Holocaust, the international community should reaffirm its commitment to the principles enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights. Self-determination was one of the most fundamental of those rights. The Holocaust could have been prevented if the Jewish people's right to self-determination had been realized all those years ago. In fact, the Zionist movement had been born in response to anti-Jewish discrimination, prejudice and violence. Nazi treatment of the Jews demonstrated how vital it was to protect their right to self-determination and how much they needed a State of their own, especially in view of the resurgence of anti-Semitism and anti-Zionism in various intellectual circles. Anti-Zionism was dangerous, for it sought the destruction of the Jewish State and, as such, ran counter to fundamental human rights principles and a number of Security Council resolutions.

88. The Commission should reassert the Jewish people's right to self-determination, for only then would it demonstrate that it had learned the lessons of the past by upholding a basic right of that people.

89. Mr. FABREGUES (Pax Romana), speaking also on behalf of the UNESCOCAT-UNESCO Centre of Catalonia, said that there was a growing consensus on the need to view self-determination as a tool for conflict prevention and resolution. That approach would significantly broaden the limited scope that the Commission had given to item 5. Traditional forms of colonization, foreign occupation and alien domination had not been eliminated, but had merely acquired a new dimension as a result of globalization, and intra-State conflicts based on self-determination were challenging international peace and security and depriving millions of peoples of their basic human rights. The human rights exegesis must adapt to those contemporary challenges by adjusting its understanding of self-determination, which had a renewed relevance as a means of ensuring security and guaranteeing human rights.

90. The recently signed Comprehensive Peace Agreement, ending the conflict in the Sudan, demonstrated that self-determination conflicts could be solved through innovative forms of power sharing. The agreement might inspire African Governments and self-determination movements to achieve peace and stability in their region. A recent report by the International Crisis Group stated that the right to self-determination was the key to any lasting resolution of

the conflict in Kosovo. Since the terrorist attacks in New York on 11 September 2001, self-determination movements had often been grouped together with terrorists. New anti-terrorism laws were being misused to criminalize vulnerable groups and sometimes to violate even non-derogable human rights. The Commission on Human Rights should explore how a balanced exercise of the right to self-determination could contribute to the resolution of victim claims. The Commission could invite the High Commissioner's Office (OHCHR) to produce a document giving an overview of existing United Nations mechanisms and procedures for dealing with intra-State self-determination disputes. It could also request that special procedures mechanisms should monitor the observance of the right to self-determination.

91. Ms. GRUNFELD (Federación de Asociaciones de Defensa y Promoción de los Derechos Humanos) welcomed recent developments in Israel and Palestine, but expressed concern that resumed negotiations might set aside the inalienable rights of the Palestinian people. Any such negotiations must be based on respect for and compliance with United Nations resolutions and the Advisory Opinion of the International Court of Justice. Although Israel had announced that it was pulling out of the Gaza Strip, it was pursuing its expansionist policy in the West Bank and was still building the wall in the Occupied Palestinian Territory, where the perpetual humiliation and isolation of the Palestinian civilian population constituted nothing short of apartheid and open defiance of the international legal order. Hence it was imperative that the international community should take the requisite steps to persuade Israel to fulfil its obligations as a State Member of the United Nations. The Federation was eager to see the advent of a just and lasting peace in the Middle East, which respected the inalienable rights of the Palestinian people and ended the occupation.

92. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that hopes of a peaceful settlement of the conflict in Sri Lanka since the ceasefire agreement of February 2002 had mostly proved illusory. Even before disaster had struck the island in December 2004, negotiations had been suspended and cooperation had largely ceased. In the north-east, extensive tracts of land were occupied by the Sri Lankan army, hundreds of thousands of refugees and internally displaced persons were waiting in vain to return to their homes, and there was a lack of investment for the reconstruction of the destroyed countryside. The new Government had not advanced the peace process, and the tsunami that had particularly affected the coastal areas in the north-east, which had already been suffering from war-related destruction, had worsened the situation. Although it had galvanized the common people of all communities to go to each other's aid, the Government had not followed suit. International aid had been used for political purposes. Aid distribution and planning for reconstruction were being organized by the President's office and government-appointed committees, often at the expense of the immediate victims, local NGOs and the Tamil Rehabilitation Organization that worked in areas controlled by the Liberation Tigers of Tamil Eelam. The international media and local parliamentarians had complained of an inadequate government response tantamount to outright discrimination against the Tamils and the Muslim community. Emergency regulations had been reintroduced and the army had been put in charge of welfare centres. Recent official arms purchases and the Government's refusal to allow the Secretary-General of the United Nations to visit the country in January 2005 had raised further suspicion that the Government intended not only to isolate the Tamils and their leaders, but also to use the catastrophe to change the balance of forces on the ground and to effectively renounce any

negotiations. Developments during the past three years, compounded by the post-tsunami experiences, gave the impression that time was running out, that there was no hope for the Tamils in a united Sri Lanka, and that their only chance lay in fighting for external self-determination.

93. Mr. MANHAS (Afro-Asian Peoples' Solidarity Organization) said that self-determination was an ongoing process that was inextricably linked to the concept of democracy. The ambit of self-determination should not be restricted on the assumption that States were formed on the basis of the distinction of their people. The contemporary reality of overlapping ethnicities, multiple identities, and increased interdependence in economic, environmental and political spheres had resulted in a dilution of the traditional notion of State sovereignty, which had also been reduced by the growth in free-market economies, trans-border contacts, global real-time technologies and the internet. Some of those who were disadvantaged as a result of rapid global economic changes, particularly in developing countries that were experiencing rapid economic development and urbanization along with declining public services, were using nationalism, ethnicity and religion as instruments for expressing their resentment. Human beings, individually and as groups, should be in control of their own existential needs, the most important of which were security and welfare, and the case of Jammu and Kashmir was particularly important in that regard. The right to self-governance was a more positive, humane and forward-looking description of the desire of the Kashmiri people than the traditional notion of self-determination. The Kashmiris had expressed a strong belief in democratic processes, and growing voter participation in recent parliamentary, legislative and local elections had once again demonstrated their rejection of the politics of violence.

94. Ms. KASHMIRI (European Union of Public Relations) said that over 50 contemporary conflicts in the world were related to antagonism between claims to self-determination and State sovereignty, one of which had affected Jammu and Kashmir for more than 50 years. The right to self-determination must be acknowledged as an important element in building peace and democracy. There was growing recognition across the world that war was a poor means of resolving conflicts, and thus India and Pakistan had begun peace negotiations to resolve the conflict over Jammu and Kashmir. The state, since its partition, had been the subject of a territorial dispute between India and Pakistan, and consideration had not been given to the future of the people. Recent changes suggested that an increasing number of Kashmiris on either side of the Line of Control favoured some form of self-rule, an option that both India and Pakistan seemed reluctant to offer. Both countries must seek paths, and begin imaginative experiments, to resolve the dispute, and must base their understanding of self-determination on the development of democratic processes.

95. Mr. OTZ (International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities) said that Turkey had invaded Cyprus in 1974, and still illegally occupied 37 per cent of its territory, with the continuous presence of Turkish military forces, as well as more than 100,000 settlers. That constituted an unacceptable limitation to the sovereignty and territorial integrity of the Republic of Cyprus, and therefore a blatant violation of the right to self-determination. Both the United Nations Security Council and the General Assembly had recognized that fact. There could be no rule of law in a territory that was illegally occupied by a foreign power.

96. The declaration of the Turkish Republic of Northern Cyprus, characterized by the European Court of Human Rights as a “puppet State”, promoted secession by means of foreign military intervention and belligerent occupation. The Secretary-General’s proposal to create an entirely new entity composed of two equal and equally sovereign constituent States, thus abolishing the Republic of Cyprus, amounted to a negation of the idea of sovereignty, self-government and self-determination. Under that plan, the grave violations of the international legal order that had been committed by Turkey’s occupation of northern Cyprus would have been legalized, but 75 per cent of voters in the Republic of Cyprus had rejected it. A decision on the future of Cyprus must be accepted by both sides, as well as by the international community, as a valid exercise of the right to self-determination.

Statements in exercise of the right of reply

97. Mr. HILALE (Observer for Morocco) said that once again the Algerian delegation had given a restrictive view of the situation in Western Sahara. The Algerian perception of the right to self-determination was variable. Algeria could not claim to be responsible for having granted asylum to the people of Western Sahara, when it had, in fact, forced them to live in refugee camps in conditions tantamount to imprisonment. The Tindouf refugee camps were the only such camps in the world where refugees were forced to remain on camp ground 24 hours a day. There were reports that the refugees in those camps were tortured. Changes must be made to allow those people to leave the camps, and ensure that they were not living in enforced isolation and were no longer exiled to Latin America to receive university education, a measure that isolated them from their cultural context and their families. Algeria had given a selective interpretation of the resolution adopted by the United Nations General Assembly in 1975, providing for a tripartite agreement on Western Sahara.

98. Turning to the comment made by the observer for Algeria on non-violence, he pointed out that Algeria had recently purchased sophisticated weaponry to a value of US\$ 4 billion, some of which would be given to separatists who were preparing for war. Viewed in that broader context, Algeria’s statement on Western Sahara served to demonstrate Algeria’s diplomatic double standards.

99. Mr. SARAN (India) said that the statement made by the representative of Pakistan had given a perverted view of the notion of self-determination in order to advance Pakistan’s agenda for territorial aggrandizement. Pakistan must begin by ensuring that its own people enjoyed the right to self-determination, a right that had been denied to them throughout most of the country’s history. Jammu and Kashmir was an integral and inalienable part of India, and India had repeatedly and systematically granted the people of that State the right to exercise democratic choice. The statement made by the Pakistan delegation had contained half quotes from United Nations resolutions. Those resolutions also contained provisions that required Pakistan to abandon its illegal occupation of one third of the territory of Jammu and Kashmir. Pakistan was still in breach of that obligation.

100. Turning to the statement made on behalf of the Organization of the Islamic Conference (OIC), he said that by equating the historic struggle of the Palestinian people for self-determination with the situation in one of the states of India, OIC was making a mockery of the rights of the Palestinian people. He called on the OIC to reject attempts by one of its members to misuse that organization for narrow and partisan foreign-policy objectives.

101. Mr. JAZAIRY (Observer for Algeria) expressed his delegation's disappointment that the observer for Morocco had referred to Algeria's "diplomatic double standards". The issue of Western Sahara was not a bilateral issue, but rather one that fell within the remit of the United Nations. The tripartite agreement was no longer valid, and legal precedence should be given to more recent resolutions, which stipulated that Western Sahara was not autonomous. Algeria wanted the refugees in the Tindouf camps to be allowed to visit their families in Western Sahara, but such visits were not authorized by Morocco. Such visits would be a positive step and should be encouraged. Algeria was not providing weapons to the Sahrawi people. The Sahrawi had fought for 20 years for the right to self-determination, and they were relying on the international community to ensure their enjoyment of that right, and to prove that violence was not the only means of achieving it.

102. Mr. KHAN (Pakistan) said that India had been in illegal occupation of Jammu and Kashmir for over 50 years, despite United Nations resolutions on the right of the Kashmiri people to self-determination. India had repeatedly raised the issue of cross-border terrorism. However, the only problem in Jammu and Kashmir was that of State terrorism. The Indian occupying forces used State terrorism to subjugate Kashmiris. Leading human rights activists and the international media had reported systematic violations of human rights against Kashmiris through the State terrorism apparatus, which had resulted in extraordinarily high suicide rates. Despite ongoing talks with Pakistan, there was still a disproportionately large Indian military presence in Jammu and Kashmir, and human rights violations had increased. Pakistan appreciated that India had reaffirmed its commitment to self-determination. It had not, however, fulfilled that commitment in respect of Jammu and Kashmir, and Pakistan urged it to do so.

103. Mr. HILALE (Observer for Morocco) said that although the observer for Algeria had appealed to the United Nations to remain involved in the situation in Western Sahara, a few months previously, before the General Assembly, the Algerian delegation had expressed opposition to quoting the recommendations of the Special Representative of the Secretary-General in a General Assembly resolution on the issue. That was another demonstration of Algeria's diplomatic double standards.

104. The refugee camps near Tindouf were comparable to desert gulags, which no one could leave. NGOs were free to visit Western Sahara, to witness the free movement, democracy and political participation. The refugee camps at Tindouf, on the other hand, were not open to all visitors, and authorization for NGO visits was given selectively. The number of refugees in Morocco had increased, since they preferred to remain there, rather than return to the refugee camps.

105. Mr. JAZAIRY (Observer for Algeria) said that since the observer for Morocco lived in Geneva, he did not have any first-hand experience of the refugee camps. The camps had recently been visited by representatives of the Office of the United Nations High Commissioner for Refugees and the World Food Programme and 20 other organizations. There had been only two people who had not wished to return to the Tindouf refugee camps, one of them a pregnant woman. The arguments put forward at the current meeting did not contribute to the understanding of self-determination that the Commission wished to promote. The United Nations must endeavour to promote self-determination in all situations.

The meeting rose at 5.30 p.m.