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COMMISSION ON HUMAN RIGHTS

Sixty-first session

SUMMARY RECORD OF THE 52nd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 15 April 2005, at 3 p.m.

Chairperson: Mr. WIBISONO (Indonesia)

later: Mr. OULD MOHAMED LEMINE (Mauritania)

CONTENTS

ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF
HUMAN RIGHTS

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CONTENTS (continued)

PROMOTION AND PROTECTION OF HUMAN RIGHTS:

- (a) STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS
- (b) HUMAN RIGHTS DEFENDERS
- (c) INFORMATION AND EDUCATION
- (d) SCIENCE AND ENVIRONMENT (continued)

The meeting was called to order at 3 p.m.

ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS (agenda item 19) (E/CN.4/2005/110-123 and 133; E/CN.4/2005/NGO/16, 166, 254, 266 and 288)

1. Mr. HAMMARBERG (Chairperson of the Board of Trustees of the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights) introducing the Secretary-General's report on advisory services and technical cooperation in the field of human rights (E/CN.4/2005/110), said that throughout the 50 years in which the Technical Cooperation Programme had existed, during which time it had grown in size and complexity, United Nations regular funding for it had always been inadequate. Despite the Voluntary Fund's establishment in 1987 and generous financial support from Member States, available resources still fell short of needs, since expenditure amounted to US\$ 12.8 million against only US\$ 9.3 million in contributions.
2. Discussion of the future of the Technical Cooperation Programme within the context of United Nations reforms had led to the conclusion that it was essential for the Office of the United Nations High Commissioner for Human Rights (OHCHR) to retain a strong capacity for the independent planning and execution of technical cooperation, while at the same time assisting others to carry out human rights-related action. The two aspects of OHCHR's work were vital and closely linked. It was, however, essential for OHCHR to develop good practices in working with others and to capitalize on its uniqueness, which lay in its recognized human rights expertise and its close institutional links with international human rights mechanisms, including those established by the Commission. The Board had initiated a dialogue with the chairpersons of treaty bodies and special procedures mandate-holders with a view to ensuring that they exerted a stronger influence on the shaping of technical cooperation programmes, in line with the recommendations of the global review. It ought to be possible to devise a single integrated human rights programme despite structural and political constraints.
3. The Board of Trustees had been able to focus on those policy issues because of the enhanced capacity of OHCHR to review and carry out projects. He welcomed the High Commissioner's decision to establish a central planning unit, as that would help to consolidate the Office's management processes without reversing recent improvements in the servicing of the Board. The thoughts and recommendations in the report were intended as a contribution to the debate on the reform of the human rights programme. While Governments' constructive cooperation with the Technical Cooperation Programme was appreciated, he agreed with the Secretary-General that the proclaimed commitment to human rights must be matched by resources to strengthen the Office's ability to discharge its vital mandate.
4. Mr. JOINET (Independent expert on the situation of human rights in Haiti) said that the most important findings of his report (E/CN.4/2005/123) were contained in chapter II, section F on the recurring question of prolonged detention, and chapter III, section A on the adverse consequences of widespread rumour-mongering and section B on the complex question of who should be answerable for violations. In that respect there had been a change, insofar as the current Government no longer surrounded itself with mutually destructive gangs to do its dirty work, but security was still weak. Chapter III, section D concerned a development that was

essential for the long-term future of the country, because the Ombudsman should play a historic role when the time came for national authorities to assume responsibility for maintaining peace at the national level. Section E on developing forensic medicine to help combat impunity was equally vital, for courts without an effective forensic medicine service were vulnerable.

5. The massive prison breakouts and the failure to arrest most of the former inmates who were still on the run was giving rise to concern among judges that they might become the target of reprisals on the part of those they had sent down.

6. The recommendations to which priority should be given were to be found in paragraphs 92, 93 (c), 94 and 100 (a) of his report.

7. Turning to the question of the place in which the former Prime Minister should be tried, he explained that originally he had been against holding proceedings in Saint-Marc but, after a visit to the town, he had found it to be quieter and more orderly than Port-au-Prince. He had therefore changed his mind. The Commission on Human Rights ought to request that pre-trial investigations be conducted by the authorities in Saint-Marc and that the question of the location of the court hearing be considered in due course, once Yvon Neptune had actually been committed for trial.

8. Mr. GOUSSE (Observer for Haiti), said that violence was no longer State-sponsored but was the work of armed gangs and demobilized soldiers whom the Government in which he was Minister of Justice was seeking to restrain. Certain districts of the capital were being pacified thanks to closer collaboration between the United Nations Stabilization Mission in Haiti (MINUSTAH) and the national police. Awareness campaigns had been mounted to combat the admittedly high level of violence against women, and legislation had been introduced to deal more effectively with sexual assault. Violence against children was closely related to poverty, but he wished to point out that the period when pupils had been discouraged from attending school predated the establishment of the transitional Government. There was complete press and media freedom in contrast to the Aristide era, when radio stations had been sabotaged.

9. Notwithstanding its scant economic resources, his Government had doubled the size of the police force, which was undergoing training to make it more professional. It had suspended policemen who were implicated in drug trafficking and human rights violations. It was issuing the police force with new badges. A strategic development plan for the police had just been adopted and a new law on the police was being drafted.

10. No one had been detained on political or religious grounds and no one was held in pre-trial detention for more than a year. In order to improve the administration of justice, courts in Port-au-Prince were turned into regional criminal courts in the afternoon. The delay in bringing Yvon Neptune and Jocelerme Privert to trial had been caused by their hunger strike and appeals. Demobilized soldiers no longer posed a security risk, as they had either been recruited to the police force, or they had received compensation for the unconstitutional dissolution of the army. At all events, they had been disarmed.

11. The independent expert's recommendations had been gratefully received, and action would be taken on them. Given the magnitude of the task facing it, his Government called on the international community to grant it practical assistance in promoting and protecting all aspects of human rights.

12. Mr. BASSIOUNI (Independent expert on the situation of human rights in Afghanistan), introducing his report (E/CN.4/2005/122), said that Afghanistan was engaged in a complex process of national reconstruction after more than 23 years of sustained and highly destructive conflict. The initial phase of democratic transition was coming to a close, but if the country's political transition were to be successful in the long term, immediate attention would have to be paid to the rule of law, justice and human rights. The Government ought to be congratulated on its commitment to policies that respected human rights standards. Similarly, the international community should be commended for its support of the transition process.

13. Positive developments included the successful presidential election in 2004, the return of nearly 4 million refugees and internally displaced persons (IDPs) to their homes, progress towards the formulation of a national transitional justice strategy, the Government's acceptance of the report of the Afghan Independent Human Rights Commission and its release of the "Shibergan detainees". Nevertheless, the country was still faced with an array of human rights violations and new patterns of impunity for human rights violators, which must be addressed in order to ensure peace, stability and security. For that purpose, it would be necessary to strengthen the rule of law, improve the administration of justice, promote human rights and formulate a comprehensive strategy covering, among other things, immediate action to stop poppy cultivation and drug trafficking and anti-corruption policies. As creating such a strategy would be a complex and costly undertaking, it might be wise to set up a new interdisciplinary intergovernmental organization to oversee the process.

14. The people of Afghanistan had great expectations for the future of their country and were increasingly alert to the significance of human rights issues. Moreover, President Karzai had responded positively to the recommendations contained in his report. For that reason, the international community should work with the Government of Afghanistan to draw up the comprehensive strategy he had just outlined, so that further progress could be made towards the reconstruction of the country and all that that implied in terms of democracy and the rule of law.

15. Mr. OMER (Observer for Afghanistan) said that the complex process of reconstruction in his country was proceeding apace, together with the consolidation of local bodies enabling individuals to exercise their rights. Cooperation was a vital element of a strategy to realize all human rights; technical assistance should therefore concentrate on boosting national capacity to protect and promote those rights. His Government had gone to great pains to restore human rights, the first step being the holding of the first democratic presidential elections in October 2004, when more than 10 million people, including those from the remotest corners of the country, had turned out to vote. An improvement in the country's economy would enable the Government to devote more attention to the promotion of human rights in all spheres of society.

16. Measures had been adopted to enhance security and the administration of justice. Combatants were being demobilized and eased back into civilian life. Fifty-three thousand policemen had been trained over the previous three years and the judiciary was being reformed.

There had been a noticeable improvement in the human rights situation, although sustained action was still needed to remedy shortcomings. For that reason, his Government had been pleased to welcome the independent expert and it therefore regretted that his report had first been made available to it on 4 April 2005 over the Internet. The expert's comments had to be seen in the light of endeavours to rebuild a devastated country. He had failed to mention the existence of freedom of the press and freedom of expression, which were an important facet of human rights. Moreover, his analysis of the situation had sometimes strayed beyond his mandate and in some cases was based on hearsay and supposition.

17. Due note had been taken of the independent expert's recommendations. Some had already been implemented; others would have to be carried out as part of a technical assistance programme. Indeed, technical assistance was extremely important when it came to carrying out projects to promote and protect human rights, and his Government was therefore very grateful to the international community and development partners for their staunch support for his country's efforts.

18. Mr. ALNAJJAR (Independent expert on the situation of human rights in Somalia), introducing his report (E/CN.4/2005/117), said that late 2004 had seen the emergence of a cautious optimism for peace and reconciliation in Somalia. The peace process had appeared to be concluded and the Transitional Federal Parliament (TFP) and Transitional Federal Government (TFG) had been established. Owing to those political developments and the hard and courageous work of international and national NGOs, there seemed to be an improved appreciation, or at least knowledge, of human rights in Somalia. Although that was an encouraging sign, much remained to be done to advance the cause of human rights in the country. He called on the international community to consolidate its support to the Government, provide assistance to civil society and give integrated support to the United Nations country team for Somalia.

19. He had recently completed his annual mission to assess the human rights situation in Somalia, during which he had visited "Somaliland", "Puntland" and Nairobi, Kenya. He had been unable to visit Mogadishu and the southern regions of the country for security reasons. In "Somaliland" he had met several high-level government officials and members of parliament and had engaged in discussions with members of the United Nations country team, local NGOs and the commanders of the police and custodial corps, and he had visited the Hargeisa central prison.

20. The autonomous region of "Somaliland" had been relatively secure in 2004. Although there was a feeling of optimism regarding the possibility of resolving the Sool and Sanaag border conflict between "Somaliland" and "Puntland", the conflict continued to cause serious human rights violations, and prisoners of war had been taken on both sides. "Somaliland" authorities were undertaking modest infrastructure projects, and NGOs continued their local human rights work, albeit with few or no resources. Issues of particular concern were the slight increase in police brutality, an alarming trend in juvenile suicides and the forced return of refugees to "Somaliland". There had also been reports of impunity, threats against human rights defenders and journalists, and restrictions on freedom of association and opinion. The scheduled elections in "Somaliland" had been discussed, and although he had been assured that they would take place, they had since been postponed. During his visit, the release of a 17-year-old prisoner from "Puntland" had been negotiated. Her release had enhanced the credibility of the United Nations human rights community.

21. In “Puntland” he had met the President, members of the United Nations country team, local and international NGOs, and the police commander, and had visited the police station, the Supreme Court, several prisons and two camps for IDPs. The situation of IDPs in camps in “Puntland” was particularly serious. In “Puntland”, the greatest human rights problems related to economic and social rights. Large-scale illegal fishing by foreign trawlers, and the cumulative effects of the long-standing livestock ban, were infringing the economic and social rights of the people and thwarting development in the region. The educational, health and social infrastructures must be strengthened.

22. During his mission, he had examined the extent of the effects of the Indian Ocean tsunami on the Hafun peninsula. Although the local officials and the resident population had expressed gratitude for the emergency assistance thus far received, they had also urged that longer-term interventions should focus on restoring their livelihood, in particular fishing.

23. In Kenya, he had met the Nairobi-based United Nations country team for Somalia, representatives of the international donor community and NGOs, and various high-level government officials. The United Nations country team had stressed the need to deploy a human rights adviser to Somalia to work within the Rule of Law Project of the United Nations Development Programme (UNDP), document human rights violations and work on human rights advocacy. If requested, such an adviser should also provide assistance to the TFG in human rights matters, and in the context of the United Nations agreed overall framework for cooperation.

24. The profile of Somali women and support of their rights had expanded in recent years, and there had been a small improvement in the wider participation of women in politics. There was, however, still a need to continue improving the economic empowerment of women and their participation in society and politics. The widespread practice of female genital mutilation was a continuing challenge to the rights of 98 per cent of women in Somalia. The practice was detrimental to women’s health and well-being, and although it was often defended as a religious custom, it was in fact an old tribal clan tradition. Somalia’s women’s groups were hard-working and knowledgeable, and effective despite their limited resources. He had called on the Government to increase its support for the Ministry of Gender and Family Affairs, and to keep the human rights of women at the top of its agenda. He urged the international community and the United Nations country team to support small civil society projects and programmes in the field of women’s rights in Somalia.

25. Against all odds and in very difficult conditions, Somali civil society continued to make progress through networking and modest activities for the protection and promotion of human rights. He strongly supported further progress in overcoming the significant difficulties faced by civil society in Somalia, including limited resources and skills and restrictions that were sometimes imposed by the authorities. He called on Somali authorities to establish independent institutions for the protection and promotion of human rights, and encouraged United Nations agencies and donor countries to provide technical assistance and financial support. He recommended that the international community and local authorities assist civil society in fulfilling its human rights responsibilities. Financial support and technical assistance to the TFG and TFP should be increased, in order to ensure that human rights were thoroughly integrated in the institutions, frameworks and laws that were being established. He hoped that

the United Nations would continue to provide integrated support to Somalia in respect of security, development and human rights, and he offered his assistance and support in that regard. The international community must do everything possible to support human rights promotion efforts in Somalia in order for peace and security to prevail.

PROMOTION AND PROTECTION OF HUMAN RIGHTS:

- (a) STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS
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(agenda item 17) (continued) (E/CN.4/2005/46, 92-100, 101 and Add.1, Add.2 and Add.3 and Corr.1, 102 and Add.1, 103 and 133; E/CN.4/2005/G/1 and 25; E/CN.4/2005/NGO/6, 15, 27, 53, 70, 89, 96, 99, 114, 119, 122, 127, 133, 135, 151, 167, 178-179, 190, 226, 236-237, 247, 265, 272, 275, 284, 287, 290 and 322; E/CN.4/Sub.2/2004/43; E/2005/3)

26. Mr. BERNIS (Observer for Luxembourg), speaking on behalf of the European Union (EU), the acceding countries Bulgaria and Romania, the candidate countries Turkey and Croatia and the countries of the stabilization and association process and potential candidates Albania, Bosnia and Herzegovina and The former Yugoslav Republic of Macedonia, said that the Declaration on Human Rights Defenders affirmed that everyone had the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms. By adopting the Declaration, the international community had paid tribute to the courage, commitment and significant contribution made by human rights defenders throughout the world. At the national level, human rights defenders helped to document violations of fundamental freedoms, provide support to victims of violations and combat cultures of impunity. At the international level, they monitored human rights situations and communicated information to regional and international mechanisms, thus contributing to the drafting of international instruments. The adoption of the Declaration was a demonstration of the international community's commitment to act against the persecution and harassment of such defenders. Many people were targeted simply because they had spoken out in favour of universally recognized rights.

27. The EU reaffirmed its support for the Special Representative of the Secretary-General on human rights defenders, and welcomed the work that she had done. The EU was particularly concerned by the increasing number of reports of serious attacks on the rights of defenders, committed all over the world. It condemned the wide range of harassment and intimidation to which human rights defenders were often subjected. The EU was particularly concerned about threats against human rights defenders in Uzbekistan, the Russian Federation, Syria and Nepal, their precarious situation in Indonesia, repeated assassinations in Colombia and attacks against them in Guatemala. The EU urged the Governments of those countries to publicly condemn such attacks, launch thorough investigations and bring the perpetrators of such acts to justice. The international community must honour the commitments it had made when adopting the

Declaration. States must recognize the value of free debate on their policies and actions with human rights defenders, since such exchanges would help to improve the protection of fundamental rights and freedoms, and promote the drafting of national plans and strategies for human rights. It was essential for human rights defenders to be recognized as government allies. The EU was particularly concerned by the development of legislation that restricted the activities of NGOs, such as that which had been passed in Zimbabwe.

28. States must ensure that their domestic legislation was in line with the Declaration, must guarantee a favourable environment for the defence of internationally recognized human rights, and must ensure that the judiciary and law enforcement bodies were properly trained. Efforts must be made to end impunity and bring the perpetrators of human rights violations to justice, in the context of appropriate and proportional procedures. The EU supported the recommendations made by the Special Representative in her report (E/CN.4/2005/101 and Add.1-3), particularly regarding recognition of the positive role of human rights defenders in the search for peaceful solutions to political and social conflicts. The States members of the EU continued to speak out on behalf of human rights defenders under attack, and sponsored organizations and events which gave a platform to defenders and supported those at the forefront of the fight against human rights violations.

29. Since the previous session of the Commission, the Council of the EU had adopted guidelines on human rights defenders, which were intended to promote and encourage respect for their rights, and proposed practical suggestions for enhancing EU action in respect of external policy on human rights. The Council of the EU had also organized a forum, in which many human rights defenders had participated, and on the basis of which a manual would be drafted for use in EU missions. The manual would contain tools and practical ideas for the improvement of protection and support for human rights defenders. The EU supported the special thematic procedures of the Commission, and considered it the duty of the international community to assist those who were persecuted for activities in defence of human rights.

30. Mr. VARELA QUIROS (Costa Rica) welcomed United Nations General Assembly resolution 59/113 adopting the World Programme for Human Rights Education. He hoped that the Assembly would also shortly adopt the plan of action for the first phase. The Programme was the result of coordinated action by OHCHR, the United Nations Educational, Scientific and Cultural Organization (UNESCO), Governments and civil society.

31. Costa Rica regarded human rights education as a lifelong process focusing on the individual. Its purpose was to forge a common understanding of human rights based on the transmission of knowledge and values, and the shaping of attitudes that would consolidate respect for human rights and fundamental freedoms. He urged all States and civil society to join in implementing the World Programme for Human Rights Education.

32. A series of reports, declarations and programmes of action, beginning with the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, had stressed the need to adopt an integrated approach to the well-being of individuals and communities. He therefore warmly welcomed the Secretary-General's updated report on the relationship between the environment and human rights as part of sustainable development (E/CN.4/2005/96). Protection or neglect of the environment in any part of the world had a

global impact in the long run. There were basic human rights whose enjoyment depended to a large extent on environmental conditions. Moreover, both respect for human rights and protection of the environment were prerequisites for sustainable development. As Costa Rica's Constitution guaranteed the right to a healthy environment, his country was actively engaged in raising awareness of the link between the two goals and in seeking mutually compatible approaches to them, also within the Commission, to which Costa Rica would shortly be submitting a draft resolution on the subject.

33. Mr. BARREIROS (Paraguay), speaking on behalf of the States members of the Southern Core Common Market (MERCOSUR) and associated States, expressed strong support for the draft resolution concerning the right to the truth (E/CN.4/2005/L.84), which should be adopted by consensus because of the tangible benefits it sought for thousands of people who demanded justice and an end to impunity. It referred to international human rights instruments, Commission resolutions regarding impunity and special rapporteurs' reports. In particular, it cited the opinion of the Human Rights Committee and the Working Group on Enforced or Involuntary Disappearances that the victims of gross human rights violations and their relatives had the right to know the truth and the identity of those responsible for the violations. Hundreds of thousands of victims and their families throughout the world did not know the whereabouts of their loved ones, the circumstances that had led to their disappearance or the identity of the perpetrators.

34. Adoption of the draft resolution would produce tangible results in the form of national truth and reconciliation commissions and other mechanisms to investigate violations of human rights and international humanitarian law. The States members of MERCOSUR identified with the aims of the draft resolution because of their painful experience of dictatorships that had ripped apart families and societies. Since the restoration of democracy in the 1980s, they had demonstrated their commitment to the human rights of victims and their families by establishing truth and reconciliation commissions. He urged the Commission to adopt the draft resolution by consensus.

35. Mr. PFAFFERNOSCHKE (Germany) said that the activities of business enterprises could have a significant impact on the enjoyment of human rights. Although securing the universal protection of human rights was primarily a government task, individuals and every organ of society, including the business community, must play a part in the promotion of respect for human rights. As globalization progressed, that responsibility became increasingly relevant. While every State continued to bear the main responsibility for its own development and for ensuring the protection of human rights, companies, particularly those operating on a transnational or global scale, must also strive for the promotion and observance of human rights, environmental and social standards in the context of their spheres of activity. Defending fundamental freedoms, encouraging compliance with democratic procedures, promoting political and social justice and protecting the environment was also in their own interests.

36. Many businesses had already recognized the importance of human rights. His delegation considered it imperative to increase understanding of the relationship between business and human rights, and therefore welcomed the OHCHR report on the responsibilities of transnational corporations and related business enterprises with regard to human rights (E/CN.4/2005/91). Germany supported all efforts to increase awareness among businesses of the implications that

their activities could have on the enjoyment of human rights, and welcomed all initiatives aimed at the voluntary commitment of enterprises to fulfil their responsibilities in that regard. Only a broad-based transregional and consensus-oriented multi-stakeholder approach could lead to real progress. Germany was in favour of the appointment of a Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, whose work would aim to deepen common understanding of the responsibilities of transnational corporations and other business enterprises with regard to human rights, to clarify standards of corporate responsibility and to document best practices.

37. Mr. ATTAR (Saudi Arabia) said that the security and stability of any society depended on the laws that guaranteed its protection and integrity, and regulated individual and collective behaviour on the basis of justice and equality. Legislation on the protection of the individual and society was an essential requirement for regulating the behaviour of individuals, in particular aggressive practices that might lead to criminal offences. One of the reasons for the social peace that prevailed in Saudi Arabia was that all members of civil society were aware of the limits that they must not exceed, and understood that punishments for overstepping those limits were a legally stipulated penalty, intended to protect society. Justice was indivisible, and must always be balanced, thus ensuring that penalties were commensurate with the nature, gravity and consequences of offences. God had conferred on man the blessing of life, the preservation of which was regarded as an obligation in accordance with the letter and spirit of all divine scriptures. The taking of innocent life was a crime against humanity. Laws that made provision for retaliation against persons who had taken innocent lives were deterrents, which promoted the inviolable right to life and constituted a practical, effective and absolute guarantee of the security and integrity of society.

38. Although Saudi Arabian law provided for retaliation against anyone who took an innocent life, it equally showed due regard for the provisions of the International Covenant on Civil and Political Rights in respect of judgement processes. No person could be found guilty of or punished for a crime, until the fact that he or she had committed that crime had been established by irrefutable proof, and any mitigating or aggravating circumstances had been taken into account. Every State had an inalienable right to choose its own political, economic, social, cultural and legal system, without interference from any other State. The Charter of the United Nations stipulated that the United Nations was not authorized to intervene in matters that were essentially within the domestic jurisdiction of any State. Capital punishment had often been characterized as a human rights issue in the context of the convicted prisoner's right to life, without any clear reference to the victim's right to life or to the need for penalties to serve as a deterrent to acts of homicide. It was unfair to apply the concept of the right to life solely to the criminal, and not also to the victim. Penalties should take equal account of the rights of the victim and the right of society to enjoy a peaceful, safe and secure life.

39. All individuals must be confident that they were fully protected against any miscarriage of justice, that laws were laid down to protect, not harm, and that any breach of the law of which they might be accused would be properly investigated and verified. Human life was sacred and inviolable, and no person should be deprived of it except by judicial decision and through due process of law. The right of the victim and the right of society to live in security must be considered before the Commission adopted any resolution on the abolition of the death penalty.

40. Mr. CAUGHLEY (Observer for New Zealand), speaking on behalf of 33 countries, said that over the past decade, several United Nations human rights treaty bodies had found that sexual orientation should be understood as a status to be protected against discrimination. Two years had passed since Brazil had first tabled a draft resolution in the Commission, seeking to condemn discrimination on the basis of sexual orientation. His delegation regretted that the Commission was still not ready to address that resolution. The international community could not ignore the mounting evidence of serious human rights violations against individuals on the basis of their sexual orientation. In too many parts of the world, individuals were being deprived of their right to life, health and freedom from torture and violence. Silence on such an issue was tantamount to condoning some of the worst forms of discrimination.

41. Sexual orientation was a fundamental aspect of every individual's identity, and it was contrary to human dignity to discriminate against a person on that basis. All States must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence committed on grounds of sexual orientation. Although sexuality was a sensitive and complex issue, the international community should not be prepared to compromise on the principle that all people were equal in dignity, rights and freedoms. The Commission must uphold the principle of non-discrimination, and should end its silence on that important issue.

42. Mr. KHALAS (Qatar) said that the implementation of human rights depended on several factors, including legal enforcement, quality of political commitment, availability of resources, civil society activities and the implementation of administrative, educational and other policies. Qatar had devoted considerable effort to running human rights education programmes and taking measures to strengthen the culture of human rights in the country, and had hosted several international human rights conferences. Seminars and workshops had been held for raising awareness of human rights issues among law enforcement officials, the press and media and civil society. A meeting had recently been held in Doha between the Qatari Ministry of Foreign Affairs and a senior OHCHR delegation, to discuss the technical steps required in order to ensure the speedy establishment of the United Nations Centre for Human Rights for Southwest Asia and the Arab Region, which was due to be hosted by Qatar.

43. The main objective of the proposed Centre was to contribute to the promotion of human rights in Southwest Asia and the Arab Region by providing training and documentation, disseminating information, and carrying out studies and exchanges of experience. The main objectives of the Centre were: to cooperate with Governments on the adoption of human rights policy frameworks, including national plans of action for human rights, integrating international standards into domestic legislation and encouraging States to ratify international instruments; to strengthen the capacity of government institutions and law enforcement officials responsible for the rule of law with a view to promoting and protecting human rights; to empower national human rights institutions and promote their independence, encouraging States that had not already done so to establish such institutions; to strengthen civil society organizations; to support and initiate human rights education programmes; to cooperate with regional organizations; and to integrate a human rights perspective into the work of United Nations agencies and programmes. The fact that any action to promote and protect human rights was inextricably linked to the promotion of democracy and development had served as a basis for the development of the Qatari comprehensive reform policy, the implementation of which was an ongoing process that had received considerable political commitment and popular support.

44. Ms. LI Wen (China) said that the protection and promotion of human rights was the common goal of the whole international community in the new millennium. The promotion of human rights demonstrated the continuous progress and civilization of society, and played an important role in promoting peace and development. At the same time, safeguarding international peace and security, and promoting development were pre-conditions to the protection and promotion of human rights. Sovereign States bore the primary responsibility for the promotion and protection of the human rights of their peoples. Each State was entitled to choose its own methods of doing so, in accordance with the national situation. The concept of human rights resulted from the political, economic and cultural conditions in a given society, and it was therefore normal that differences existed between States with regard to human rights issues. Such differences should be resolved through dialogue on the basis of mutual respect, in accordance with the Charter of the United Nations. United Nations reforms in the field of human rights should therefore be based on the principle of promoting international cooperation.

45. In recent years, China had made considerable efforts to promote and protect the human rights of its people, including strengthening democracy and the legal framework, and maintaining social stability. The principle of the State respecting and protecting human rights had been inscribed in the Constitution, and the Government directed its policies at the establishment and maintenance of a harmonious society. During the sixtieth session of the Commission, decision 2004/117 had been adopted, which had requested OHCHR to seek the views of Member States and intergovernmental and non-governmental organizations on the pre-draft declaration on human social responsibilities (E/CN.4/2003/105, annex I). The Chinese delegation had not received any communication on that issue, and had therefore been unable to express its opinion. It therefore wished to inform the commission that it fully supported the principle and spirit of the declaration. However, while emphasizing the promotion and protection of human rights, the Commission must not neglect the fundamental concept of man's responsibilities towards society.

46. Mr. Ould Mohamed Lemine (Mauritania) took the Chair.

47. Ms. WHELAN (Ireland) welcomed the important work undertaken by the Special Representative of the Secretary-General on human rights defenders and urged compliance with the recommendations contained in her report (E/CN.4/2005/101 and Add.1-3). The Special Representative had received reports of the killing of 47 defenders in 2004 and had sent out 34 per cent more communications than in previous years. There was a growing tendency to label some human rights defenders, especially those upholding the rights of minorities, as terrorists and a threat to the State, leaving them vulnerable to abuse and restricting their ability to work on behalf of the minority groups they represented.

48. There had also been a growing number of serious violations of the rights of journalists who denounced human rights abuses. Action to suppress their freedom of expression and to dissuade others from voicing their concerns included abduction, issuing of death threats and killings. She condemned such actions and called on Governments to take measures to ensure the safety of journalists.

49. The European Union Guidelines on Human Rights Defenders, adopted in June 2004, provided practical suggestions for the strengthening of EU action in that regard. She welcomed

the increased international attention given to the issue as a result of the work of the Special Representative and NGOs. Ireland would join the sponsors of the draft resolution on human rights defenders. It would also continue to offer financial support and policy partnerships to leading NGOs in that area.

50. Mr. FERNANDO (Sri Lanka) said that Sri Lanka had ratified 16 international human rights instruments - more than any other Asian country. It had regularly invited Commission mandate-holders and members of United Nations working groups and treaty bodies to visit Sri Lanka and appreciated their opinions and expertise.

51. Over the years the Supreme Court had granted relief to thousands of petitioners. Cumbersome procedures had been replaced with a simple mechanism whereby an indigent person could invoke the Court's jurisdiction simply by writing it a letter.

52. A multi-ethnic Constitutional Council which enjoyed the confidence of all political parties had been established. Persons of both national and international repute had been appointed to independent commissions on elections, judicial and public service, the police and human rights. Citizens frequently petitioned the National Human Rights Commission and the Office of the Ombudsman. The National Police Commission entertained complaints against individual police officers and the police force. The law on criminal defamation had been abolished and an independent Press Complaints Commission established. New laws had been enacted to ensure gender parity.

53. A Permanent Interministerial Committee advised the Government on human rights policy and an Interministerial Working Group monitored investigations and judicial proceedings pertaining to human rights violations. The Attorney-General's Department had established a Prosecution of Torture Perpetrators Unit. The army, navy, air force and police had established human rights directorates, and the International Committee of the Red Cross (ICRC) and NGOs assisted them in awareness-raising through seminars and workshops.

54. Terrorism in Sri Lanka had been curtailed through the Ceasefire Agreement that had come into force in 2002, since when the population had enjoyed a substantial peace and human rights dividend.

55. Ms. WANJIRU MWANGI (Kenya) said that the multiparty elections in Kenya in December 2002 had ushered in a new era of democracy and respect for human rights. The new Ministry of Justice and Constitutional Affairs was responsible for human rights policy, democratic governance, ethics and integrity. Corruption had been identified as a major obstacle to the realization of human rights. Kenya had been the first country to ratify the United Nations Convention against Corruption, and it had taken legal, institutional and practical steps to address the problem, including a reform of the entire justice and law and order system. A multisector steering committee was developing a national human rights action plan.

56. Kenya had been one of the first four African countries to volunteer for a review of good governance, rule of law, justice and human rights under the New Partnership for Africa's Development (NEPAD) Peer Review Mechanism. A new draft constitution reflected Kenya's international human rights obligations, as contained in the International Covenants on Human Rights and other human rights instruments. It had recently ratified the Rome Statute establishing

the International Criminal Court and the Protocol to the African Charter on Human and Peoples' Rights establishing the African Court on Human and Peoples' Rights. In that regard, she welcomed the report by the independent expert on impunity containing the revised version of the principles on impunity (E/CN.4/2005/102/Add.1). The Government was considering the possibility of ratifying the Optional Protocol to the International Covenant on Civil and Political Rights regarding individual complaints. Although Kenya retained the death penalty for the most serious crimes, there had been a de facto moratorium since 1987. A national consensus on the issue had not yet emerged.

57. The role of civil society and human rights defenders had been pivotal in ushering in the new order in Kenya. The National Human Rights Commission had a mandate to raise public awareness of human rights. In 2003 it had launched a strategic plan for the promotion and protection of human rights. In that connection, she welcomed the proclamation by the General Assembly of the World Programme for Human Rights Education.

58. The nexus between sustainable development, democracy, good governance and women's rights had been illustrated by the award of the 2004 Nobel Peace Prize to Kenya's Assistant Minister for the Environment, Professor Wangari Maathai. Under the 1999 Environmental Management and Coordination Act, the right to a clean and healthy environment was a justiciable human right. In that connection, she welcomed the Secretary-General's report on the relationship between the environment and human rights as part of sustainable development (E/CN.4/2005/96).

59. She also welcomed the reports of the High Commissioner for Human Rights and the independent expert on the protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2005/100 and 103). In drafting its Suppression of Terrorism Bill, the Government had engaged in wide consultations and drawn on the experience of other countries in order to strike a balance between the protection of human rights and the need to suppress terrorism.

60. Mr. CERDA (Argentina) expressed support for the recommendations of the independent expert on the protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2005/103), in particular regarding the need to focus on international humanitarian law, criminal law and refugee law, and to ensure that any future mechanism would not supplant but supplement the work of existing special procedures.

61. He disagreed with the decision to dispense with the Commission's interactive dialogue with mandate-holders under agenda item 17.

62. In paragraphs 17-19 of her report (E/CN.4/2005/102), the independent expert on impunity had addressed the subject of the right to know, stressing the need to draw on recent experience, noting the establishment of a large number of truth commissions and recognizing that the work of such commissions was not an alternative to that of judicial bodies.

63. Argentina was sponsoring a draft resolution on the right to the truth (E/CN.4/2005/L.84), which was supported by countries from the five regional groups. The basic aim was to provide

relief for the families of victims, helping to fight against impunity while complementing the work of judicial systems. He urged the Commission to recognize achievements in that regard, especially through the activities of truth and reconciliation commissions.

64. Mr. GUEVARA (Mexico) commended the independent expert on the protection of human rights and fundamental freedoms while countering terrorism on having identified gaps in the coverage of counter-terrorist issues by the Commission's special procedures and the human rights treaty bodies. He strongly supported the recommendation to appoint a special rapporteur with a sufficiently broad mandate to analyse the compatibility of counter-terrorist measures with States' obligations under international human rights law, refugee law and international humanitarian law. Both the United Nations Secretary-General and the High Commissioner for Human Rights had made similar recommendations.

65. Mr. RAZZOOKI (Observer for Kuwait) said that a discussion of the fate of civilians in armed conflict was long overdue. Although the paramount importance of international humanitarian law was generally recognized, certain loopholes in its applicability remained. While there was a mechanism under the Charter of the United Nations for dealing with breaches of international law that threatened international peace and security, the same was not true of international humanitarian law. When Kuwait had been invaded, there had been gross violations of the Geneva Conventions. But the ICRC, as custodian of the Conventions, had informed Kuwait that it was unable to act in the absence of an implementation mechanism. There was some disagreement as to the status of international humanitarian law vis-à-vis national sovereignty. He therefore called for a debate on how it might be strengthened so that perpetrators of gross violations of international humanitarian law no longer enjoyed impunity.

66. Mr. STROMMEN (Observer for Norway) said that human rights defenders, by assisting victims in circumstances of widespread human rights abuse, enhanced international peace and security and helped to extirpate the roots of terrorism. Welcoming the report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2005/101 and Add.1-3), he expressed serious concern about the increase in the number of reports of serious human rights abuses against groups of defenders and their relatives, especially the shift towards more grave violations such as killings. He was also disturbed by the increasing restrictions imposed by some States on freedom of opinion and association, especially legislation regulating the creation and operation of NGOs. He reminded them that article 13 of the Declaration on Human Rights Defenders asserted the right to solicit, receive and utilize resources for the promotion and protection of human rights and fundamental freedoms.

67. It was encouraging that so many Governments supported the Special Representative's mandate. Such support should be translated into practical commitments and cooperation. As noted by the Special Representative, Governments needed to be more tolerant of criticism. Dialogue with human rights groups was a sign not of weakness but of strength, of a dynamic approach that could promote respect for human rights and an improvement in the situation of those who, often at great personal risk, had the courage to work for human rights all over the world.

68. Ms. MASRI (African Union) said that, since its establishment in 1987, the African Commission on Human and Peoples' Rights had cooperated closely with intergovernmental and non-governmental organizations working in the field of human rights. The African Union

unreservedly supported the United Nations Declaration on Human Rights Defenders. At conferences in 1999 and 2003, African ministers for human rights had recognized the importance of the role played by human rights defenders in Africa and had urged Member States to take appropriate steps to implement the Declaration.

69. The African Commission had also appointed a Special Rapporteur to observe and report on the situation of human rights defenders. In carrying out her mandate, she cooperated with the Special Representative of the Secretary-General on human rights defenders and was keen to work even more closely with her in the future. Their joint efforts would certainly ensure better protection for human rights defenders in Africa and other continents.

70. Mr. SADOS (Observer for Poland) said that good governance was a key element in promoting and protecting human rights, and combating corruption was a key element in improving governance. To achieve that goal, States must focus on sharing best practice; establishing a professional and adequately paid civil service; adopting anti-corruption legislation; introducing measures to facilitate civil society and media monitoring; and undertaking awareness-raising activities. While particularly prevalent among holders of public office, corruption also affected the media, the private sector and NGOs. Preventing public sector corruption was a fundamental prerequisite for transparency and the effective functioning of a democratic State.

71. Corruption was difficult to prove, and legislation protecting individuals' interests and privacy posed a challenge to the successful eradication of the practice. While long-standing democracies had established social norms that were conducive to preventing corruption, progressive social atomization and the decline of morals in contemporary societies provided a fertile breeding ground for corruption even in those countries.

72. Improving governance practices worldwide required international cooperation and support for developing domestic capacities to ensure respect and protection of human rights.

73. Mr. GAFOOR (Observer for Singapore) said that the annual resolution on the death penalty presented by the European Union was a perfect example of the attempt of some States to use the Commission as a forum to impose their views on others. The EU's claim that there was a trend towards universal abolition of the death penalty was confuted by the reintroduction of capital punishment in a number of States. Diverging opinions about the death penalty existed even within Europe itself.

74. States had the sovereign right to determine their own criminal justice system and to decide on the retention or abolition of the death penalty. Respect for different systems and practices was an integral part of respect for human rights. Unless the Commission strove to become a more representative body respectful of a diverse world, it would lose all credibility.

75. Ms. BREINES (United Nations Educational, Scientific and Cultural Organization - UNESCO) said that UNESCO had long-standing experience in the field of human rights education. In the past year, the organization had been particularly active in monitoring normative instruments; supporting the development of domestic and regional capacities; and developing educational materials and publications. Jointly with OHCHR, UNESCO had

developed a plan of action for the first phase of the World Programme for Human Rights Education. The plan promoted rights-based quality education for all in the framework of an education system oriented towards human values, facilitating the realization of peace, social cohesion and respect for human dignity. The process of human rights education meant that all the components and processes of learning were conducive to the learning of human rights, as well as respect for the human rights of all actors within the education system. UNESCO encouraged Member States to implement the plan of action and would focus on supporting implementation.

76. Within the framework of its bioethics programme, UNESCO had given particular attention to standard-setting. Those efforts had been enhanced further by the drafting of a Declaration on Universal Norms on Bioethics designed to serve as guidelines for States in the formulation of relevant legislation and policies and for scientific decision-making and practices. The Declaration also encouraged dialogue within societies on the implications of bioethics and on knowledge-sharing in the field of science and technology. A United Nations Inter-agency Committee composed of representatives of United Nations agencies directly concerned had been set up, inter alia, to discuss modalities of cooperation regarding ethics, intellectual property and benefit-sharing.

77. UNESCO attached particular significance to its international instruments and was committed to cooperating with Member States, relevant United Nations agencies and the Special Rapporteur on the study on human rights and the human genome in their implementation.

78. Mr. BAIKADAMOV (Observer for Kazakhstan) said that, to date, the development of human rights education in Kazakhstan had been unsystematic. His Government was committed to implementing the World Programme for Human Rights Education to remedy existing shortcomings. Achievements with regard to human rights education thus far included the convening of a conference entitled “Human rights education in Kazakhstan: challenges and solutions” in November 2004. The outcome document recommended, inter alia, the establishment of a Centre for Human Rights Education entrusted with devising relevant practical measures and of an Expert and Consultative Council composed of scientists, scholars and NGO representatives. The Office of the Ombudsman organized educational activities at all levels of the education system, had launched its own web site and published a quarterly bulletin for use by governmental bodies, NGOs, universities and the media. He appealed to OHCHR to provide technical and other assistance for the systematic introduction of human rights education in his country.

79. Mr. GOUSSE (Observer for Haiti) said that any political system must further individual and collective human development. Human rights were enshrined in the Haitian Constitution, and the foundation of the Republic of Haiti itself had been an affirmation of the principle of human dignity irrespective of a person’s ethnic or racial origins. Throughout history, Haitians had fought for human dignity and equal rights for all and, in 2004, had overthrown what was hoped to be the country’s last dictatorship.

80. The transitional Government was committed to protecting the population’s right to life, peace and security during the difficult transition period. A number of legislative reforms had been undertaken to enhance the protection and promotion of human rights, including changes to

the local electoral system to guarantee the participation of all elected candidates; the adoption of legislation affording avenues for judicial review of administrative decisions; and the adoption of legislation guaranteeing equal rights before the law for men and women. Since the ousting of the previous regime, all restrictions on personal freedom, political groups and the media had been lifted. Persisting shortcomings were due mainly to the deficient infrastructure and institutional weakness inherited from the country's authoritarian past. In order to guarantee the right to due process, judges found guilty of negligence in the discharge of their duties had been removed from office. Additional hearings of the Criminal Court were held to reduce the length of pre-trial detention. In some cases, however, detainees themselves had delayed the trial by challenging the lawfulness of their detention or embarking on hunger strikes, and he called on Haiti's international partners to respect the decisions of the Haitian courts. Provision had been made to grant the judiciary full administrative and budgetary independence.

81. In the face of extreme poverty, individual rights became meaningless. Sustained efforts were required to ensure equal access to education, health and welfare for all Haitians. He called on States to open their markets to Haitian goods, thus enabling the country to generate economic growth as a key element of improving the overall situation in the country.

82. Mr. ALAMEDDIN (Observer for Jordan) said that, while successfully limiting the global threat of terrorism, the campaign against that dangerous phenomenon had in some cases undermined the protection of human rights and fundamental freedoms. His Government firmly condemned terrorism, irrespective of the origin or motives of the perpetrators, but strongly objected to linking terrorism with any particular religion or equating a people's struggle for self-determination with terrorism.

83. In Jordan, imposition of the death penalty was restricted to crimes that constituted a serious violation of human rights or undermined public security. Also, the Shariah law granted persons sentenced to death the right to seek pardon.

84. International attention focused mainly on impunity and human rights violations that occurred within non-democratic States. It was important to remember the plight of those who, like the Palestinian people, suffered from both foreign occupation and a range of human rights violations committed by the occupying Power, and who were in special need of protection.

85. Mr. VIGNY (Observer for Switzerland) said that his Government welcomed the abolition of the death penalty in Senegal; urged Papua New Guinea, the Philippines and Sri Lanka to maintain their moratoria on executions; and was hopeful that the reintroduction of the death penalty in Iraq would be repealed by the new authorities. The recent decision of the United States Supreme Court to abolish capital punishment for minors was a positive step, and he urged China and Iran to follow suit.

86. The situation of human rights defenders was cause for concern, especially since certain countries had adopted new legislation restricting the creation and functioning of NGOs in the context of the fight against terrorism.

87. He called on all States to incorporate the updated principles on impunity into domestic legislation and practice.

88. The administration of justice in transition countries was a complex issue and required the establishment of relevant international norms and standards. Justice, peace and democracy were mutually reinforcing, and provision must be made for the integration of those aspects into all United Nations human rights activities.

89. The international community must take account of the increasing impact of business enterprises on the realization of human rights. His delegation therefore welcomed the transregional initiative to draft a resolution on the private sector and human rights and supported the appointment of a Special Representative of the Secretary-General mandated to examine the issue.

90. Mr. CROITOR (Observer for the Republic of Moldova) said that his Government was committed to the progressive incorporation of internationally agreed human rights standards in domestic legislation. The National Human Rights Action Plan 2004-2008 was being implemented in most of the national territory and human rights were a key priority in Moldova's cooperation with the European Union. In the framework of that cooperation, his Government envisaged accession to a number of United Nations human rights instruments.

91. However, the continuing violation of human rights and fundamental freedoms in the separatist region on Moldova's eastern border, including arbitrary detention, torture and political persecution, were cause for grave concern. In its judgement in the case of Ilaşcu and Others v. Moldova and Russia, the European Court of Human Rights had confirmed allegations of torture and arbitrary detention of members of the "Ilaşcu Group". Regrettably, that part of the country was under the control of the separatist regime, and his Government had no authority over the prisoners' release. He called on the international community to condemn the unlawful actions of that regime and to support the implementation of the Court's decision. The time had come to move from the declaration of human rights to their implementation.

92. Mr. VEJAJIVA (Observer for Thailand) said that his Government was currently undertaking domestic consultations with a view to acceding to the Convention against Torture. Accession to the two Optional Protocols to the Convention on the Rights of the Child was pending. While the ratification of international instruments was of vital importance, it must be complemented by the strengthening of domestic systems for human rights promotion and protection, with due attention to local particularities and challenges. His Government had taken a series of measures to strengthen the promotion and safeguarding of human rights defenders' activities, including consultations held between the Ministry of Justice and NGOs on the establishment of a joint mechanism for their protection. Additional efforts would be made in the area of human rights education, which was crucial to the promotion of human rights.

93. Ms. BIGI (Observer for San Marino) said that her Government supported all initiatives aimed at the abolition of the death penalty and called on States to ratify regional and international instruments prohibiting capital punishment or, pending its complete abolition, implement moratoria on executions. Her Government welcomed the prohibition of the death penalty for certain categories of persons such as, inter alia, the elderly, minors, pregnant women, and persons with mental disabilities in countries where the practice continued to exist. Capital punishment was widely recognized as socially counterproductive, and the implementation of moratoria on executions at the national or regional level was an important step towards its progressive elimination.

94. Despite encouraging developments, numerous death sentences were pronounced and executed each year worldwide. She was concerned that some States had recently decided to defer abolition and lift the moratorium on executions. The lack of guarantees for the protection of the rights of persons subject to the death penalty was also disturbing. Therefore, her delegation was co-sponsoring the draft resolution on capital punishment presented by the European Union, which it hoped would command broad support.

Statement in exercise of the right of reply

95. Mr. BERZINJI (Observer for Iraq), referring to the recent statement made by the representative of the World Union for Progressive Judaism, said that no one had been spared the tremendous suffering under Saddam Hussein's repressive regime. Not only Jewish people, but also members of other ethnic or religious minorities, had been a target of repression. The statement made by the representative of the former regime at the Commission's fifty-eighth session did not reflect the views of the current Iraqi authorities. His people yearned for peace and reconciliation and a democratic future for their country, and the progress made towards achieving that goal should be commended. Reminding the people of Iraq of past horrors only served to reopen barely closed wounds.

The meeting rose at 6 p.m.