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Chair: Mr. Dempsey (Vice-Chair) (Canada)
later: Mr. Hilale (Chair) (Morocco)

Contents

Agenda item 72: Promotion and protection of human rights (*continued*)

- (b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*)
- (c) Human rights situations and reports of special rapporteurs and representatives (*continued*)


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In the absence of Mr Hilale (Morocco), Mr. Dempsey (Canada), Vice-Chair, took the Chair.

The meeting was called to order at 10.05 a.m.

Agenda item 72: Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/70/56, A/70/111, A/70/154, A/70/166, A/70/167, A/70/203, A/70/212, A/70/213, A/70/216, A/70/217, A/70/255, A/70/257, A/70/258, A/70/259, A/70/260, A/70/261, A/70/263, A/70/266, A/70/270, A/70/271, A/70/274, A/70/275, A/70/279, A/70/279/Corr.1, A/70/285, A/70/286, A/70/287, A/70/290, A/70/297, A/70/303, A/70/304, A/70/306, A/70/310, A/70/316, A/70/334, A/70/342, A/70/345, A/70/347, A/70/361, A/70/371, A/70/405, A/70/414, A/70/415 and A/70/438)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/70/313, A/70/332, A/70/352, A/70/362, A/70/392, A/70/393, A/70/411, A/70/412, A/C.3/70/2, A/C.3/70/4 and A/C.3/70/5)

1. **Ms. Jungk** (Chair of the Working Group on the issue of human rights and transnational corporations and other business enterprises), introducing her report (A/70/216), said that the United Nations Guiding Principles on Business and Human Rights, which had been formulated to clarify the roles and responsibilities of companies and States in addressing business-related harm, had received overwhelming support from associations and the global business community. Some progress had been achieved since the endorsement of the Principles in 2011. More than two dozen States had adopted or were developing national action plans on business and human rights and national human rights institutions were increasingly taking up business and human rights issues. Global standards and initiatives relating to responsible business, including the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD) and the 26000 standard of the International Organization for Standardization, had incorporated the Principles. A number of regional organizations including the Organization of American

States, the African Union, the Association of Southeast Asian Nations (ASEAN), the Council of Europe and the European Union, had made declarations in support of the Principles, an increasing number of companies were adopting policies and human rights due diligence processes in line with the Principles, and business associations were providing detailed guidance on human rights issues to their members. The Forum on Business and Human Rights had become one of the largest annual events at the United Nations.

2. Nevertheless, there was still insufficient data on progress towards, and persistent challenges impeding, the implementation of the Guiding Principles. Without effective measurement of such progress, effective implementation was impossible. Measurement allowed stakeholders to determine whether Governments and companies were upholding their commitments to implement the Principles and, by incentivizing relevant stakeholders to take action, facilitated their implementation. There was a wealth of potentially relevant data available. For example, States collected and published data on the implementation of laws and policies on labour conditions, human rights and environmental standards; companies tracked the implementation of their sustainability and corporate social responsibility policies; and non-governmental organizations (NGOs) and affected communities monitored and reported on business impacts.

3. In many cases, data was neither collated nor presented in ways that made it easy for stakeholders to measure implementation. Moreover, measuring and tracking must take place in a balanced manner across all three pillars of the Guiding Principles. In particular, more measurement initiatives specific to pillar 3 were required in order to generate better data on the number and nature of complaints made against companies and the effectiveness of the bodies tasked with remediating those grievances. Furthermore, there was insufficient data on the extent to which the commitments made by States and companies were being upheld and their impact, if any, on the ground. Some issues were being measured more than others. For example, while data on labour rights and environmental impacts was often readily available, much less was known about the rights of communities and the protection of human rights defenders working on business-related harm.

4. To address those challenges, existing data gathering mechanisms must be strengthened. High quality data was an essential prerequisite in the

formulation of national action plans and facilitated the sharing of best practices. States could also obtain useful data on their compliance with the Principles through their engagement with United Nations human rights mechanisms, including the universal periodic review. Most existing initiatives to measure company performance, including investors' environmental, social and governance initiatives, sustainable stock exchange indices and triple bottom line accounting frameworks, did not refer specifically to human rights, but more broadly assessed companies' social impact. Those initiatives tended to focus on a narrow range of rights, such as workers' and customers' rights and should be further developed to address all human rights.

5. At the global level, the 2030 Agenda for Sustainable Development provided significant opportunities for enhancing the implementation and measurement of the Guiding Principles. The Working Group welcomed the acknowledgement in the Agenda of business as a key stakeholder in efforts to meet the Sustainable Development Goals, but stressed that businesses must also shoulder significant responsibilities. For example, it was unacceptable for a company to build health-care centres and simultaneously jeopardise its workers' health by obliging them to work in environments that failed to meet safety standards. Concerted efforts were needed to reach global consensus on how to measure implementation of the Principles so that stakeholders could clearly identify and focus their attention on areas where progress had been slow.

6. While measurement was often perceived as a neutral technical exercise, value choices lay at its core. It was important to measure what was meaningful, not what was easiest to measure. Measurement initiatives must employ an appropriate mix of qualitative and quantitative approaches and should involve a range of stakeholders that was geographically and politically diverse, including, in particular, communities that were directly affected by business operations.

7. **Ms. Moutchou** (Morocco) said that the Guiding Principles represented a significant advance in the protection and promotion of human rights, despite their non-binding nature. Her delegation noted with concern the lack of high quality data on the nature and extent of business-related harm and its impact on human rights and asked how the United Nations could most effectively encourage States and businesses to carry out analysis to generate that data. In that regard, she noted that many developing countries lacked the

necessary technical capacity to develop national action plans and asked what steps could be taken to facilitate those States' efforts to that end.

8. **Ms. Kirianoff Crimmins** (Switzerland) said that her country supported efforts by the Working Group to facilitate the development of indicators to measure implementation of the three pillars of the Guiding Principles. Measurement must not be an end in itself, however, but must contribute meaningfully to the implementation of the Principles both in terms of prevention and in terms of access to remedies. She asked whether the Working Group planned to investigate optimal ways to measure the impact of the numerous existing voluntary multi-stakeholder initiatives on business and human rights.

9. **Mr. Ríos Sánchez** (Mexico) said that his country had established a working group, comprised of representatives of Government, civil society and the business community, to consider ways to strengthen existing public policies on business and human rights and facilitate Mexico's implementation of relevant national and international initiatives, including the 2030 Agenda for Sustainable Development. In view of the linkages between the Sustainable Development Goals, human rights and business, he asked how the Working Group would monitor implementation of the 2030 Agenda and what accountability mechanisms could be used in the private sector to facilitate implementation.

10. **Ms. Pérez Gómez** (Colombia) said that her Government was formulating a national plan of action on business and human rights in line with the Guiding Principles and the Voluntary Principles on Security and Human Rights, and was working with a wide range of stakeholders, including representatives from civil society, to strengthen respect for human rights at the national level. She asked what steps the Working Group intended to take to accelerate implementation of the 2030 Agenda for Sustainable Development.

11. **Ms. Tschampa** (Observer for the European Union) said that good measurement practices and an awareness of the risks associated with measurement could enhance efforts already in place and strengthen respect for the Guiding Principles. She asked how stakeholders could ensure that relevant trends and phenomena which were difficult to measure were not overlooked and that measurement initiatives adopted an appropriate mix of qualitative and quantitative approaches. She also asked

what gaps in the data on States' implementation of the Guiding Principles should be addressed first, and what challenges and opportunities States might encounter if they used the Principles as a reference in national and global efforts to implement the Sustainable Development Goals.

12. **Mr. Dvořák** (Czech Republic) said that his delegation concurred with the Working Group's findings that national action plans on business and human rights could be used as mechanisms for measuring States' implementation of the Guiding Principles. The Czech Republic has recently started discussions on how to implement the Principles and looked forward to participating in the 2015 United Nations Forum on Business and Human Rights, where measuring implementation of the Guiding Principles would be one of the priority themes. A wide range of stakeholders, including Governments, State-owned and private companies and civil society actors must be involved in the process to develop measuring tools. To strengthen the legitimacy of the outcome of that process, interregional and cross-sectoral consensus would prove essential. He asked what incentives would encourage the various relevant stakeholders to participate in that process and, specifically, what steps Governments could take to encourage their participation.

13. **Mr. Torbergsen** (Norway) said that his Government had recently adopted a national action plan that encouraged Norwegian companies to use existing international reporting frameworks, including the Guiding Principles reporting framework, the United Nations Global Compact and the Global Reporting Initiative. Companies were also encouraged to submit their reports on their human rights impact for external review and to make them available in local languages in the countries in which they operated. His Government believed that efforts to enhance corporate accountability and access by victims to effective remedies remained particularly relevant. He asked how the United Nations system could ensure that the Guiding Principles were taken into account and used as a benchmark in national and global efforts to implement the Sustainable Development Goals.

14. **Mr. Coloma Grimberg** (Chile) said that the adoption of national action plans could help States measure implementation of the Guiding Principles and encourage dialogue among a wide range of stakeholders on the impact of business activity on human rights. Chile was currently reviewing its

implementation of the Principles. He asked how implementation of the Principles could help achieve the Sustainable Development Goals and how duplication of effort could be avoided in initiatives to promote development and human rights.

15. **Ms. Snowbarger** (United States of America) said that the Guiding Principles reflected a global consensus on States' duty to protect human rights and corporate responsibility to respect those rights. The United States supported efforts to enhance implementation of the Principles by States and companies, including by encouraging companies to upgrade their human rights reporting mechanisms, and welcomed recent trends in the private sector that further supported reporting on responsible business conduct. It was increasingly clear that business responsibility was an important consideration for many institutional investors. Indeed, investors managing some \$4.8 trillion in assets supported tools that enabled reporting on the Guiding Principles. She asked how measurement tools could be enhanced so as to provide a more holistic overview of how the Principles were being implemented in States with large public sectors or large state-owned enterprises, and by companies operating in those States.

16. **Mr. Mulyadi** (Indonesia) said that a robust legal framework ensured that businesses operating in Indonesia complied with their duty to promote the well-being of citizens at both the local and national levels. Indonesia was an active member of the ASEAN Intergovernmental Commission on Human Rights, supported all efforts to expedite the implementation by States of the Guiding Principles, and was studying how best to incorporate the Principles in the country's national action plan, which had been drafted by a wide range of stakeholders, including Indonesia's national human rights institutions. He asked what issues should be accorded priority by States as they strove to implement their national action plans.

17. **Mr. Mminele** (South Africa) said that the Guiding Principles had not been negotiated in an intergovernmental forum, and did not, therefore, reflect a consensus position of Member States. Furthermore, the Principles had not been adopted as a resolution of the General Assembly and failed to meet the minimum threshold for international human rights law norms and standards. They could not, therefore, be regarded as part of codified international human rights law and States should not be expected to formulate national

action plans to promote their implementation. Notwithstanding the ongoing debate on whether non-State actors should be held accountable under international human rights law for human rights violations, it was imperative for the United Nations human rights system to elaborate a legally-binding instrument to hold those entities accountable. His Government therefore welcomed the adoption of Human Rights Council resolution 26/9, which encapsulated that vision. The General Assembly, as the highest legislative body of the United Nations system, must support the early adoption of such an instrument. Transnational corporations and other business enterprises, as the owners of global wealth and the key drivers of globalization, were responsible for fostering sustainable social development.

18. **Mr. Coloma Grimberg** (Chile) said that his delegation did not believe that a new legally binding instrument on business enterprises and human rights was strictly necessary. Indeed, the application of customary law, the validity of which had long been acknowledged by States, was often sufficient to ensure that rights were upheld.

19. **Ms. Jungk** (Chair of the Working Group on the issue of human rights and transnational corporations and other business enterprises) said that although the Guiding Principles were not the result of intergovernmental negotiations, they were the outcome of an extremely robust six-year global consultation processes that had brought together States, the global business community and global associations and achieved consensus among them. The Principles were based on States' existing obligations. Indeed, the duty of States to protect their citizens had already been established, and companies were already expected to uphold human rights, not only because international law required them to do so, but also because their customers, shareholders, the communities in which they operated and associations demanded it. The Principles touched on many interrelated areas. Further steps were needed, however, and in that connection, the Working Group warmly welcomed the establishment of an intergovernmental working group to consider the formulation of a binding treaty on business and human rights. Any such treaty should build on and complement the Principles. Regardless of whether a binding instrument was eventually adopted, however, it was crucial to move forward with implementation of the Principles. Indeed, the lessons

learned by States in their efforts to implement the Principles would provide useful input for, and would strengthen, any future treaty.

20. National action plans facilitated States' implementation of the Guiding Principles, inter alia by aligning the positions and policies of governmental agencies and ministries on issues pertaining to human rights and business. The Working Group was aware that certain States lacked the necessary know-how and technical capacity to develop their own national action plans and had created a guidance document for those States that drew on lessons learned and established best practices in that regard. The guidance document aimed to help States identify their key human rights challenges and formulate targeted national action plans that were fit for purpose. It also provided guidance on ways to involve various stakeholders in the formulation of national action plans, including representatives from business and communities that had been negatively affected by business activities. The Working Group intended to issue a revised guidance document in 2016 that would incorporate the best practices of a wider range of States and provide additional information, including on how States could incorporate indicators on conflict and gender in their national action plans.

21. It was vital for the many regional and international frameworks, including the Sustainable Development Goals, the OECD Guidelines for Multinational Enterprises and the United Nations Global Compact, to be coherent and give the same guidance to businesses and States on what constituted responsible business practice. In that regard, the Working Group believed that the implementation of the Sustainable Development Goals, which had been negotiated with input from the business community and civil society, could provide key data on progress towards implementation of the Guiding Principles. Additional targets and indicators should be developed to measure how human rights were negatively affected by business activity and the action States were taking to combat any negative repercussions on human rights of business activity. Indicators were also needed on corporate sustainability reporting. Indeed, a key step that States could take was to augment companies' reporting requirements, as that would spur businesses to develop and implement human rights due diligence mechanisms. It was also important to ensure that State-owned businesses and public procurement procedures complied with the Guiding Principles. The Working

Group invited all interested parties to attend the upcoming 2015 United Nations Forum on Business and Human Rights, which would focus, in particular, on implementation of the Principles.

22. **Mr. Kiai** (Special Rapporteur on the rights to freedom of peaceful assembly and of association), introducing his report (A/70/266), said that the report focused on the disparity in the environments that States created for businesses, on the one hand, and associations, on the other. In general, States, multilateral organizations and other key actors made great efforts to create enabling environments for businesses but made little effort to improve environments for civil society. Both sectors were equally deserving of promotion by the State, however, and both contributed enormously to the overall well-being of a nation.

23. In many countries, civil society organizations, including NGOs, charities and non-profit associations, had to overcome extremely onerous legal, financial and administrative hurdles in order to carry out their activities, while businesses in those same countries faced many fewer restrictions. There was no compelling reason why civil society sectors should be obliged to operate in such hostile environments when civil society and business, as non-State actors, had much in common. Entities in both sectors allowed individuals to associate, provided employment, goods and services, and were magnets for investment and platforms for mobilizing and influencing policies. Yet Governments often placed an inordinate emphasis on businesses being key economic drivers while failing to recognize that a prosperous economy was, to a significant extent, dependent on a robust, vocal and critical civil society sector.

24. Businesses received more favourable treatment than associations without reasonable justification in five key areas, namely, entry procedures and dissolution processes, regulation of operations, access to resources, political influence and access to power, and conducting peaceful assemblies. Those key areas were essential components of the exercise of the rights to freedom of peaceful assembly and of association and any limitations imposed in those areas must be prescribed by law, be necessary in a democratic society in the interests of national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, and be proportionate to the aim pursued.

25. States often went to great lengths to control entry into the civil society sector and barriers to registration were often inordinately high. Some States severely curtailed the percentage of revenue that associations could spend on overhead expenses or placed limits on the funding they could receive from foreign sources. Meanwhile, the Governments of those same States were often heavily dependent on foreign aid. Governments rarely imposed such wide-ranging restrictions on the activities or operations of businesses. The involvement of associations in so-called “political activity” was prohibited or severely limited in many States. As a result, businesses in those States enjoyed more leeway than associations to influence the political landscape.

26. Both businesses and civil society had a responsibility to comply with the law in their financial and other dealings. However, there was no justification for more complex, onerous or intrusive reporting and audit requirements for associations and no objective, empirical data demonstrated that associations were any more likely than businesses to engage in financial crime. That fiction was propagated by those who felt threatened by the prospect of people organizing outside the dominance and control of the State. Likewise, there was no data to suggest that associations were any more prone to funding terrorism or extremism than businesses. Nonetheless, some States disproportionately targeted and punished associations for real or perceived links to such crimes.

27. Only in the rarest of cases did Governments infiltrate businesses or spy on the activities of the private sectors in their jurisdictions. Yet NGOs and social movements routinely faced such scrutiny. Indeed, States often colluded with businesses to limit the influence of civil society, particularly when lucrative commercial activities were at stake, and the rights to assembly and association of groups and individuals who protested against large business interests were often severely curtailed. Members of such groups were often threatened, prosecuted, attacked, harassed and sometimes even killed. Trade unions working to ensure equitable treatment of workers against business interests were also subjected to repression.

28. Restricting the ability to access and use human, financial and material resources was a particularly pervasive strategy used by States to strangle civil society. Meanwhile, those same States often actively encouraged commercial investment, including from

foreign sources, sometimes to the detriment of civil society. Tax exemptions and other funding incentives for associations should not be viewed as an opportunity for States to exercise excessive oversight or control of associations. The process of qualifying for such privileges should be simple, transparent and impartial, and incentives should not be awarded on the basis of the Government's judgement of an organization's goals or purpose, provided that that purpose complied with international law. Many States offered significant financial incentives to businesses, and those benefits were not used as justification for interference in the affairs of businesses. Governments often viewed businesses as natural allies, while associations were side-lined and had no political leverage or influence on public policy. Although the rationale was that the business sector stimulated economic growth and job creation, civil society's own significant contribution to those objectives was often overlooked. The enthusiasm with which Governments supported the private sector was evidenced by the increased merging of trade interests with foreign affairs, the support abroad that Governments offered to companies domiciled in their jurisdictions, and the private sector's growing access to law-making procedures and trade treaty negotiations. Some 40 heads of State and Government had attended the most recent World Economic Forum. It was extremely rare that a head of State or Government attended a global event organized by civil society.

29. States should adopt a fair, transparent and impartial approach to businesses and associations and should regulate those two sectors in accordance with international law, standards and norms. Such "sectoral equity" meant that regulatory decisions affecting the two sectors must be based on objective criteria. Few legal or technical barriers prevented the equitable treatment of associations and businesses. States' failure to do so was simply due to a lack of political will. Yet the business community's interests would be greatly served by the adoption of the concept of sectoral equity. The presence of a robust, vocal and critical civil society sector in a State guaranteed, almost without exception, that that State had also fostered an enabling environment for business: the rule of law was stronger, transparency enhanced, and markets less tainted by corruption. The promotion of sectoral equity, which cost States nothing, could yield significant economic, social and political dividends for society as a whole, and should be adopted by States as a guiding principle in their treatment of the business and civil society

sectors. States should recognize that civil society was just as valuable to the economy and the labour market as businesses and therefore just as deserving of proactive measures to create an enabling environment. Indeed, critical civil society was crucial in helping States and citizens identify those political, economic, social and other policies that harmed society. Similarly, any efforts to incentivize businesses should incorporate broad respect for fundamental human rights, including the rights to freedom of peaceful assembly and of association, while other actors, such as multilateral institutions and bilateral donors, had a responsibility to ensure that their policies did not exacerbate the disadvantages of civil society, and must use the tools at their disposal to encourage sectoral equity. Businesses and civil society themselves must recognize the broad convergence of interests in areas of government transparency and the rule of law and work together to enhance those goals.

30. **Ms. Brooke** (United States of America) said that multilateral organizations were uniquely positioned to help foster the rights to freedom of peaceful assembly and of association by pressing States to comply with their international obligations and by providing venues in which those rights could be discussed. Her delegation commended the Open Government Partnership for its work to create a mechanism that would allow associations and others to share their concerns about underperformance, as well as efforts to uphold those rights by the Community of Democracies and the Lifeline Assistance Fund for Embattled Associations, which provided concrete assistance to organizations under threat. Her delegation also strongly supported the Special Rapporteur's calls for reform of the Committee on Non-Governmental Organizations so that States would no longer be able to block accreditation applications by posing perpetual questions and blocking consensus. The United States would continue to use its seat on that Committee to promote the participation of civil society in the United Nations system.

31. She asked the Special Rapporteur whether he had evidence that countries with open and enabling environments for civil society derived economic benefits. Noting that an increasing number of associations were scaling down their operations or even withdrawing from certain countries, she asked what impact that was likely to have on civil society as a whole. She also asked whether there were aspects of

civil society openness that stakeholders were failing to measure, what people around the world understood by freedom of association and of assembly, and whether efforts were needed to raise global awareness of the protections that the Organization was seeking to promote.

32. *Mr. Hilale (Morocco) took the chair.*

33. **Mr. Rabi** (Morocco) said that his delegation agreed that associations received different treatment than businesses and that States should foster an environment that was favourable to civil society. Businesses and associations were, however, by nature different, and comparisons would have to focus on specifics.

34. Both Mr. Kiai and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism had noted that counter-terrorism laws and measures were having a negative impact on civil society. Yet it was well known that terrorist organizations used both NGOs and businesses for their financial transactions and the financing of their activities. He asked what measures the Special Rapporteur would suggest for combating the financing of terrorism that would at the same time guarantee an enabling environment for NGOs and for businesses.

35. **Mr. Osboei** (Islamic Republic of Iran) said that, although associations and businesses shared some similarities inasmuch as they were both non-State actors, they had different (non-profit and for profit) purposes, as well as different political, social, cultural and economic goals. Differences in law and practice in the State's treatment of businesses and associations, particularly regarding registration, dissolution, political activity, taxation, auditing, reporting and access to resources, were therefore warranted and reasonable.

36. **Ms. Fitzmaurice Gray** (Ireland) said that her delegation shared the Special Rapporteur's concern about the growing influence of businesses enterprises over Governments. States must facilitate civil society's access to the highest levels of decision-making, including at the multilateral level where corporate interests were increasingly influential, through, inter alia, dialogue, consultation and the regulation of lobbying practices. Ireland had recently enacted the Regulation of Lobbying Act 2015 to ensure transparency and equity across all lobbying activities that sought to influence public decision-making.

37. Given the Special Rapporteur's finding that a vibrant civil society was necessary for sustainable economic development, as well as good for the business sector, it was essential for the concept of sectoral equity to be adopted. She requested examples of how that concept could be incorporated into the business and human rights agenda, in particular through national action plans.

38. **Ms. Tschampa** (Observer for the European Union) said that the European Union agreed that, in many cases, States and other actors could better promote and protect the rights to freedom of peaceful assembly and of association if they elevated their treatment of associations to the same level as their treatment of businesses. Many States, however, imposed restrictions on the ability of associations to seek, secure and use resources while simultaneously promoting business investment activity. She asked how those problems could be addressed and how States could be assisted in promoting an enabling environment. She also asked the Special Rapporteur to elaborate on what form a regular dialogue between the State and civil society might take and how the role of civil society in that context could be increased.

39. **Ms. Anichina** (Russian Federation) said that the relevance of the Special Rapporteur's comparison of businesses and non-profit organizations was highly questionable, since the activities of businesses did not fall under the Special Rapporteur's mandate and it was inappropriate to compare the rules, conditions and results of the work of structures that were completely different in nature, character and purpose.

40. The Special Rapporteur had not yet considered all the aspects of ensuring freedom of peaceful assembly and of association. There were many tasks relating directly to her mandate that should be given due attention, such as the role of associations of national and religious minorities in society in promoting mutual understanding and respect and in protecting and diversifying culture; the role of the right to peaceful assembly in protecting economic and social rights during times of financial crisis; and trade unions.

41. The Russian Federation did not agree with the focus being only on violations. Attention should be paid to the exchange of best practices, in particular financial and moral support provided by the State to charities and non-profit organizations. In the Russian Federation, over 4 billion roubles were allocated every

year to projects, including those related to human rights, of non-profit organizations. Two State prizes were awarded annually for charity work and human rights activities in the amount of 2.5 million roubles. At the federal and regional levels, advisory mechanisms had been established and were actively working.

42. As for the Russian law referenced in paragraph 71 of the report, it should be noted that the law did not prohibit access to foreign resources. The Russian Federation had appropriated the law itself and the list of organizations from another State, which might well protest that it no longer applied that law, but in reality that was not the case. A few years ago, a judge from that country had imprisoned the leader of an NGO on the basis of that very law.

43. **Mr. Dvořák** (Czech Republic) said that the comparative study of the enabling environment for businesses and associations was useful given their similar positions as non-State actors for whom the rule of law was preferable to the rule of power. He asked for specific examples of the incorporation of fundamental rights, including the rights to freedom of peaceful association and of assembly, in international trade treaties, as recommended by the Special Rapporteur.

44. **Ms. Probst-Lopez** (Switzerland) said that Switzerland was concerned by the restrictions imposed on civil society in certain countries and called on all States to ensure a safe and favourable working environment for all civil society organizations and actors. Bearing in mind the responsibility of States not simply to protect, but also to promote freedom of association, her delegation requested information about good practices in interactions between States and associations that not only strengthened links between them but also improved authorities' understanding and appreciation of the work done by civil society. She also asked how commercial enterprises could be encouraged to provide greater support to civil society organizations and how the latter could benefit from the experience and often more favourable situation of commercial enterprises.

45. **Mr. Rosdi** (Malaysia) said that freedom of peaceful assembly and of association were enshrined in the Malaysian Constitution. His Government took a holistic approach to human rights, was committed to protecting all its citizens, and would take the necessary steps to ensure that citizens enjoyed their fundamental

liberties in a way that did not impinge on the rights of others or threaten the security or safety of the nation. His delegation therefore regretted the factually inaccurate reporting by the Special Rapporteur. The Registrar of Societies did not have absolute discretion to revoke the registration of associations, as alleged in paragraph 36 of the report: there were mechanisms for challenging his decisions, including judicial review procedures. His delegation was also concerned by the unfortunate political tone of the references in paragraph 61 of the report to the 1948 Sedition Act, which was used only against harmful and malicious communications that ran counter to the ideals that sustained Malaysia as a peaceful and harmonious country. The Act had been enforced solely to protect the sovereignty of the monarch, preserve harmony between ethnic groups and religions and hinder illegal acts. He hoped that those explanations would correct the erroneous and prejudicial reporting by the Special Rapporteur on the matter. His delegation was happy to engage with other delegations and United Nations mechanisms to further explain Malaysia's position.

46. **Mr. Holtz** (United Kingdom) said that progress in reducing poverty had been founded on freedom of speech, association and peaceful assembly, and that unleashing the potential of citizens was the only way a State could flourish. Civil society was, however, under renewed attack in many countries from burdensome regulations, the intimidation of journalists and sectarian violence. It was important to remember that prosperous societies were necessarily open ones.

47. Businesses were part of civil society and had an equally important role to play as global advocates for change. Neither businesses nor associations should be excessively hampered by bureaucratic red tape or restrictive legislation. Instead they should be protected, enabled and encouraged through agile regulations. Governments should pass risk-based laws to tackle specific challenges, rather than assuming general powers to address vague threats that might never materialize. He asked what role the Special Rapporteur thought businesses could play in defending civil society space and whether he planned to engage with other international organizations, especially those involved in regulating global finance, in the fulfilment of his mandate.

48. **Ms. Everett** (Norway) said that great attention was given to the ease of doing business at the national and international levels, but similar concern for

protecting the space for civil society was not apparent. The Special Rapporteur had called for sectoral equity in treatment of those two non-State actors, but in many countries the space for associations was shrinking. The undermining of civil society was a global trend that posed a threat to human rights, security, stability and sustainable development. She asked what steps could be taken within the United Nations system to promote greater sectoral equity and enshrine that principle in human rights instruments.

49. **Ms. Duda-Plonka** (Poland) said that Poland was particularly concerned by restrictions imposed on associations in some States that limited their ability to solicit, receive and use resources. Practices such as requiring associations that received foreign funds to be registered as foreign agents were motivated more by politics than by practical realities. States had an obligation to promote the rights of freedom of peaceful assembly and of association and a duty to create an enabling environment for associations. She asked what the most effective international action would be to combat politically motivated restrictions on associations.

50. **Mr. Ilyas** (Kazakhstan) expressed appreciation to the Special Rapporteur for his visit to Kazakhstan in January 2015. His Government was continuing to implement measures aimed at meeting international human rights standards, taking into account the internal and global challenges and threats the country faced. The new national development strategy for 2015-2050 focused on modernizing Kazakh society and the State, including by strengthening the rule of law, the judiciary and the government apparatus. Kazakhstan intended to continue cooperating in a transparent manner with the United Nations special procedure mandate-holders, whose work it supported.

51. **Ms. Pérez Gómez** (Colombia) said that Colombia had taken major steps to strengthen the protection of freedom of association, particularly in relation to labour unions. The country had traditionally faced huge challenges in that area, but had made significant progress with the support of the International Labour Organization (ILO) and other United Nations bodies in increasing the State's response capacity and promoting trade unions and collective bargaining. In order to combat impunity and violence, specialized units had been created, including teams of ILO trained prosecutors, to protect union members and their leaders. A key instrument had been

the establishment of a national trade union reparation board, which was tasked with reporting on violence committed against union members, facilitating reparations and promoting the formation of unions.

52. **Mr. Khan** (Pakistan) said that in Pakistan the rules of financial transparency applied equally to for-profit and not-for-profit organizations, without discrimination. The provisions of the national anti-money-laundering act and the financial monitoring processes of the Central Bank aimed to ensure that neither NGOs nor corporations were used as covers for money-laundering or for diverting funds to terrorist organizations. Given that NGOs and corporations had fundamentally different objectives, he asked whether it was possible for Governments to apply exactly the same rules to both.

53. **Mr. Thammavongsa** (Lao People's Democratic Republic) said that the rights to freedom of peaceful assembly and association and to freedom of speech were enshrined in the Constitution. Laws had been passed in 2009 and 2011 on the formation of associations, and 147 associations had been registered in the country since 2009. A hotline had also been set up for filing complaints with the National Assembly about restrictions on freedom of association or freedom of speech.

54. **Mr. Kiai** (Special Rapporteur on the rights to freedom of peaceful assembly and of association) said that freedom of association was content-neutral, and States should treat all associations equally regardless of their purpose. The distinction between for-profit and not-for-profit associations was often used as a justification for imposing greater restrictions, duties and obligations on associations, especially those that addressed sensitive issues, such as human rights and democracy, than on businesses. In some cases, associations were subject to criminal background checks prior to registration even though businesses and, for that matter, State entities were equally capable of engaging in criminal activity.

55. Terrorism was curbing the space of civil society, especially that of civil society organizations that sought to hold States accountable for their counter-terrorism activities. If States targeted the very organizations that were trying to hold them to account, it was not clear what peaceful avenues would remain for exercising that role. If associations broke the law, the response should be to prosecute them under criminal law, not to curb civil society space. States

must use dialogue and other tools to keep the space open; they must make it easier to reach compromises and move forward.

56. The corporate sector should take up the issue of civil society space because sustainable development depended on human rights being respected and on having an open society that could address corruption. All States acknowledged the role of business in development but few States talked about the role of civil society. Forty heads of State and Government had attended the most recent World Economic Forum; not one had attended the CIVICUS World Assembly. Civil society should be invited to participate in business events and vice versa. Human rights was one of the three pillars of the United Nations' work but was allocated only 3 per cent of its budget. He urged Member States to push for human rights to be placed at the top of the agenda.

57. He would be happy to discuss the matters raised by the representatives of the Lao People's Democratic Republic and of Malaysia with their respective Governments.

58. **Ms. Pinto** (Special Rapporteur on the independence of judges and lawyers), introducing the report submitted by her predecessor (A/70/263), said that the independence of the judiciary was no longer strictly associated with matters of criminal justice. Rather it was considered integral and inherent to the protection and promotion of human rights and the rule of law. It was central to the right to an adequate and effective remedy for human rights violations, but it also constituted a human right in itself. A total of 168 States were bound by the International Covenant on Civil and Political Rights, whose article 14 dealt with the right to equality before the courts and tribunals and to a fair and public trial, and the international community as a whole had recognized the wording of the Universal Declaration of Human Rights on the matter as a customary rule of international law. Yet the independence of judges, lawyers and prosecutors was still non-existent in many parts of the world.

59. The best context for the independence of judges, lawyers and prosecutors was democracy, since it ensured the separation of powers and promoted the rule of law. Democracy evolved with societies and presented different features depending on the societies concerned; nonetheless, none of the new characteristics of democracy should impair the core value of the

independence of judges, lawyers and prosecutors. Commitments by governmental, political and economic actors and judges, prosecutors and lawyers were also necessary. Judges and prosecutors must ensure justice on an equal basis for all, without discrimination. They needed to demonstrate intellectual and material integrity, and must not only be impartial, but also be perceived as such. Independence was not a prerogative, it was their duty. It was also important to recall that being a lawyer was not a business but a profession.

60. Rules were important for many reasons. They had symbolic and legal value; they communicated a message. An official discourse hostile to the independence of judges, lawyers or prosecutors delegitimized the judiciary and undervalued the most important mechanism at the disposition of democratic societies for the peaceful settlement of disputes. It was imperative for Governments to review legal rules, when necessary, to ensure the independence of judges, lawyers and prosecutors. At the same time, a legal culture was required, that of the rule of law, where the independence of judges and lawyers played a crucial role. A solid set of international legal rules, standards and principles aimed at ensuring and reinforcing the independence and integrity of the justice system as a whole currently existed, yet that independence should not be taken for granted. Continuous attention and monitoring were required to identify and tackle newly or re-emerging problems and challenges triggered by societal, political and economic changes. Those were the goals of her mandate, which she intended to deliver to the best of her abilities. She had made her first official country visit, to Guinea-Bissau, earlier in October, and her preliminary observations of which were available on the website of her mandate.

61. **Ms. Al-Temimi** (Qatar) said that her delegation was pleased that the previous Special Rapporteur had visited Qatar in 2014 to gain first-hand knowledge about the human rights situation there. Qatar was determined to comply with all its international human rights obligations and would continue to work with the United Nations special rapporteurs to that end. Within a relatively short period of time, Qatar had enacted far-reaching reforms that had bolstered the neutrality and independence of its judiciary and ensured that the country upheld the principle of separation of powers, as enshrined in its Constitution. In April 2015, Qatar had hosted the Thirteenth United Nations Conference on Crime Prevention and Criminal Justice. States must

uphold the rule of law and ensure that their societies were based on the principles of freedom and justice. Qatar would continue along its path of reform to ensure that its judicial system complied with international standards on the independence of the judiciary, and would continue to collaborate with all United Nations human rights mechanisms.

62. **Ms. Tschampa** (Observer for the European Union), noting that the separation of powers and an independent judiciary were crucial for sustainable development, asked what role the independence of judges, lawyers and prosecutors would play in the implementation of the 2030 Agenda for Sustainable Development. She also asked how an independent judiciary could contribute to achieving child-sensitive justice systems.

63. **Mr. Garcia** (United States of America) asked whether any best practices or lessons had been garnered from the visits made by the Special Rapporteur's predecessor to Portugal and Tunisia and whether the Special Rapporteur foresaw any particular challenges or immediate needs to ensure the independence of judges and lawyers.

64. **Mr. Osboei** (Islamic Republic of Iran) drawing attention to paragraphs 45 and 46 of the Special Rapporteur's Report (A/70/263), said that several barriers, such as lack of legal capacity or standing or lack of legal identity, hampered access to justice for children from vulnerable groups, especially children who were unregistered migrants, refugees or asylum seekers. His delegation felt that obtaining justice for children who served as soldiers and the effects of war on children's rights to justice could have been given more coverage in the report.

65. **Ms. Shlychkova** (Russian Federation) said that the Russian Federation shared the opinion that judicial independence was of the utmost importance in the context of separation of powers and guaranteeing the rule of law and democracy, and agreed that it was not possible to ensure the independence and competence of the judiciary without an organized and coherent procedural system which adequately guaranteed equality before the law and the legal security of all.

66. Her Government called on the Special Rapporteur to continue analysing problems related to the independence of judges and lawyers and access to justice, and to focus on ensuring the integrity of the judicial system, in accordance with Human Rights

Council resolution 25/4. That issue was of particular importance in the context of military courts or special military tribunals for trying criminal offenders, which should be an integral part of the general judicial system and apply procedures that were recognized according to international law as guarantees of a fair trial, including the right to appeal a conviction and a sentence. It was also extremely important with regard to eliminating use of the principle of extraterritoriality in order to evade international obligations, including access to a fair trial and the right to protection.

67. **Mr. Rabi** (Morocco) asked which specific aspects of judicial independence the Special Rapporteur planned to focus on in future reports. His delegation wished to stress the importance of exchanging good practices and of the provision of technical assistance to States undertaking reforms in the field of justice.

68. **Ms. Pinto** (Special Rapporteur on the independence of judges and lawyers) said that the independence of judges and lawyers and of the whole legal system was crucial for the rule of law and democracy. Access to justice was important because without justice there could be no peaceful settlement of disputes. Access included territorial access as, in many countries, lawyers and courts were far away and expensive to reach. Access was also dependent on the provision of adequate training, not just basic law degrees, but continuous professional development and specialized legal training, on women's and children's issues, for example. Justice systems must be child-sensitive. The Convention on the Rights of the Child contained provisions on the subject and was one of the most widely ratified conventions; yet it was also one of the least implemented. Similarly, justice systems needed to be sensitive to women's issues in the context of national cultures. Many countries had ratified the Convention on the Elimination of All Forms of Discrimination against Women and passed adequate legislation, but women's rights were still not respected.

69. Military courts, for their part, should have very restricted jurisdiction, covering only military issues, and should have appeals procedures in accordance with international human rights law. International cooperation was key for helping countries improve the structure of their prosecution services. Some countries needed specific training in procedures for the collection of forensic evidence that fully respected human rights.

The meeting rose at 12.40 p.m.