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HUMAN RIGHTS COUNCIL

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-eighth session

SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 15 August 2006, at 10 a.m.

Chairperson: Mr. BOSSUYT

later: Ms. CHUNG

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The meeting was called to order at 10.10 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued)

1. Ms. SAHUREKA (Interfaith International) said that from November 1998 until 2004, a war had been waged by the Indonesian military and their paramilitary jihad forces against the Alifuru people of Maluku, leading to the deaths of over 40,000 people, considerable displacement and the destruction of thousands of hectares of land. Although the Indonesian Government had orchestrated that war, the authorities had led the world to believe that it was a religious conflict between the Muslims and Christians of Maluku. Attempts were still being made to incite religious tension, the most recent example of which had taken place on 10 July 2006 between the villages of Horale and Saleman, but which had been unsuccessful, owing to the Christian and Muslim Moluccans' awareness of the manipulation of the Indonesian authorities. The Government used transmigrants from other Indonesian islands, who arrived in Maluku in their thousands, by giving them land in the indigenous territories, while the original inhabitants were ousted from their ancestral homes.
2. Land was being redistributed, new roads were being built and new villages were being created for the transmigrants, which was resulting in the loss of Alifuru cultural identity. The Alifuru people were being terrorized and prohibited from returning to their ancestral lands. Many had taken refuge in caves in the jungle, and were in urgent need of food and medical assistance. Babies were often stillborn and children were dying of malnutrition. Traumatized by war, forced Islamization, female genital mutilation, rape, forced marriages and eviction from their homes, the Moluccan people continued to suffer and yet did not receive any assistance. The Indonesian military continued to occupy Maluku, and jihad and mujahedin forces had dispersed among the population and maintained strongholds in a number of islands. Although they had officially disbanded in 2004, those forces were still committing violations of human rights and crimes against humanity, and their commander continued to call for the destruction of Maluku. Extrajudicial killings, rape, torture and kidnappings continued to take place. Her organization called on the United Nations to go on monitoring the situation in Maluku, to assist in the return of displaced persons, to call upon the Indonesian Government to cease its transmigration policy and withdraw its troops from Maluku, and to bring the Indonesian military and paramilitary forces to justice for the crimes they had committed.
3. Mr. DECAUX said that despite the reform of 2000 that prohibited the adoption of resolutions, decisions and declarations concerning specific countries, agenda item 2 remained particularly important, since it enabled the Sub-Commission to discuss human rights situations of concern, and to receive information from NGOs and hear testimony from victims. The current session was taking place at a particularly sombre moment, since international terrorism remained a permanent threat across the world, and the risk of nuclear proliferation was adding a new dimension to that challenge.

4. The crisis in the Middle East was the current focus of international attention. While the United Nations Security Council had been reaching a consensus on its resolution 1701 (2006), Lebanon had been engulfed in a cruel and unjust war. While the international community had procrastinated, the warmongers had raised the stakes and made it even more difficult to achieve a negotiated solution based on the free exercise of rights and dignity of the Palestinian people and guarantees for Israel's security within internationally recognized borders. By adopting a Chairperson's statement condemning the fate of all victims of that war and of displaced persons across the region, the Sub-Commission had appealed to the Security Council to meet its responsibilities in respect of threats to international peace and security. The statement, which had been approved by consensus, had not been tainted with the politicization witnessed at the first two special sessions of the Human Rights Council, and demonstrated that the members of the Sub-Commission could speak with one voice on human rights issues.

5. The proliferation of regional crises was overshadowing the long-term objectives towards which the international community should be working: promoting human rights education, fighting discrimination and racism, giving priority to development and international solidarity, and combating poverty and exclusion. The suspension of the Doha Round of trade talks constituted a failure of international governance, to the detriment of the weakest. Economic and social rights must occupy a prominent place in the international system. The Human Rights Council should pursue the prompt adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and encourage ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, particularly by European States. It should also establish links with the International Labour Organization and the World Trade Organization, in order for the whole United Nations system to contribute to the development of human rights.

6. The increase in crises was also making the position of human rights defenders increasingly vulnerable. The situation of United Nations humanitarian agencies in the Sudan was particularly difficult, and humanitarian NGOs were also under threat, as had recently been shown by the deaths of 17 staff members of the humanitarian organization Action contre la Faim. The situation of the Bulgarian nurses and Palestinian doctor who had been arbitrarily detained in Libya for the past seven years deserved particular attention.

7. The role of the Sub-Commission was not only to examine situations, but also to act and react. Under agenda item 2, the Sub-Commission had adopted resolutions on the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, which constituted a strong reaction to the treatment of prisoners in Abu Ghraib and Guantánamo Bay. A resolution had also been adopted on transfer of persons, following which the Council of Europe had conducted an inquiry into Central Intelligence Agency clandestine flights, secret prisons and forced transfers. In future, it would be useful if regional organizations could provide information and participate directly in dialogue with the advisory body on such issues. Despite reference in resolution 2005/1 to the complicity of medical personnel in acts of torture and ill-treatment, the Sub-Commission's annotated agenda made no mention of follow-up to that issue. Since 2005, disturbing reports had appeared in the United States press on the force-feeding of prisoners on hunger strike at Guantánamo, in particularly distressing circumstances. Medical participation in executions through intravenous injections was also controversial. The principal provisions of soft law on the issue were contained in the Principles of medical ethics adopted by the United Nations General Assembly in resolution 37/194. It

would be very useful if joint consideration of the issue could be launched in the context of the United Nations, in close cooperation with the World Health Organization, the World Medical Association - which had produced its own guidelines for physicians concerning torture in the form of the Declaration of Tokyo - and NGOs. It was necessary to determine to what extent such norms should be supplemented and clarified, and particularly how to increase their effectiveness in the light of new international instruments that had been established. The issue was a prime example of the gaps in the human rights protection system, and he hoped that the new Human Rights Council would be able to respond to the situation, through its advisory body.

8. Ms. WARZAZI said that, in the context of agenda item 2, particular mention should be made of the devotion that so many NGOs demonstrated in addressing wide-ranging situations of grave violations of human rights. Those organizations showed the will to promote humanitarian issues and never gave up, even under the most trying and discouraging circumstances. Their example should be kept in mind, particularly when considering situations of massive and deliberate violations of human rights such as had occurred over the past month, when large numbers of innocent people had been killed, injured, forced into exile and even attacked as they were leaving. Television footage had shown victims leaving their homes, comfort and families to take refuge in schools and hospitals, where medicine and food were lacking, while on the other side, those under attack were taking refuge in equipped shelters with proper medical assistance and even televisions. The reasons given to justify a month of destruction of bridges, roads, houses and even ambulances that were transporting the injured, were unacceptable. Furthermore, a United States publication had recently stated that the attack against Lebanon had been planned before the two Israeli soldiers had been kidnapped. A Moroccan journalist had observed ironically that a number of rules should be borne in mind when reporting on the current conflict, including: Palestinian and Lebanese Arabs did not have the right to kill civilians on the other side, since that constituted terrorism; Israel had the right to kill Arab civilians in “self-defence”; the Israelis had the right to abduct as many Palestinians as they wished, and they did not need to justify their actions by proving that those kidnapped were guilty of committing any crimes, but simply by saying the magic word “terrorist”; and journalists should never mention “occupied territories”, “United Nations resolutions” or “violations of international law”, since those terms could upset some readers. The journalist in question had concluded by saying that those who disagreed with those rules or considered that they favoured one party to the conflict over the other were dangerous anti-Semites.

9. The Moroccan people had condemned the brutal aggression against Lebanon, and the killings of Palestinians, including many children, under the pretext of the war on terror. Moroccan Jewish intellectuals, who could not be considered to be anti-Semites, had demonstrated their opposition to the violence, and had appealed to all Jewish Moroccans living abroad to call for an end to the Israeli attacks against Lebanon and the Palestinian territories. No policy could justify the massive violations of human rights that had been occurring on a daily basis for over a month.

10. Mr. CHEN Shiqiu said that topics related to new global trends should be selected for further study, in accordance with the central study function of the Sub-Commission. Much discussion had already taken place on the fight against terrorism and its impact on everyday life, and the Commission on Human Rights and the Sub-Commission had both made their views on the issue well known. In that regard, he considered that the Sub-Commission should not dwell on the matter any further. Although the Sub-Commission had completed a study on small arms

and their impact on human rights, it had not yet considered in detail weapons of mass destruction and their effect on human rights. Such weapons had a much greater impact than small arms, since they had the capacity to kill on a massive scale, and to destroy civilian infrastructure. Targets could be destroyed instantly, and considerable collateral damage was caused. Moreover, the materials for their manufacture, such as, depleted uranium, had a serious long-term impact on the environment. They had very accurate targeting capacity, and could be used at long range. There was no early warning regarding the use of such weapons and attacks could not be prevented. They inflicted psychological terror and devastation on the populations in whose region they were used. Such destruction led to hatred among targeted populations, which continued for generations. Reconstruction after conflicts involving those weapons was particularly difficult, and placed a severe economic burden on the countries themselves, and on the United Nations and human rights organizations. For those reasons, a study on weapons of mass destruction would be considerably more significant than a study on small arms.

11. Another important subject for study was the imposition of sanctions by the United Nations, in particular economic embargoes, which adversely affected the economic development of the country concerned, and hence its citizens' enjoyment of economic and social rights. Such sanctions had a negative impact on international relations, and should be avoided wherever possible.

12. A new phenomenon was the impact of environmental disasters on daily life and economic development. The depletion of the ozone layer had disturbed the balance of nature, leading to global warming, rising sea levels and, especially in Africa, desertification and land erosion. All such phenomena had an adverse influence on economic, social and cultural rights.

13. The Sub-Commission's successor body should establish an effective mechanism to address the problems he had mentioned, identifying new trends and new categories of human rights issues. The special advisory body would thus demonstrate the value of its expertise and its ability to complement the work of other United Nations human rights organs. If he was elected to serve as a member, he would volunteer to prepare a report on one of the issues he had mentioned.

14. Mr. SALAMA said he assumed that the expert body would be subject to the same limitations as the Sub-Commission when it came to adopting country-specific decisions or resolutions under agenda item 2. It should therefore move beyond the mere condemnation of human rights violations or situations posing a threat to human rights, and instead identify gaps in protection or monitoring, singling out a limited number of areas in which it agreed, in the light of interactive debate, that it could make a difference.

15. From a human rights perspective, there had been both positive and negative developments during the past 12 months. He would mention three of each. The first potentially positive development had been the establishment of the Human Rights Council and, in principle, the idea of a universal periodic review of Member States' human rights performance which could remedy a major shortcoming in the United Nations human rights system by ensuring equality of emphasis and avoidance of double standards. It could also make an important contribution to the progressive development of customary international human rights law and standards.

16. A second positive development was the progress made in drafting an Optional Protocol to the International Covenant on Economic, Social and Political Rights, which would help to restore the balance between those rights and civil and political rights. An expert body such as the Sub-Commission could make a valuable contribution to the complex negotiations on the text.

17. Thirdly, negotiations on the right to development had reached a crucial point in terms of identifying the criteria on which partnerships for development should be built. Twenty criteria had now been elaborated for the adoption of an operational rights-based approach to development.

18. The first negative development was terrorism. Recent political events were likely to result in a resurgence of terrorist acts and an exacerbation of the so-called war against terrorism. The Sub-Commission's studies of terrorism and human rights were of crucial importance in that context.

19. Second, it had been a difficult year for NGOs on account of the transition from the Commission to the Council, which had weakened their capacity to contribute to the work of the Commission and Sub-Commission. That situation must be remedied as soon as possible.

20. A third painful development had been the outcome of the two special sessions of the Human Rights Council on the Occupied Palestinian Territory and Lebanon. A nascent institution that was seeking to establish its credibility as a protector of human rights in the international community had failed to achieve that aim. The Sub-Commission, whose membership was no less diverse than that of the Council, had managed to comment on human rights with one voice because it had taken the time and the trouble to build unanimity. He therefore proposed that the new expert body should reflect on whether it was possible to distinguish the political dimensions of a given conflict from its human rights dimensions. In his view, there had been no fundamental difference between the majority of Council members on the human rights dimensions of the situations dealt with at the two special sessions. What divided them was the political background to the conflicts concerned. It was the moral and legal duty of the expert body to emphasize that priority should be given to a rights-based approach to conflicts and that every effort should be made to isolate the human rights dimension and to reduce the impact of politics.

21. It was important for a think tank to analyse past failures. If the two special sessions were analysed from the standpoint of potential gaps in protection and monitoring, emphasis should be placed on the relationship between international human rights law and international humanitarian law, the monitoring mechanisms for the two branches of law, the role of the media as a de facto monitoring mechanism, the role of special human rights procedures and mechanisms in armed conflicts, the role of civil society in reporting violations and supporting victims, post-conflict support for human rights NGOs, reparations and, lastly, guidelines for fact-finding commissions and commissions of inquiry.

22. Mr. KARTASHKIN said that the discussion of agenda item 2 had been restricted some years previously by the Commission on Human Rights, but the time had now come to express the Sub-Commission's position on the topics that should be considered under the item and the

kinds of measures or decisions that should be taken. In recent years, the Sub-Commission had confined itself to adopting Chairperson's statements by consensus because it had been barred by the Commission from referring to human rights violations in specific countries and hence from proposing remedies. In his view, the future expert body should develop working methods for dealing with such outstanding issues and situations. The Council would not be bound by its recommendations but could take them into account in its own decisions.

23. He therefore proposed that the Sub-Commission should make specific recommendations regarding possible approaches by its successor body to country-specific human rights violations, including racial discrimination, under agenda item 2. It should do so now, since there would be no leeway for change at a later stage.

24. Ms. Chung, Vice-Chairperson, took the Chair.

Statements in exercise of the right of reply

25. Mr. LABIDI (Observer for Tunisia), replying to a statement by Ms. Hampson at the previous meeting, in which she had expressed concern about the transfer of Mr. Adel Tebourski from France to Tunisia, his native country, said that Mr. Tebourski had served a prison sentence in France for his involvement in the murder of the Afghan leader Ahmad Shah Masood. As reported by the international press, he had been reunited with his family in Tunisia in accordance with the principle of freedom of movement and the right of return to one's own country, as enshrined in the Constitution.

26. Referring to paragraph 5 (e) of General Assembly resolution 60/251, he stressed the importance of ensuring the reliability and objectivity of information cited in support of the protection and promotion of human rights and the need to reject mendacious and misleading allegations disseminated by certain sources for suspect reasons.

27. Ms. SUTIKNO (Observer for Indonesia) referred to a statement by Ms. Hampson at the previous meeting, in which she had mentioned a survey by a local NGO alleging that prisoners in several prisons in Jakarta were being subjected to torture and ill-treatment. The Indonesian Government unequivocally rejected the use of violence or torture against detainees and had ratified the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment in October 1998. Every Government since then had promoted reforms aimed at integrating the principles embodied in the Convention into the country's social, administrative and institutional life. Respect for the human rights of all citizens, including detainees and criminals, was an essential component of training courses for the military, the police and custodial authorities and personnel.

28. The Government was therefore dismayed at the unsubstantiated allegations by the Sub-Commission expert and questioned the credibility of the NGO survey. If detainees were being ill-treated on the scale alleged, the NGO and the Sub-Commission should first inform the Government so that it could determine whether there was any basis of truth in the allegations. Indonesian prisons were visited regularly by the International Committee of the Red Cross and NGOs, presumably including the NGO in question. If an investigation concluded that abuse had taken place, the perpetrators would be brought to justice.

29. The Government would be in a better position to promote and protect human rights if it could rely on transparency, non-selectivity and an interactive dialogue with the Sub-Commission. Such an approach would strengthen the Government's good relations with the whole range of human rights mechanisms.

30. Mr. GOHYAEV (Observer for the Russian Federation), referring to a statement by Ms. Hampson at the previous meeting, said that the information provided by various sources to the Office of the United Nations High Commissioner for Human Rights, Sub-Commission experts and special procedures of the Commission on Human Rights was often inaccurate and sometimes fabricated.

31. According to the lawyer of Mr. Trepashkin, one of the persons mentioned by the Sub-Commission expert, the Russian Federation had received a number of enquiries concerning his case from special procedures, the most recent on 10 August 2006. The information to the effect that he had been denied urgently needed medical care was false. His conditions of detention were in conformity with Russian legislation and his lawyer had been given ample opportunity to confer with him.

32. The Russian Federation had also already replied to an enquiry by a special procedure regarding Mr. Adjokpa, who had been detained in connection with the sale of forged documents.

33. No enquiry had yet been received from special procedures regarding Mr. Vakhitov and Akhmiarov, but if any was, the Russian Federation would certainly respond in view of the importance that it attached to all United Nations human rights monitoring mechanisms.

The meeting rose at 11.45 a.m.