UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2006/52
23 January 2006

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
Sixty-second session
Item 11 (d) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION, OF JUSTICE, IMPUNITY

Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy

GE.06-10382 (E) 240206 010306

Summary

This report describes the activities conducted by the Special Rapporteur on the independence of judges and lawyers in 2005; a complete picture of all his activities may be obtained by consulting the other four reports submitted by the Special Rapporteur to the Commission on Human Rights at its sixty-second session, as well as the report on the situation of persons detained at Guantánamo Bay prepared jointly with the Special Rapporteur on the right to health, the Special Rapporteur on torture, the Special Rapporteur on freedom of religion or belief and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention.

The themes considered include the administration of justice and the right to the truth, the judicial authorities and justice in transitional situations and the Iraqi Special Tribunal. This report approaches the right to the truth as an independent right as well as a means of achieving the rights to information, to identity, to mourning and especially the right to justice; the report considers the right in both its individual and its collective dimension and analyses the actors and procedures required for its implementation. It deals with the issues of active legitimation for the enforcement of the right and the interaction between the courts and truth commissions. Lastly it reviews the experiences of individual countries (Argentina, Chile, Spain and Timor-Leste, amongst others) and highlights what they have in common and the lessons they have to impart.

With regard to justice in periods of transition, a non-exhaustive list is given of the categories of situations most frequently met with at present. The report highlights the central role of justice as the keystone of the construction and reconstruction of a country's institutions. It places particular emphasis on the need to ensure that the measures applied in judicial review procedures are implemented in accordance with the Basic Principles on the Independence of the Judiciary.

The Iraqi Special Tribunal has been the subject of analysis and special concern for the Special Rapporteur, who reiterates his reservations regarding its legitimacy, the restriction placed on its jurisdiction in terms of people and time, and the breach of international human rights principles and standards to which it gives rise. He suggests that the notorious shortcomings of the trial so far make it advisable to conduct it in an international tribunal with United Nations cooperation.

The conclusions and recommendations highlight the growing importance of the right to the truth and transitional justice. The international community is called upon to play a fundamental role in implementing the former and initiating the cooperation activities required during transition periods. Justice, in this context, is not only a step towards establishing the rule of law, but also a means of consolidating institutional stability.

CONTENTS

* The appendix is being circulated in the language in which it is submitted only.

Introduction

1. This is the twelfth report submitted to the Commission on Human Rights since the Commission established the mandate of the Special Rapporteur on the independence of judges and lawyers and the third submitted by the current Special Rapporteur. In his first report (E/CN.4/2004/60), the Special Rapporteur gave an overview of the activities already carried out and those planned, as well as details regarding the scope of his mandate and his methods of work. In his second report (E/CN.4/2005/60), he called for reflection on the consequences for human rights of the measures adopted by some States to combat terrorism or to deal with emergencies (states of emergency) and foresaw a need to study the challenges that face the system of justice following a conflict or an institutional crisis.

2. This report deals mainly with the right to the truth as an independent right, as well as the administration of justice in situations of transition, and reiterates observations on the performance of the Iraqi Special Tribunal. Owing to editorial limitations, the Special Rapporteur has had to postpone consideration of other important issues for a future report. Nevertheless, in the course of the year he has addressed a great variety of issues when dealing with urgent appeals, letters of allegation and press releases, either in the course of missions to countries or on the occasion of international meetings. The Commission will find food for thought on these and other issues in the various reports the Special Rapporteur is submitting, contained in the present document and in its annexes (E/CN.4/2006/52/Add.1-5). In subsequent reports the Special Rapporteur intends to address, inter alia, relevant issues related to access to justice, pressures and threats brought against lawyers, judges and prosecutors, and juvenile justice. He will also analyse in more detail the rules and principles that guarantee the protection of human rights in situations of crisis or states of emergency.

I. TERMS OF REFERENCE AND METHODS OF WORK

3. The Special Rapporteur's terms of reference fall within the Commission's work on the protection of all persons subjected to any form of detention or imprisonment. Having noted the many attacks against magistrates, lawyers and judicial staff, the Commission has become aware of the link between the weakening of the safeguards afforded to magistrates and lawyers and the frequency and the gravity of human rights violations in certain States.

4. The terms of reference include the structural and functional aspects of the judiciary and the dysfunctions which, in extremely varied contexts, may affect human rights and the administration of justice in both ordinary and exceptional circumstances or in periods of conflict and of transition. They cover both civil and military justice, ordinary and exceptional jurisdictions and developments related to the International Criminal Court. More recently, pursuant to several resolutions of the Commission, the terms of reference were extended to other issues, such as the right to the truth in the context of combating impunity (resolution 2005/66, of 20 April 2005) and transitional justice (resolution 2005/70, of 20 April 2005). Since justice lies at the heart of the democratic system and the rule of law, the independence of judges and lawyers should not be examined without taking account of the broader institutional context and the various factors that can have an impact on the functioning of the judiciary. It is therefore natural that the Commission should have asked for account to be taken of the relevant work and experience of the other procedures and mechanisms of the Commission, the Sub-Commission for

the Promotion and Protection of Human Rights and the United Nations system as a whole, as well as the following specific aspects: (a) raising awareness among judges and lawyers of the principles of human rights, impunity and the integrity of the judicial system; (b) cross-cutting issues, such as those concerning children, women and gender, disabled persons, members of national, ethnic, religious and/or linguistic minorities, or persons in extreme poverty; and (c) problems posed by terrorism in relation to the administration of justice.

5. The broad scope of the terms of reference requires choices to be made and priorities to be set. Nevertheless, the Special Rapporteur is endeavouring to move ahead on the following tasks: (a) to identify, inquire into and record any infringements of independence; (b) to record any progress made in protecting and strengthening such independence; (c) to analyse matters of principle with a view to making recommendations aimed at strengthening the independence of the judiciary and of the legal profession and at consolidating international principles and instruments in this area, without losing sight of the fact that there can be no universal model; (d) to promote consultative services or technical assistance and provide advice to interested member States; and (e) to foster activities aimed in general at furthering the independence of the judiciary and the legal profession. This document sets out the working methods used to carry out these tasks.

II. ACTIVITIES IN 2005

1. General Assembly

6. Pursuant to Commission on Human Rights resolution 2005/33 of 19 April 2005, the Special Rapporteur attended the sixtieth session of the United Nations General Assembly, from 26 to 28 November, in New York, at which he reported on his activities in 2005. During that visit, the Special Rapporteur held meetings with the United Nations High Commissioner for Human Rights, representatives of the permanent missions of Ecuador and the Netherlands and high-level officials of the United States of America, the Centre for Constitutional Rights and other non-governmental organizations.

2. Consultations

7. During his visits to Geneva in the course of the year, the Special Rapporteur held consultations with representatives of the permanent missions of Cuba, Venezuela, Guatemala, the United States of America, Kazakhstan, Hungary and Russia, and with various non-governmental organizations and United Nations programmes. From 20 to 24 June, he held consultations with officials of the Office of the United Nations High Commissioner for Human Rights in order to prepare the follow-up mission to Ecuador - which took place from 11 to 15 July - and his missions to Tajikistan and Kyrgyzstan, which were conducted from 19 to 30 September at the invitation of the respective Governments.

3. Missions and visits

8. In response to various official invitations, the Special Rapporteur visited Ecuador on three occasions in 2005: he conducted his mission from 13 to 17 March 2005; he then carried out a follow-up visit on his recommendations from 11 to 15 July 2004

(see documents E/CN.4/2005/60/Add.4 and E/CN.4/2006/52/Add.2) and on 30 November took part as a special guest in the inaugural ceremony held for the new Supreme Court of Justice. Also by official invitation, he visited Kyrgyzstan and Tajikistan from 19 to 30 September (see documents E/CN.4/2006/52/Add.3 and 4).

9. The Special Rapporteur wishes to thank the Governments that received him and also those that extended other invitations, and regrets that United Nations budgetary constraints prevented him from accepting them immediately. He nevertheless hopes to be able to make several of those visits in 2006.

10. With respect to the decision of 25 June 2004 taken by those responsible for the Commission's special procedures inviting him and other experts to visit persons arrested, imprisoned or on trial for terrorism or other alleged offences in Afghanistan, Iraq, the Guantánamo Bay Military Base and elsewhere (see paragraph 59 below), document E/CN.4/2006/120 recalls the exchanges conducted with authorities of the United States of America and the verifications and conclusions arrived at by the experts.

4. Urgent appeals and letters of allegation addressed to Governments, and press releases

11. Document E/CN.4/2006/52/Add.1 contains a summary of the allegations sent to Governments and the answers received, along with statistics for 2004 and 2005. By way of indication, the following exchanges took place between 1 January and 31 December 2005:

Urgent appeals: 69;

Letters of allegation: 16;

Press releases: 13;

Answers received: 40.

5. Cooperation with organizations and promotion activities

12. These activities appear in the appendix to this document.

6. Advisory services and technical assistance

13. On 19 May, the Special Rapporteur had a meeting in Geneva with the United Nations High Commissioner for Human Rights and the President of the International Association of Judges in order to work on a cooperation project for technical assistance provided by the Office of the High Commissioner. As expressed in the report submitted on missions to Ecuador, Tajikistan and Kyrgyzstan, the Special Rapporteur strongly recommends intensifying technical assistance for justice in those countries, and generally speaking in all countries experiencing a period of transition or institutional crisis.

III. ADMINISTRATION OF JUSTICE AND THE RIGHT TO THE TRUTH

1. Background

14. In view of its importance, it is worth noting resolution 2005/66, entitled "Right to the truth", in which the Commission on Human Rights recalls the main precedents in this area in international humanitarian law and the Set of Principles for the protection and promotion of human rights through action to combat impunity.[1] The resolution stresses the right of victims of gross violations of human rights and their families to know the truth regarding such violations, including the identity of the perpetrators and the causes, facts and circumstances in which such violations took place. It also stresses "the imperative need" for this right to be recognized within each State's domestic legal system. Lastly the resolution requests the Office of the High Commissioner to prepare a study on the right to the truth and invites special rapporteurs and other mechanisms of the Commission to take the issue into account. Based on this request, the Special Rapporteur devotes this section of his report to the right to the truth. As in the context of the general study requested by the Office of the High Commissioner, he deals only with the aspects most directly related to his terms of reference.

15. The right to the truth was clearly identified in the rules of international humanitarian law (in particular those concerning the obligation for States to search for persons who have disappeared in the course of an armed conflict), and later took shape in articles 32 and 33 of Protocol I Additional to the 1949 Geneva Conventions relating to the Protection of Victims of International Armed Conflicts. A further similar development occurred more recently in the field of international human rights law, where this independent right appears in association with other fundamental human rights such as access to information, the right to identity (in the case of children) and especially the right to justice.

16. It may be pointed out that these developments occurring in the two branches of public international law have been complementary and in no way opposed to each other, to the extent that the jurisprudence which is evolving on a national [2] and international level,[3] identifies the right to the truth as an international norm of *jus cogens*. That was a conclusion reached as far back as in 1995 by the Special Rapporteur, acting in the same capacity with respect to the protection of human rights in states of emergency. Following a meeting of experts on "Rights not subject to derogation during states of emergency and exceptional circumstances", the Commission on Human Rights had before it the Special Rapporteur's eighth annual report, which referred to the conclusions of that meeting. The report explained why the right to the truth is untouchable and non-derogable; it retraced the developments in jurisprudence and asserted that "the opinions of the pertinent United Nations rapporteurs evidence the existence of a rule of customary international law".[4]

2. Relation between the right to the truth and the right to justice

17. Without overlooking the many aspects inherent in the right to the truth, for both editorial reasons and others specifically related to the Special Rapporteur's terms of reference, the right to the truth will be approached both as an independent right and as a means of implementing another fundamental human right, which is the right to justice. In the implementation of the right to the truth, the right to justice plays a prominent part, since it ensures a knowledge of the

facts through the action of the judicial authority, responsible for investigating, evaluating evidence and bringing those responsible to trial. The right to justice in turn implies the right to an effective remedy, which means the possibility of claiming rights before an impartial and independent tribunal established by law, while ensuring that perpetrators are tried and punished in the course of a fair trial, and it entails fair compensation for victims. So from the point of view of the right to justice, truth is both a requisite for determining responsibilities and the first step in the process of reparation. Due legal process is the means of attaining the lofty values of truth and justice. From this point of view, the independent and impartial administration of justice is an extremely valuable tool for achieving the right to the truth.

18. If it is accepted that, on a domestic level, the essential elements of the right to justice include those outlined above, it is worth noting that international jurisprudence has given a precise definition of the requirements of each of its components. For example, the Inter-American Court of Human Rights extended the obligation of the State to the requirement that it must "remove all factual and legal obstacles that may impede complete judicial clarification of the violations".[5] In view of this obligation to investigate, in cases of gross human rights violations "rules allowing amnesty, limitation or the establishment of derogations from responsibility are unacceptable" and "no act or provision of domestic law may be used to justify the failure to meet this obligation". This jurisprudence is significant insofar as it crystallizes earlier guidelines which were gradually taking shape with regard to enforced disappearance, but which, as this judgement shows, are now being applied to other gross human rights violations such as summary executions. The Human Rights Committee refers to "enforced disappearances *and other attempts on the right to life*". The African Commission on Human and Peoples' Rights has established in several judgements that an effective, independent and impartial investigation must be conducted in all circumstances.[6] For its part, the European Court has found that any person who has suffered torture or other cruel, inhuman or degrading treatment is entitled to "effective remedy and investigation and to be informed of the results".

19. The binding force of these principles is derived from the legal continuity of the State, whereby the latter's obligations extend to subsequent governments, even though they were not responsible for the violations in question.[7] Taking account of the seriousness, the State's obligation "duly to investigate and if necessary punish those responsible must be conducted diligently in order to avoid impunity or any recurrence of such cases".[8] In this way, the reparation of victims should not be seen as a merely compensatory and individual act. The social projection derived from the State's obligation to avoid any recurrence shows once more the public order character of human rights violations and the legitimacy of society's reaction to them. This illustrates the consubstantial link between the right to the truth and the right to justice and the difficulty in ensuring the former without effective exercise of the latter. The right to reparation can hardly be fully realized without this vital component, which is the right to know the truth.

20. The links between the right to the truth and the right to justice are of many kinds and in many cases inescapable, as illustrated by the decision of the Human Rights Committee in 1983 when it stated that the fact of not informing a mother about the situation of an adult daughter who has disappeared after being detained - by Uruguayan military personnel in the Venezuelan Embassy in Montevideo - not only violates her rights but constitutes an act of psychological torture.[9] In the case concerned, the failure to respect the right to the truth through the courts,

since several successive habeas corpus applications had been rejected, led to a new violation, namely torture, which also required judicial proceedings for its cessation and reparation.

21. States have a positive obligation to provide both judicial and extrajudicial means of knowing the truth. This obligation extends beyond the strict requirements of the rule of law insofar as it is derived also from the ethical and moral framework of any society, since a knowledge of the truth, apart from being a right, is the only solution to restoring the dignity of persons who have been victimized. Apart from being unjust, it would be immoral for those who have perpetrated the most bloody violations of human rights to be in a position to vouch for the facts, without the victims participating. According to Principle 6 of the Updated Set of Principles, investigations undertaken by truth commissions in recognition of the dignity of victims and their families should be connected with the object in particular of securing recognition of such parts of the truth as were formerly denied. Many peace agreements provide that the truth commissions must establish rights violations committed by the State, as well as by armed groups and other non-State agents.

22. These advances of a cultural nature add legal support to the statement that: "Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations" (Principle 2). In addition: "A people's knowledge of the history of its oppression is part of its heritage, and, as such, must be ensured by appropriate measures […] aimed at preserving the collective memory" (Principle 3). In this sense, the right to the truth implies somewhat more than the right to justice, since it includes a duty of memory on the part of the State. The latter duty confirms the social and collective dimension of the right to the truth while giving victims and their families an imprescriptible right to know "the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate" (Principle 4).

23. Although the right to the truth is often referred to as the "right to know" or the right "to be informed", as is the case in the Commission's resolution 2005/66, there is still a need to spell out its different components. Although the right to the truth is often ensured through freedom of opinion, expression and information, especially in common law countries which have a long tradition of respecting freedom of expression and information, the fact that these freedoms may be subjected to certain restrictions, even in ordinary situations, establishes marked differences. It would be illogical to accept that for public order reasons a State may suspend rights and guarantees - including the right to the truth - thereby jeopardizing untouchable rights such as the right to life or to the physical and moral integrity of persons. The differences between these two undoubtedly widen as we enter situations in which the nature of the crimes and the rights affected renders the right to the truth untouchable and confers on the obligation the character of *jus cogens*.

24. In effect, the freedoms of opinion, expression and information, as referred to in the International Covenant on Civil and Political Rights (art. 19), may be subject to certain restrictions, for instance for the protection of national security or of public order or others, even in ordinary circumstances. The right to the truth, on the contrary, remains as we have seen untouchable even in exceptional circumstances, when the protected or underlying right is also

an untouchable or non-derogable right. Article 20 of the draft international instrument against enforced disappearances establishes that the right to a prompt and effective remedy "may not be suspended or restricted in any circumstances".

25. It is established in the jurisprudence that, in situations of emergency, the non-derogability of certain rights also covers the guarantees needed to ensure the exercise thereof. If so, the right to the truth may be associated with the habeas corpus or *amparo* guarantees, for example, which if denied may affect untouchable rights which may not be suspended, such as the rights to life and to physical and moral integrity, amongst others.

26. It is important that this reasoning should be applied to special circumstances in which, on grounds of national reconciliation, measures are adopted (such as amnesties) which deny the exercise of the right to the truth through the courts, supposedly in order to consolidate peace and institutional stability. Nevertheless, if the right to the truth is untouchable even in exceptional circumstances, it must even more so be considered untouchable when the emergency is over and the country enters a process of transition.

4. How is the right to the truth exercised?

27. In addition to drawing attention to the individual and collective dimension of the right to the truth, it is very important to determine the actors and procedures required for its realization, that is, to establish which persons are entitled to take legal action and what other procedures may be applied to achieve that result. We refer in particular to the commissions of inquiry, normally known as truth commissions. In this sense, it is often said that the right to the truth is the collective expression of the right to know, and that distinguishing between a general truth and an individual truth is a way of obtaining full knowledge of what occurred, and of distinguishing between individual cases of violations and the system of repression itself.

5. Who can exercise the right to truth?

28. It is usually held that both the victims and their relatives enjoy *locus standi*. In this respect, both the Working Group on Enforced or Involuntary Disappearances and the Inter-American Commission on Human Rights have found that the relatives or dependants of the disappeared person are also victims.[10] What is sure is that at both national and international level there has been a growing admission of actors who in the past were not entitled to lodge complaints. The reason for this opening is that gross human rights violations are breaches of the public order which affect society as a whole, so that any member of society should be entitled to take legal action. This tendency has been taken up in the recent draft convention on enforced disappearances, which extends the notion of victim to any physical person who has suffered harm as a direct result of an enforced disappearance. It confers, moreover, on *any person having a legitimate interest* the right to know the truth about those responsible for and the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. The draft also makes provision for the obligation to ensure effective remedy as a means of obtaining the necessary information and it stipulates that, once the committee has been set up under the convention, it may deal with requests submitted by family members, relatives and legal representatives, as well as by any person having a legitimate interest.[11]

29. The former Principle 19 of the Updated Set of Principles (former Principle 18) states that the right to institute proceedings as *partie civile* "should be extended to non-governmental organizations", while the recently revised version of the Principles adds that "States should guarantee broad legal standing in the judicial process to any wronged party and to any person or *non-governmental organization* having a legitimate interest therein". On a regional level, article 44 of the American Convention provides that any legally recognized person, group of persons or *non-governmental entity* may lodge petitions with the Commission even though they are not victims.

30. A growing number of countries are now admitting that parties having a "legitimate interest" should appear as private complainants in criminal proceedings in which they are not victims. These countries, for example, include France, Spain, Portugal, Guatemala and Belgium. Also in the national context, but in another sense, the right to the truth is confirmed in its collective dimension when it is identified as the right to memory to which any society is entitled. For example, the Constitutional Court of Peru has stated that "the Nation has the right to know the truth regarding unjust and painful facts and events caused by the many forms of State or non-State violence" and that "*the violation of the right to the truth is a matter which affects not only the victims and their relatives but the Peruvian people as a whole*".[12] The Constitutional Court of Columbia, moreover, has found that there are punishable acts with respect to which the interest of victims and injured parties in knowing the truth and establishing responsibilities is projected onto society, and that "in cases of punishable acts that involve gross violations of human rights and international humanitarian law and a serious threat to collective peace, (…) society - acting through a social representative - must be able to take part as *partie civile* in criminal proceedings".[13]

31. As confirmed by the study undertaken by the Office of the United Nations High Commissioner for Human Rights, the experience of many other countries, such as Cambodia, Chile, Timor-Leste, Burundi and more recently Morocco, shows just to what extent the search for the truth has gained weight over time. Argentina, Chile and Spain follow the same trend. In Chile, first the Rettig Commission and later the Commission on Torture, which completed its work in 2004, opened the way to revelations regarding the truth about events that occurred during the Pinochet dictatorship (1973-1990), and further action was determined only once the investigation was completed.

32. Argentina, following a long and bloody dictatorship (1974-1983), began a process of transition in which one of the most noteworthy features was the effort to combat impunity, considering that it led to: (a) the abrogation of a law of self-amnesty which prevented the perpetrators of gross human rights violations from being brought to trial;[14] (b) the establishment of a truth commission, the National Commission on Enforced Disappearance of Persons (CONADEP), which contributed valuable data for the subsequent investigations of the courts; and (c) the conviction by civil courts of top military staff of the de facto government. Subsequently, two amnesty laws[15] restricted the jurisdiction of criminal prosecution and on 7 October 1989 and 30 December 1990 the military who had been sentenced and many others awaiting trial for equally serious offences received pardons. Nevertheless, before then significant advances were made in terms of recovering disappeared children, who had either been detained with their parents, or had been born in captivity, which led to the trial of many of

those responsible for repression, thanks to the fact that neither the amnesty laws nor the pardon covered responsibility for the abduction of children and the alteration of their civil status. Another significant step forward was the recognition of the right to identity as expressed in article 8 of the Convention on the Rights of the Child, which allowed many children to be recovered and led to a major scientific advance in terms of DNA testing.

33. In view of the obstacles to justice implied by those two laws and the pardon, relatives and victims appealed to international organizations, which declared the amnesties and pardons to be incompatible with international human rights treaties and requested successive Argentine governments to annul them, since they prevented clarification of the facts and the identification of those responsible. This led to the adoption of a series of national measures which opened the way to legal proceedings, which although they were conducted in criminal jurisdictions, lacked a punitive purpose.[16] Generally known as "truth-finding proceedings", these actions were very important because they allowed the investigation of over 100 cases and the identification - in one case alone - of 35 disappeared persons; they are still useful at present, as shown by the criminal cases which are being reopened. But meanwhile the human rights organizations continued their work and, on 17 April 1998, the National Congress abrogated the "*Punto Final*" and "Due Obedience" Acts. These laws ceased to apply only in the future, but on 3 September 2003, Act No. 25779 declared them null and void. Subsequently, on 14 June 2005, the Supreme Court confirmed that they were null and void and unconstitutional, on the grounds amongst others of a breach of international treaties that recognize no time limitation for crimes against humanity and confer on the obligation to try this type of crime the status of a rule of *jus cogens*.

34. Spain has its own characteristics, since it consolidated its democracy by means of a national pact based on a general amnesty, which circumvented the two aspects we have just been reviewing, namely justice and truth. Nevertheless, it is not surprising if, apart from the notorious achievements of the episode known as the Transition, 30 years after the death of General Franco many sectors of Spanish society are still wanting to know basic aspects of that period of national history. Considering that Spain has played a very significant part in combating impunity in the world, and that Spanish judges have initiated some spectacular precedents, as in the Pinochet case, the Special Rapporteur will be interested to know what measures are proposed by the inter-ministerial commission, chaired by the Vice President of the Government, which was set up in 2004 to study the situation of the victims of the Civil War and the Franco era. Complainants want to know the fate of thousands of disappeared persons and to restore the honour of those who were tried by special courts in the course of extremely summary proceedings devoid of the most elementary guarantees.

6. Interaction between the courts and the truth commissions

35. The obligation on the part of States to ensure the right to the truth includes ensuring the independent and effective operation of the judiciary to give it effect. In this respect, Commission on Human Rights resolution 2005/66, apart from encouraging States to establish specific judicial mechanisms, where appropriate, encourages the establishment of truth commissions *to complement the justice system*.

36. The experience gained by States shows how important it is to institute different mechanisms which are complementary. This may be illustrated with two examples. Initially a commission may be instructed to establish the facts and the repressive methods applied and to

prevent the disappearance of evidence; subsequently it will be up to the courts to undertake whatever legal proceedings are necessary. One example of this is the way the CONADEP has operated in Argentina. Another example is where the commission and the judicial system work hand in hand, simultaneously, assisting each other in dealing with cases according to their seriousness. This complementary approach is essential whenever the courts would reach saturation if required to investigate all the violations which occurred in the past, as in the methodology applied in Timor-Leste. The study carried out by the Office of the High Commissioner reports on the rich diversity of experience in this field.[17]

37. Despite the above comments, however, it is worth mentioning that both the international texts and the leading jurisprudence make it quite clear that resorting to commissions should in no way impede the functioning of conventional justice[18] and that it is not a substitute for the States' obligation to bring those responsible for human rights violations to trial.[19] In practice, the countries' experience of the last two decades shows that in many cases the commissions have recommended initiating investigations or legal proceedings about the facts set out in their reports and that usually they hand over whatever evidence has been collected to the prosecutors or to the courts.

38. In order to preserve the independence of the judiciary, the proceedings of the courts and those of the truth commissions must be coordinated. The latter must remain organically speaking on the fringe of the judiciary, which must conduct its activities without impediments, in order to judge and punish those responsible for human rights violations. The obligation on the part of States to ensure effective remedy - as required by article 2 of the International Covenant on Civil and Political Rights - also implies that the judiciary must act independently of the truth commissions (which are normally set up within the ambit of the legislative and executive powers). The Human Rights Committee has established that administrative and disciplinary appeals cannot be considered adequate and effective remedies, not even in states of emergency. The Committee against Torture, moreover, has stressed that the State's treaty, customary and non-assignable duty to investigate, prosecute and punish the perpetrators of gross human rights violations must be conducted through the courts and obliges the judiciary at times to act independently of the position adopted by a particular commission and at other times to make use of the commission's findings.[20]

39. The above considerations would suggest that the truth commissions should be looked upon as a tool which is complementary to action in the courts and even when immediate court proceedings are impossible, they should not be excluded as a solution, since over time conditions can change and the reports of commissions can take on a decisive legal effect.

IV. THE JUDICIARY AND JUSTICE IN A PERIOD OF TRANSITION

1. Background

40. In his previous report, the Special Rapporteur addressed the issues of the fight against impunity, the reconstruction of the judiciary and compensation for victims of human rights violations, especially in the case of exiles, while expressing an interest in looking into this matter in more depth on a future occasion.

41. In the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies,[21] submitted to the Security Council on 25 August 2004, the Secretary-General drew attention to the magnitude of the task facing the United Nations in its efforts to offer and consolidate an institutional framework providing the judiciary with the necessary tools to operate within the context of increasingly frequent peacekeeping operations, which nowadays systematically include programmes intended to further the administration of justice.

42. Commission on Human Rights resolution 2005/70 emphasized the problems of transitional justice and called upon the various components of the system, especially those involved with human rights, to cooperate in this area. In this respect, the present report aims to contribute some elements of analysis in order to enable the international community, and especially the United Nations, to provide a suitable response to the need for cooperation that arises in this type of situation involving a considerable number of States.

43. The notion of transitional justice is a very broad one, as it arises in a variety of situations and institutions, so that it is worth trying to work out methodological considerations that offer a more precise and practical framework of analysis.

44. Without wishing to draw up an exhaustive typology, it may be said that the experience of the last two decades shows that the situations which occur most frequently nowadays may be classified into at least three categories: (a) States which have or have had an institutional system structured on the basis of the division of powers and which, through various historic circumstances, have been seriously affected, as occurred in the countries of Latin America during the 1970s, when military dictatorships and authoritarian governments concentrated total control of the State in the executive; in these cases, the question of justice was one of the fundamental factors as far as institutional reconstruction was concerned; (b) States experiencing a similar though not identical problem, which have emerged from a situation of authoritarian government but in whose traditional institutional model the division of powers was never clearly practised and the judicial power was more appendent to the political power; the Special Rapporteur's reports on his missions to the former Soviet republics of Central Asia illustrate this type of transition; (c) countries where the State is practically non-existent or has been largely destroyed as a result of an international armed conflict or a civil war; this category might be illustrated by the situation in Afghanistan or Somalia. Identifying these categories, of course, does not imply overlooking the fact that, in certain situations, factors of an ethnic, religious or tribal origin may exert a strong influence on the administration of justice and operate as a differentiating or aggravating circumstance, amounting in some cases to a category on its own.

45. In all the above categories, the problem arises of coping with the consequences of the past and the Governments concerned face the difficult dilemma of deciding how far they can go in judging the past without the risk of compromising the future. Nevertheless, each of the categories tends to evolve differently. The first of them is where the greatest effort has been made to deal with the problem of the right to the truth, the fight against impunity, punishment and reparation for victims, alongside institutional reconstruction. In the second category, on the

other hand, it is clear that, while they are not totally absent, these concerns appear blurred and efforts are concentrated on designing a new architecture of the judiciary which can meet the requirements of independence both in its structure (particularly with regard to appointment) and in its mode of operation, which involves dismantling the repressive arsenal underlying the system. Because of the particular characteristics of this category, the emphasis is placed on tailoring an independent professional profile for all the actors involved in the machinery of justice. In the third category, it is a question not so much of restoring the judiciary as of creating one or reconstructing it from scratch. The Special Rapporteur on the situation of human rights in Afghanistan pointed out that, following the dismantling of the Taliban regime, while the objective was to build a properly institutionalized lay and judicial system, the transition also gave rise to a need to establish a provisional strategy for the administration of justice, while taking due account of tradition.

46. The studies carried out by the United Nations, especially the Office of the United Nations High Commissioner for Human Rights, concerning the best practices derived from experience and the knowledge acquired by a large number of States and by the United Nations in the context of peacekeeping operations, contain some very valuable lessons regarding a broad spectrum of situations, which can serve as useful material for meeting future challenges. The experiences of Angola, Timor-Leste and the Congo illustrate this dual challenge of wanting to apply past lessons learnt while at the same time discovering new ones as they appear.

47. It may be pointed out that beyond the diversity of situations, these transition processes have in common the central, leading role of justice as the keystone of the institutional construction or reconstruction of a country. The establishment of the rule of law with a democratic base is a precondition for building a lasting peace and avoiding sliding back into the situation where abuses occurred.

48. In the Special Rapporteur's view, one should not attribute a separate category to situations where the reforms of justice, even though they imply major structural modifications, are conducted through institutional mechanisms provided for that purpose within the legal system. In this sense, the response to the judicial crisis in Ecuador could be one such case, since the appointment of a new and independent Supreme Court was arrived at through normal democratic institutional mechanisms, even though the crisis led to the replacement of a constitutional president.[22]

49. It is hardly worth pointing out that the fact that the country does not strictly fit into any of the three above categories does not guarantee that its system of justice works properly. In a great many cases, anomalies in the functioning of the judicial system can occur - and in fact do occur - in periods of normality. We have distinguished those categories with the objective of setting out guidelines that can be used to deal with the different circumstances that arise and to respond to the need to undertake the necessary reforms, despite the obvious diversity of possible cases. At any event the reforms must be supported by the axiological foundations of justice on which the judicial system that expresses them rests.

2. Problems identified in relation to the judiciary

50. One feature which all transition processes have in common is the need to recover public trust in the system of justice, and this is directly related to the degree of integrity prevailing in the administration of justice. This is particularly important when broad sectors of the judiciary were directly involved in the former system or else ceased to fulfil their obligations for fear of reprisals. While it is not possible to follow a single approach to the issue of institutional renewal and while it is advisable to identify the specific requirements and the resources available, it is feasible to work out a set of principles and guidelines that pursue a triple objective. Firstly, the magistrates and judicial staff who were involved with the former system must be removed from the judiciary. Secondly, magistrates must be protected from arbitrary interference and from drastic, indiscriminate measures. Lastly, it must be ensured that the magistracy makes up a homogeneous body, of proven integrity and acknowledged irreproachable conduct.

51. The Updated Set of Principles for the protection and promotion of human rights through action to combat impunity[23] establishes certain restrictions on the principle of the irremovability of judges in cases where these have been unlawfully appointed or derive their judicial power from an act of allegiance, and stipulates that they may be relieved of their functions by law in accordance with the principle of parallelism. At the same time they must be provided with an opportunity to challenge their dismissal in proceedings that meet the criteria of independence and impartiality with a view to seeking reinstatement.

3. Legal and doctrinal bases

52. When a peace process is initiated, special attention must be paid to the judiciary when implementing administrative measures aimed at establishing responsibilities, while the conduct of the members of that judiciary must be measured against human rights standards, any past history of corruption, professional training and qualifications and their attitude to the peace process. Sometimes, for the sake of combating impunity, it may be necessary to limit and restrict certain rules of law relating to the statutory limitation of offences, due obedience, the right to asylum and the actual irremovability of judges.[24]

53. The texts that stress the advisability of expelling officials involved in serious human rights violations from the civil service do it for a preventive purpose and in order to avoid any recurrence. Thus, in accordance with the aforementioned Principles, “public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, shall not continue to serve in State institutions” (Principle 36 of the Updated Set of Principles). All this has been confirmed in the jurisprudence and the Human Rights Committee has stated, for instance with respect to Argentina and Bolivia, that those countries should abide by this principle. The Inter-American Court of Human Rights adopted the same view in the *Velásquez-Rodríguez* case.

4. Judicial Renewal

54. The task of judicial renewal may be approached in different ways, but in all cases with due regard for the Basic Principles on the independence of the judiciary. Among the measures

available within the two major operational categories (**review or reassignment**), the more advisable course of action in the Special Rapporteur's opinion is **review**. The main difference between the two is that while "reassignment" presupposes the entire removal of the personnel affected and the obligation to reapply, "review" implies undertaking an individualized analysis and ensuring that any appeals are filed before a higher body, in accordance with paragraph 20 of the Basic Principles, according to which "decisions in disciplinary, suspension or removal proceedings should be subject to an independent review". The Special Rapporteur would stress that in a case where the situation is so serious that reassignment is the only course of action left, it is advisable to undertake it through an independent mechanism made up of qualified persons of recognized moral authority and, if possible, with the support of an international institution supervising the proceedings.

55. In the second place, the various measures which may be applied in review proceedings, such as expulsion, temporary suspension, demotion, geographical relocation or the withdrawal of benefits and merits, should be implemented in accordance, amongst others, with paragraphs 17 to 20 of the Basic Principles concerning discipline, suspension and removal. The first of those stipulates that any charge made against a judge in his/her professional capacity shall be processed expeditiously under an appropriate procedure. The Principles later assert that judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties, while all disciplinary, suspension or removal proceedings must be determined in accordance with established standards of judicial conduct, subject to appeal. In this respect, any action must abide by the general premise established in paragraph 17, which imposes an obligation on the State to respect the independence of the judiciary, bearing in mind that the main objective of the Principles is to preserve the independence of the judiciary, for which it offers sectoral guidelines.

V. IRAQI SPECIAL TRIBUNAL

56. This has been the subject of analysis and special concern for the Special Rapporteur since 10 December 2003 when the Statute of the Iraqi Special Tribunal (IST) was adopted and throughout its development. Already in his reports to the Commission and the General Assembly in 2005, he had the opportunity to express his reservations regarding the legitimacy of the tribunal, its limited competence in terms of people and time[25] and the breach of international human rights principles and standards to which it gives rise. But beyond these serious objections of a legal nature, to which should be added the possibility that the death penalty might be applied, the Special Rapporteur has observed the terrible conditions in which the trial has been taking place and in particular the climate of insecurity in the country, which in turn has affected its development.

57. The level of violence is such that one of the judges and another five candidates for the post have been assassinated. The same fate was met by one of the defence lawyers of Saddam Hussein on the day after the trial began; on 8 November 2005 another defence lawyer was murdered and in the course of the same attack a third one was wounded. Pressure has grown for the trial to be removed from Iraq. The protests of non-Iraqi lawyers have increased, and they maintain they are not allowed enough time to put forward their pleas. All this led at

the beginning of December 2005 to the temporary suspension of the trial, to the withdrawal and return of the defence team, to the absence of the main person accused and to the possibility that the trial might be continued behind closed doors.

58. Although it is generally agreed that Saddam Hussein should be tried for the atrocities committed, what is needed is an institution which has the material capacity to do so, which respects international human rights standards and which offers the necessary security guarantees, and this is obviously not the case at present. The experience of the various international tribunals established by the United Nations shows that there are alternatives to the IST, even within the Organization, since the trial of the former dictator and his collaborators can offer a valuable model for combating impunity, provided that the rules of due process are respected and that the community at large understands that it is a real act of justice and not the verdict of the victors over the vanquished.

VI. THE FIGHT AGAINST TERRORISM AND ITS IMPACT ON HUMAN RIGHTS: REPORT ON THE SITUATION OF PERSONS DETAINED AT GUANTÁNAMO BAY

59. With regard to the activities conducted by the Special Rapporteur, together with the Special Rapporteurs on the right to health, on the question of torture, on freedom of religion or belief and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, in accordance with the decision adopted in June 2004, repeated in June 2005, by the special procedures mandate holders, for visits to take place to detention centres of the United States of America in Guantánamo Bay and of the Coalition in Iraq and Afghanistan, the special report prepared by the four experts is submitted and distributed as document E/CN.4/2006/120.

VII. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

60. The right to know the truth emerged in international law as a response to the traumatic impact of profoundly significant social events, such as armed conflicts or gross human rights violations. Subsequently the issue evolved in several directions, but its recognition was invariably linked to “gross human rights violations”, “serious violations and crimes of international law”, or “large-scale and systematic violations” of human rights. At any event, owing to the heinous nature of the crimes involved, this right extends beyond the victims (individual dimension) to society as a whole (collective dimension). In the last resort, the main reason for reconstructing past events is to avoid their recurrence in the future.

61. A particular feature of this right, which is based on treaty and customary law, is that it is both an independent right on its own and the means for the realization of other rights, such as the right to information, to identity, to mourning and especially the right to justice. It is in fact fully complementary with the latter right, since truth is a component of justice and justice has the duty to establish the truth, both in order to realize the right to the truth and in order to fulfil the right to justice.

62. The importance of the effects implied by this right and the fundamental nature of the rights affected, such as the right to life or to physical and moral integrity, give it its qualities of being inalienable, as well as non-derogable and imprescriptible.

63. The positive obligation of States to facilitate the administration of justice is founded on the right of every individual to effective remedy before an independent, impartial tribunal established by law. This obligation extends even to subsequent governments even though they were not responsible for violations, and in the case of serious offences under international law (such as enforced disappearance or crimes against humanity) there is no legislation or provision of domestic law which may justify the failure to implement it. Hence in the case of this type of crime, amnesty laws are compatible with international law only to the extent that the States have previously given effect to the right to justice and respect the right of victims to reparation.[26] This latter consideration reinforces the argument that national amnesties cannot invalidate the competence of bodies set up to judge crimes against international law.

64. The search for the truth, whether through commissions of inquiry or judicial proceedings, even when these do not pursue a punitive objective, has meant a great step forward and has played a very important part as far as the realization of the right to the truth is concerned. As pointed out in the report, the latter right may be fulfilled not only through judicial proceedings but also through the establishment of so-called truth commissions and other mechanisms which in most cases have been complementary to and supportive of the action of the courts.

65. The experience of recent decades (as illustrated by the study carried out by the Office of the High Commissioner for Human Rights) where the right to the truth is concerned shows just how far this right has progressed over time. The examples considered in the report show that most of the negative factors opposing the right tend to be either political or circumstantial. It is also becoming increasingly hard to imagine a society that accepts to be deprived of the knowledge of vital aspects of its own history.

66. In view of the inexorable nature of knowledge of the truth, it may be said from a historic perspective that truth, justice and reparation are fundamental components of a democratic society, and that, far from weakening it, they nourish and strengthen it. Thanks to its legal, sociological and historical origins, the right to the truth may be seen as one of the main conquests on the human rights movement in the twentieth century.

67. The cooperation activities undertaken in the general area of what is known as “transitional justice” constitute one of the most important challenges facing the international community, in view of the very large number of countries affected by this condition and the negative consequences which a return to the former situation would entail.

68. Although the situations are very varied, one feature they share in common is that in all cases the consolidation of justice is playing a decisive role in the reconstruction and stability of the institutional system.

69. The Special Rapporteur welcomes the General Assembly's decision to establish a Peace-building Commission in order to assist countries emerging from conflict situations and to contribute to their recovery and reconstruction.

Recommendations

70. **In view of the importance acquired by the right to the truth, the Human Rights Council should deal with it separately, studying it in more detail and developing its potential as a tool for combating impunity. Criminal proceedings, in dealing with such serious crimes, act as an opportunity for reaffirming fundamental values, since, in addition to their punitive purpose, they can offer the public valuable lessons.**

71. **The Special Rapporteur invites the Human Rights Council to facilitate the adoption and ratification as soon as possible of the International Convention on the Enforced Disappearance of Persons and the implementation of the Set of Principles for the protection and promotion of human rights through action to combat impunity. He also requests the Secretary-General to ensure that due account is taken of the right to the truth in peacekeeping operations and in the Organization's other activities, and that the various special procedures of the United Nations should also do so as part of their mandates.**

72. **On a national level, the Special Rapporteur recommends that official cooperation mechanisms should be established between truth commissions and the tribunals, before they begin to operate. There should be an agreement on ways of sharing evidence, on the value attached in the courts to self-accusing testimonies given before the commissions and, among other aspects, on ways of combining common programmes for the protection of witnesses.**

73. **The Special Rapporteur requests the States and international organizations to extend procedural legitimacy in cases involving the right to the truth to all persons and organizations which have a legitimate interest.**

74. **With respect to the specific problems of magistrates and judicial staff, the contribution of international associations of judges and magistrates, who possess considerable experience in this area and have proved their great availability and effectiveness in the tasks entrusted to them, should be deliberately incorporated through international cooperation. Perhaps the time has come for the job of advising the judiciary to be left in the hands of the latter's members and for international organizations to undertake the noble task of facilitating this development.**

75. **The Human Rights Council should examine this issue in the light of its many aspects and should coordinate the activity of the many actors concerned.**

76. **The experience of Ecuador shows the positive effects which may be produced, especially in a situation of crisis, by appropriate, timely coordination between the activities of special rapporteurs and the Office of the High Commissioner and those of other international actors interested in promoting the consolidation of institutions and**

governance. In this case, the inclusion of judges from other countries as part of the international supervision of the election of the Ecuadorian Supreme Court had a decisive effect.

77. **The notorious shortcomings apparent in the trial of Saddam Hussein and his main collaborators and the climate of insecurity in which the trial is being conducted make it advisable to transfer the trial to an international tribunal with United Nations cooperation.**

Notes

[1] The Set of Principles for the protection and promotion of human rights through action to combat impunity was prepared by Mr. Louis Joinet (E/CN.4/Sub.2/1997/20) and updated by Ms. Diane Orentlicher (E/CN.4/2005/102/Add.1).

[2] See ruling of the Supreme Court of Argentina. Case No. 17768 of 14 June 2005.

[3] In its decision on cases Nos. 1/1988, 2/1988 and 3/1988, of 23 November 1989, the Committee against Torture pointed out that the obligation to investigate, prosecute and punish those responsible for gross human rights violations, whether based on treaty or customary law, cannot be delegated by the State. In an international context the expressions "inalienable" or "imprescriptible" right are more often used (Joinet's first and third principle and Orentlicher's second). The same terminology appears in national use, where the right to the truth is considered an "inalienable collective good" (Constitutional Court of Peru, Order No. 2488-2002-HC/TC of 18 March 2004, No. 8); "the inalienable right of each person to know the truth" (Argentine Federal Judiciary, case No. 6681).

[4] See document E/CN.4/Sub.2/1995/20, annex I, paras. 39 and 40.

[5] Judgement in the case of the Maripirán massacres in Colombia, of 17 September 2005.

[6] Case of *Amnesty International v. Sudan*, communications Nos. 48/90, 50/91, 52/91, 89/83 (1999), para. 54. See also the Principles And Guidelines On The Right To A Fair Trial In Africa, Principle C [African Union, document DOC/OS (XXX) 247].

[7] *Velázquez/Rodriguez* case, Inter-American Court of Human Rights.

[8] Ibid.

[9] *Quinteros v. Uruguay*, case No. 107/1981.

[10] Report of the Working Group (document E/CN.4/1990/13), para. 339; and Annual Report of the Inter-American Commission on Human Rights - 1978 (OEA/SER.L/II.47, Doc. 13, Rev. 1), 29 June 1979, p. 23.

[11] Document E/CN.4/2005/WG.22/WP.1/Rev. 4.

[12] Constitutional Court of Peru, decision No. 2488-2002-HC/TC of 18 March 2004, number 8.

[13] Judgement of the Constitutional Court of Columbia, No. T-249-03, of 20 January 2003, number 16.2.

[14] Act No. 23040 of 29 December 1983 abrogating Act No. 22924 of September 1983.

[15] Act No. 23492 (*Punto Final*), of November 1986, and Act No. 23521 (*Due Obedience*) of June 1987.

[16] Argentine Federal Chamber, case No. 761 of 4 March 1996.

[17] Document E/CN.4/2006/91.

[18] Report on the question of the impunity of perpetrators of human rights' violations (civil and political), prepared by Mr. L. Joinet (E/CN.4/Sub.2/1997/20), paragraph 7, and Principle 8 of the Updated Set of Principles (note 1 above).

[19] Inter-American Commission on Human Rights, report No. 28/92, cases Nos. 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311 (Argentina), 2 October 1992, para. 52; Inter-American Commission on Human Rights, report No. 36/96, case No. 10.843 (Chile), 15 October 1996, para. 77; Inter-American Commission on Human Rights, report No. 136/99, case No. 10.488 *Ignacio Ellacuria S.J. and others* (El Salvador), para. 230.

[20] Committee against Torture, decision in cases Nos. 1/1988, 2/1988 and 3/1988, of 23 November 1989.

[21] Document S/2004/616.

[22] Document E/CN.4/2006/52/Add.2.

[23] Document E/CN.4/2005/102/Add.1.

[24] Document E/CN.4/Sub.2/1997/20/Rev.1, paras. 40 and 32.

[25] According to its competence, the IST has jurisdiction only over Iraqi nationals for acts committed up to 1 May 2003.

[26] Principle 24 of the Updated Set of Principles.

Apéndice

COOPERACIÓN CON DISTINTAS ORGANIZACIONES Y ACTIVIDADES DE PROMOCIÓN

Del 28 de febrero al 2 de marzo, el Relator Especial participó en Ginebra en un seminario de expertos organizado por la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre "La democracia y el Estado de derecho". El 3 de marzo, expuso sobre las cuestiones vinculadas al acceso a la Justicia en el marco del seminario "Extrema pobreza y derechos humanos" organizado en São Paulo (Brasil) por The Nippon Foundation. El 20 de mayo, participó como expositor e invitado especial en el encuentro "La justicia, fuerza de la democracia" en el contexto de la celebración del 20 aniversario de la Asociación de Magistrados Europeos por la Democracia y las Libertades en Roma.
El 30 de junio, inauguró la práctica de una presentación en la Cancillería argentina, dirigida al ámbito académico y demás profesionales del derecho, en la cual participaron el Presidente de la Unión Internacional de Magistrados, ministros de la Corte Suprema de Justicia de la Nación, decanos de facultades de Derecho y presidentes de las principales asociaciones de abogados y magistrados de la Argentina. El 2 de julio, expuso sobre el tema "La protección de los derechos humanos y el papel de la justicia durante los estados de excepción" en el marco del Seminario Regional sobre el Control Parlamentario del Sector de la Seguridad en América Latina, organizado en Montevideo por la Unión Interparlamentaria, que contó con la participación de personalidades políticas y académicas de América Latina. El 8 de septiembre participó en Buenos Aires de la sesión académica sobre "Las Naciones Unidas y los desafíos del Siglo XXI" organizado por el Consejo Argentino de Relaciones Internacionales, donde expuso acerca del "Rol de las Naciones Unidas en el período de consolidación de la paz". Del 12 al 13 de septiembre, en Buenos Aires, participó en el "Seminario sobre independencia del poder judicial de la nación: Estatuto del Juez - Horizontalismo", organizado por la Asociación Civil Justicia Democrática, y expuso sobre "Independencia y poder". El 8 de octubre, en el marco de las XVI Jornadas Científicas de la Magistratura Argentina, organizadas en la ciudad de Bariloche (Argentina) por la Federación Argentina de la Magistratura y el Colegio de Magistrados y Funcionarios de la Provincia de Río Negro, disertó en el panel sobre "Justicia y derechos humanos". El 17 y el 18 de octubre participó del seminario sobre "Derecho a la verdad" organizado por la Oficina del Alto Comisionado, en Ginebra. El 21 de noviembre, en Montevideo, presentó a la 48ª Reunión Anual de la Unión Internacional de Magistrados los informes elevados al 61 período de sesiones de la Comisión de Derechos Humanos.
