



General Assembly

Fifty-sixth session

Official Records

Distr.: General
27 November 2002
English
Original: French

Third Committee

Summary record of the 33rd meeting

Held at Headquarters, New York, on Thursday, 8 November 2001, at 10 a.m.

Chairman: Mr. Al-Hinai (Oman)

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The meeting was called at 10.20 a.m.

Agenda item 119: Human rights questions

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

(A/56/212, A/56/230, A/56/207 and Add.1, A/56/263, A/56/256, A/56/204, A/56/310, A/56/271, A/56/190, A/56/341, A/56/253, A/56/258, A/56/168, A/56/344, A/56/255, A/56/334, A/56/254 and Add.1, A/56/292 and A/56/209)

(c) Human rights situations and reports of special rapporteurs and representatives

(A/56/460, A/56/312, A/56/340, A/56/336, A/56/337, A/56/327, A/56/409 and Add.1, A/56/281, A/56/278, A/56/217, A/56/479, A/56/440, A/56/220, A/56/505, A/56/210; A/C.3/56/4 and A/C.3/56/7)

(d) Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action

(A/56/36 and Add.1)

(e) Report of the United Nations High Commissioner for Human Rights

(A/56/36 and Add.1)

1. **Mr. Ndiaye** (Director, New York Office, Office of the High Commissioner for Human Rights) said he would briefly introduce some of the reports submitted by the Secretary-General on topics considered under agenda item 119 (b).

2. The establishment and strengthening of national institutions for the promotion and protection of human rights was a key priority of the Office of the United Nations High Commissioner for Human Rights. In his report, which focused on national institutions for the promotion and protection of human rights (A/56/255), the Secretary-General underlined that the large volume of work concerning those institutions was done by a small team from the Office of the High Commissioner which was supported solely through voluntary contributions. Those activities were, however, being integrated gradually throughout the United Nations family, including the Commission on Human Rights, given the important role that national institutions could play in the promotion and protection of human rights.

For 2001, particular emphasis had been placed on supporting the active and practical involvement of national institutions in preparation for, during, and following the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

3. The Secretary-General, basing himself on responses received from States to the questions raised in his first report on globalization (A/55/342), had submitted in 2001 a further report on the subject (A/56/254), dealing with the various processes of globalization, including trade liberalization, financial deregulation and increased migration.

4. The Secretary-General had also drafted a report on the effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (A/56/258). The relevant initiatives focused on the necessity of having representative Governments and having minorities participate in public life and development. The report also referred to the regional seminars that had taken place on multiculturalism in Africa and on multicultural and intercultural education. Those initiatives, associating civil society and minority groups, were important contributions to the development of a culture of prevention.

5. Lastly, the Secretary-General, instructed by the Commission on Human Rights to report every two years to the General Assembly on the progress of efforts to ensure the full recognition and enjoyment of the human rights of persons with disabilities, had submitted a note in 2001 on the human rights of persons with disabilities (A/56/263), which attested to the increased visibility of disability-related issues on the human rights agenda. Following up on Commission on Human Rights resolution 2000/51, the Office of the High Commissioner had developed a project to provide a conceptual framework for the recognition of the human rights dimensions of disability. The first projected outcome of the project would be the publication of a study on human rights and disability which would take stock of and evaluate existing standards and institutions in that field and propose options for the future. The study would be an essential step towards the full and effective recognition of the human rights dimension of disability issues.

6. **Mr. Hossain** (Special Rapporteur of the Commission on Human Rights on the situation of human rights in Afghanistan) said that the tragic events

of 11 September 2001 had dramatically affected the situation in Afghanistan. He had visited Pakistan and Iran on an emergency basis from 22 to 30 October 2001 and had held local meetings with governmental representatives, United Nations agencies, non-governmental organizations and Afghan refugees.

7. Recapitulating the main points developed in his interim report on the situation of human rights in Afghanistan (A/56/409 and Add.1), he said that, prior to 11 September 2001, the continued armed conflict, which was externally supported, had all along been identified as the root cause of the deteriorating human rights situation in Afghanistan. Because of the recurrent armed conflicts between warring factions, 20 years after the 1979 invasion, the Afghans were virtually hostages in their own land and were the target of massacres and lawless violence. As a result, there were more than five million refugees and internally displaced persons. The humanitarian crisis had been aggravated by the armed conflict, the ensuing economic crisis and a severe drought extending over three years, which had destroyed agriculture and livestock, threatening 3.8 million Afghans with starvation.

8. Few people had suffered as the Afghans had for over two decades. Yet, in early 2001, it seemed that they were becoming a forgotten and abandoned people as humanitarian crises in other parts of the world emerged. The appeal for humanitarian assistance for the Afghans in 2001 had estimated the "bare bones" requirements to be US\$ 229 million, or roughly US\$ 10 per Afghan for the whole year. Past experience had shown that the Afghans had received only about half the requested amount, in any case much lower than that granted, for instance, to East Timor and Angola.

9. Since the tragic events of 11 September, there had been a dramatic change in the situation of Afghanistan and its people. The decision taken by the international coalition established with the declared aim of combating terrorism to pursue persons alleged to be responsible for those events had brought Afghanistan into central focus. Military operations, involving extensive air strikes, had commenced on 7 October and were still continuing. The intensity of the aerial bombardment and the targeting of cities had led to a large-scale evacuation from urban areas and to the loss of civilian lives and of sources of livelihood for the population. In Kabul, warehouses of the International Committee of the Red Cross had been repeatedly

struck. A certain type of bomb, which had fallen near a village, had scattered bomblets over a considerable area, posing threats to the villagers that were similar to those posed by mines. If such reports were true, an inquiry should be set up to find out whether there had been compliance with the requirements of international humanitarian law.

10. It was feared that the humanitarian crisis, which had been deepening even before the commencement of those operations, could develop into a humanitarian catastrophe. In a joint statement issued on 25 September 2001, the heads of six United Nations agencies, including the Office of the United Nations High Commissioner for Human Rights, had appealed to the international community, in particular to the countries in the region, to take steps to prevent a new tragedy; they had, in particular, urged more international support for asylum States to ensure that their borders were open to all those who deserved protection and humanitarian assistance.

11. The threats from starvation and the lack of shelter and adequate winter clothing called for extraordinary measures. The aid distribution arrangements had been disrupted, although an emergency task force, established in Islamabad, Pakistan, to coordinate the efforts of the humanitarian agencies, had prepared contingency plans for meeting the survival needs of the population, and the necessary humanitarian assistance had considerably increased over the past few weeks.

12. The report emphasized the need to find a durable political settlement that would allow the different segments of the Afghan population, whether in the country or abroad, freely to choose a representative, multiethnic, broad-based Government that would respect the Charter of the United Nations and the international human rights instruments to which Afghanistan was a party. The support of the international community to a national reconstruction plan, by helping refugees and displaced persons to return to their homes, could facilitate that process, which should be guaranteed free from all foreign interference.

13. The recent events had admittedly aggravated the humanitarian crisis. At the same time, they had given the Afghan people the opportunity to become active participants in bringing about fundamental change. There was a widely shared expectation that the United Nations would play a vital role in establishing peace by

helping the Afghan population to participate in devising a comprehensive political plan. Whatever the role that was played by the international community and the United Nations, it would be up to the Afghan people themselves to re-establish peace and the rule of law.

14. As the fall of the existing regime seemed imminent, it was essential that interim internal security arrangements and practical mechanisms should be put in place at short notice, with the participation of the Afghan people, in particular community leaders, to prevent a power vacuum and ensuing problems from occurring. In order to avoid jeopardizing the emergence of a representative Government, it would be necessary to take immediate steps to meet security needs, to deliver the first humanitarian assistance and, in particular, to consult extensively with all segments of the Afghan population in order to restore a unified country; to urge the international coalition to review the conduct of their military operations so as to strictly comply with international humanitarian law, to avoid losses of innocent human lives, damage to civilian property and disruption in the delivery of humanitarian assistance; to ensure that the United Nations played a more visible role in the protection of the fundamental rights of the Afghan people and in the delivery of humanitarian assistance by redeploying, if need be, its staff inside Afghanistan; to ensure internal security, such as the deployment forces, working out agreements with local community leaders, issuing warnings against any form of summary execution, indicating to those responsible for such actions that they could no longer expect to enjoy impunity; and to ensure that the media were available to all Afghans so that their voices could be heard and that a consensus could be built.

15. The United Nations should rise to the challenge and bring its support to a people that had suffered for so long, in order to give them the means to rebuild their country and to live in peace, dignity and freedom.

16. **Mr. Knyazhinskiy** (Russian Federation) shared the views expressed by the Special Rapporteur on the situation of human rights in Afghanistan. He hoped that Afghanistan would become an independent and prosperous State, living peacefully with its neighbours and deserving the principles of international law. His country was ready to participate in the efforts to normalize the situation in Afghanistan, particularly in the context of the initiatives taken within the United Nations system. Citing the resolution adopted by the

Commission on Human Rights in that connection, he stressed the need for an end to the impunity enjoyed by the perpetrators of gross human rights violations, including the cruel treatment of children, in Afghanistan. He drew attention to paragraph 56 of the interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Afghanistan (A/56/409) and noted that the nature and modus operandi of the abuses mentioned, together with the overall structure and operation of the Taliban military authority, indicated the need for investigation into the role and responsibility of those at the highest levels of command. He asked the Special Rapporteur whether the fight against the Taliban was a prerequisite to the re-establishment of peace and stability in Afghanistan.

17. **Mr. Wenaweser** (Liechtenstein) said that the situation in Afghanistan and consequently the mandate of the Special Rapporteur on the situation of human rights in that country were now more strongly dominated and influenced by political and humanitarian issues than in the past. Noting that the plenary session of the General Assembly was expected to adopt a resolution containing provisions relating to the political and humanitarian situation in Afghanistan and that a similar resolution was under consideration by the members of the Security Council, he asked what contribution in the field of human rights the Third Committee might make to the general activities of the United Nations. He also asked the Special Rapporteur to comment on the nature and extent of his contribution to the work of the Special Representative of the Secretary-General for Afghanistan, Mr. Lakhdar Brahimi, whose report was shortly due for submission.

18. **Mr. Hossain** (Special Rapporteur of the Commission on Human Rights on the situation of human rights in Afghanistan) said that it was important to take the necessary measures to ensure that those responsible for violations of international humanitarian law, massacres, summary executions and any other human rights abuses were brought to account for their actions. Although the international community was moving towards a settlement to restore a unified Afghanistan to all of its peoples, it should ensure that the new distribution of powers was conducive both to the rule of law and to individual and material security. The question of human rights violations should be on the agenda of the country's leaders, and the institutions to be created following the participatory process should

be able to prosecute those who should be prosecuted. Care should be taken to ensure, however, that the requirements of justice did not compromise the process of national reconciliation. In other societies emerging from conflict, truth and reconciliation commissions had been established with a view to complementing the work of law-enforcement agencies. For his part, on acquiring evidence of human rights abuses, he had assembled those pieces which seemed to be credible and indicated such cases as required further investigation. In particular, he now had abundant evidence of the massacre committed at Yakawlang, which was described in the sixth report on the situation of human rights in Afghanistan (A/56/409).

19. Responding to the question from the representative of Leichtenstein, he said that the contribution of the Third Committee to the general activities of the United Nations should be determined by the General Assembly. The Afghan people hoped that the international community would take into account its legitimate aspirations and that the Organization would help to create favourable conditions in Afghanistan for the return of refugees. Although Afghan refugees abroad felt a deep desire to return to their country of origin, they also wanted to be able to live there safely. Their return was equally desired by Iran and Pakistan, border countries which had taken in Afghan refugees for over 20 years. The reconstruction of Afghanistan demanded courageous initiatives. He hoped that the General Assembly would be able to formulate recommendations to that end and ensure the participation of all of its members, including those who could provide resources, in the establishment of a national reconstruction plan that would enable Afghans to resume their lives, revive the economy and gain fresh access to health care and education. It was for the General Assembly to encourage the Organization and ensure that the efforts of the Member States measured up to the task which remained to be done.

20. Concerning his working relationship with the Special Representative of the Secretary-General for Afghanistan, Mr. Brahimi, he said that their first fruitful cooperation dated back to 1998. As Special Rapporteur, his mandate had led him into conversation with different groups of the Afghan population and into various forms of consultation with refugees, civil society and women, whose hopes and grievances he had noted in order to convey them to the organs of the

United Nations and to Mr. Brahimi. The members of the Integrated Mission Task Force (IMTF) established in the Secretariat to provide support to Mr. Brahimi had invited him to join in an examination of their respective concerns. Such forms of cooperation allowed him to contribute to the process while remaining within his mandate of making suggestions on how to improve the situation of human rights in Afghanistan.

21. **Mr. Maertens** (Belgium), speaking with reference to Security Council resolution 1325 (2000), which defined the political framework for the protection of the rights of women and their role in peace-building, asked the Special Rapporteur what could be done to strengthen women's organizational capacities so that they could play a central role in civil society.

22. **Ms. El-Hajjaji** (Libyan Arab Jamahiriya), emphasizing the clear worsening of the humanitarian situation in Afghanistan, particularly as a result of the incessant bombing that essentially affected the civilian population of women, children and the elderly alike, asked the Special Rapporteur if, in view of recent developments, he intended to change his method of work and extend his study of human rights violations in Afghanistan to include violations of international humanitarian law, in cooperation with all the competent partners (Mr. Lakhdar Brahimi, Special Representative of the Secretary-General for Afghanistan, the Humanitarian Coordinator for Afghanistan, United Nations organizations and the programmes on the ground).

23. **Mr. Hossain** (Special Rapporteur of the Commission on Human Rights on the situation of human rights in Afghanistan) said, in reply to Belgium's question, that he attached particular importance to the role of women in restoring human rights in Afghanistan. In the past, Afghan women had not had equal educational opportunities. Women living in cities, unlike those in rural areas, had had access to education and then to higher-level positions (as professors of law or medicine, engineers, etc.). Those were the women who would be able to play a very active role in the re-establishment of a system that would allow the whole female population, in both rural and urban areas, to receive an education. The young Afghan women who were living in refugee camps abroad, and who feared they would not find, upon returning to Afghanistan, the education and training

opportunities that they had in the camps, could also play a role. It seemed essential, therefore, to encourage access to education, employment and health care for women in Afghanistan. The outlook was good as long as conditions were created that would allow women to resume the position that was due to them in society, taking duly into account their cultural and religious values.

24. In reply to the representative of the Libyan Arab Jamahiriya, he recalled the terms of his own mandate, namely, to examine the human rights situation in Afghanistan, to contribute to ensuring full protection of those rights and to seek relevant information from specialized agencies, intergovernmental organizations and non-governmental organizations. He added that, within the framework of that mandate, he must continue to inquire about any violation of the fundamental right to life and to security of person and property. The International Committee of the Red Cross, consulted on that topic, had assured him of its vigilance and its own commitment in that field.

25. After recalling the sometimes unrewarding aspects of his task, such as collecting evidence and evaluating facts concerning human rights violations, in accordance with international principles of human rights and humanitarian law, he underlined the positive dimension of his work. He hoped that the situation would evolve and that the conditions would be created for allowing the refugees to calmly envisage their return to Afghanistan in order to resume their daily lives. The international community should therefore assume its particular responsibilities in that regard and establish a national reconstruction plan that would be funded adequately and focused on humanitarian assistance, education and health. He called upon the General Assembly to spare no efforts to ensure that Afghan women and children would be able to go home and reintegrate into the society to which they belonged.

26. **Sir Nigel Rodley** (Special Rapporteur of the Commission on Human Rights on the question of torture), whose resignation would take effect on 12 November 2001, presented his report on torture and other cruel, inhuman or degrading treatment or punishment (A/56/156) and spoke about the main topics he had addressed in that report. Firstly, he said that all intimidation measures, including threats, could be considered, because of the mental suffering of the victim, as equivalent to cruel, inhuman or degrading treatment, or even torture, especially when the victim

was in the hands of law enforcement officials. Noting with appreciation that the Commission on Human Rights had made reference to intimidation in paragraph 2 of its resolution 2001/62, entitled "Torture and other cruel, inhuman or degrading treatment or punishment", he stressed how difficult it was to secure evidence of non-physical forms of torture.

27. He recalled that the jurisprudence of several human rights monitoring mechanisms had referred to the prohibition of torture in cases of enforced or involuntary disappearances. Enforced disappearances, in particular prolonged detention in a secret place, might amount to a form of torture or ill-treatment, in the sense of article 1 of the Convention against Torture, for the disappeared person and his relatives. Nevertheless, he would continue to refrain from dealing with such matters in order to avoid duplication of efforts with the Working Group on Enforced or Involuntary Disappearances; he hoped however, to be able to send joint communications together with the Working Group, especially where fears had been expressed that the persons concerned might be at risk in view of their being held in a secret place.

28. He mentioned the problem of torture and discrimination towards sexual minorities, which were particularly vulnerable groups. Moreover, the discriminatory attitudes of law enforcement agencies might mean that members of such minorities were perceived as less credible or not fully entitled to the same protection as the rest of the population. In some cases, when the members of sexual minorities had been arrested for reasons other than their orientation, or when they had lodged a complaint of harassment against third parties, they had reportedly been subjected to further victimization by the police in the form of verbal, physical and sexual assault, including rape.

29. Impunity was the single most important factor in the proliferation and continuation of torture, be it of a de jure or de facto nature. In the light of the Vienna Declaration and Programme of Action and international jurisprudence, he stressed the duty of States to bring to justice perpetrators of torture as an integral part of the victims' right to reparation and expressed his opposition to the passing, application and non-revocation of amnesty laws, for whatever reason, since impunity itself constituted a violation of international law.

30. Lastly, with regard to prevention and transparency, he said that the prevalence of the opportunity to practise torture was one of the main factors contributing to impunity. He recommended, in that regard, that interrogation sessions should be held in the presence of a lawyer and that all places of detention should be subject to external monitoring by independent officials, such as judges, prosecutors, ombudsmen, members of national or human rights commissions and representatives of civil society. He recommended the radical transformation of the paradigm of opacity which had prevailed for over a century, and that there should be open access to all places of deprivation of liberty, while ensuring that the necessary measures were taken to safeguard the security of those institutions and the individuals within them.

31. After concluding the presentation of his report by encouraging Member States to reflect upon the recommendations included in it, he gave an update concerning missions that should be made to certain countries. He expressed regret that the Government of China had not confirmed by the end of July 2001 the possibility of a visit in September of that year. It was thus up to the Government of China to indicate if and when it was willing to permit such a visit. The response of the Government of the Russian Federation to his joint request with the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and its consequences to visit the Republic of Chechnya had been negative despite the fact that he had been informed that such a visit could be envisaged at a later stage, once security was ensured. Regarding Israel, the Special Rapporteur had reiterated his request to visit the occupied Palestinian territories, including places of detention and interrogation, within the framework of a fact-finding mission, but had not yet received any response. His requests to visit India (1993), Indonesia (1993), Egypt (1996), Algeria (1997), Bahrain (1998), Tunisia (1998), Uzbekistan (2000) and the Kingdom of Nepal (2001) remained unanswered. Since the most recent session of the Commission on Human Rights, he had also sought an invitation to Georgia.

32. In conclusion, he emphasized that, within the context of counter-terrorism following the tragic events of 11 September 2001, any temptation to resort to torture or similar ill-treatment or to send suspects to

countries where they would face such treatment must be resisted.

33. **Mr. Maertens** (Belgium) said that the struggle against torture was one of the main political priorities of the European Union, which had adopted guidelines on the prevention of torture and would continue to accord special importance to that issue. He asked the Special Rapporteur, whose mandate was to end soon, what advice he might give to his successor, based on his own experience in the field.

34. **Mr. Wenaweser** (Liechtenstein), recalling the remark made by the Special Rapporteur concerning the possible temptation, following the events of 11 September 2001, to have recourse to torture in the name of anti-terrorism, asked whether that remark had been purely preventive or based on concrete observations.

35. **Sir Nigel Rodley** (Special Rapporteur of the Commission on Human Rights on the question of torture), replying to the representative of Belgium, pointed out that it was always difficult to give advice to one's successor without appearing unpleasant or paternalistic. He intended nonetheless to inform his successor of the problems connected with the performance of his mandate, in particular the shortage of resources, which rendered the task very difficult in view of the degree of professionalism required, in his opinion, by any action conducted on behalf of the United Nations. His successor would have to look for ways to increase the resources allocated.

36. He would also have to induce a larger number of countries to agree to receive him and cooperate with him. Visits by the Special Rapporteur must not be perceived as intrusions or interference in the affairs of a country, but as activities aimed at bringing an outsider's view to bear on legal and institutional obstacles that sometimes hamper the action of the Governments concerned and at making recommendations concerning measures that national authorities might take in cooperation with the international community. Such cooperation might, for example, take the form of technical assistance.

37. He hoped that his successor would receive the same material, political and logistic support that he himself had received, especially from the Office of the United Nations High Commissioner for Human Rights.

38. Replying to the representative of Liechtenstein, he said that his remark had been essentially preventive, even though a debate was currently taking place in the media on the possibility of resorting to torture as an answer to terrorism. As far as he knew, fortunately no State had expressed the intention to yield to that temptation or to return persons to countries where they would be threatened with torture. Nevertheless, given that Governments were subject to pressures of every kind, his remark had been aimed at encouraging them to resist that temptation.

39. Some Governments were also alluding to the possibility of suspending certain measures for the protection of human rights or bypassing them. Though such questions did not come under his mandate, the Special Rapporteur recalled that the prohibition against keeping persons isolated from the outside world over a long period was one of the foundations of protection against torture. He feared that a number of Governments had already adopted or were contemplating the adoption of isolation measures and recalled that any measure that went against freedom, personal safety and protection against arbitrary arrest might give rise to ill-treatment that came under his mandate.

40. **Ms. Kok Lipeng** (Singapore) asked which international human rights monitoring mechanisms the Special Rapporteur was referring to in his interim report (A/56/156) and in section B of his statement, and where the documents pertaining to the related jurisprudence might be found. She also requested additional information on the choice of countries visited. Concerning the interrelation between the work of the Special Rapporteur and that of the Committee against Torture, she asked how one might eliminate the backlog in the handling of complaints.

41. **Mr. Heyward** (Australia), referring to the common areas and interaction existing between the mandate of the Special Rapporteur and that of the Working Group on Enforced or Involuntary Disappearances, asked the Special Rapporteur how he contemplated facilitating cooperation between the two mechanisms and how, generally speaking, such interaction might be managed.

42. **Mr. Maertens** (Belgium) pointed out that, as indicated by the Special Rapporteur in his report, evidence concerning threats and intimidation of which a person might have been the victim was crucial for

determining whether the person was in danger of being tortured. He asked what measures ought to be taken to ensure that such evidence was obtained. Recalling the opposition of the Special Rapporteur to the adoption, application and non-revocation of amnesty laws, he wished to know whether that position applied to amnesty laws in general or solely to those concerning torture.

43. **Mr. Ndiaye** (Senegal), referring to the question of sexual orientation and sexual minorities, wondered whether it would not be helpful to take into account the traditions and religious convictions of certain countries that considered the behaviour of sexual minorities unacceptable.

44. **Sir Nigel Rodley** (Special Rapporteur of the Commission on Human Rights on the question of torture), replying to the request of the representative of Singapore for clarification on the international monitoring mechanisms, referred her to paragraphs 9 to 16 of his report (A/56/156), where specific mention was made of the jurisprudence of the Committee against Torture, the Human Rights Committee and the Working Group of the Commission on Human Rights on Enforced or Involuntary Disappearances. In response to her second question, on the criteria for deciding which countries to visit, he explained that, for lack of resources, he made requests for visits only when the torture was not limited to isolated cases, trying at the same time to maintain a geographical balance in the choice of countries. Nor did he make a request when a special rapporteur had been appointed in the country or when the Committee against Torture was reviewing the situation in the course of its work. Furthermore, in his own work he took a much more general approach than did the Committee against Torture, which was obligated by article 22 of the Convention against Torture to forward its views on communications from individuals to the Governments concerned. As to the backlog in the Committee against Torture, he was not in a position to answer the question.

45. Regarding Australia's question on the interface with the Working Group on Enforced or Involuntary Disappearances, the use of joint communications would not only lighten the burden of Member States but facilitate the task of the secretariat, who could thus employ a single channel of communication and avoid useless overlap.

46. In answer to Belgium, it was indeed difficult to obtain concrete evidence to document cases of intimidation, and hence the importance of statements from witnesses and of interrogations in establishing the validity of a complaint. Regarding Belgium's question on what was being done to combat impunity, he worked within his own area of competence but it was not by chance that in the past he had launched an appeal to the Peruvian Government in conjunction with the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers and its Special Rapporteur on extrajudicial, summary or arbitrary executions, opposing the adoption of amnesty laws. Even though not all human rights violations were considered criminal offences under national laws or international law, States did have an obligation in the case of some violations, especially acts of torture, to initiate criminal proceedings.

47. Lastly, in answer to the representative of Senegal, he noted that he himself did not deal with the question of genital mutilation, which fell under the mandate of the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences; but, on the other hand, violations of the basic rights of homosexuals, transvestites or transsexuals that were committed or tolerated by public authorities was a concern of his, whether or not such behaviour was legal or illegal in the countries in question. As matters stood, however, he believed that simply the penalization of such behaviour could constitute a violation of human rights.

48. **Mr. Dugard** (Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied since 1967) said that his mandate had been criticized by a number of States on the ground that it singled out Israel for special attention as a violator of human rights, despite the fact that, since the implementation of the Oslo Accords, control over 90 per cent of the Palestinian population had passed to the Palestinian Authority. He recalled that Commission resolution 1993/2 A had given him the mandate of investigating violations of international humanitarian law committed by Israel as the occupying Power.

49. The military occupation, the root cause of the current conflict in the region, should be brought to an end. Until that was done, Israel was obliged to comply with the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. Whether

caused by Israelis or Palestinians, the violence violated the right to life that featured pre-eminently in all human rights conventions. Yet it was not the ultimate explanation for the violation of basic human rights in the region. That must be found in the military occupation of a people by an occupying Power.

50. Since the start of the second intifada in September 2000, some 600 to 700 Palestinians had been killed and over 15,000 injured. More than 180 Israelis had been killed. Most of the victims had been civilians.

51. Israel's practice of selective assassinations could not be reconciled with the Fourth Geneva Convention, which guaranteed the protection of persons not taking a direct part in hostilities. The practice also violated human rights norms that confirmed the right to life and prohibited extrajudicial executions of civilians. Moreover, many innocent civilians had been killed in circumstances indicating a disproportionate use of force.

52. The violence carried out by Palestinians — for example, the shooting of settlers and the attacks in public places in Israel — was also contrary to international law, as codified in 1998 in the International Convention for Suppression of Terrorist Bombings. Nevertheless, it seemed unlikely that the Palestinian violence was subject to the control of the Palestinian Authority, even though it could have done more to prevent it. In that respect, the violence differed from Israeli use of force.

53. Violence had escalated in recent months, with assassinations, exchanges of gunfire and invasions of Palestinian-controlled towns by the Israel Defense Forces. Ceasefires had repeatedly failed.

54. The most obvious and rational solution, namely, an international presence, advocated in particular by the G-8 foreign ministers, had been regularly set aside by the international community and especially by the Security Council. It was difficult to understand why no serious attempt had been made by the international community to persuade Israel to accept such a presence, for it had already been agreed to by the Palestinian Authority and had been employed elsewhere in less explosive situations.

55. The most visible manifestations of the occupation were the settlements, which now numbered 190 in the West Bank and Gaza. Those settlements, and the roads

which linked them to each other, separated Palestinian communities and deprived them of part of their land. By destroying the territorial integrity of Palestine, they forestalled any possibility of creating a Palestinian State. They were a continuous obstruction to Palestinian self-determination. The Mitchell report of 20 May 2001 took the view that peace was impossible without a complete freeze on all settlement activity. In spite of the promise of the Israeli Government to limit the expansion of the settlements to their “natural growth”, and the illegality of the settlements under the Fourth Geneva Convention, Israel had continued to expand them. The Palestinians saw them as evidence of Israel’s unwillingness to accept the creation of a Palestinian State. Only an immediate and substantial dismantling of the settlements would convince the Palestinian people that Israel was genuinely interested in peace in the region.

56. In his report (A/56/440), he had recommended a meeting of the High Contracting Parties to the Fourth Geneva Convention. He was pleased that the Swiss Government was offering to host the meeting.

57. Human rights had been the principal victim of Israel’s reaction to the second intifada. Lives and property had been destroyed, and the sealing off of Palestinian areas had had a serious impact on jobs, health and education. All such violations of human rights were a direct consequence of the occupation.

58. **Ms. Barghouti** (Permanent Observer of Palestine) said that the exhaustive description of human rights violations in the Occupied Palestinian Territories contained in the report of the Special Rapporteur was based on a clear conception of international humanitarian law and human rights. In view of the seriousness of the problem, she was glad that the Third Committee was now considering it for the first time. She noted with satisfaction that the Special Rapporteur, who had presided over the Human Rights Inquiry Commission, was condemning the targeted assassinations of public figures and the grave violations of economic and social rights committed by Israel, and was stating clearly in the report that the continuing occupation was a genuine obstacle to the re-establishment of peace. The report had made a valuable contribution by moving forward the debate on the question of Palestine, including in the Special Political and Decolonization Committee. She urged States Members of the United Nations to consider its recommendations in detail with a view to putting them

into effect, thereby ensuring respect for international humanitarian law and an end to human rights violations and to the occupation as soon as possible. However, she regretted the fact that the Israeli Government rejected the mandate of the Special Rapporteur and was refusing under that pretext to cooperate with him. A meeting in Geneva of the High Contracting Parties to the Fourth Geneva Convention would be a positive step towards solving those problems.

59. **Ms. Khalil** (Egypt) shared the view expressed in the report that the root cause of conflict in the region was the military occupation, which must be brought to an end without delay. Her delegation unreservedly endorsed the recommendations in the report for sending an international presence to monitor the ceasefire and to observe the continuing human rights violations, with a view to bringing them to an end.

60. **Mr. Milo** (Israel) said he could not share in the satisfaction expressed by previous speakers with the report. In his view, the Special Rapporteur’s mandate was outdated and one-sided, and was not suited to the current situation. Moreover the report, far from dealing with human rights, was in the nature of a political statement. It was not unlawful in itself to resort to occupation in self-defence. By stating that the occupation was the root cause of the current problem, the report gave the impression that the protection of civilians was a more serious violation of international law than acts of terrorism. He also regretted that the report omitted to mention that a considerable part of the territories, and considerable power, had been transferred to the Palestinian Authority, and that Israel had offered to hand over the whole of the West Bank and Gaza Strip, a proposal which had been rejected by the Palestinians. That rejection, like the Palestinians’ refusal to accept the existence of Israel, was the root cause of the violence and of the current conflict.

61. There did not seem to be much sense in sending observers to maintain a peace and a ceasefire which did not exist. He wondered if they would be required to observe the bombers who attacked the civilian population of Israel. In his view the report made no constructive contribution to peace in the Middle East. On the contrary, it risked encouraging the Palestinian terrorists to continue resorting to violence. There was no need for reports that tended to prejudice the outcome of issues which ought to be negotiated between the parties. What was needed above all was to put an end to terrorism and persuade the international community

to make a clear statement in favour of negotiations, that being the only lawful means of settling disputes in general, and those between the Israelis and the Palestinians in particular.

62. **Ms. El Hajjaji** (Libyan Arab Jamahiriya) said she was pleased at the way the Special Rapporteur had defined his mandate and felt that the report contained much evidence of breaches of the provisions of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. Several countries had suggested organizing a meeting in order to reaffirm the terms of the Geneva Conference of 1949; Switzerland, as the depositary of the Convention, had offered to host the meeting and said that it would welcome its convening before the end of the year.

63. Like the Special Rapporteur, she believed that the military occupation was the cause of the current conflict and human rights violations and reaffirmed that the settlements were illegal and that their existence and expansion constituted a breach of the Geneva Convention. She stressed the importance of having international observers in the Occupied Palestinian Territories.

64. Resolution ES-10/3, by which the General Assembly had decided in 1999 to convene a conference of the High Contracting Parties to the Fourth Geneva Convention of 1949 and had confirmed the applicability of the Convention to the Occupied Palestinian Territories, remained a dead letter; in that context, she asked how the Special Rapporteur expected to implement the Convention in order to end the occupation.

65. **Mr. Dugard** (Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in the Palestinian Territories Occupied since 1967) said, in response to the representative of the Libyan Arab Jamahiriya, that he was pleased about the decision taken by the Swiss Government to host a meeting of the High Contracting Parties to the Convention, which could mark a new phase towards the dismantlement of the settlements. That would also confirm the applicability of the Fourth Geneva Convention to the territories contested by Israel and reiterate that the settlements constituted a violation of the provisions of the Convention, as had been asserted by the various organs of the United Nations, including the General Assembly and the Security Council.

66. Responding to criticisms of his mandate made by the representative of Israel he explained that the mandate was linked to the military occupation and that he had to continue monitoring the situation until Israel withdrew from the occupied territories. He recognized that the Palestinian Authority currently had control over most of the Palestinians and that it was also committing human rights violations. However, his mandate applied to the numerous human rights violations stemming from military occupation, whether those violations were of civil, political, economic or social rights.

67. He refuted the allegation made by the representative of Israel, whereby the Palestinians' refusal to accept Israel's right to exist was the main reason for the military occupation, by pointing to the fact that the majority of the Palestinians he had met accepted the principle of the existence of two States.

68. As for the concerns of the representative of Israel concerning the security of his country, he recognized the importance of the problem but stressed that there could be no security as long as the Israeli army occupied the Palestinian territories.

69. A military occupation could admittedly be legitimate under international law; however, the case at hand represented a prolonged and particular form of occupation which had not been foreseen at the time of drafting of the Fourth Geneva Convention, and which should be brought to an end.

70. Concerning the offer made by the Israeli Government to return the occupied territories, he observed that Israel had not made any specific statement on that topic. First of all, it must dismantle all the settlements built in the Gaza Strip and the territories, and it must withdraw from all the territories occupied since 1967, including East Jerusalem.

71. With regard to the role that observers and an international presence could play on the ground, he said that since the two parties were deadlocked, with neither of them being inclined or able to ensure security in the region, it would be appropriate to seriously consider the possibility of having such observers.

72. In conclusion, he pointed out that everyone he had spoken to had agreed that the occupation was the cause of the conflict and that there could be no peace in the region as long as it continued. While recognizing

the complexity of a situation which necessarily called for a negotiated solution, he urged Israel to take a courageous step to prove its good faith and its determination to settle the problem and seriously envisage the end of military occupation.

73. **Mr. Al Thani** (Qatar) said that the report submitted by the Special Rapporteur described the seriousness of the human rights violations committed by Israel in the Occupied Palestinian Territories, and rightly reiterated that the only possible option to end those inhuman practices was the Israeli withdrawal from those territories.

74. **Mr. Hyassat** (Jordan) said that he agreed with the statements made by the representatives of Egypt, Bahrain and the Libyan Arab Jamahiriya.

75. **Ms. Stevens** (Belgium), recalling that the report mentioned that the closures impeded the delivery of humanitarian aid, asked the Rapporteur about the current situation and whether he had made contacts in order to remedy that problem.

76. **Mr. Dugard** (Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in the Palestinian Territories Occupied since 1967), replying to the question posed by the representative of Belgium, confirmed that the closures had indeed had an effect on the delivery of humanitarian aid, particularly in the Gaza Strip, and that he continued to receive reports of the difficulties ambulances were having in reaching hospitals, as they were often stopped at checkpoints.

The meeting rose at 12.50 p.m.