



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/SR.12
31 October 2005

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Sixty-first session

SUMMARY RECORD OF THE 12th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 18 March 2005, at 10 a.m.

Chairperson: Mr. WIBISONO (Indonesia)

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

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.4/2005/3, 4, 12, 126 and 134; E/CN.4/2005/G/12, 15, 16 and 17; E/CN.4/2005/NGO 76;
S/2005/60)

1. Ms. ARBOUR (United Nations High Commissioner for Human Rights), presenting her report (E/CN.4/2005/12), which reviewed the activities carried out by her Office since the Commission's previous session, briefly analysed the challenges to be faced in the near future. Regarding the problem of the right to development, a number of activities had been conducted with the aim of strengthening consideration of the links between development and human rights and promoting the realization of economic and social rights. In particular, five studies had been commissioned, which should serve as material for the drafting of a document analysing the different options for the implementation of the right to development. Furthermore, the directives established in 2002 on strategies for combating poverty from a human rights perspective had been revised and were due to be made public in spring 2005. Her Office had continued to encourage the implementation of the Durban Declaration and Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, by supporting the variety of mechanisms that had resulted from the Conference, facilitating regional dialogue and cooperating with civil society. Regarding the strengthening of national capacities for the protection and promotion of human rights, the trend towards increasing action at the national level had been confirmed, and her Office had continued its activities for technical cooperation and local capacity-building. At the request of certain States, it had also provided considerable support to a wide range of inquiries into cases of human rights violations. The launch of the initiative, which aimed at improving the coordination between the activities of the different member agencies of the United Nations country teams with a view to improving the effectiveness of the assistance given by the United Nations to national protection systems, had been an important step.

2. A large part of the work done by the Office of the United Nations High Commissioner for Human Rights (OHCHR) at the national level concerned countries in conflict or post-conflict situations, where human rights were the most vulnerable. In a number of countries a serious deterioration in human rights protection had been noted over the course of the past year. That was the case in Nepal, where OHCHR activities had consisted essentially of supporting the National Human Rights Commission and strengthening the capacities of the United Nations country team. Since her visit to Nepal in January 2005, the situation had seriously deteriorated and OHCHR was keeping a close watch on developments. Regarding Darfur, OHCHR had dispatched fact-finding missions to Chad and then to Sudan, and had deployed, although not without difficulty, human rights monitors on the ground. The Office was working in close cooperation with its partners in the system, with the African Union mission and with all the other actors present on the ground, in order to follow the developments in the situation as closely as possible, and to participate in the protection of the peoples and in laying the groundwork for the establishment of a just and lasting peace.

3. Over the period under consideration, OHCHR had received an increasing number of requests for support for the establishment of commissions of inquiry into grave, large-scale human rights violations. It had provided backing for three such commissions, two in Côte d'Ivoire and one for Darfur. It had also supported the recently established Commission of Experts on Timor-Leste. Considering that such commissions were particularly useful in the fight against impunity, it would continue to develop its expertise on that subject.
4. The reform of the United Nations system was at a crucial phase, and human rights were at the very heart of the debate. The real protection of all those whose rights were under threat depended largely on the system's ability to increase its effectiveness. Her Office had a fundamental task in that regard, and she was pleased to note that a large number of delegations had offered her their support. She thanked them for their confidence and reaffirmed her determination to continue to work for the improvement of the situation of men and women whose rights were in danger.
5. Ms. GORELY (Australia), speaking also on behalf of Canada and New Zealand, thanked the High Commissioner for her comprehensive report, which focused on a number of country situations of serious concern. She commended the efforts of OHCHR to encourage practical improvements on the ground and to address gross violations of human rights, for example by deploying human rights monitors, and she welcomed the High Commissioner's very useful role in providing information to the United Nations Security Council.
6. The Australian delegation approved the emphasis laid on the improvement of tools for assisting States in bolstering their national human rights protection systems. She welcomed the reform of the treaty body system and would like to see a similar improvement in the operation of the special procedures of the Commission, and particularly the creation of methodological tools such as those that were being devised for the development of transitional justice mechanisms in post-conflict States. In order to be useful, such tools must be practical and accessible to those working in the field, so she stressed the importance of the implementation of the Secretary-General's Action 2 programme for reform. She welcomed the High Commissioner's help to States emerging from conflict in their efforts to tackle impunity, and her constructive role in the establishment of commissions of inquiry. The reform of the United Nations was an opportunity to ensure that human rights were placed at the centre of all its activities. Australia, Canada and New Zealand looked forward to working closely with the High Commissioner to ensure that the link between human rights, peace and security and development became a reality through tangible improvements to people's everyday lives.
7. Mr. SHA Zukang (China), taking the floor on behalf of the Like Minded Group of States, said that they appreciated the pragmatic working style of the High Commissioner, and assured her of their full support. He welcomed the importance attached to strengthening national human rights protection mechanisms, considering that States bore the primary responsibility in that regard, but hoped that careful account would be taken of the specificities of each situation and of national particularities, for although human rights were universal their protection could not be uniform.

8. Considering that, despite all that OHCHR had done to promote economic, social and cultural rights and the right to development, they were still not universally accepted as fundamental human rights and the international environment was still not favourable for their realization, the Like Minded Group of States expected OHCHR to develop more specific and pragmatic initiatives in that regard. He hoped that the new guidelines for drafting reports to the treaty bodies would alleviate the burden on States and would result in more concise and useful reports. His delegation also expected the Special Procedures to discharge their mandate in a more transparent, objective and impartial manner. Finally, he hoped that the OHCHR mandate, as it was clearly defined in General Assembly resolution 48/141, would be strictly respected in the context of the effort to reform the United Nations.

9. Mr. MARTABIT (Observer for Chile), speaking on behalf of the Convening Group of the Community of Democracies (Chile, the Czech Republic, India, Mali, Mexico, Poland, Portugal, the Republic of Korea, South Africa and the United States of America), together with the Special Guests (Italy, Peru and Romania), welcomed Ms. Arbour's first report. The Community of Democracies had noted in particular the activities carried out to strengthen the rule of law, transitional justice and democracy, as also in the area of human rights and development. It welcomed the conclusions of the seminar of experts on democracy and the rule of law, held in Geneva at the end of February 2005, and of the seminar on good governance practices for the promotion of human rights, held in Seoul in September 2004, which had emphasized the interdependence between democracy and the rule of law, the crucial role of the Commission on Human Rights and the fact that the notions of good governance and human rights were based on the same essential principles. OHCHR could take account of the recommendations of the two seminars in its advisory services and technical assistance programmes.

10. Reaffirming his conviction that democracy, peace and economic and social development were interdependent and mutually reinforcing, and that respect for human rights was an essential element of representative democracy, the Community of Democracies would adopt, at its ministerial conference to be held in Chile at the end of April 2005, a strategic programme of action for the development and promotion of democracy at the national, regional and global levels. Since democracy not only guaranteed the punishment of human rights violations but also enabled the deficiencies behind those violations to be rectified, the Community of Democracies wished to contribute to its strengthening through encouraging and supporting transition processes. It invited all countries to work to strengthen the Commission's activities for promoting the ideals of the Charter of the United Nations and the Universal Declaration of Human Rights, and stressed that the reform of the Commission should aim at consolidating, not weakening, the international system for the promotion and protection of human rights.

11. Mr. MOHAMED (Sudan) reiterated his Government's determination to spare no effort in ensuring the protection and promotion of human rights in Sudan. The human rights violations in Darfur were a direct result of the ongoing conflict, which had been started, as the High Commissioner stated in paragraph 48 of her report (E/CN.4/2005/3), by rebel forces. It was certainly not easy for a mission deployed in a region as vast and complex as Darfur to arrive, in only three weeks, at viable and well-founded conclusions, which was why the report frequently used words and phrases expressing uncertainty. The root causes of the crisis lay

notably in the rivalry, dating back 80 years, between the nomadic tribes and sedentary groups for resources in constant diminution owing to recurring waves of drought. The opportunism of some politicians and the proliferation first of small arms and then of sophisticated weapons had further aggravated the situation.

12. The international community should ask itself what it had done to help remedy the shortage of resources and to honour its commitments in respect of financial assistance to developing countries, particularly Sudan. The Darfur region, which was not the only one marginalized in Sudan since, with the exception of Khartoum, all the regions were poor and underdeveloped, had received the most economic assistance from the State. To resort, unilaterally, to coercive and politicized measures, rather than sincerely trying to cooperate in helping to resolve crises, would only exacerbate conflicts and lead to their proliferation. Developed countries should consider the right to development as a criterion in the promotion and protection of human rights.

13. The Sudanese Government reaffirmed that armed groups and militias, including the Janjaweed, were all illegal and that the armed forces and police had fought them, especially during operations launched to protect camps for displaced persons. The insinuations in the report to the effect that the Janjaweed were Arabs were repugnant and racist. Furthermore, Sudan had never deliberately resorted to aerial bombings against civilians or civilian installations. It had committed itself, by signing the Abuja Protocol, to refraining from any aerial attack, except in legitimate self-defence. It was not the first time that the media had reported Sudanese bombings that had later proved never to have taken place.

14. Mr. SHALABY (Egypt) assured the High Commissioner for Human Rights of his Government's full cooperation in fulfilling her mandate. The Egyptian Government had made a symbolic financial contribution of 4,000 dollars to OHCHR, as an expression of its support for the Office's work. The High Commissioner's report (E/CN.4/2005/12) contained important information on the activities carried out by her Office since the Commission's previous session, as well as ideas and proposals that deserved attention regarding the difficulties faced by the Commission.

15. The Egyptian Government welcomed the work carried out by OHCHR in the field, particularly through technical cooperation programmes, as also the assistance that it gave to national human rights bodies. The human rights conference that had been organized in Egypt in cooperation with OHCHR was a successful example of the Office's support for countries. At the same time, it was important that the human rights protection and monitoring activities carried out by OHCHR in the field should form part of a specific mandate.

16. The Egyptian Government also welcomed the High Commissioner's support for the implementation of the Durban Declaration and Programme of Action, and the establishment of a group for combating discrimination within OHCHR. He noted with satisfaction the importance attached to migration issues and the setting up of a working group to monitor them. He was glad that the High Commissioner considered development to be an inalienable right, and commended her efforts to promote that right, as well as the support provided to the Working Group on the right to development.

17. The Egyptian Government shared the High Commissioner's view on the existence of links between respect for human rights and maintaining peace and security. Aggression, occupation and the denial of the right to self-determination constituted a threat to countries' stability. His Government also supported the activities of the treaty monitoring bodies, and cooperated fully with them. In that regard, it approved of the draft guidelines on an expanded core document and treaty-targeted reports. He was in favour of the special procedures system, while emphasizing that duplication of work between the various mechanisms should be avoided.

18. The Egyptian Government was following with interest the developments in the situation in the province of Darfur, in Sudan. It had noted the measures taken by the Sudanese Government to facilitate access to humanitarian aid and was confident that the Sudanese Government would ensure that those who had committed serious human rights violations would be brought to justice. He welcomed the peace agreement on Sudan signed in Nairobi, and was convinced that it would pave the way to peace and stability in the country. Considering the vital role played by the African Union for the restoration of peace in Darfur, he called on the international community to provide the Union with the support it needed to fulfil its mission, while hoping that the solution to the conflict in Darfur would be an exemplary case of cooperation between regional organizations and the United Nations.

19. Mr. do NASCIMENTO PEDRO (Brazil) said that the Brazilian delegation shared the concern expressed in her report (E/CN.4/2005/12) by the High Commissioner, about the human rights violations still being committed in various regions of the world, particularly with regard to poverty, racism and discrimination, torture and trafficking in persons, women's rights, indigenous people's rights and children's and migrants' rights. Like the High Commissioner, the Brazilian Government also considered that human rights should be at the heart of all activities and that they played an essential role in the maintenance of peace and security and in development.

20. Noting that the High Commissioner was taking up her duties at a crucial phase in the consideration of the human rights system, the Brazilian delegation believed that the current session offered a unique opportunity to engage in a substantive debate on the future, and in that spirit would be submitting a resolution to the Commission. Having noted that the Commission's work was increasingly marked by a politically selective approach, the Brazilian Government was in favour of the establishment of a report on human rights across the world, as the Special Secretary for Human Rights of Brazil had said in his statement to the Commission. The establishment of such a global report would certainly be a way of guaranteeing the application of the principles of universality and non-selectivity of human rights. It would also give the Commission access to a larger corpus of systematic and reliable information targeted at the rights of the victims of human rights violations wherever they occurred in the world. The Brazilian delegation engaged in preliminary informal consultations with other delegations and NGOs on the possibility of submitting a resolution on that issue. Its principal objective was to protect, defend and promote the fundamental rights of victims, and it also looked, in the context of that proposal, towards the strengthening of the action and the role of OHCHR.

21. Mr. VASSYLENKO (Ukraine) noted with interest the High Commissioner's annual report (E/CN.4/2005/12), together with the reports on Sudan (E/CN.4/2005/11) and Iraq (E/CN.4/2005/4). The Ukrainian Government supported the activities of OHCHR at the country

level. The High Commissioner's report highlighted a number of difficulties that could only be resolved through collective action and commitment. Some of those issues would be debated in the light of the report of the High-Level Panel on Threats, Challenges and Change, which was one of several contributions to the current debate on reforming the United Nations system, so that the Organization, and the international community as a whole, could face the threats and challenges of the contemporary world. Together with that report, the proposals made by States members, particularly during the High Level Segment meetings, should be taken into account, as well as the results of the work of various research bodies. The Ukrainian Government awaited the Secretary-General's next report on the subject with interest. There must be thorough consideration of the issue at the national and international levels, and all aspects of the clearly needed reform, of the United Nations system and human rights protection mechanisms should be rigorously and comprehensively studied.

22. The Ukrainian Government attached great importance to the human rights situation across the world and subscribed to the idea that the protection of human rights was primarily the responsibility of States, and that the creation of mechanisms for investigating human rights violations committed in the past and the fight against the impunity of perpetrators of violations were indispensable conditions for the exercise of justice. It considered, however, that the prevention of human rights violations should be the principal element of human rights protection at the national and international levels alike. In that regard, the promotion of human rights education, particularly in law enforcement bodies, was of vital importance. Emphasis must unquestionably be laid on the strengthening of national human rights protection systems.

23. The Commission was one of the authorities embodying collective responsibility to promote and protect all human rights. That responsibility was manifested through the action taken by the United Nations, the initiatives of regional organizations, the part played by the media and civil society and, perhaps increasingly, the establishment of appropriate mechanisms of accountability.

24. Ms. HERRERA (Cuba) noted with satisfaction that in her report (E/CN.4/2005/12) the High Commissioner for Human Rights emphasized the universality, indivisibility and interdependence of all human rights, and her intention to direct her actions towards the elimination of obstacles to the full realization of all human rights. That should indeed be the priority of OHCHR and also of the Commission on Human Rights. However, far from fulfilling its mandate, the Commission was plunging ever further into discredit and politicization because of certain northern countries that had turned it into a biased tribunal that judged southern States, and taken it hostage to their mean political interests and hegemonic aspirations. The effective promotion and protection of all human rights required the cessation of those practices and the establishment of real international cooperation. It also meant ceasing to give primacy to civil and political rights at the expense of economic, social and cultural rights and respecting the principles and aims of the Charter of the United Nations and international law, while taking into account the national particularities and historical, cultural and religious heritage of each country. Any process of reform in the sphere of human rights should take place on that basis.

25. The subject of reform had acquired a new relevance with the issue of the report of the High-Level Panel on Threats, Challenges and Change, the principal merit of which was that it expressly recognized that the Commission on Human Rights was no longer credible. The

process of reform must be more profound and thorough than what had been proposed, and should extend to the whole system of human rights protection, including OHCHR, starting by re-establishing equitable geographic distribution in the composition of the staff. In reality, OHCHR was the exclusive domain of the developed West. The current situation precluded it from fully understanding the diversity of cultures, civilizations, religions and legal, political and philosophical systems, indispensable as that was for the objective and impartial fulfilment of its responsibilities.

26. The special procedures system did not escape industrialized nations' political manipulation of the Commission, where the appointment of mandate holders also demonstrated inequitable geographical distribution, always to the detriment of developing countries. That situation should also be rectified. Furthermore, the Cuban delegation noted with concern the attempts to mix the functions of the treaty bodies and those of the special procedures of the Commission, whereas they were different mechanisms, with their own particularities and distinct mandates. To link those two types of mechanism also entailed the risk of polluting the work of the treaty bodies with the political manipulation that affected the special procedures. Finally, the Cuban delegation denounced the imbalance observed in the Office's allocation of resources and assistance to the various mechanisms of the Commission, procedures relating to civil and political rights being privileged to the detriment of those addressing economic, social and cultural rights. That went against the universality of human rights.

27. Those examples showed that the machinery established by the United Nations for the protection of human rights needed a genuine reform that would enable it to promote effectively the full realization of all human rights for everyone.

28. Mr. LUKIYANTSEV (Russian Federation) said that the Russian Government was particularly interested in the work of OHCHR, which not only determined the nature of international cooperation in rights protection, but also influenced other spheres of multilateral cooperation. It endorsed the priorities set by the High Commissioner, and the lines of action chosen, and assured the High Commissioner of its full support.

29. The Russian Government considered it imperative to rectify the imbalance that had been manifest over recent years in the attention given to civil and political rights on the one hand and economic, social and cultural rights on the other. The promotion of the latter category of rights, and the right to development, was particularly relevant, bearing in mind the negative effects of globalization. The Russian Government hoped that OHCHR would adopt a global approach that took account of the interests of all groups of States asking to benefit from international solidarity in the spheres of social and economic development. It supported the appeal launched by the High Commissioner for the drafting of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which would help to translate into practice the principles of the Vienna Declaration and Programme of Action concerning the universality of all human rights.

30. Two other problems had long been affecting the work of OHCHR: failure to respect of the principle of equitable geographic distribution in the recruitment of staff; and the Office's strong dependence on voluntary contributions from certain donors. The Office's authority and

its image as a fully independent, impartial and effective body working for the development of constructive international cooperation in human rights protection would depend largely on the effective solution of those two problems.

31. The Russian delegation approved in general of the principal objective of the report of the High-Level Panel, which was to reform the human rights sector of the United Nations, and particularly to increase the authority of the Commission on Human Rights by eliminating double-standards. Furthermore, it supported the idea of guaranteeing sufficient resources to OHCHR by funding its activities from the regular United Nations budget, provided that the results obtained were commensurate with the resources provided. The Russian Government awaited with interest the distribution of the United Nations Secretary-General's report on the reform of the Organization.

32. In conclusion, he reiterated his country's will to support unreservedly the efforts of the High Commissioner within the terms of her mandate to strengthen cooperation between States and establish an international system for promotion and protection of human rights. He was confident that the High Commissioner's forthcoming visit to his country would give rise to fruitful cooperation between the Russian Federation and the United Nations in that regard.

33. Mr. VARELA QUIROS (Costa Rica) welcomed the efforts made to ensure that human rights were present in all United Nations activities. The principle established in the second decision of the Secretary-General's initiative should promote synergy and strengthen means of action.

34. The Costa Rican Government paid tribute to the work of OHCHR, particularly in areas of risk and armed conflict, through peacekeeping and fact-finding missions. The deployment of monitors, the strengthening of cooperation on the ground with special procedures mandate holders, as also with UNHCR and the Internal Displacement Division of the Office for the Coordination of Humanitarian Affairs, together with visits by the High Commissioner herself to conflict zones, were vital for tackling emergency situations. Monitoring of the human rights situation in a particular area enabled OHCHR to acquire useful information for more in-depth dialogue with concerned States or to encourage the adoption of early warning measures in those States or if necessary to alert the international community.

35. The Costa Rican delegation also noted with satisfaction the important work done by OHCHR towards the establishment of national institutions, whose role was vital for developing a human rights culture, and all its activities to which the Costa Rican Government attached particular importance, such as technical cooperation, assistance to States in drafting reports to treaty bodies and implementing treaty body recommendations, activities to combat impunity, and measures to respond to the needs of societies emerging from conflict. In that connection, Costa Rica would support the resolution to be submitted by Switzerland on administration of justice during periods of transition. His delegation noted the emphasis given by the High Commissioner in her report to the importance of not undermining human rights in the context of the fight against terrorism. It approved the idea of instituting an annual report on the situation of human rights across the world.

36. Mr. DE ALBA (Mexico) said that Mexico approved the way forward chosen by the High Commissioner for Human Rights, and the questions that she raised, with the aim of advancing beyond theoretical considerations on the nature of human rights and going into action. It also shared her views on the fundamental responsibility of each State the protection of human rights.

37. Convinced of the universality of human rights and their essential role in a development project for creating a fairer society, President Vicente Fox's Government was endeavouring to rectify Mexico's insufficiencies and delays, with the valuable support of the international community, through the OHCHR technical cooperation programme, which had resulted in the opening of an OHCHR representative's office in the country and the preparation of a diagnosis of the human rights situation in Mexico. That assistance, together with recommendations from the organs of the Commission and the Organization of American States, had enabled a national human rights programme to be drafted, covering the whole area of human rights, guaranteeing stable institutions, and largely reflecting the aspirations of society. Presented in December 2004, that programme had already resulted in specific measures, in particular the conclusion of two cooperation agreements with OHCHR and the European Commission, one on the promotion and protection of the rights of indigenous peoples, in pursuant of the recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and the other on combating torture and on giving indigenous peoples access to justice in the State of Oaxaca.

38. Referring to the High Commissioner's report, he said that Mexico fully supported the Commission's endorsement of the fundamental principles and guidelines on the right to recourse and compensation of victims of violations of international human rights and humanitarian law. Mexico approved of the appeal launched by the High Commissioner inviting States to ratify the seven core human rights treaties, including the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, and hoped that OHCHR would promote the speedy adoption of an eighth core treaty on the rights of the disabled. Reaffirming that, in the fight against terrorism, States must scrupulously respect international human rights norms, international humanitarian law and international refugee law, Mexico would continue to encourage and support OHCHR's efforts in that sphere. Finally, the necessary steps for a significant increase in the OHCHR budget should be taken without delay.

39. Mr. KHAN (Pakistan), speaking on behalf of the States members of the Organization of Islamic Conferences (OIC), noted that the High Commissioner's report (E/CN.4/2005/12) emphasized the need to strengthen national systems of human rights protection through cooperation with and capacity-building of United Nations country teams. While they acknowledged the importance of national measures, the States members of OIC believed that United Nations country teams should adhere strictly to the relevant General Assembly resolutions and focus primarily on development matters. They were also disappointed that the report made no mention of the grave human rights situation of the Palestinian people in the occupied Palestinian territory and occupied Syrian Golan, which was an issue of particular concern to them, and did not understand the reasons for that omission. Furthermore, they stressed that OHCHR and its work should maintain a balance between civil and political rights and economic, social and cultural rights, and that specific measures should be taken to transform the right to development into a reality.

40. Regarding the key components of the administration of justice mentioned in paragraph 12 of the report, the States members of OIC believed that each country should decide its own approach to that issue, and should not be obliged to establish truth commissions or legal monitoring mechanisms. OHCHR should focus on enhancing the capacity of States to address human rights violations, and not exert control over them.
41. OIC urged OHCHR to rationalize the working methods of the Special Rapporteurs, in order to increase their effectiveness. Regarding treaty bodies, the ongoing reform process should culminate in a simplified procedure for fulfilling the reporting obligations of States parties.
42. Concerning the report of the High-Level Panel on Threats, Challenges and Change, briefly mentioned in the High Commissioner's report, the States members of OIC firmly believed that the whole international human rights protection system should undergo a general reform in the context of a constructive dialogue, and reiterated that international peace and security could be assured only by addressing the root causes, both political and economic, of the problem.
43. Several points of the High Commissioner's report called for consideration and in-depth examination, and the States members of OIC were ready to collaborate with the High Commissioner on all those matters.
44. Mr. HARIYADHI (Indonesia) commended the work of the High Commissioner and OHCHR, particularly in combating trafficking in persons, strengthening programmes and activities relating to the right to development and national human rights institutions, and enhancing technical cooperation. The Indonesian Government was aware of the crucial role that independent national institutions could play in human rights protection, and therefore looked positively on any activities or technical assistance programmes for strengthening those institutions, provided that was their genuine aim. His Government also approved of the strengthening of activities for the promotion of women, children and migrants, and was currently working hand in hand with all stakeholders concerned, including civil society, to respond to the needs of those groups; legislation and other steps designed to protect their rights had not only been adopted, but were also being implemented. Believing that the achievement of the Millennium Development Goals, particularly in respect of food, housing and health, was closely linked to the realization of the right to development, his delegation encouraged OHCHR to strengthen its programme activities in that regard and direct them towards more specific action.
45. The Indonesian Government, like the High Commissioner, unequivocally condemned terrorism and considered that anti-terrorism measures should be carried out with the strictest respect for existing human rights obligations. In that regard, it considered that respect for freedom in the fight against terrorism was an indispensable prerequisite for maintaining world security. The Government also supported the strengthening of special mechanisms for the promotion and protection of human rights. To be able to fulfil their tasks, those mechanisms must demonstrate greater transparency, objectivity and impartiality.
46. The High Commissioner's annual report was an important framework document for guiding the work of the Commission. The Indonesian delegation believed that the key to achieving swifter and better results in the field of human rights lay in the quality of the

relationship between OHCHR and all Governments. Moreover, a greater share of the United Nations regular budget should be allocated to OHCHR activities. Finally, the Office should promote transparency and impartiality and should emphasize dialogue and cooperation.

47. Mr. BERNIS (Observer for Luxembourg), speaking on behalf of the European Union, assured the High Commissioner of the unfailing support of the European Union, which intended to leave her to organize her work in complete independence. OHCHR made an essential contribution to the work of the Commission, and in that delicate task, all the relevant mechanisms were important, particularly the special procedures, with which the European Union hoped all countries would fully cooperate. Discreet and encouraging dialogue, together with the technical cooperation and early warning activities of OHCHR, were also very important.

48. The Commission's credibility depended on its impartiality and effectiveness. The European Union would therefore participate in the current exchange of ideas on its reform. Finally, the European Union agreed with the High Commissioner's analysis regarding her priorities and the regions of the world where the human rights situation required particular attention, and encouraged her to continue along that road.

49. Ms. YAMADA (Japan) agreed with the High Commissioner that States had the primary responsibility for promoting and protecting human rights. Japan was one of the countries that considered that a reform of the United Nations and the Commission was necessary, and was also concerned at the increasing politicization of the Commission's work. It nevertheless believed that, while priority should be given to dialogue and cooperation, where certain countries were concerned recourse to stronger measures should not be ruled out if they were necessary.

50. Mr. RAZZOQI (Observer for Kuwait), referring to the report on the human rights situation in Iraq (E/CN.4/2005/4) submitted by the Acting High Commissioner for Human Rights, stressed that the need to respect international humanitarian law and human rights at all times, everywhere and under all circumstances should be reaffirmed. Furthermore, the current human rights situation in Iraq should be examined in the light of the violations committed under the tyrannical regime that the country had lived through for more than two decades. The Kuwaiti delegation welcomed the measures that had been taken since the fall of that regime, particularly the establishment of the Governing Council and the organization of elections for building a free, democratic State that would respect human rights.

51. Mr. AL-FAIHANI (observer for Bahrain) said that it was important to take the particularities of each region into account when designing plans and programmes for the promotion of human rights and fundamental freedoms. Aware of the importance of those particularities, the Kingdom of Bahrain had undertaken a wide-ranging programme of political, economic and social reform aimed at promoting citizens' rights by integrating human rights principles into the values of Bahraini society. The adoption of the National Action Charter and the Constitution, the resumption of parliamentary life and the granting of political rights to women, together with the creation of numerous NGOs, currently totalling 390, were some examples of the achievements that had resulted from that reform programme. Those organizations had participated in the drafting of the various reports that had been submitted to the respective United Nations treaty monitoring bodies, including the Committee for the

Elimination of Racial Discrimination and the Committee against Torture, and which reflected the democratic practices that existed in Bahrain. As well as those political and social developments, considerable economic progress had been made in many sectors.

52. In conclusion, he emphasized the importance of the role of the media and awareness-raising measures for the promotion of human rights and fundamental freedoms worldwide.

53. Ms. AJAMAY (Observer for Norway) welcomed the reform process undertaken by the Secretary-General, for it was imperative to improve the organization of work relating to human rights, in order to strengthen its impact and relevance. Given that the promotion of human rights was one of the fundamental objectives of the entire United Nations system, and that there was a strong link between respect for human rights and maintaining peace and security, as well as sustainable development, it was anomalous that the Organization's principal activities in respect of human rights were funded from extrabudgetary resources. Norway was therefore in favour of an increase in the portion of the regular United Nations budget allocated to OHCHR, so that the Office could carry out its numerous tasks. It also considered that cooperation with the United Nations country teams was an important means of strengthening national human rights protection systems, as the High Commissioner had noted in her first annual report, and agreed with the idea put forward in the report that emphasis should in future be laid on the implementation of existing human rights norms at the national level.

54. The Norwegian delegation considered that, taking into account the complexity of their tasks and the indispensable role they played, in view of their competence and independence, in the protection of human rights, it was imperative to strengthen the special procedures of the Commission and the treaty bodies, and to increase the resources allocated to OHCHR for supporting their activities.

55. Mr. OZDEN (Centre Europe-Tiers Monde) was surprised that the report of the Acting High Commissioner for Human Rights on the situation of human rights in Iraq (E/CN.4/2005/4) mentioned the violations committed by the coalition armed forces operating in Iraq but said nothing about the use of mercenaries and its consequences in the conflict. Yet it was common knowledge that the American army had engaged 20,000 mercenaries in Iraq, and the military personnel involved in carrying out torture in Iraq had even stated that they had acted on instructions given by the employees of private military firms, recruited by the Pentagon to conduct interrogations, as the Special Rapporteur on mercenaries had stated in her report (E/CN.4/2005/14). Furthermore, the Acting High Commissioner had not given any opinion as to the legitimacy of the Coalition Provisional Authority Order 17, which barred Iraqi tribunals from addressing cases of reprehensible acts committed by the coalition forces, and thus guaranteed their impunity. That Order should actually be declared null and void, since it had been issued by the occupying forces following a war that the Secretary-General of the United Nations had described as illegal.

56. The matter of the use of mercenaries could not be taken lightly, since that practice not only destabilized Governments, but also threatened the functioning of democracy and the effective realization of human rights. Centre Europe-Tiers Monde therefore called on the Commission to pay particular attention to that issue, and to follow up the Special Rapporteur's

recommendations to the effect that a new legal definition of the term “mercenary” should be included in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

57. Ms. ARBOUR (United Nations High Commissioner for Human Rights) thanked all the delegations that had taken the floor for their support and encouragement, and reaffirmed her determination to work in close collaboration with the Commission for the fulfilment of their respective mandates. She had taken due note of all the observations made, and she intended to have regular contacts with all the regional groups during the session, and engage in ongoing dialogue with all delegations on all the issues raised.

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.4/2005/13, 14 and 23; E/CN.4/2005/NGO/2, 77, 89, 92, 148, 165, 203, 210, 212, 238, 253, 260, 279, 293, 296, 306, 308, 339 and 346)

58. Ms. SHAMEEM (Special Rapporteur on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination), introducing her report (E/CN.4/2005/14), said that she was currently compiling a list of national legislative measures prohibiting mercenary activity, with a view to drafting a model law for consideration by States determined to put an end to such activities on their territory. She particularly commended the efforts made in that regard by the countries of the Commonwealth of Independent States, by New Zealand and by South Africa. Other countries did not have specific legislation on the issue, but provisions had been incorporated into their Criminal Codes or anti-terrorism legislation. Any new laws or provisions on the subject should be drafted in accordance with the provisions of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and the proposed model law would give some direction to States in that respect.

59. Having closely followed the reports of an alleged coup d'état by mercenaries in Equatorial Guinea, and the arrest and trial in Zimbabwe and Equatorial Guinea of 70 of the mercenaries involved, most of whom were apparently from South Africa, she had urged the Government of Equatorial Guinea to respect international human rights law during the trials and had received assurances to that effect. She had advised those countries to accede to the aforementioned international Convention. She had noted, however, that Zimbabwe and Equatorial Guinea were States parties to the African Union Convention for the Elimination of Mercenarism in Africa, and welcomed the action taken by the Governments of those countries in accordance with that instrument. The steps taken for the repatriation of foreign ex-combatants in accordance with the October 2004 memorandum of understanding between the Governments of Liberia and Sierra Leone were encouraging, but she had nevertheless cautioned against the general use of amnesties, which could have the effect of apparently granting immunity to mercenary acts and thus undermine the objective of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

60. In view of the proliferation of international private military companies that were operating around the world, and which had rendered totally ineffective the existing legal frameworks and enforcement mechanisms, she would look into the question of the licensing and

regulation of genuine private security companies through strict national legislation or the establishment of an international registration mechanism, which would enable responsibilities to be clearly identified for bona fide companies so as to protect human rights in all cases. The third expert meeting on mercenaries, held in December 2004 in Geneva, had studied that very question, together with the proposed new legal definition of the term “mercenary” and recent activities of mercenaries in Africa.

61. She was disappointed that only 26 States, most recently New Zealand, had ratified the International Convention and she urged all States, particularly those in which mercenaries operated, to do so. She emphasized, by the way, that although the use of mercenaries had to be considered within the general context of terrorism, mercenaries should not be confused with terrorists. Great vigilance must, however, be exercised with respect to the methods and personnel employed in anti-terrorism measures, as demonstrated by the case of the detainees in Afghanistan who had claimed that their purpose in the country had been to fight terrorism.

62. Finally, it was important to note the impact of the changing nature of conflict globally, the transformation of the concept of sovereignty, and the reformulation of the definition of the term “armed forces”, on the recruitment, use, financing and training of mercenaries who violated human rights and impeded exercise of the right to self-determination. It was in that broader perspective that she would evaluate the situation of mercenaries in the current global framework in 2006.

63. Mr. FERNÁNDEZ PALACIOS (Cuba) said he would like the Special Rapporteur to specify the direction of her work, as her predecessor Mr. Bernales Ballesteros had done, confronted as she was with the increasing involvement of private security companies in armed conflicts and their participation in activities that would normally be assigned to the police and the army. It would be useful for her to examine the issue in greater depth, given that the recruitment of mercenaries had become an extremely widespread practice and was conducted openly through the medium of a variety of journals, such as “Soldiers of Fortune”.

64. Ms. SHAMEEM (Special Rapporteur) said she took due note of that very pertinent remark, but observed that some of the questions the representative of Cuba had raised were dealt with in detail in her full report.

65. Mr. KHAN (Pakistan), speaking on behalf of the States members of the Organization of Islamic Conferences (OIC), stressed that respect for the right to self-determination was vital for maintaining international peace and stability. History had demonstrated that occupying powers always resisted the liberation of the people whose territory they occupied through force and subjugation, and labelled their struggle for freedom as acts of terrorism.

66. Although it was over 50 years since the United Nations had accorded to them the right to self-determination, the peoples of Palestine and of Jammu-and-Kashmir were still struggling to exercise that inalienable right. Thus, Israel had continued to commit grave and systematic violations of human rights and international humanitarian law, in order to subjugate the Palestinian people. The international media, NGOs and the United Nations Special Rapporteur on the question, more particularly in his latest report (E/CN.4/2005/29), had given a detailed account of those violations and the escalation of violence in the occupied territories. Despite the

objections of the international community, Israel had continued to construct a wall on Palestinian territory, on the pretext of ensuring security. The wall did not solve Israel's security problems and only added to the suffering and alienation of the Palestinian people. Its construction was tantamount to de facto annexation of Palestinian land by Israel. It should be remembered that in its Advisory Opinion of 9 July 2004 the International Court of Justice had stated that Israel was under obligation to discontinue the construction of the wall and dismantle it forthwith.

67. The resolution of the Palestine issue depended on the implementation of United Nations resolutions on the right of the Palestinian people to self-determination, which could be achieved through faithful implementation of the Quartet's road map. OIC was optimistic that the spirit of the Sharm al-Sheikh summit would lead to an end to the violence in the occupied Palestinian territory, and the realization of the right to self-determination of the Palestinian people.

68. The Pakistani delegation, along with the rest of the international community, hoped that the dialogue between India and Pakistan would result in the resolution of the Kashmir issue, through the realization of the right to self-determination of the Kashmiri people, and the establishment of peace and stability in the South Asian region.

69. In conclusion, OIC urged the Commission to take concrete measures to assist people in the struggle for the realization of the right to self-determination.

70. Ms. AL-HAJJAJI (Observer for the Libyan Arab Jamahiriya), speaking on behalf of the Group of Arab States, said that the right to self-determination was a fundamental right, not only because it was enshrined in all of the international human rights instruments, but also because it stemmed from people's legitimate aspiration to live in liberty, peace and freedom from fear. Occupation constituted a denial of all human rights and a threat to international peace and security.

71. The Group of Arab States welcomed with satisfaction the measures taken to solve the Palestine problem, particularly the Sharm al-Sheikh and London meetings. It also welcomed the holding of democratically organized elections in the occupied Palestinian territories, though it was disappointed at the attempts of the Israeli Government to impede them, particularly by arresting certain candidates.

72. The Group of Arab States welcomed the advisory opinion handed down some months previously by the International Court of Justice, which had held that the construction of a so-called "security" wall in the occupied Arab territories, including East Jerusalem, was in violation of international law. The construction of the wall had resulted in the annexation of a large part of the occupied territories and the creation of new political borders, which was detrimental to negotiations on the issue. It had also had the effect of restricting the rights of the Palestinian people to freedom of movement, work, and access to health care and education. Yet Israel had persisted in the building of the wall and continued to demolish homes, expropriate Palestinian land and kill innocent people, in gross violation of all international resolutions.

73. The Arab Peace Initiative, launched at the Beirut Summit in 2002, reaffirmed the willingness of the Arab countries to guarantee a lasting peace in the Middle East, such as would ensure security, stability and well being for the peoples of the region. In order to achieve that objective, however, the other parties concerned must demonstrate goodwill. The Commission

must demonstrate to all that it was serious in its attempts to put an end to human rights violations in countries under occupation, and must reaffirm its determination to ensure that the resolutions adopted by the international community were respected.

74. Ms. GABR (Egypt) said that her delegation supported what had been said by the States members of OIC and the Group of Arab States. Nothing could justify the fact that populations were being subjected to foreign occupation and that others were trying to control their destiny. The Palestinian people's exercise of their right to self-determination and the creation of an independent State with East Jerusalem as its capital would ensure a stable and safe life for Palestinians and Israelis alike.

75. Egypt welcomed the positive developments in the situation over recent months, particularly the presidential elections in Palestine and the Sharm al-Sheikh summit, where the Israeli and Palestinian leaders had met for the first time in four years and shown their determination to respect their mutual commitments, and the meeting in London where the Quartet had reaffirmed the need to create a Palestinian State on contiguous territory, following the 1967 borders. Meanwhile, it was to be hoped that Israel and the other States members of the United Nations would respect the advisory opinion of the International Court of Justice, which ruled that the separation wall, built on Palestinian territory, was contrary to international law and had requested Israel to halt its construction, demolish the sections already built, and compensate anyone who had sustained damage. Furthermore, the Court had asked the international community not to recognize the illegal situation created by the construction of the wall and not to provide any assistance for the continuation of the project.

76. Egypt considered that the withdrawal of Israeli forces from the Gaza strip and other regions of the West Bank would constitute a first step in the implementation of the road map and the resumption of negotiations on crucial issues concerning the delineation of borders, the status of Jerusalem and the repatriation of refugees, which would contribute to settling the conflict on the basis of the principle of two independent States and would usher in an era of peace for both peoples.

77. The international community, in particular the Quartet, should support the peace process, for a just and lasting peace in the region depended on the establishment of lasting peace worldwide.

78. Mr. Bin IBRAHIM (Malaysia) said that Malaysia supported the statement made by the Coordinator of OIC on the issue of the right to self-determination of the Palestinian people. Malaysia reaffirmed its support for the Palestinian people in their fight to exercise their right to self-determination and to live in a sovereign and independent State with East Jerusalem as its capital. The occupation was depriving individuals of that fundamental right, on which the enjoyment of all other human rights and fundamental freedoms depended.

79. The violations by Israel, the occupying power, of the fundamental rights of the Palestinians had been aggravated by its policy of implanting colonies and by the continued construction of a wall in the occupied Palestinian territories, including East Jerusalem, regardless of the advisory opinion handed down by the International Court of Justice, which had deemed

the wall contrary to international law. Those acts jeopardized the implementation of the solution put forward in the road map. Serious and sustained efforts must be made by all concerned parties to give effect to that solution, which would guarantee the creation of a viable, sovereign and independent Palestinian State that could coexist with Israel in peace and security within safe and recognized borders.

80. Malaysia expressed its hope that the agreement reached by the Israeli and Palestinian leaders, in particular at the Sharm al-Sheikh summit, would revive the peace process. Nothing should be done that could impede the full implementation of the road map, including any action that could prejudice questions concerning the final statute. All parties involved in the process must do everything in their power to reach a sustainable and peaceful solution to the conflict between Israel and Palestine. In the meantime, the United Nations and the Commission on Human Rights must not close their eyes to Israel's denial of the Palestinian people's right to self-determination and to the suffering that they were enduring.

81. Mr. ATTAR (Saudi Arabia) noted that Israel's persistent refusal to restore the rights of the Palestinians, together with its determination to pursue its settlements policy, to build a separation wall and to create obstacles to the exercise by Palestinians of their most basic rights, were not conducive to the establishment of an independent Palestinian State at a time when the international community was reaffirming its commitment to United Nations Security Council resolution 1397 (2002), which recognized the imperative need to create such a State. The States sponsoring the peace process had also stated that Israel should contribute to the creation of a truly viable Palestinian State, taking into account the fact that a State composed of scattered territories would not be viable.

82. Israel should grasp the opportunity offered by recent developments in the situation to resolve, with the Palestinian leadership, the security problems that it considered an obstacle to peace and stability. Israel should realize that it would never achieve security while it was occupying territory and thereby giving rise to legitimate resistance to that occupation. Furthermore, the construction of a separation wall on Palestinian territory was isolating Palestinian villages from their agricultural land and depriving them of access to basic social services, health and education, which was exacerbating the spiral of violence and complicating the peace process. Given that there were promising indications of a solution to the conflict, the time had come for Israel to respect international law and at last allow the Palestinian people to realize fully their right to establish a Palestinian State with Jerusalem as its capital.

83. The aim of the Commission had never been to adopt resolutions that were not applied. It was therefore difficult to accept that it would be content to do so at every session regarding the rights of Palestinians. The Commission must help the Palestinian people realize their legitimate right to a sovereign and independent State, and must put pressure on Israel to end its inhuman practices towards them and not let slip the opportunity to assist in the establishment of peace and security in the region.

84. Mr. AL-NUAIMI (Qatar) noted with satisfaction the free and impartial elections that had taken place in Palestine and the measures adopted at the summit in Sharm al-Sheikh to find a solution to the Palestine question.

85. Israel, a strong and therefore unbending country, must demonstrate more flexibility so that a just and lasting peace to be established for both parties. There was good reason to welcome the Advisory Opinion of the International Court of Justice declaring contrary to international law the separation wall built by Israel, which considerably reduced Palestinian territory, established a new political map, would have a negative impact on the negotiations on the final status of Jerusalem, and could only worsen the situation in the occupied territories.

86. Qatar supported all initiatives aimed at achieving that just and lasting peace, and reminded the international community that it was responsible for respecting international legality, and rejecting any policy based on double standards. It must enable the Palestinian people to exercise their right to create an independent State on all their lands that had been occupied since 1967, with East Jerusalem as its capital, by invoking all of the resolutions on that issue and the principles of international law.

87. Mr. OULD MOHAMED LEMINE (Mauritania) said first that he supported the statements made by Pakistan and the Libyan Arab Jamahiriya on behalf of OIC and the Group of Arab States respectively.

88. The right of peoples to self-determination was one of the essential foundations of the international order, sanctioned in the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all other human rights depended on its implementation. Thanks to United Nations action many peoples had been able to exercise it, except for the Palestinian people, who over 50 years after the adoption of General Assembly resolution 181 still remained under foreign domination. The difficult conditions in which the Palestinian people lived under Israeli occupation were well documented. That question had featured on the agendas of several United Nations bodies for several decades, and the conditions required to resolve it had been defined and re-stated numerous times, including by the Commission.

89. The Palestinian people naturally aspired to live in peace and dignity, and to establish an independent State with the holy city of Al-Qods as its capital, next to the State of Israel. The most recent elections had enabled the Palestinian people to manifest, once again their commitment to the peace process that had begun in 1991 in Madrid, and to a just solution based on international law and the principle of land for peace. Furthermore, the Sharm al-Sheikh summit had been an opportunity for the two parties to commit themselves to reviving the peace process. All those developments were hopeful, but the international community must follow them up in order to hasten the Palestinian people's recovery of their legitimate national rights, and thus lay the foundations for a just, universal and sustainable peace in the Middle East.

The meeting rose at 12.55 p.m.