



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2004/SR.12
25 March 2004

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sixtieth session

SUMMARY RECORD OF THE 12th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 19 March 2004, at 10 a.m.

Chairperson: Mr. SMITH (Australia)

CONTENTS

ORGANIZATION OF THE WORK OF THE SESSION (continued)

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB
TERRITORIES, INCLUDING PALESTINE

REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS
AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS

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

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.04-12187 (E) 220304 250304

The meeting was called to order at 10 a.m.

ORGANIZATION OF THE WORK OF THE SESSION (agenda item 3) (continued)
(E/CN.4/2004/110/Rev.1; E/CN.4/2003/118, E/CN.4/2002/16)

1. The CHAIRPERSON said that some delegations had expressed reservations concerning various aspects of document E/CN.4/2004/110/ Rev.1 on methods of work. He suggested postponing further discussion on that document until the intersessional meeting of the Expanded Bureau. The work of the current session continued to be governed by document E/CN.4/2003/118, the agreed provisions of document E/CN.4/2002/16, and the rules of procedure of the functional commissions of the Economic and Social Council.
2. He read out the following recommendations of the Expanded Bureau concerning speaking-time limits for the current session: dignitaries at the High-Level Segment would be entitled to up to 15 minutes; members of the Commission would be entitled to 6 minutes per agenda item during the general debate; joint statements should not exceed 15 minutes; if a joint statement by member or observer States exceeded 10 minutes, each participating State would be entitled to half its speaking time under the same item; observers, including non-governmental organizations (NGOs), would be entitled to 3 minutes; each NGO would be entitled to not more than six statements during the session; joint statements by NGOs should be delivered within normal time if 1 or 2 NGOs were involved, normal time plus 30 per cent for 3 to 5 NGOs, normal time plus 70 per cent for 6 to 10 NGOs, and twice normal time for more than 10 NGOs; rights of reply would be limited to two replies per item, consisting of 3 minutes for the first and 2 minutes for the second, and exercised at the end of the meeting, day or agenda item; concerned countries would be entitled to an additional 5 minutes; 3 minutes would be available for the introduction of draft resolutions, for general comments and for explanations of vote, and 5 minutes in the case of concerned countries; 40 minutes would be allocated to the interactive dialogue with special procedures mandates; the Chairperson of the Sub-Commission would be entitled to 15 minutes; and national institutions, treaty bodies and the chairpersons of other functional commissions would be entitled to 7 minutes each.
3. Mr. REYES RODRIGUEZ (Cuba) said that members should be entitled to 7, rather than 6, minutes per agenda item in the general debate.
4. Mr. AL-FAIHANI (Bahrain) said that the restriction of members' speaking time to 6 minutes was essential to avoid the clustering of agenda items that had occurred at the end of the previous session.
5. The CHAIRPERSON said he took it that the Commission wished to accept the recommendation of the Expanded Bureau to restrict members' speaking time to 6 minutes.
6. It was so decided.
7. After a discussion in which Mr. REYES RODRIGUEZ (Cuba), Mr. STEINER (Germany) and Mr. TEKLE (Eritrea) took part, the CHAIRPERSON suggested that, as in previous years, States should be entitled to exercise the right of reply twice each time they were

offended, and always at the end of the meeting, day or agenda item, but with no restriction on the number of replies per agenda item. He took it that the Commission wished to accept the remaining recommendations of the Expanded Bureau.

8. It was so decided.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (agenda item 8) (E/CN.4/2004/6/and Add.1; E/CN.4/2004/G/24)

9. Mr. DUGARD, Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, introducing his report (E/CN.4/2004/6/and Add.1), said that the human rights situation in the occupied Palestinian territories had deteriorated over the past year. Israel had made no serious attempt to distinguish between military and civilian targets during military operations, and its imposition of checkpoints, closures and curfews had been disastrous for employment, health and education. In a single attack on a refugee camp on 7 March 2004, 15 Palestinians, including four children, had been killed, and 80 wounded.

10. The main development over the previous year had been the building of the Wall. In the name of security, Israel had built a Wall deep inside Palestinian territory, designating the area between the Wall and the de facto border as a closed zone. The construction of the Wall had resulted in widespread destruction and seizure of Palestinian land. The permit system governing Palestinians' entry into the closed zone was administered in an arbitrary and humiliating manner. It restricted the Palestinians' freedom of movement, access to education, health care and a settled family life. Given the resulting anger and anxiety, it was likely to create further insecurity for the occupying power. Furthermore, it was likely to force Palestinians living in the closed zone to abandon their homes and migrate to the West Bank.

11. Neither the legitimacy of Israel's security concerns, nor its right to take steps to prevent suicide bombers from reaching its territory, were in doubt. However, the Government had failed to provide reasonable justification for building the Wall within Palestinian territory. Consequently, in his view, the Wall constituted an acquisition of territory by forcible means, as well as a violation of human rights and humanitarian law. By reducing the size of a future Palestinian State, it undermined the right to self-determination of the Palestinian people.

12. During advisory proceedings before the International Court of Justice, a number of States had suggested that a statement on the legality of the Wall would interfere unnecessarily in the peace process. He urged those States to reconsider their position. An acceptable solution to the problems of the region could only be found by applying universally accepted rules of international law. In reporting on violations of those rules, his intention was to further, rather than hinder, the peace process. Denying the allegations of bias made by Israel in document E/CN.4/2004/G/24, he said his only interest was in finding a peaceful solution to the crisis.

13. Mr. LEVY (Observer for Israel) said that the Commission had scarcely opened its proceedings before the attacks on Israel had begun. In his report (E/CN.4/2004/6 and Add.1), the Special Rapporteur continued to use his mission and mandate as a platform for advancing a

political agenda. His wholesale rejection of a complex situation in favour of a simplistic picture in which one side of the conflict had a total monopoly on victimhood placed his report well outside the realm of reasonable discourse. He presented a virtual reality in keeping with his political agenda, in which no Israeli action in self-defence was justified, the Palestinian leadership was untainted by its support for terrorism or corruption, and all Palestinian ills were laid at Israel's doorstep. He thus absolved the terrorists that had taken Palestinian society hostage, the corrupt leadership that had incited and abused the Palestinian people and States that had deliberately sought to fund and inflame terrorism in the region.

14. Since the outbreak of Palestinian violence in September 2000, over 20,000 separate terrorist attacks had been directed against Israelis by Palestinian terrorist groups who showed no regard for the distinction between civilians and combatants. Yet in the report's perverse calculus of proportionality no mention was made even of the 127 terrorist attacks that had taken place during the Special Rapporteur's brief visit to the region. Documented cases of Palestinian terrorist groups using ambulances and humanitarian vehicles to smuggle ammunition, suicide bomber belts and terrorists were ignored. Notwithstanding his theoretical recognition of Israel's legitimate concerns, the Special Rapporteur had not declared a single defensive measure taken by Israel legitimate or proportionate in any of his reports. The manner in which he reached his determination of legitimate proportionality remained a mystery. Given that 945 Israelis had already been murdered by terrorists, the ease with which he made his assertions on issues of life and death left a bitter taste.

15. The report was rife with loaded and misleading terminology. The term "Wall" to describe Israel's security fence was wrong. It took the form of a wall for less than 5 per cent of its length and it was neither electric nor electrified. The term "apartheid" was entirely inappropriate since the fence had nothing to do with race or ethnicity. Neither did the conflict.

16. The Special Rapporteur clearly viewed his office as little more than a platform for broadcasting his personal political views. Moreover, he had published a political tirade against Israel in the international media in violation of Article 100 of the Charter of the United Nations. Any attempt to address specific charges was frustrated by the vagueness of his allegations, which were based primarily on rumour and speculation. At times the Special Rapporteur merely stated impressions of his own, with no indication of their basis. He went so far as to suggest that Palestinian obligations did not exist, that the Palestinians could not be held accountable for their undertakings to fight terrorism, to collect weapons and to end incitement, because they had signed them "under duress". Yet the United States, the Russian Federation, Egypt, Jordan, the European Union and Norway had all witnessed the signature.

17. For the most part, the report was not a factual document but a presentation of virtual reality in which no Israeli action in defence of its civilian population was justified.

18. Mr. RAMLAWI (Observer for Palestine) thanked the Special Rapporteur for submitting an objective and truthful report, which could not, of course, enumerate all the human rights violations that had been perpetrated by Israel against the Palestinian people. The Special Rapporteur was held in high esteem by both the Commission and the General Assembly and had earned the respect of the entire international community.

19. He intended to speak at greater length on human rights violations in the Occupied Palestinian Territory when the discussion on agenda item 8 was resumed later in the session.

REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 4) (E/CN.4/2004/4, 5 and 12 and Add.1-3; E/CN.4/2004/NGO/15)

20. Mr. RAMCHARAN (Acting High Commissioner for Human Rights), introducing the annual report of the High Commissioner for Human Rights (E/CN.4/2004/12), said that the report highlighted areas such as the importance of international protection systems, and of human rights education and the role of the courts in the protection of human rights. He also drew attention to the progress report on support for the strengthening of national human rights protection systems (E/CN.4/2004/12/Add.3).

21. Key objectives in human rights education were: production of teaching booklets on human rights in local languages for teachers in primary and secondary schools; production of a manual in local languages for use by teachers at higher levels of education; and inclusion of human rights in the curriculum of teacher training colleges. He also believed that a convention on human rights education, negotiated over a period of time, could help to produce a framework for promoting such objectives. Once every five years or so, a group of experts representing the different regions could review information gathered through the secretariat on how the objectives were being realized.

22. With regard to the role of the courts in the protection of human rights, he said that each country should have a human rights manual for judges, in local languages, setting out the principal human rights norms, and an accompanying manual on key elements of international human rights jurisprudence. The wider human rights movement should also encourage periodic national, regional and subregional consultations among judges on the application of international human rights law in national courts. In addition, human rights law should form part of the curriculum of schools for judges, magistrates and lawyers. Cooperative programmes could be implemented with Governments, regional organizations and legal organizations such as the International Bar Association, the International Association of Lawyers and the International Commission of Jurists.

23. The Office of the United Nations High Commissioner for Human Rights (OHCHR), in collaboration with the International Bar Association, had produced a Manual on Human Rights for Judges, Prosecutors and Lawyers. He thanked the Association for its substantial financial and intellectual investment in the project.

24. Lastly, he drew attention to the report of the High Commissioner on the situation of human rights and fundamental freedoms in Liberia (E/CN.4/2004/5), which he had submitted to the Commission during the intersessional period because of the particularly difficult situation in the country. He made a strong appeal to the Commission to act on the problem of trafficking in young women.

25. Mr. UMER (Pakistan), speaking on behalf of the Organization of the Islamic Conference (OIC), said that the OIC fully shared the concern of the Acting High Commissioner that the international human rights system had failed to honour its solemn pledge at the 1993 World Conference on Human Rights to realize fundamental human rights. Factors such as poverty, conflict, terrorism, violence, prejudice and bad governance continued to contribute to serious human rights abuses.

26. The Islamic countries attributed the existing deficiencies of the international human rights machinery to its failure to embrace the core principles of justice, equality, cooperation, understanding and tolerance. Instead, it was largely driven by political considerations and characterized by economic discrimination, double standards and lack of respect for cultural and religious diversity. Calls for democracy and good governance should have equal resonance at the international level. In the view of the OIC, a comprehensive review and overhaul of international human rights machinery was long overdue.

27. Muslims had suffered greatly from the failure to implement human rights standards. Thousands had lost their lives over the past decade in conflict situations. Although Islam was a religion of peace and tolerance and OIC countries had made a material contribution to the war against terrorism, Islamophobia, vilification of Islamic values and religious profiling of Muslims and Arabs remained a major concern. The Islamic world was disappointed that the High Commissioner's report made no mention of the deteriorating human rights situation in Palestine and Israeli practices in the occupied Syrian Golan.

28. The report called for a strengthening of the role of United Nations country teams in order to build stronger foundations for the protection of human rights. United Nations agencies and country teams should operate in accordance with General Assembly resolutions and agreed mandates. They should focus on development and their role should not be undermined by extraneous linkages.

29. While the Islamic countries recognized the useful contribution of special rapporteurs, they considered that there had been a proliferation of mandates, that working methods were flawed and non-transparent, and that proper procedures were not followed for addressing complaints. Moreover, most complaints were directed against developing countries, while human rights violations in developed countries were ignored. The Islamic countries therefore urged the Commission to undertake a thorough review of special procedures.

30. The OIC supported the Acting High Commissioner's emphasis on human rights education and on providing judges and courts with human rights material in local languages.

31. The Islamic countries firmly believed that membership of the Commission should be reserved for States. Non-governmental actors should continue to make an important contribution in accordance with the rules of procedure of the Commission and the Economic and Social Council.

32. The rules and procedures established over the years should govern the relationship of the Commission with other United Nations bodies. The Acting High Commissioner's exploration of

the possibility of the Commission referring cases of gross human rights violations to the Security Council was fraught with complications and would further aggravate the politicization of the human rights agenda. The Commission should focus on rationalizing its implementation mechanisms in accordance with existing rules and procedures.

33. The objective of international cooperation for the protection of human rights could be achieved by enhancing the role of national institutions and rendering advisory services and technical cooperation to countries on request. Punitive country resolutions and monitoring mechanisms such as the 1503 procedure had proved counterproductive and a source of confrontation. The OIC urged the Commission to adopt an approach based on cooperation, dialogue and interaction.

34. The Commission's reporting and implementation procedures and mechanisms should be conducted within its own framework. The role of the Expanded Bureau was procedural and could not be extended to substantive issues, including situations, experts and working groups. The idea of periodic reporting by the Commission or the High Commissioner on gross and systematic violations to the Security Council, the General Assembly or the Economic and Social Council demanded further reflection.

35. The Islamic countries believed that OHCHR needed to be reformed to ensure greater transparency, openness and compliance with rules and procedures. They also reiterated their call for action to address the underrepresentation of developing and Islamic countries in the Office.

36. Mr. SHA Zukang (China), speaking on behalf of the Like-Minded Group of States, welcomed the appointment of Ms. Arbour as the new High Commissioner but drew attention to the need to give due consideration to geographical balance in respect of OHCHR, as stipulated in General Assembly resolution 48/141.

37. The advance edition of the High Commissioner's report had only been received the previous week. The six-week rule regarding the availability of Commission documents should be strictly respected so that participants had time to read and digest substantive proposals.

38. The Like-Minded Group shared the Acting High Commissioner's dismay at the state of human rights in the world, especially the fact that almost 1 billion people living in extreme poverty were struggling to survive and that many could not even hope to reach the age of 55. The Group agreed that the struggle against poverty must remain at the forefront of the human rights agenda.

39. With regard to national protection systems, the Like-Minded Group believed that the protection of human rights was first and foremost the responsibility of States. The international community should create favourable conditions for building national protection systems and provide the requisite assistance to States. Democracy and good governance were important for the realization of human rights and should also be practised at the national level.

40. The Group supported efforts to improve and strengthen the work of the human rights treaty bodies and special procedures. However, it drew attention to problems such as insufficient funding and overlapping of mandates.

41. As the activities of OHCHR increased, the necessary financial and material resources should be made available from the United Nations regular budget to enable it to carry out its mandates effectively. The Group welcomed voluntary contributions to the Office and called on the donor community to make unearmarked contributions so as to enhance flexibility in the allocation of resources and ensure that all human rights were treated equally. Extrabudgetary contributions should not be used to undermine transparency in the recruitment of OHCHR staff.

42. The composition of the staff of the Office remained a serious concern. Despite annual resolutions by the Commission, little progress had been made in ensuring equitable geographical distribution. The fact that one region accounted for more posts than the four other regional groups combined undermined the credibility of the Office. China suffered particularly from underrepresentation. Immediate action should be taken to address the problem.

43. The Like-Minded Group considered that the staff of the Office should function within their mandates and maintain the highest United Nations standards of neutrality, impartiality and objectivity.

44. Ms. GABR (Egypt) said that while she welcomed the appointment of Ms. Arbour to the post of High Commissioner for Human Rights, she stressed the need to respect the principle of rotation of the office between regional groups because of its role and impact in an area of crucial importance for all nations and societies.

45. Turning to the High Commissioner's report, she said that poverty eradication should be viewed as the first pillar of human rights protection. She commended the efforts of OHCHR in conjunction with States and treaty body members to develop the human rights treaty system. The need for coordination and less duplication of State party reporting was generally recognized. She encouraged OHCHR to promote the preparation of a single consolidated report for use by all treaty bodies and to press ahead with consultations on streamlining the periodic reporting system.

46. She agreed with the Acting High Commissioner on the importance of human rights education, especially at the primary and secondary levels, and of ensuring that law enforcement agencies were aware of human rights standards. Egypt regularly organized training courses and workshops for personnel involved in the administration of justice and it had developed programmes to teach human rights values, including tolerance and mutual respect, to young people and the public at large. She supported the report's emphasis on the importance of international cooperation in promoting human rights awareness and education.

47. At the regional level, she welcomed the reference in the report to the efforts by the League of Arab States to revise and update the Arab Charter on Human Rights.

48. She agreed that it was essential to tackle the problem of human trafficking, especially trafficking in women, and also the issue of violence against women, which was unfortunately a very widespread phenomenon that impeded women's development and hence the development of societies as a whole.

49. It was inappropriate, for substantive and procedural reasons, to link the human rights system and its mechanisms, on the one hand, with international peace and security and its mechanisms, represented by the Security Council, on the other. If a deterioration in a country's security as a result of poverty and war had an adverse impact on its human rights situation, that should not serve as a pretext for involving the Security Council in its affairs. Such action would also be contrary to international law, which required respect for State sovereignty and non-interference in a country's internal affairs. Moreover, human rights mechanisms and mandates were entirely different from the Security Council's procedures and its mandate, which was aimed at maintaining international peace and security, inter alia through the use of force and the imposition of sanctions.

50. Greater emphasis should have been placed in the report on advisory services and technical assistance on behalf of national human rights institutions, especially in developing countries. Egypt viewed such assistance as the primary task of OHCHR, a task on which the success or otherwise of its action to strengthen and support human rights depended.

51. Mr. CAUGHLEY (Observer for New Zealand), speaking also on behalf of Australia and Canada, said that the world was faced with serious challenges demanding collective action and engagement based on the principles set forth in the International Bill of Human Rights.

52. New Zealand, Australia and Canada had worked jointly in support of the initiatives proposed by the Secretary-General in his report Strengthening the United Nations: an agenda for further change (A/57/387 and Corr.1). Human rights, including the role of OHCHR, were fundamentally intertwined with the goals of the United Nations as a whole. The responsibility for implementing human rights lay with States. No State could be immune to scrutiny of its human rights performance. As underlined in the High Commissioner's report, democracy, the rule of law and good governance were fundamental to upholding human rights and achieving development goals.

53. National protection systems played an essential role in fulfilling those goals. The countries on behalf of which he spoke welcomed initiatives to place more emphasis on the role of United Nations country teams in capacity-building and supported technical cooperation by OHCHR to strengthen human rights promotion and protection at the national and regional level.

54. He welcomed the improvement in staffing and resourcing of support to the treaty bodies and the special procedures of the Commission. All States had a direct interest in their effective functioning. He also commended the efforts of OHCHR to make the process of selecting special rapporteurs more transparent and consistent, and pledged support for ongoing action to secure further improvements.

55. To remain credible, the Commission must strive to end human rights violations wherever they occurred. The prevention of gross violations could also serve to prevent conflict. New Zealand, Australia and Canada agreed with the report's assessment that NGOs had always been the lifeblood of the Commission when it came to fulfilling its role of bringing issues of fundamental concern to the attention of the international community.

56. Mr. SKURATOVSKIY (Ukraine) said that his delegation shared the concern of the Acting High Commissioner with regard to gross human rights violations in the contemporary world. The strengthening of national, regional and international efforts to prevent conflicts had become extremely urgent. The integration of a human rights component into peacekeeping and peace-building missions was a good idea, which would help to promote stability and democratic values. Given the economic pressures of globalization, the Global Compact initiative on human rights, labour and the environment would provide essential assistance to States in fulfilling their human rights obligations.

57. His delegation welcomed the proposed streamlining of reporting procedures for human rights treaty bodies. Representatives of States and treaty bodies should hold a round of talks in order to study the proposals together and find mutually acceptable solutions.

58. Strengthening national human rights protection systems had remained a priority and included improving the judicial system, non-judicial remedies and raising awareness. Effective judicial remedies should be available to all, and States had a duty to ensure that human rights legislation was applied effectively. His delegation welcomed the intention of OHCHR to support the efforts of Governments to bring their national systems into full compliance with international standards, and the idea of drawing up an international convention on human rights education.

59. He commended OHCHR and the Commission on their efforts to promote and protect human rights at the international level and in all countries, urging them to enhance human rights mechanisms and address the causes of violations through international instruments, treaty bodies and common actions.

60. Mr. HARIYADHI (Indonesia) said that his delegation considered that the Commission should re-focus States' attention on the commitments made at the Vienna World Conference and the Millennium Summit. Indonesia had made significant efforts to improve human rights protection over the previous five years, including the addition to the Constitution of a new chapter on human rights in 1999. In addition, a number of international human rights norms and standards had been incorporated into domestic legislation.

61. His delegation welcomed the emphasis on developing the role of the courts in human rights protection. The Government had improved the situation in Indonesia in that regard, creating the National Commission for Human Rights (Komnas HAM) and several regular and ad hoc courts to try cases of gross violations of human rights. While recognizing that there was still much to do in that domain, particularly in educating judges on the evolving body of human rights norms and jurisprudence, the Government was convinced of the need to develop a strong, effective and independent judicial system. His delegation supported the call for closer subregional, regional and international cooperation between judges and courts and agreed that human rights education, especially in primary and secondary schools, was of fundamental importance. To that end, he advocated a normative approach at the national and international levels, as well as raising awareness of human rights principles through the media and relevant literature in local languages. While recognizing the need to strengthen the system of special procedures, his delegation asserted that a comprehensive review was necessary to establish a clear framework for that work, including appointment procedures, working methods, a code of conduct and criteria for the transmission and administration of communications.

62. Ms. HERRERA (Cuba) said that, as reflected in the High Commissioner's report, 55 years after the adoption of the Universal Declaration of Human Rights and more than 10 years after the Declaration and Programme of Action of the World Conference on Human Rights, human rights for all was still but a dream. While the Commission had been created precisely to promote and protect human rights, the shameful reality was that millions of people worldwide were still unaware that they had rights. The Commission had become a biased forum in which industrialized States imposed their ideas and political interests on developing countries. The Commission should put a stop to the submission of selective and discriminatory resolutions against developing States under agenda item 9, as it impeded genuine international cooperation and open dialogue, which were the necessary ingredients for improving human rights the world over.

63. While her delegation supported the assertion in the report that democracy and the rule of law were essential components for the protection of human rights, she recalled that the Millennium Declaration had called for governance, democratization, participation, non-discrimination and accountability to be improved at the national and international level. A social and international order in which rights and freedoms were fully realized, as provided for in article 28 of the Universal Declaration, should therefore be established. The sovereignty and internal jurisdiction of States should be respected within the Commission, as should their historic, cultural and religious heritage. Cooperation should not be forced, but encouraged, in accordance with Articles 1 and 55 of the Charter of the United Nations.

64. Combining the work and the functions of the different human rights mechanisms would be counterproductive, as the treaty bodies and the Commission's special procedures had separate mandates. Similarly, the mandates of United Nations agencies, funds and programmes should not be modified, given that only the intergovernmental bodies that had established them had the authority to do that. OHCHR should maintain its independence and integrity and address the issue of the current shortage of staff members from developing countries. The relevant resolutions adopted by the Commission and the recommendations in the report submitted to the Joint Inspection Unit should be implemented.

65. Her delegation denounced the attempts by some Northern States, together with NGOs under their control, to impose arbitrary and discriminatory requirements on members of the Commission. If, however, the Commission ever decided to establish membership criteria for the functional commission of the Economic and Social Council, the starting point should be to deny access to those who promoted aggressive wars, failed to meet official development assistance targets, curtailed peoples' right to self-determination, denied indigenous peoples their human rights, refused to make reparation for the transatlantic slave trade or imposed coercive unilateral measures in violation of international law.

66. Mr. WILLIAMSON (United States of America) said that, in accordance with the system of political beliefs on which his country had been founded, the United States sought to increase the Commission's fulfilment of its mandate to strengthen human rights and fundamental freedoms worldwide, offering international support to those fighting national and local tyranny and giving voice to the voiceless. Given that immense and worthy task, the Commission should highlight all abuses of liberty and encourage all States to improve their protection of fundamental freedoms and human rights.

67. His delegation supported an effective Commission that took concrete steps resulting in tangible improvements in the lives of people worldwide. It focused on working with other States that respected the rule of law at home, in order to improve the Commission's work to extend the rule of law internationally. It also encouraged operating a democracy caucus to express shared, core values, electing to the Commission members with strong human rights records who embraced democratic principles and practices, and improving the procedural mechanisms, and thus the daily and overall functioning of the Commission.

68. In accordance with the Secretary-General's assertion that membership of the Commission implied responsibilities as well as privileges, ways should be found to ensure that members shared a true commitment to the basic purpose and mandate of the Commission. That implied that members should be true democracies that held regular, free and fair elections, had an independent judiciary, a strong multiparty system, the rule of law, transparency and accountability in government, a free and independent media and constitutional guarantees of human rights and fundamental freedoms. His delegation encouraged democratic Governments in each regional group to present themselves as candidates, and urged democracies to support the election of other democracies.

69. The Commission should emphasize the importance of implementing treaties and other human rights obligations undertaken or ratified by States. Some Governments had ratified but subsequently ignored major human rights treaties, which was an unacceptable state of affairs.

70. The Commission's procedures required improvement in order to enhance the effectiveness of its work. His delegation supported the call in the report to strengthen the system of special rapporteurs and made several specific proposals, including halting the recent proliferation of special rapporteurs and other mandate holders in order to focus on high-priority concerns, rationalizing and consolidating the special mechanisms and ensuring compliance with defined mandates and opposing no-action motions, as they were often used to silence discussion on human rights realities.

71. Mr. AL-FAIHANI (Bahrain) said that while States and Governments had the primary responsibility for promoting and protecting human rights and fundamental freedoms, his delegation considered that OHCHR had a vital role to play in that respect, and in developing and strengthening dialogue and cooperation between States, within the framework of the United Nations human rights machinery. It also considered OHCHR to be a catalyst for international efforts to prevent flagrant human rights violations and a pioneer in respecting and promoting those rights. States should therefore fully support its activities, and all States that cooperated with the Commission and respected human rights should receive moral support and encouragement from fellow members and OHCHR.

72. The Commission and OHCHR should bear in mind the different human rights characteristics in different regions and promote respect accordingly. Comprehensive moral support from the international community should encourage continuation of the positive developments in the human rights field worldwide.

73. Bahrain recognized the importance of strengthening human rights, as they formed the foundations of political, economic and social progress. Plans and policies had therefore been implemented in the Kingdom over the previous five years that promoted respect of human rights

and fundamental freedoms. The right to freedom of opinion and expression, which was enshrined in the Constitution, was guaranteed through such means as mass media, parliament and demonstrations. The Supreme Council of Women defended women's rights, which had been highlighted during the previous year, particularly the right to obtain private housing and financial assistance for widows and divorcees. The rights of the child had also been promoted. Bahrain had submitted its sixth and seventh periodic reports to the Committee on the Elimination of Racial Discrimination, and relations with the Arab Region Team in OHCHR had been strengthened in order to advance human rights in the Kingdom. Human rights education was being introduced at several levels in order to disseminate a human rights culture, involving different ministries and civil society institutions.

74. Mr. ROCHA PARANHOS (Brazil) said that his delegation shared the Acting High Commissioner's concern over continuing human rights violations in various parts of the world, and over poverty, racism and discrimination, torture and people trafficking, women's and children's rights and the rights of indigenous peoples. The Brazilian delegation favoured initiatives designed to strengthen national protection systems and improve the implementation of the human rights treaty system. Dialogue with the Commission and with treaty and other mechanisms was a valuable tool for improving human rights at the national and international levels. While taking note of the reference in the report to special procedures as early-warning mechanisms for the international system, his delegation was willing to study the suggestions for improving the work of the Commission contained in the report, many of which were complex and merited further consideration. Such debate was both useful and necessary and his delegation was willing to participate positively in that process.

75. Mr. CHUMAREV (Russian Federation) said that the position taken by the High Commissioner did not just determine the nature of international cooperation in the field of human rights, but also influenced other areas of multilateral collaboration. He hoped that under the guidance of the new Commissioner, Ms. Arbour, it would be possible to make human rights a unifying rather than a divisive force and depoliticize that sphere of inter-State relations. Successful implementation of the High Commissioner's mandate could only be achieved through mutually respectful multilateral dialogue, undertaken on the basis that all States were equal, and taking account of their ethnic, religious and cultural particularities.

76. He noted that calls were occasionally made to turn the Commission into a sort of "elite club", with States judged either as "stars" or "underachievers", according to their human rights record. That approach was not only counter to the aim of encouraging States to cooperate on an equal footing, but was contrary to the Charter of the United Nations.

77. The time had come for a review of the Commission's special procedures. He proposed that the candidatures of special rapporteurs and independent experts should be subject to approval by all the members of the Commission in order to ensure more effective control and resolve problems connected with political bias. The Commission should introduce a ban on various mandates being carried out by the same people, and also on their participation in the work of NGOs; it should clearly determine the length of mandates; lastly, it should consider introducing a moratorium on the creation of new special procedures and carry out detailed analysis of the effectiveness of existing mechanisms.

78. He supported the focus on strengthening national capacity to protect and promote human rights, enhancing the role of judicial authorities and improving human rights education. In that context, special attention should be paid to advisory services and technical assistance and to encouragement of participation in the relevant programmes of United Nations agencies and the international finance institutions; the voluntary nature and political neutrality of such cooperation was vital.

79. The Russian Federation had been surprised by the proposal for development of cooperation between the Commission and the Security Council, including the question of referring to the Security Council cases of grave and massive human rights violations; such initiatives were contrary to the system of mandates of United Nations Charter bodies, according to which human rights fell within the competence of the Economic and Social Council. Such “pseudo-innovative procedures” were dubious in terms of compliance with the Charter.

80. Two and intractable chronic problems persisted, namely the failure to respect the principle of geographical distribution and the Commission’s excessive dependence on voluntary contributions by a fixed group of donor countries. The Russian Federation believed that resolving those issues would enhance the authority of the OHCHR in the eyes of the international community as a genuinely independent body.

81. Mr. MARTÍNEZ MARTÍNEZ (Mexico) said that consideration of the High Commissioner’s report was one of the most important items on the Commission’s agenda. His delegation supported the Acting High Commissioner’s view that national protection of human rights was a priority, both for members and OHCHR. The structures and practices for preventing and effectively combating human rights violations should be established at the national level, and the High Commissioner’s invitation to States to submit reports on their national protection systems, as Mexico had done in the previous year, was welcomed. His delegation also welcomed the exchange of ideas between Governments and organizations on different national protection systems as a means of promoting best practice on an international scale. To that end, the Mexican National Human Rights Commission had organized an international seminar on current challenges faced by national institutions for the protection and promotion of human rights in October 2003.

82. His delegation fully endorsed the efforts by OHCHR to support Governments by identifying areas in which it could make a positive contribution. It would be useful to ensure appropriate coordination with treaty bodies and other United Nations human rights agencies to that end. His delegation also supported the notion that human rights protection was the key challenge for the international community. The Mexican Government had committed itself to making concrete developments in that area with the help of OHCHR, experience it would be willing to share with other States. An OHCHR office had been set up in Mexico, and the technical cooperation agreement between that body and the Government, which had been signed in 2000, was currently in its second phase. It had entailed analysing the human rights situation in the country, based on research by four independent experts who had consulted the relevant sectors of Government and civil society. The analysis had been submitted to the President in December 2003, and had included over 230 recommendations made by treaty bodies

and other international agencies that had visited the country. The Special Rapporteur on indigenous peoples had visited Mexico the previous year and his recommendations, together with those of other agencies, were currently under consideration by the Government's Human Rights Policy Commission. Mexico welcomed all measures taken by OHCHR to promote and protect human rights on an international scale, particularly those that made greatest impact nationally, such as technical cooperation agreements.

83. Mr. RAMCHARAN (Acting United Nations High Commissioner for Human Rights) said the report had been compiled in a spirit of constructive engagement and he would give careful consideration to all the comments that had been made.

84. He fully subscribed to the principle of the independence of OHCHR. He would liaise with the new High Commissioner about geographical distribution, including in particular the representation of China; the composition of OHCHR should reflect the world. He would like to see the proportion of the Commission's resources coming from the regular budget of the United Nations increased from one third to one half. He would consider the problem of a lack of transparency in recruitment; it was important that the Office was perceived to be transparent.

85. OHCHR had great admiration for the system of special rapporteurs and for the special rapporteurs themselves; however, the Commission had final control. He took note of the request for advance information on financial implications; OHCHR would endeavour to circulate that information ahead of time if States were able to ensure that resolutions were received early enough. The dilemma with regard to the expansion of the advisory services programme was that voluntary contributions would be required.

86. He recalled that the Secretary-General had gone on record as saying that he would consider the appointment of a special adviser on genocide; in that context, situations might occur in which the protection of people from genocide might entail complex cooperation between United Nations bodies. The request by the Mexican Government for United Nations help in diagnosing the state of human rights in Mexico had set an important precedent, and he hoped to organize a supplementary event to provide more information about the initiative. With regard to the comments that had been made concerning Palestine and Pakistan, he wished to draw attention to the remarks he had made on those situations in his opening statement to the session.

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (agenda item 5) (E/CN.4/2004/15)

87. Mr. BERNALES BALLESTEROS, Special Rapporteur on the question of the use of mercenaries, said that his mandate had developed over the last 17 years, since his role had been created by resolution 1987/16. The use of mercenaries had increased in all five continents in that time, and constituted a scourge in international and internal armed conflicts that flouted international law. Mercenaries had also been involved in terrorism, illegal trafficking, covert operations masterminded by other powers, selective assassinations and attempts to destabilize the political and economic sovereignty of some countries, under the auspices of international

security companies, which recruited mercenaries with impunity. There had, however, been some positive developments, such as the introduction of a sound, multiracial democracy in place of the apartheid regime in South Africa, the end of several armed conflicts and the entry in force of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. While opinion had been divided at times over the mandate, which had increased to encompass other criminal activities involving mercenaries in serious violations of human rights, the Commission had always supported him in his role, for which he was most grateful.

88. Among the substantial correspondence between the Special Rapporteur and member States detailed in paragraphs 12 to 18 of the report (E/CN.4/2004/15), he drew attention to the Russian Federation's direct reference to the use of mercenaries in the so-called jihad in Chechnya to carry out terrorist activities, and to information from the Governments of El Salvador and Panama on the anti-Cuban activities of Luis Posada Carriles and his group.

89. The report also covered mercenary activities in Africa, particularly in Côte d'Ivoire, Guinea, Liberia and Sierra Leone. He expressed the hope that his successor would visit both Côte d'Ivoire and Sierra Leone. He would request information from the Governments of South Africa and Zimbabwe on the foiled coup d'état in Equatorial Guinea, which had allegedly involved mercenaries who had flown from South Africa to Harare in March 2004.

90. The connection between terrorism and mercenary activities was of great concern. Having alerted the international community to that link, he regretted that recent international legislation on terrorism had not taken it into account. That situation should be remedied as soon as possible and the involvement of mercenaries in terrorist activity should always be investigated and, where established, punished.

91. A new legal definition of "mercenary" had been arrived at in the past two years, in collaboration with international experts, the results being detailed in paragraphs 37 to 47 of the report. He hoped the next Special Rapporteur would take further action on the definition. Another important matter pending was the invitation to visit the United States extended in 2002.

92. The image of the mercenary as a hero who killed evil oppressors and strove for freedom had been built up in popular culture and the media. That image deliberately concealed the criminal nature of mercenary activities and had affected his work as Special Rapporteur. He thanked the Secretariat for the support he had received during his term of office and assured the Commission of his willingness to contribute to its work in future.

93. Mr. FERNANDEZ (Cuba) expressed the hope that the Special Rapporteur's successor would ensure that the postponed visit to the United States went ahead; the visit should serve to determine the involvement of various anti-Cuba groups based in Miami in mercenary activities. Secondly, in the light of the recent arrest of 64 suspected mercenaries in Zimbabwe, he suggested that similar visits should be made to certain European capitals in order to investigate allegations of European involvement in mercenary activities in Africa. Thirdly, he

recommended that Mr. Bernales Ballesteros provide his successor with detailed information on the progress of his investigations into the use of mercenaries by private security companies, so that the good work that he had started could continue.

94. Mr. BERNALES BALLESTEROS, Special Rapporteur on the question of the use of mercenaries, said that he saw his final few months in office as a time for preparing for a smooth handover so as to ensure continuity. He would take steps to ensure that the visits that were still pending took place; that applied not just to the visit to the United States, but also visits to Sierra Leone and Cote d'Ivoire. With regard to the proposal for a similar visit to be made to certain European cities, he explained that the first step would be to gather information about the case. Once the Government of Zimbabwe had officially provided the necessary information, it would be cross-checked and information would be requested from any other Government which might be able to shed light on the matter.

95. The information on the work of international private security firms had enormous repercussions. Such firms operated on almost every continent, and while there were some interesting and positive aspects to the existence of such firms, their role as facilitators in the hiring of mercenaries for illegal operations in other countries was decidedly negative. He noted that a number of countries had classified intelligence in that regard.

96. Mr. RAMCHARAN (Acting United Nations High Commissioner for Human Rights) paid tribute to the important work that Mr. Bernales Ballesteros had done since being appointed, in particular in developing his mandate, devising a legal framework for the use of foreign combatants, and promoting the entry into force of the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries. He should also be commended on his work to counter new uses of mercenaries, notably in relation to terrorism and with respect to private security companies and on his insistence on the limitations and shortcomings of the existing legal definition. He thanked the Special Rapporteur for his valuable achievement and outstanding commitment to fulfilling his mandate.

97. Mr. UMER (Pakistan), speaking on behalf of the Organization of the Islamic Conference (OIC), said that the right of peoples to self-determination had been repeatedly recognized in key international legal instruments and the final declarations of major world conferences. Achievement of the right to self-determination had contributed to international peace and security, while its denial had caused, and continued to cause, suffering and instability. Whenever and wherever the right to self-determination had been denied through occupation and subjugation, it had spawned conflict and instability.

98. Although the fundamental right to self-determination had first been conferred on the people of Palestine, as well as Jammu and Kashmir, by the United Nations more than 50 years earlier, Israel continued not only to defy that right but to perpetuate massive human rights abuses, as had been consistently reported by a variety of sources. He referred to the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by

Israel since 1967 (E/CN.4/2004/6 and Add.1), which indicated that excessive use of force in the occupied territories had resulted in the killing of 2,755 Palestinians since September 2000 and confirmed the presence of some 6,000 Palestinian detainees in Israeli prisons.

99. In defiance of appeals from the international community, Israel had continued its construction of a separation wall on Palestinian territory. The OIC considered the construction of the Wall to be illegal. The Wall was not a security measure but an attempt at de facto annexation of Palestinian land into Israel; he drew attention to the conclusion of the Special Rapporteur that the amputation of Palestinian territory by the Wall seriously interfered with the right of self-determination of the Palestinian people as it substantially reduced the size of the self-determination unit (already small) within which that right was to be exercised.

100. The people of Jammu and Kashmir had also been engaged in their struggle for realization of their right to self-determination for more than half a century. The international community was hopeful that the dialogue that had recently begun between India and Pakistan would lead to a peaceful resolution of the dispute and the establishment of peace and stability in the South Asian region.

101. The denial of the right to self-determination constituted a grave violation of fundamental human rights; the Commission, as custodian of those rights, had an obligation to people living under foreign occupation to assist them in their quest for freedom. Concrete measures should be taken in response to non-cooperation by the occupying powers.

102. Mr. LEVY (Observer for Israel), speaking in exercise of the right of reply, said that by focusing its attention almost exclusively on one country, the OIC was indulging in discrimination against Israel. One of the most fundamental violations of international law was the failure of the Palestinians to distinguish between Israeli civilians and combatants. Palestinians detained in Israeli jails were there because they had committed crimes, killing and injuring Israelis. The construction of the fence was a defensive measure and not a political act; it was not intended to affect the status of the land on which it had been constructed. The fence had been the most effective means that Israel had found of preventing Palestinian terrorism. He wished to emphasize that the fence was a temporary structure; a fence could be taken down, but the victims of terrorist attacks could not be resurrected. His Government was committed to the peace process; its sole aim in constructing the fence had been to protect the right to life of the Israeli population.

103. Mr. SARAN (India), speaking in exercise of the right of reply, said that he wished to respond to a reference to an integral part of his country. He sincerely hoped that the OIC would overcome the mindset of referring to half-truths and misrepresenting history and reality. If the OIC was sincere in its desire to see the peace process succeed, he urged it to resist the temptation to make statements that were inaccurate and counterproductive.

104. Mr. RAMLAWI (Observer for Palestine), speaking in exercise of the right of reply, said that he wished to refute the suggestion by the observer for Israel that Palestinians were terrorists; Palestinians had a right to resist occupation, including through the use of arms. Israel, however,

persisted in perpetrating State terrorism against the Palestinian people. Palestinians had good reason to reject the building of the Wall; the Secretary-General himself had confirmed that its construction was a flagrant violation of the right of the Palestinian people to self-determination. If Israel wished to build a wall, it must do so on its own territory.

105. Mr. HUSSAIN (Pakistan), speaking in exercise of the right of reply, expressed his surprise at India's response to the statement made on behalf of the OIC, which had merely reiterated the facts of the situation. He contested the claim that Kashmir was an integral part of India. The fact that the issue remained on the international agenda as a case in which the right to self-determination had not been realized was ample to refute India's assertion. However, Pakistan did not wish to engage in acrimonious exchanges with India.

The meeting rose at 1.10 p.m.