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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-fourth session

SUMMARY RECORD OF THE 8th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 August 2002, at 3 p.m.

Chairperson: Mr. PINHEIRO

later: Mr. YOKOTA
(Vice-Chairperson)

later: Mr. PINHEIRO
(Chairperson)

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The meeting was called to order at 3.15 p.m.

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (agenda item 3) (continued) (E/CN.4/Sub.2/2002/4, 5 and 6; E/CN.4/Sub.2/2002/NGO/4, 14, 15, 16, 20 and 22)

1. Mr. JOINET, Special Rapporteur on the administration of justice through military tribunals, introducing his report (E/CN.4/Sub.2/2002/4), said that two of his most important reference standards had been Commission on Human Rights resolution 2002/37, on integrity of the judicial system (para. 10), and Human Rights Committee General Comment No. 13, on article 14 of the International Covenant on Civil and Political Rights (para. 12).

2. Paragraph 8 of Commission resolution 2002/37 represented an attempt to improve judicial guarantees in military tribunals and, in the long term, to encourage the abolition of such tribunals, and had inspired a number of his recommendations. The General Comment was of particular interest because of the contribution it had made to Human Rights Committee case law over the years as the Committee had addressed the changing role of military tribunals during its consideration of States parties' reports. The trend in recent decades had been from the use of military courts to try solely military offences in time of conventional warfare, through their use to try armed civilians engaged in national liberation movements during colonial wars, to their increasing and continuing use in trying civilians exercising their democratic civil right to oppose Governments. In certain countries, however, there was an equally clear trend towards the "demilitarization" of military tribunals, whether in terms of their jurisdiction or in terms of their composition.

3. Building on the work of his predecessors (para. 1), he said that, if military courts could not be abolished, it was important at least to reinforce the judicial guarantees applicable therein. Summarizing his recommendations (paras. 29-38), he drew particular attention to the issue of secrecy (recommendation No. 2).

4. Secrecy surrounding the deprivation of liberty was a major factor in serious human rights violations, as had been seen at the time of the dictatorships in Chile and Argentina, for example. It was vital that the recourse of habeas corpus should remain inviolable: it was during the first hours of detention that human rights violations tended to occur. The continuing importance of that issue had been highlighted by the recent court decision ordering the United States Government to publish the names of prisoners captured in connection with the 11 September 2001 terrorist attacks and its own action in Afghanistan some months later. The decision included a discussion of the problem of combating terrorism in a democratic context and was well worth reading.

5. His recommendations would need refining if the Sub-Commission wished to attempt to derive principles from them. The next stage of work should, perhaps, concern the subject of courts of special jurisdiction in general: even if a country abolished military tribunals, civil courts of special jurisdiction could still be established, and their use needed to be examined.

6. Ms. ZERROUGUI said that the issues of the administration of justice through military tribunals and the scope of the activities and the accountability of those involved in peace support operations had acquired a relevance none could have foreseen when the Sub-Commission had placed them on its agenda in 2000, at the suggestion of Mr. Joinet and Ms. Hampson.

7. At a time when the impartiality and independence of such tribunals was increasingly being called into question, the restrictions on their jurisdiction recently introduced in Turkey and Bahrain were particularly welcome.

8. In the wake of the events of 11 September 2001, there was a real danger not only that military tribunals would be maintained in many countries but also that their jurisdiction over civilians and over members of the military involved in serious human rights violations would be reinforced, and that even more restrictions on judicial guarantees before such courts would be introduced.

9. The United States, for example, had recently established military tribunals that flouted the most elementary principles of due process and the United Nations Security Council had placed some limitations on the jurisdiction of the International Criminal Court with respect to peacekeeping troops.

10. If countries that, in the past, had advocated the abolition of military tribunals and tribunals of special jurisdiction were switching positions, she wondered who would be left to speak out on the issue: the Working Group on Arbitrary Detention constantly received communications challenging military and special jurisdiction tribunals, particularly in countries of the South, and also in Israel, where military jurisdiction extended to all Palestinians, including children.

11. Even Commission on Human Rights resolution 2002/37, which was of particular importance in that context, had not been adopted by consensus, Canada and the United Kingdom having requested a vote and the Western Group having abstained almost en bloc - a somewhat puzzling position considering that some of those countries had no military tribunals at all and others had abolished them in peacetime.

12. She hoped that the situation would prove a temporary setback only and proposed that the Sub-Commission should adopt a resolution endorsing the principles outlined by Mr. Joinet as binding minimum rules to protect the human rights of those brought before military tribunals and tribunals of special jurisdiction, and that it should ask the Commission on Human Rights to adopt a similar decision.

13. Mr. GUISSÉ said he wondered what would happen in countries where it was becoming more common to extend military jurisdiction to civilians and civil offences and where, in general, no defence was permitted. Such extension in the countries of southern Africa was of great concern since it frequently led to summary executions and the denial of justice. Lawyers in military tribunals who did not know the procedures and techniques of defence offered no guarantee of a fair trial. One development seen in the countries of northern Africa had been the intervention of civil judges in criminal procedures and he wondered whether that could be extended to the south also. In French-speaking countries, military tribunals were often presided

over by civil judges but usually for petty offences only. He believed it was necessary therefore to define military offences so as to limit the jurisdiction of the military courts. Guidelines were required on the principle of jurisdiction for military courts as a first step towards their limitation.

14. Ms. HAMPSON said she was pleased to note that Turkey had abolished the death penalty in peacetime and she also welcomed the decision by a Federal Court in the United States of America to require that the names of detainees in the Guantánamo base be released. She also hoped that Mr. Joinet's report would eventually result in a code of principles.

15. With regard to courts martial in peacetime, she believed that they should not be abolished unless certain guarantees could be given. For example, if a peacekeeper were to commit a criminal offence under the law of his own and another country, the current situation was that only the courts of his own country would have jurisdiction. However, if on the basis of the evidence gathered from all witnesses in the territory where the crime was committed, it was felt that it would be preferable to hold the trial on that territory, that was quite acceptable provided that due process was respected. There were, nevertheless, many conditions attached, such as the fact that courts martial should apply only to members of the armed forces in question. Military tribunals should have no jurisdiction over civilians or children under the age of 18, even if they were serving in the armed forces.

16. She recommended a more cautious approach, however, to the remedy of habeas corpus which, at least in the United Kingdom, was not in practice the wonderful remedy it appeared to be in theory.

17. One issue not addressed in the report and one that could be introduced as a recommendation concerned the composition of a court martial. It was important to ensure that there was no hierarchical relationship between the defence lawyer, the suspect and the judges. With regard to recommendations Nos. 2 and 3, she believed that military secrecy, like decisions to hear a case in camera, should be subject to some form of review. One way to ensure due process for soldiers was to ensure they had access to a lawyer of their own choosing, as they would in civilian courts.

18. Any future study should also consider situations in which a military judge sat alongside civilian judges, as had once been the case in State security courts in Turkey, bearing in mind that the European Court of Human Rights had ruled that the very presence of a military judge in trials of civilians meant there was a risk of an unfair trial.

19. She hoped that the study would lead to the production of guidelines to assist the Commission on Human Rights in its work and help States in the process of reviewing their systems of military justice. Courts martial might be necessary in certain circumstances, but they must be fair and consistent with due process.

20. Mr. SORABJEE said that Mr. Joinet's excellent report was a very timely one, given that a development that would have been unthinkable a year previously - the emergence of military tribunals in democratic countries - was gaining acceptance, even among some civil libertarians.

As the report made clear, military tribunals violated several of the guarantees incorporated in article 14 of the International Covenant on Civil and Political Rights, in that there was no public hearing and the independence and impartiality of the tribunal was not guaranteed.

21. While there might be strong arguments to retain military tribunals in the case of military personnel accused of so-called "military offences", which needed to be defined, the crucial point was that military courts must be open to judicial review. In his view, therefore, recommendation No. 6 was non-negotiable: the legality of the proceedings in military tribunals must be judged by civilian courts and remedies such as habeas corpus - which in India was an extremely effective remedy - must be available to defendants.

22. Mr. DECAUX said he welcomed Mr. Joinet's imaginative and practical proposals for the "demilitarization" of justice. A specialized justice system was by definition discriminatory and he doubted whether the defendant could really receive a fair hearing by an independent and impartial tribunal, as required by article 14 of the International Covenant on Civil and Political Rights, in the case of military trials of civilians or where disputes between civilians and the military were resolved by military courts. In that regard, General Comment No. 13 of the Human Rights Committee was of the utmost importance.

23. The anti-terrorist measures introduced in various parts of the world since 11 September 2001 and, more generally, the abuse of states of emergency presented a real risk of backsliding in the area of judicial guarantees. That issue needed to be looked at more closely, as did the application of international criminal justice to peacekeeping operations and the responsibilities of military and civilian personnel working in such operations.

24. Mr. POLIFRONTI (International Commission of Jurists) said that military tribunals were all too often a source of injustice and impunity and the trial of civilians by military tribunals was frequently incompatible with international law. He thus agreed with the conclusion of the Special Rapporteur on the independence of judges and lawyers that international law was developing a consensus as to the need to restrict drastically, or even prohibit, the use of such courts (E/CN.4/1998/39/Add.1, para. 78). Both the Inter-American Court of Human Rights and the European Court of Human Rights had reached the conclusion that the individual's right to due process was violated when a military court assumed jurisdiction over civilian matters. Moreover, serious human rights violations such as extrajudicial executions or torture committed by the military or the police could not be considered as military crimes and should be tried under ordinary law. Several United Nations treaty bodies and mechanisms, as well as the Inter-American Commission on Human Rights, considered the trial of soldiers or police officers by military courts for human rights violations to be incompatible with international human rights law.

25. Pseudo-judicial bodies set up during states of emergency were, in fact, organs of the executive branch of Government and, as such, violated the basic principles of the independence of the judiciary. Even in the most extreme circumstances, where trial by civilian courts was physically impossible, the trial must respect the minimum guarantees established by international law.

26. The rights of military personnel and police officers tried by military courts for military offences were frequently violated. For example, the right to a fair trial was far from guaranteed when the military courts were composed of military officers subject to the discipline of the military hierarchy. Moreover, military criminal law in many States allowed military courts to exercise extraterritorial jurisdiction and to try military or police officers from their country for crimes committed while participating in United Nations or other intergovernmental peace operations. Most such cases were tried by military courts, with the notable exception of the case concerning Canadian troops in Somalia, which had eventually been handed over to the civilian courts.

27. He urged the Special Rapporteur on the administration of justice through military tribunals to identify and propose a set of principles on the jurisdiction, functioning and structure of military tribunals in the light of the existing corpus juris and international law. The regulation of military courts in accordance with international human rights law was essential for the proper administration of justice, the exercise of the right to a fair trial and the elimination of impunity.

28. Mr. JOINET, Special Rapporteur on the administration of justice through military tribunals, said that, while he agreed with Ms. Zerrougui and other speakers on the need to produce a set of principles or guidelines on the administration of justice through military tribunals, he had thought it more appropriate at the current stage of the study to submit recommendations for consideration by the Sub-Commission so as to give its members the opportunity to refine them. On the question of defining a military offence, he had made a start in paragraph 5 of his report (E/CN.4/Sub.2/2002/4) but it would be very difficult to produce a satisfactory definition. With regard to the remedy of habeas corpus, he was better acquainted with the remedy of amparo, or enforcement of a person's constitutional rights, which was of fundamental importance in Latin American countries, but he noted that Mr. Weissbrodt had argued that habeas corpus should be recognized as a non-derogable right of every individual. Concerning the need for a solution that was fair to both soldiers and civilians, he stressed the significance of the decision by the High Court of South Africa declaring the act establishing military courts to be incompatible with the Constitution (para. 17 and note 33).

29. It was easy to say that military courts should simply be abolished, but in practice it was very difficult to do so from a political point of view. That was why he had included the more realistic recommendation No. 6 (para. 35), on limiting the competence of military tribunals to the first degree of jurisdiction and requiring disputes concerning legality to be resolved by civilian courts; such practices would represent a major step forward.

30. It had come as something of a surprise to him to find that the military establishment was prepared to discuss the issues raised in his study, and he believed the time was ripe for a symposium attended by military personnel, of the kind proposed earlier by the International Commission of Jurists. There was no doubt that the events of 11 September 2001 had changed many things, and he suggested that the Sub-Commission should consider making a comparative analysis of the impact of those events on legal systems, including the introduction of special jurisdiction tribunals that closely resembled military courts. He also suggested that it would be useful to study the role of public prosecutors in military courts.

31. Mr. AL-ADHADH (Interfaith International) said he wished to draw attention to the lasting consequences of colonial legislation for the classification of Iraqi citizens. Originally classified as Ottoman or Iranian Iraqis under a law introduced by the British in 1924, Iraqis were currently classed under a law passed in 1980 in either the "A" category of "original Iraqi citizens", corresponding to the previous "Ottoman Iraqis", or the "B" category, corresponding to "Iranian Iraqis". The Baath Party's policy of deporting Iraqi Shi'ah, Shi'ah Kurds and other minorities, mainly during the war between Iraq and the Islamic Republic of Iran, was based on that classification.

32. Moreover, Government decree No. 474 of 1981 forced men and women married to someone from the "B" category to seek a divorce. In other words, the current Iraqi regime was practising discrimination on the basis of religion, in the case of the Arab Shi'ites, and ethnicity, in the case of the Shi'ah Kurds. He called on the Sub-Commission to examine the problem of the Iraqi minorities and to request the Iraqi regime to establish new citizenship laws to put an end to the discrimination against them.

33. Mr. NASEEM (International Human Rights Association of American Minorities) said that the Prevention of Terrorism Act introduced by the Indian Government in April 2002 included the following draconian features: it undermined the right to be presumed innocent until proven guilty, by automatically considering a person found in unauthorized possession of arms in a "notified area" as having links with terrorists; it allowed for summary trials if individuals failed to provide information and for offences that were punishable with imprisonment for a term of up to three years; it violated the privacy of individuals by allowing the interception of communications; it made no provision for challenges to the reliability of evidence; and it allowed cases to be transferred to courts outside the original state, so that cases relating to events in Indian-occupied Jammu and Kashmir, for instance, could be heard in a state that was more favourable to the Government. The Act was incompatible with international human rights treaties and standards and, in the words of Congress leader Sonia Gandhi, posed greater threats to the freedom of ordinary people than to terrorists.

34. The legislation was also shamefully discriminatory. All but a few of the 1,000 persons charged under the Act across India were Muslims, and the overwhelming majority of them belonged to Kashmir. The Act had also been selectively applied in the aftermath of the Godhra incident and the carnage that followed it in Gujarat: those accused of being involved in the incident itself had been charged, while those guilty of killing thousands of innocents afterwards had been conveniently overlooked. The Act was one of many laws used by the Indian Government to brutalize the Kashmiri people and silence dissenting voices. The state of the judicial rights of Kashmiris and Muslims in India should be a matter of great concern for the Sub-Commission, especially its sessional working group on the administration of justice.

35. Mr. BARNES (Indigenous World Association) said that, in the United States of America, the administration of justice was selective at best as far as indigenous peoples were concerned. Whether it was a question of land title to Alaska or simply disputes involving indigenous property, it was exceedingly difficult for indigenous people to bring a case to court and, even if they won the case, the United States authorities refused to implement the court's decision.

36. In the case of its dispute with the indigenous people of Alaska, the United States was having great difficulty in establishing its claim to title to the territory of the State of Alaska. The United States Supreme Court had found in 1975 that the "quitclaim" transfer of the territory possessed by Russia on the continent of America and the adjacent islands did not transfer title. Moreover, territorial title had not been acquired by Russia in the first place.

37. The State of Alaska and the United States of America were endeavouring to prevent the indigenous peoples from claiming their recognized title to Alaska. The United States of America had denied them participation and had subjected them to laws specifically targeting indigenous peoples and preventing them from stopping development in Alaska, in violation of several United Nations General Assembly resolutions. The organization he represented denied the right of the United States of America to adjudicate unilaterally on the title to Alaska and requested that the Sub-Commission study such situations, where indigenous people were refused justice and denied their human rights and fundamental freedoms as independent peoples.

38. Mr. Yokota, Vice-Chairperson, took the Chair.

39. Ms. ASSAAD (International Pen) said that bringing before military courts writers and journalists whose only "offence" had been to practice their right to freedom of expression and association was a clear example of the way in which trials of civilians by the military could breach international standards. International Pen was currently monitoring such cases in Lebanon, Turkey, Myanmar and Israel. She requested that the use of military courts to penalize writers and journalists who practiced their right to freedom of expression be included among the issues to be considered by the sessional working group on the administration of justice.

40. Mr. SÁNCHEZ (American Association of Jurists) said that Security Council resolution 1422 (2002) represented a brutal attack on the principle of independence of the judiciary and had dashed what little hope there had been of a relatively independent International Criminal Court. Article 16 of the Rome Statute of the International Criminal Court could not be interpreted as authorizing the Security Council to grant blanket immunity in advance to unspecified persons, a violation of a fundamental principle of law. While there might be some ambiguity in the English and French versions of the Statute, the Spanish text - which was equally authentic - allowed of no such interpretation: the Security Council had the authority only to request the suspension of a specific investigation or prosecution already under way.

41. The Security Council resolution invoked Chapter VII of the Charter of the United Nations. That was either an abuse of the provisions of Chapter VII or the Council believed that the United States' threat to veto peacekeeping missions constituted a threat to the peace. It had then been unable to find a better solution than to grant impunity to the personnel of the very State constituting that threat.

42. The resolution was a violation of article 16 of the Treaty of Rome and he wondered whether any State party to that Treaty would have the modicum of self-respect required to bring the issue before the International Court of Justice.

43. Mr. SUGA (Japan Federation of Bar Associations (JFBA)) said that his organization particularly welcomed the part of the report of the sessional working group on the administration of justice (E/CN.4/Sub.2/7) which dealt with the domestic implementation of the obligation to provide domestic remedies. Domestic implementation through the justice system was crucial to ensuring the effectiveness of international human rights treaties at the national level and the theme should be studied and discussed in plenary. For example, the Supreme Court of Japan did not adequately implement the international human rights instruments ratified by Japan. One of the most serious concerns was the persistent discrimination against children born out of wedlock in Japan which neither legislature nor judiciary was willing to rectify. Although article 24, paragraph 1 of the International Covenant on Civil and Political Rights provided that every child should have the right to protection, without discrimination, and article 26 provided that all persons were equal before the law without any discrimination as to birth, article 900, paragraph 4 of the Civil Code of Japan prescribed that the inheritance of a child born out of wedlock should be one half that of a legitimate child. In 1995, the Supreme Court had found that such a clause did not violate article 14, paragraph 1 of the Constitution, which prescribed equality under the law.

44. Mr. VINCENT (Pax Romana) said that, although there was an independent judiciary in India, it was not very accessible to the 160 million Dalits spread all over the country. Moreover, even though an Act had been passed to prevent atrocities against members of the scheduled castes and tribes, there was a low conviction rate, judicial delays and dilution of its scope, which had resulted in a denial of justice to Dalits. There was a clear lack of will on the part of law-enforcement officers to take action owing to caste prejudice or to deference towards higher-caste perpetrators. His organization therefore requested the Sub-Commission to carry out a study on the inherent bias of the judiciary against the Dalits and the lack of will among the police to pursue cases involving offences against Dalits.

45. Mr. Joinet's report on the administration of justice through military tribunals (E/CN.4/Sub.2/2002/4) proposed the transfer of cases involving civilians to ordinary courts pending the abolition of military tribunals. The situation in the Democratic Republic of the Congo required further measures, however. Since 1997, the Democratic Republic of the Congo had been operating a military court system which judged both military and civilian cases on the pretext that the country was at war. The competence of the military court in the Democratic Republic of the Congo covered everything from typically military offences to political offences and included ordinary crimes committed with a weapon. It was a court of first and last instance in that there was no right of appeal. In addition, the judges had no possibility of examining the legality of pre-trial detention, resulting in long periods of detention during the investigation, sometimes for as long as one year. He therefore requested that the Sub-Commission recommend the immediate abolition of military tribunals from which there was no appeal in order to ensure a fair trial for military personnel who were human beings with the same rights as others.

46. Mr. Pinheiro resumed the Chair.

47. Ms. SHAWL (International Islamic Federation of Student Organizations) said that, in Indian-occupied Jammu and Kashmir, the authorities were flouting the provisions of the International Convention on Civil and Political Rights to which India was a party. The

promulgation of the Prevention of Terrorism Act in April 2002 had accorded the Indian security forces impunity and wide discretionary powers which they had mercilessly abused. India had rejected the international human rights community's repeated calls for independent investigation into alleged incidents of mass murder and the killings of civilians.

48. Two incidents in Jammu and Kashmir provided evidence of the barbarity of the Indian security forces and revealed a pattern of Indian policy of concealing the truth and mutilating evidence. The first was the massacre of 35 Sikhs in Chittisinghpora in March 2000 and the subsequent killing of five persons, asserted by the Indian forces to be foreign militants responsible for the massacre but later found to be innocent local Kashmiri villagers. The second incident was the killing of three alleged terrorists in the Mendhar sector. Indian army troops had been charged with their abduction from their homes and their murder. Such incidents proved the need for Jammu and Kashmir to have access to international human rights bodies and substantiated the repeated calls for independent international investigation into every alleged case of cross-border terrorism. The Sub-Commission should extend its moral support to the Kashmiris' demand for the deployment of independent observers and fact-finding missions to prevent the abuse of their fundamental rights.

49. Ms. AVELLA (World Federation of Trade Unions) drew the Sub-Commission's attention to the intimidation and harassment of trade-union leaders in Colombia. Strengthened by the Military Penal Code of 2000, the military justice system had been employed to prevent fair trials from taking place in cases related to crimes such as extrajudicial killings and sexual abuse. The armed forces used paramilitary groups to carry out killings on their behalf, and threatened human rights defenders or journalists in order to prevent investigations of the incidents.

50. The Special Representative of the Secretary-General on the situation of human rights defenders had denounced the weakness of the Colombian judicial system following her visit to the country in October 2001, and expressed concern about the case of the former General Rito Alejo del Río. The Procurator-General had dropped all charges against the former General, who had been accused of numerous crimes including the murder of trade-union leaders. Subsequently, two witnesses for the prosecution of the former General had been assassinated.

51. Former General del Río was not the only high-ranking officer of the armed forces to escape prosecution. Rear-Admiral Rodrigo Quiñones had not been charged by a military tribunal for at least 57 murders of trade unionists and human rights defenders during 1991 and 1992 on the grounds of lack of evidence. Subsequently, a judge responsible for investigating the case had been assassinated. A case involving the attempted murder of the President of the State Workers Federation in December 2000 by army officers had recently been dismissed, and many similar cases had failed to reach the courts.

52. A report by the Committee on Freedom of Association of the International Labour Organization (ILO), published in June 2002, had drawn attention to the murders of 113 trade unionists over the previous year, and urged the Government of Colombia to bring those responsible to justice.

53. She thus requested the Sub-Commission to pay urgent attention to the policy of terror employed by the Government of Colombia, and to seek to ensure that crimes committed by members of the armed forces did not remain unpunished.

54. Ms. PARKER (International Educational Development) said that her organization was deeply concerned about the severe curtailment of fundamental principles of justice in a number of countries as a result of responses to the events of 11 September 2001. In particular, domestic legislation had been adopted in the United States of America and elsewhere that directly violated articles 9 and 14 of the International Covenant on Civil and Political Rights. The United States of America was holding people in a prison camp at Guantánamo in Cuba who had been in the armed forces of Afghanistan and were clearly prisoners of war under the terms of the Geneva Conventions and should be guaranteed their rights as such. Other prisoners were non-combatants and might be chargeable under criminal law but were also entitled to its protection, such as the right to counsel, presumption of innocence and the right to petition in ordinary criminal courts. The international community had a duty to insist that the United States honour all rules pertaining to all prisoners.

55. In addition to the new legal regimes contradicting the Geneva Conventions and human rights legislation regarding prisoners of war, the United States had adopted national anti-terrorism legislation which abrogated the protection of human rights. Included in the new list of terrorist organizations were environmental and anti-vivisection groups. Targeting such groups would have no impact whatsoever on actual terrorist threats against the United States of America. The new act also curtailed the right to counsel, "legalized" incommunicado detentions, allowed the use of "hearsay" evidence, and gave the authorities the right to invoke State security to deny or present evidence. She appealed to the Sub-Commission to condemn the new Act. Several other countries had adopted similar legislation, some of it applicable to aliens only. Her organization therefore welcomed the work of Ms. Zerrougui on the issue of discrimination in the criminal justice system and urged the Sub-Commission to make a full study of the issue.

56. Mr. AL-SABAH (North South XXI) said that the Government of Israel had committed serious crimes against Palestinians in the city of Jenin, and was continuing to carry out similar activities with impunity. It deliberately endangered the lives of civilians by perpetrating acts of torture and harassment, preventing the arrival of medical and water supplies, denying access to humanitarian workers, destroying private property and infrastructure, and using refugees as human shields to facilitate the achievement of military objectives. Although the recent report by the United Nations Secretary-General had referred to the violence employed by the Israeli army against ordinary Palestinians, the United Nations and the rest of the world had failed to take action to prevent such atrocities. He called for a concerted international effort to provide protection to the Palestinian people, whose enjoyment of human rights was a precondition for peace in the region.

57. Mr. BEN MARZOUK (Young Doctors Without Frontiers Tunisia) said that practical steps must be taken, especially in countries engaged in conflict, to enhance the independence and integrity of the judiciary, with a view to ensuring respect for human rights and fundamental freedoms. In that context, the United Nations system provided invaluable technical assistance. Close international cooperation was required in order to combat organized crime effectively, particularly with regard to terrorism. The development of a comprehensive code of ethics for

judges, the consolidation of the rule of law and elimination of racial discrimination were crucial objectives in enhancing the administration of justice throughout the world. Some countries required particular assistance to improve the forensic component of judicial inquiries. Forensic experts must be properly trained to seek consent from the accused without interference from security officers before conducting medical examinations, and to write accurate, comprehensive reports.

58. The conclusions of negotiations concerning the United Nations Convention against Transnational Organized Crime and its additional protocols should be given careful consideration, especially bearing in mind the concerns expressed by States. Those considerations should enable experts to gain a better understanding of countries' training and technical assistance needs.

59. Ms. THEPHSOUVANH (Transnational Radical Party) said that her organization was concerned about the administration of justice in Laos, where human rights violations took place regularly in the form of arbitrary arrests, disappearances, torture and other cruel and degrading treatment. Laos had failed to submit a single report to the Commission on Human Rights since 1984. Meanwhile, its code of criminal procedure provided justification for the arbitrary arrest of human rights defenders, ethnic and religious minorities and political opponents on the grounds that any opposition to the ruling Communist Party constituted a threat to national security. Hundreds of prisoners had been detained, sometimes for several years, without the right to a fair trial or access to medical care.

60. She drew attention to the situation of five leaders of the peaceful pro-democracy demonstration of 26 October 1999 who had been detained arbitrarily since that date. For over two years, the Government of Laos had denied their existence, although recent statements had contradicted such denials. She urged the Sub-Commission to include the names of those leaders in its resolution on human rights defenders, and to request the Commission on Human Rights to do everything in its power to persuade the Government of Laos to release them in accordance with international law. An observation mission should be sent to report back on the situation in Laos, and an appeal should be made to the Government to respect international human rights standards.

61. Mr. SARAF (World Muslim Congress) said that he had been imprisoned and tortured by order of the Governor of the Indian State of Jammu and Kashmir, as retribution for having expressed his views regarding the right of the people of Kashmir to self-determination under the auspices of the United Nations. The legislation in force in that and other states of India gave the police extraordinary powers to detain or even shoot suspected criminals at sight without trial. The situation was equivalent to a permanent state of undeclared emergency.

62. For example, the Disturbed Areas Act (1990), Armed Forces Special Powers Act (1990) and Public Safety Act (1978), provided Indian forces in Jammu and Kashmir with wide-ranging powers of arbitrary detention on the pretext of the need to maintain public order. The Prevention of Terrorism Act (2002) extended such powers to allow for detentions of up to 90 days without

trial, as well as for confessions to senior police officers to become admissible as evidence in court. Despite having signed the International Covenant on Civil and Political Rights, India had derogated from many of its provisions on the pretext of a state of emergency in the aftermath of the terrorist attacks of 11 September 2001.

63. He urged the Sub-Commission to call for a wide-ranging investigation into human rights violations in Jammu and Kashmir and to appeal to the Indian Government to bring its legislation into conformity with international law.

64. Mr. SOTTAS (World Organization Against Torture) said that his organization had already drawn the attention of the Sub-Commission to the fact that witnesses must be free to testify without pressure or intimidation. Another factor that often prevented the truth from emerging in judicial proceedings was the oath of secrecy taken by medical professionals. Even though patients under most legal systems were entitled to release their doctor from the obligation to secrecy, many victims of torture were unable to do so, as a result either of the psychological effects of the abuse they had suffered or to pressure exerted upon them. Consequently, doctors sworn to secrecy were often unable to report cases of torture of which they had become aware.

65. His organization had arranged a symposium on 26 June 2002 with a view to developing an effective response to the problem. The participants had decided to ask the Sub-Commission to consider the subject and to make the following recommendations to Governments: doctors should be released from their obligation to secrecy in cases of torture; a mechanism should be developed to enable doctors to inform national authorities or the International Criminal Court directly of cases of torture, and information and training for doctors and medical students on the traumatic effects of torture should be promoted. The Sub-Commission might also wish to consider whether it was necessary to amend or add to the Principles of Medical Ethics adopted by General Assembly resolution 37/194 of 18 December 1982.

The meeting rose at 6 p.m.