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Agenda item 7

DRAFT PROVISIONAL AGENDA AND ADOPTION OF THE REPORT

**Draft report of the Sub-Commission on the Promotion and Protection
of Human Rights***

Rapporteur: Yozo YOKOTA

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* Documents E/CN.4/Sub.2/2005/L.10 and addenda will contain the chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Sub-Commission, as well as draft resolutions and decisions for action by, and other matters of concern to, the Commission on Human Rights, will be contained in documents E/CN.4/Sub.2005/L.11 and addenda.

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II. Resolutions and decisions adopted by the Sub-Commission at its fifty-seventh session

A. Resolutions

2005/21. Housing and property restitution for refugees and displaced persons

The Sub-Commission on the Promotion and Protection of Human Rights,

Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and other relevant international instruments on human rights and humanitarian law,

Recalling its resolution 1998/26 of 26 August 1998 on housing and property restitution in the context of the return of refugees and internally displaced persons, its decision 2001/122 of 16 August 2001 on the return of refugees' or displaced persons' property, its resolution 2002/30 of 15 August 2002 on the right to return of refugees and internally displaced persons, its resolution 2002/7 of 14 August 2002 on housing and property restitution in the context of refugees and other displaced persons, its resolution 2003/17 of 13 August 2003 on prohibition of forced evictions, its resolution 2003/18 of 13 August 2003 on housing and property restitution, and its resolution 2004/2 of 9 August 2004 on housing and property restitution,

Recalling also Commission on Human Rights decision 2003/109 of 24 April 2003 on housing and property restitution in the context of the return of refugees and internally displaced persons and resolution 2004/28 of 16 April 2004 on prohibition of forced evictions,

Convinced that the right to housing, land and property restitution is essential to the resolution of conflict and to post-conflict peacebuilding, safe and sustainable return and the establishment of the rule of law, and that careful monitoring of restitution programmes, on the part of international organizations and affected States is indispensable to ensuring their effective implementation,

1. *Urges* States to ensure the right of all refugees and displaced persons to return and have restored to them any housing, land and/or property of which they were arbitrarily or

unlawfully deprived, and to develop effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms designed to implement this right;

2. *Reiterates* that States should neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations;

3. *Affirms* that all refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process;

4. *Welcomes* the final report of the Special Rapporteur, Paulo Sérgio Pinheiro, on housing and property restitution in the context of the return of refugees and internally displaced persons (E/CN.4/Sub.2/2005/17), containing the Principles on Housing and Property Restitution for Refugees and Displaced Persons as well as the explanatory notes on the Principles (E/CN.4/Sub.2/2005/17/Add.1);

5. *Endorses* the Principles on Housing and Property Restitution for Refugees and Displaced Persons and encourages their application and implementation by States, intergovernmental organizations and other relevant actors;

6. *Requests* Mr. Pinheiro to compile and update the study on housing and property restitution for refugees and internally displaced persons so that it can be published in one volume as part of Human Rights Study Series, in all the official languages of the United Nations;

7. *Decides* to request the Secretariat to transmit the Principles on Housing and Property Restitution (E/CN.4/Sub.2/2005/17) and the Explanatory Notes to the Principles (E/CN.4/Sub.2/2005/17/Add.1) to the Committee on the Elimination of Racial Discrimination and other United Nations treaty monitoring bodies and to regional human rights bodies, so as to assure their wide dissemination;

8. *Recommends* the following draft decision to the Commission on Human Rights for adoption:

“The Commission on Human Rights, recalling its decision 2003/109 of 24 April 2003 on housing and property restitution in the context of the return of refugees and internally displaced persons, recalling also its resolution 2004/28 of 16 April 2004 on prohibition of forced evictions, and taking note of resolution 2005/21 of 11 August 2005 of the Sub-Commission on the Promotion and Protection of Human Rights, endorses the request by the Sub-Commission that Paulo Sérgio Pinheiro compile and update the study on housing and property restitution for refugees and internally displaced persons, and that the full study, entitled ‘The right to housing and property restitution for refugees and other displaced persons’, be published as part of the Human Rights Study Series, in all the official languages of the United Nations, and recommends the following draft decision to the Economic and Social Council for adoption:

‘The Economic and Social Council, recalling Sub-Commission resolution 2005/21 of 11 August 2005 and taking note of Commission on Human Rights decision 2006/... of ... April 2006, approves the request that Mr. Paulo Sérgio Pinheiro compile and update the study on housing and property restitution for refugees and internally displaced persons and that the full study, entitled “The right to housing and property restitution for refugees and other displaced persons” be published in all official languages of the United Nations as part of the Human Rights Study Series, and requests the Secretary-General to provide all assistance necessary for the compilation and publication of the updated study.’”

*20th meeting
11 August 2005*

[Adopted without a vote. See chap. VI.]

2005/22. Discrimination based on work and descent

The Sub-Commission on the Promotion and Protection of Human Rights,

Reaffirming its resolution 2000/4 of 11 August 2000, in which it declared that discrimination based on work and descent is a form of discrimination prohibited by international human rights law,

Acknowledging the constitutional, legislative and administrative measures taken by some States to abolish practices of discrimination based on work and descent, as outlined in the expanded working paper on this topic submitted by Asbjørn Eide and Yozo Yokota (E/CN.4/Sub.2/2004/31),

Concerned that discrimination based on work and descent affects communities in many regions of the world,

Noting the need for further study on this topic, and for the formulation of principles and guidelines for the elimination of discrimination based on work and descent,

1. *Urges* concerned States to ensure that all necessary constitutional, legislative and administrative measures, including appropriate forms of affirmative action and public education programmes, are in place to prevent and redress discrimination based on work and descent, and that such measures are respected and implemented by all State authorities at all levels;

2. *Welcomes* that preliminary report on discrimination based on work and descent (E/CN.4/Sub.2/2005/30) of the Special Rapporteurs, Yozo Yokota and Chin-Sung Chung, which stresses that the practice of discrimination based on work and descent is a serious violation of human rights and human dignity and concludes that “in order to eradicate this type of discrimination, it is essential that the Governments concerned (a) acknowledge the existence of such discrimination; (b) conduct a survey to determine the extent and nature of such discrimination; (c) prohibit any act of discrimination based on work and descent; (d) punish offenders; (e) educate and train Government officials, including law enforcement officers; (f) raise public awareness of the issue; (g) provide effective protection and remedies to the victims of this type of discrimination; (h) take other measures, including affirmative action and special budgetary allocations, to eliminate such discrimination;

3. *Approves* the Special Rapporteurs’ proposal to send the questionnaire annexed to the preliminary report, with improvements to be made taking into account in particular the comments and suggestions expressed during the discussions at the present session of the Sub-Commission, to Governments, national human rights institutions, relevant United Nations bodies and specialized agencies and non-governmental organizations;

4. *Requests* the recipients of the questionnaire to respond in a timely and constructive manner;
5. *Endorses* the Special Rapporteurs' proposals to hold a general consultation in Geneva in mid-March/April 2006 and to organize, if funding is available, two regional workshops, one in Asia and the other in Africa, sometime before the fifty-eighth session of the Sub-Commission;
6. *Requests* the Special Rapporteurs to reflect the results of the questionnaire, the general consultation and the regional workshops as well as of their analyses in the progress report to be submitted to the Sub-Commission at its fifty-eighth session;
7. *Also requests* the Special Rapporteurs to continue to work on the drafting of a set of principles and guidelines for the effective elimination of discrimination based on work and descent, addressing all relevant actors, including Governments, local authorities, private sector entities, schools, religious institutions and the media, based on existing applicable standards and best practices and taking into account the framework proposed in the expanded working paper on discrimination based on work and descent submitted by Asbjørn Eide and Yozo Yokota;
8. *Encourages* the Special Rapporteurs to undertake this study in cooperation and collaboration with relevant treaty bodies and United Nations organs, agencies and mandates, including the Committee on the Elimination of Racial Discrimination, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization, and in consultation with representatives of affected communities;
9. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to provide the Special Rapporteurs with all the assistance necessary to enable them to accomplish this task;

10. *Decides* to continue consideration of this question at its fifty-eighth session under the same agenda item.

20th meeting
11 August 2005
[Adopted without a vote. See chap. VII.]

2005/23. Working Group on Indigenous Populations

The Sub-Commission on the Promotion and Protection of Human Rights,

Reaffirming the urgent need to recognize, promote and protect more effectively the rights of indigenous peoples, including their human rights and fundamental freedoms,

Mindful of the relevant recommendations adopted by the World Conference on Human Rights in 1993, in particular those contained in Part I, paragraph 20, and Part II, paragraphs 28 to 32, of the Vienna Declaration and Programme of Action,

Mindful also of the relevant recommendations adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001,

Recalling Economic and Social Council resolution 1982/34 of 7 May 1982, in which the Council authorized the Sub-Commission to establish annually a working group on indigenous populations,

Taking note with deep appreciation of the report of the Working Group on Indigenous Populations on its twenty-third session (E/CN.4/Sub.2/2005/26) and, in particular, of its conclusions and recommendations,

Welcoming the ample discussions in the Working Group during its twenty-third session under its twofold mandate: the review of developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous people, including the main theme, “Indigenous peoples and the international and domestic protection of traditional knowledge”, and standard-setting, as well as on cooperation with other United Nations bodies in the sphere of indigenous issues,

Stressing its deep concern at the still-visible sequels of the colonial era that continue to adversely affect the living conditions of indigenous peoples in various parts of the world,

Recalling once again Commission on Human Rights resolution 1993/30 of 5 March 1993, in which the Commission recommended to all thematic rapporteurs, special representatives, independent experts and working groups to pay special attention, within the framework of their mandates, to the situation of indigenous peoples,

Taking note of Commission on Human Rights resolutions 2004/57 and 2004/58 of 20 April 2004 and Economic and Social Council decision 2004/264 of 22 July 2004,

Noting with disappointment that the Office of the United Nations High Commissioner for Human Rights could not implement the request in Sub-Commission resolution 2004/15 of 9 August 2004 to organize, if possible in 2005, a workshop on indigenous peoples and conflict resolution and prevention,

Taking into account, in the context of the ongoing process of reform of the United Nations human rights bodies recently launched at the initiative of the Secretary-General, the deep interest in the continuation of its Working Group of Indigenous Populations repeatedly expressed by a large number of Governments and the representatives and caucuses of indigenous peoples in a large number of meetings held both within and outside the United Nations system,

Recalling its resolutions 2003/29 of 14 August 2003 and 2004/14 and 2004/15 of 9 August 2004,

1. *Expresses its deep appreciation* to all members of the Working Group who attended its twenty-third session for the important and constructive work accomplished during the session and for the new working methods introduced with the purpose of facilitating a more interactive dialogue during its annual sessions;

2. *Reiterates* its view - now in the context of the ongoing process of reform of the United Nations human rights activities, bodies and mechanisms recently initiated by the Secretary-General - that in reviewing the activities, bodies and mechanisms relating to indigenous peoples, account should be taken of the fact that the mandates of the Working Group on Indigenous Populations, the Special Rapporteur on the situation of human rights and

fundamental freedoms of indigenous people and the Permanent Forum on Indigenous Issues are clearly distinct and complementary and that consequently none of these three bodies should be discontinued, and invites its superior bodies to endorse this view in the light of the already established cooperation among the three mechanisms;

3. *Requests* the Secretary-General to transmit the report of the Working Group on its twenty-third session (E/CN.4/Sub.2/2005/26) to the United Nations High Commissioner for Human Rights, indigenous organizations, Governments and concerned intergovernmental and non governmental organizations, to the Board of Trustees of the United Nations Voluntary Fund for Indigenous Populations, as well as to the Commission on Human Rights at its sixty-first session, all thematic rapporteurs, special representatives, independent experts and working groups existing as special procedures under the authority of the Commission, and to all the treaty bodies;

4. *Reiterates* its invitation to the treaty bodies and all thematic special procedures to advise the Working Group on how they take into account, in their work and in accordance with their respective mandates, the promotion and protection of indigenous peoples' rights and in this context further invites them to take duly into account paragraphs 3 and 4 of Commission on Human Rights resolution 2004/58 of 20 April 2004;

5. *Requests* the current Chairperson-Rapporteur of the Working Group to make an oral presentation to the thirteenth annual meeting of special rapporteurs/representatives, independent experts and Chairpersons of working groups of the special procedures of the Commission of Human Rights to substantiate the need for further cooperation between the special procedures and the Working Group and to propose possible modalities for further developing this much-needed cooperation;

6. *Reiterates its recommendation* that the Working Group, upon request, cooperate as a body of experts in any conceptual clarification or analysis that might assist the open-ended intersessional working group established by the Commission in its resolution 1995/32 of 3 March 1995 to complete as soon as possible the final version of the draft United Nations declaration on the rights of indigenous peoples;

7. *Decides* to authorize the Working Group to make available to the Permanent Forum on Indigenous Issues and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, upon their specific request, the information provided by representatives of Governments and indigenous peoples during the annual general debate on its agenda item 4 (“Review of developments”), as a specific step towards further cooperation with other bodies with specific mandates related to the situation of indigenous peoples;
8. *Requests* the Working Group to continue exploring ways and means to further strengthen its cooperation with the Permanent Forum and the Special Rapporteur;
9. *Requests* the Commission on Human Rights to endorse the participation for one week of the Chairperson-Rapporteur of the Working Group at the fifth session of the Permanent Forum on Indigenous Issues in 2006, as recommended by the Working Group (see E/CN.4/2005/26, para. 120), to enable him to present the report of the Working Group on its twenty-third session, and to recommend to the Economic and Social Council to approve such participation;
10. *Decides* that the Working Group at its twenty-fourth session shall adopt as the principal theme “Utilization of indigenous peoples’ lands by non-indigenous authorities, groups or individuals for military purposes”, and that the Office of the High Commissioner for Human Rights shall invite all relevant organizations and departments of the United Nations system to provide information on this subject and, if possible, to participate actively in the debates on this matter at the Working Group;
11. *Decides* that the Working Group’s agenda for its twenty-fourth session would be as follows: 1. Election of officers; 2. Adoption of the agenda; 3. Organization of work; 4. Review of developments: (a) General debate; (b) Principal theme: “Utilization of indigenous peoples’ lands by non-indigenous authorities, groups or individuals for military purposes”; (c) Indigenous peoples and conflict prevention and resolution; 5. Standard-setting: (a) Future priorities for standard-setting activities; (b) Possible new studies to be undertaken; 6. Other matters: (a) Second International Decade of the World’s Indigenous People; (b) Cooperation with other United Nations bodies; (c) Follow-up to the World Conference against Racism, Racial

Discrimination, Xenophobia and Related Intolerance; (d) State of the Voluntary Fund for Indigenous Populations; (e) The draft United Nations declaration on the rights of indigenous peoples (update); 7. The human rights situation of States and territories threatened with extinction for environmental reasons with particular reference to indigenous peoples;

8. Adoption of the report;

12. *Requests* the Secretary-General to prepare an annotated agenda for the twenty-fourth session of the Working Group on the basis of paragraph 11 of the present resolution;

13. *Invites* the Office of the High Commissioner for Human Rights, after consultation with the Chairperson-Rapporteur, to inform participants at the twenty-fourth session of the Working Group about the organization of issues under agenda item 4 in advance of the session, in order to facilitate a more active dialogue among the various participants;

14. *Requests* the Working Group to continue to review, if necessary at its twenty-fourth session, under draft agenda item 5 (“Standard-setting”), the revised draft principles and guidelines on the heritage of indigenous people elaborated by Erica-Irene Daes (E/CN.4/1995/26, annex) and the issue of free, prior and informed consent;

15. *Calls upon* all States to give specific attention to the promotion and protection of the traditional knowledge of indigenous peoples and to ensure that the principle of free, prior and informed consent is fully applied when protecting their traditional knowledge in their relations with non-indigenous sections of the population;

16. *Requests* Miguel Alfonso Martínez to submit, if possible to the twenty-fourth session of the Working Group under draft agenda item 4 (c), the additional working paper requested by the Sub-Commission in resolution 2004/15 of 9 August 2004 on the issue of indigenous peoples and conflict prevention and resolution;

17. *Invites* all States to submit to the Working Group at its twenty-fourth session any information they deem fit to provide on the mechanisms for conflict resolution and prevention

available to indigenous peoples living under their jurisdiction, in case of existing or potential conflict situations based on the exercise of their rights in their relations with non-indigenous entities or individuals;

18. *Requests* the Office of the High Commissioner for Human Rights to forward, as soon as possible, to the Coordinator for the Second International Decade of the World's Indigenous People annex IV to the Working Group's report on its twenty-third session (E/CN.4/Sub.2/2005/26) containing the list of activities suggested by the Working Group for possible inclusion in the programme of action of the Second Decade to be submitted to the General Assembly for consideration at its sixtieth session;

19. *Endorses once again* the recommendation of the Working Group to request the Office of the High Commissioner to organize a workshop on indigenous peoples and conflict resolution and prevention and, to this effect, to take the necessary steps to include in the budget for the 2006-2007 biennium the required appropriations so as to secure the holding of such a workshop in Geneva not later than the fall of 2007;

20. *Decides*, in view of the discussions that took place under the principal theme of its twenty-third session, to invite the Office of the High Commissioner to organize in the spring of 2006, as a matter of priority and in consultation with the Chairperson-Rapporteur of the Working Group, a second workshop on indigenous peoples, mining and other private sector companies and human rights, with a view to preparing guidelines based on respect for the cultures, traditions and the cultural heritage of indigenous peoples, and for the principle of free, prior and informed consent;

21. *Expresses its deep appreciation* to the Mascwachis Cree Nation's Elders and Chiefs for their formal announcement confirming their hosting of the United Nations seminar referred to in Sub-Commission resolution 2004/15 on "Possible ways and means to implement treaties, agreements and other constructive arrangements between States and indigenous peoples", to be held from 25 to 27 September 2006 in their traditional lands under Treaty 6 in Canada, in accordance with the invitation extended by them during the twenty-second session and already formally accepted by the Working Group (see E/CN.4/Sub.2/2004/28, para. 118);

22. *Requests* the Office of the High Commissioner to establish as soon as possible the necessary cooperation with the indigenous organizers of the seminar mentioned in the preceding paragraph so as to ensure the full organizational and technical preparation as well as the successful holding of this important event;

23. *Welcomes* the invitation extended to the Chairperson-Rapporteur of the Working Group by the United Nations Department of Economic and Social Affairs and the Office for Latin America and the Caribbean of the United Nations Children's Fund to participate in the Workshop on Indigenous Traditional Knowledge recommended by the Permanent Forum at its fourth session, to be held in Panama City from 21 to 23 September 2005, and decides to authorize his participation in representation of the Working Group;

24. *Requests* the Office of the High Commissioner to submit to the Working Group at its twenty-fourth session an updated compilation of all studies, reports and other research work on the situation of the rights of indigenous peoples, including their human rights, that have been carried out and completed since 1982 by the diverse United Nations bodies with a mandate specifically related to indigenous issues, as well as those currently being undertaken by those same bodies; to serve as a point of reference for the Working Group in its future research action, so as to avoid duplication of work;

25. *Requests* Mr. Alfonso Martínez to prepare, without financial implications, a working paper on the present-day sequels of the colonial era that continue to adversely affect the living conditions of indigenous peoples in various parts of the world, to be submitted to the Working Group at its twenty-fifth session and to the Sub-Commission at its fifty-ninth session;

26. *Appeals* to all Governments, indigenous peoples, governmental and non-governmental organizations and other potential donors in a position to do so to contribute generously in 2006 to the United Nations Voluntary Fund for Indigenous Populations and the Voluntary Fund for the Second Decade of the World's Indigenous People;

27. *Requests* the Commission on Human Rights to request the Economic and Social Council to authorize 10 meetings for the Working Group on Indigenous Populations prior to the fifty-eighth session of the Sub-Commission in 2006;

28. *Recommends* to the Commission on Human Rights the following draft decision for adoption:

“The Commission on Human Rights, taking note of resolution 2005/20 of 10 August 2005 of the Sub Commission on the Promotion and Protection of Human Rights, endorses the Sub-Commission’s request that the Economic and Social Council authorize 10 meetings for the Working Group on Indigenous Populations prior to the fifty-eighth session of the Sub-Commission in 2006.”

20th meeting
11 August 2005
[Adopted without a vote. See chap. VII.]

2005/24. Discrimination against leprosy victims and their families

The Sub-Commission on the Promotion and Protection of Human Rights,

Recalling article 1 of the Universal Declaration of Human Rights, which stipulates that all human beings are born free and equal in dignity and rights,

Recalling also article 2 of the Universal Declaration, which provides that everyone is entitled to all the rights and freedoms set forth therein without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling further article 5 of the Universal Declaration, which provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Concerned that millions of people suffer from discrimination resulting from physical and mental illness or handicap,

Concerned in particular that tens of millions of people suffer not only from leprosy as a disease, which is scientifically and medically proven to be curable and manageable, but also from political, legal, economic or social discrimination and isolation as a result of misunderstanding and indifference, and lack of legislative or administrative measures to prohibit such discrimination and to protect and remedy the victims,

1. *Welcomes with appreciation* the preliminary working paper on discrimination against leprosy victims and their families submitted by Yozo Yokota (E/CN.4/Sub.2/2005/WP.1);
2. *Endorses* all the conclusions and recommendations contained in the working paper;
3. *Requests* Governments, if they have not yet done so, to abolish legislation that requires forced institutionalization of leprosy patients and to provide effective, prompt and free treatment to leprosy patients on an outpatient basis if they so wish;
4. *Also requests* Governments to provide appropriate remedies to former patients forcibly hospitalized in a sanatorium, colony, hospital or community;
5. *Further requests* Governments to immediately prohibit discrimination of any type against leprosy victims and their families;
6. *Encourages* Governments to make every effort to include leprosy education in school curricula so as to give correct information about leprosy and leprosy patients and their families and prevent discrimination against them;
7. *Endorses* the proposal to organize, if funding is available, regional seminars to hear the views and experiences directly from the former patients and their families as well as doctors, social workers, experts, non-governmental organizations and governmental officials concerned;
8. *Decides* to appoint Yozo Yokota as Special Rapporteur with the task of preparing a comprehensive study on discrimination against leprosy victims and their families, and requests the Special Rapporteur to submit a preliminary report to the Sub-Commission at its fifty-eighth session, a progress report at its fifty-ninth session and a final report at its sixtieth session;
9. *Requests* the Special Rapporteur to enter into dialogue with the relevant entities, including the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the United Nations Children's Fund, the Special Rapporteur on the right to the highest attainable standard of physical and mental health and the Committee on Economic, Social and Cultural Rights;

10. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to provide the Special Rapporteur with all the assistance necessary to enable him to accomplish this task;

11. *Recommends* the following draft decision to the Commission on Human Rights for adoption:

“The Commission on Human Rights, taking note of resolution 2005/24 of 11 August 2005 of the Sub-Commission on the Promotion and Protection of Human Rights, approves the decision of the Sub-Commission to appoint Yozo Yokota Special Rapporteur with the task of preparing a comprehensive study on discrimination against leprosy victims and their families, on the basis of his preliminary working paper (E/CN.4/Sub.2/2005/WP.1) and the comments made during the fifty-seventh session of the Sub-Commission, and to submit a preliminary report to the Sub-Commission at its fifty-eighth session, a progress report at its fifty-ninth session and a final report at its sixtieth session.

“The Commission also approves the proposal endorsed by the Sub-Commission to organize, if funding is available, regional seminars to hear the views and experiences directly from the former patients and their families as well as doctors, social workers, experts, non-governmental organizations and governmental officials concerned.

“The Commission further approves the request that the Secretary-General and the United Nations High Commissioner for Human Rights provide the Special Rapporteur with all the assistance necessary to enable him to accomplish this task.”

12. *Decides* to continue consideration of this question at its fifty-eighth session under the same agenda item.

20th meeting
11 August 2005
[Adopted without a vote. See chap. VII.]

2005/25. Technical cooperation and capacity-building for the promotion and protection of human rights

The Sub-Commission on the Promotion and Protection of Human Rights,

Recognizing the importance of technical cooperation and capacity-building for the promotion and protection of human rights,

Seeking to facilitate and promote the inclusion of economic, social and cultural rights in technical cooperation in the field of human rights,

Taking into account the working paper submitted by Gudmundur Alfredsson and Ibrahim Salama (E/CN.4/Sub.2/2005/41) in accordance with Sub-Commission decision 2004/115 of 12 August 2004,

1. *Decides* to appoint Gudmundur Alfredsson and Ibrahim Salama as Special Rapporteurs with the task of preparing a comprehensive study with a focus on how best to include economic, social and cultural rights in international, regional and bilateral technical cooperation in the field of human rights;
2. *Requests* the Secretary-General to provide the Special Rapporteurs with all the assistance necessary to accomplish their task;
3. *Requests* the Office of the United Nations High Commissioner for Human Rights, the United Nations Development Programme, the United Nations Children's Fund and other United Nations bodies and specialized agencies to respond favourably to queries from the Special Rapporteurs;
4. *Recommends* the following draft decision to the Commission on Human Rights for adoption:

“The Commission on Human Rights, taking note of resolution 2005/25 of 11 August 2005 of Sub-Commission on the Promotion and Protection of Human Rights, decides to endorse the decision of the Sub-Commission to appoint Gudmundur Alfredsson and Ibrahim Salama as Special Rapporteurs on economic, social and cultural rights in technical cooperation in the field of human rights, based

on their working paper (E/CN.4/Sub.2/2005/41) and the comments made thereon at the fifty-seventh session of the Sub-Commission. The Commission also endorses the request to the Secretary-General to provide the Special Rapporteurs with the necessary assistance as well as the request to relevant actors in the United Nations system to respond to queries from the Special Rapporteurs.”

20th meeting
11 August 2005
[Adopted without a vote. See chap. VIII.]

2005/26. World Programme for Human Rights Education

The Sub-Commission on the Promotion and Protection of Human Rights,

Recalling its resolutions 2003/5 of 13 August 2003 and 2004/18 of 12 August 2004,

Reaffirming article 26 of the Universal Declaration of Human Rights, in accordance with which education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms,

Convinced that human rights education is a key to changing attitudes and behaviour based on racism, racial discrimination, xenophobia and related intolerance and to promoting tolerance and respect for diversity in societies,

Convinced that human rights education is a long-term and lifelong process by which all people at all levels of development and in all strata of society learn respect for the dignity of others, and that human rights education significantly contributes to promoting equality and sustainable development, preventing conflict and human rights violations and enhancing participation and democratic processes, with a view to developing societies in which all human rights of all are valued and respected,

Reaffirming the need for continued actions at the international level to support national efforts to achieve the Millennium Development Goals by the year 2015, in particular universal

access to basic education for all, including human rights education, and for human rights education as a means of empowering groups suffering discrimination, particularly women and the poor,

Recognizing the invaluable and creative role that non-governmental and community-based organizations play in the promotion and protection of human rights by disseminating public information and engaging in human rights education, especially at the grass-roots level and in remote and rural communities, and taking into account their concern regarding the continuation of activities undertaken during the United Nations Decade for Human Rights Education, 1995-2004,

Recalling the views expressed in the report of the United Nations High Commissioner for Human Rights to the Commission on Human Rights on the achievements and shortcomings of the Decade and on future activities in this area (E/CN.4/2004/93), and the views expressed in the report of the High Commissioner to the Commission on the follow-up to the Decade (E/CN.4/2003/101) as to the need to continue a global framework for human rights education beyond the Decade in order to ensure a priority focus on human rights education within the international agenda, provide a common collective framework for action for all relevant actors, support existing programmes and provide an incentive for the development of new ones, as well as enhance partnership and cooperation at all levels,

Recalling General Assembly resolution 58/181 of 22 December 2003, in which the Assembly decided to dedicate a plenary meeting during its fifty-ninth session on the occasion of Human Rights Day, 10 December 2004, to review the achievements of the Decade and to discuss possible future activities for the enhancement of human rights education,

Recalling also Commission on Human Rights resolution 2004/71 of 15 April 2004 and Economic and Social Council decision 2004/268 of 22 July 2004 recommending that the General Assembly proclaim at its fifty-ninth session a world programme for human rights education to begin on 1 January 2005, structured in consecutive phases, the first phase of which will focus on primary and secondary school systems on the basis of plan of action to be prepared

by the Office of the High Commissioner for Human Rights, in cooperation with the United Nations Educational, Scientific and Cultural Organization and other relevant governmental and non-governmental actors,

Noting with appreciation that the overall objective of the world programme, as stated in paragraph 3 of Commission resolution 2004/71, is to maintain and develop the implementation of human rights education programmes in all sectors, and draws attention to the fact that the development of innovative human rights education strategies in the formal education sector, with, as requested by the Commission, an indication of at least minimum action, should not preclude lasting support for activities carried out in other sectors, in particular programmes developed at grass-roots level and aimed at promoting human rights education for vulnerable groups such as populations involved in post-conflict reconstruction, women and other groups suffering discrimination, and the poor as actors of development and social change,

1. *Welcomes* the proclamation by the General Assembly in its resolution 59/113 of 10 December 2004 of the World Programme for Human Rights Education, structured in consecutive phases, which began on 1 January 2005, and stresses that the United Nations High Commissioner for Human Rights and the United Nations Educational, Scientific and Cultural Organization should continue their work in the field of human rights education;

2. *Also welcomes* General Assembly resolution 59/312 of 14 July 2005, in which the Assembly adopted the revised draft plan of action for the first phase (2005-2007) of the World Programme for Human Rights Education (A/59/525/Rev.1), which focuses on primary and secondary school systems, and encouraged all States to develop initiatives within the World Programme for Human Rights Education and, in particular, within their capabilities, the revised draft plan of action;

3. *Recommends* that the human rights treaty bodies, when examining reports of States parties, devote attention specifically to human rights education particularly in the framework of the World Programme for Human Rights Education, and that human rights

education be included in the agenda of the annual meeting of the persons chairing the treaty bodies so that they can make recommendations on how human rights education can contribute to national capacity-building aimed at strengthening national human rights protection mechanisms;

4. *Decides* to consider the issue of human rights education at its fifty-eighth session under the same agenda item.

20th meeting
11 August 2005
[Adopted without a vote. See chap. VIII.]

2005/27. Systematic rape, sexual slavery and slavery-like practices during armed conflicts

The Sub-Commission on the Promotion and Protection of Human Rights,

Recalling its resolution 2004/22 of 12 August 2004,

Recalling also Security Council resolution 1325 (2000) of 31 October 2000, which, inter alia, reaffirmed the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts, as well as the report of the Secretary-General on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution (S/2002/1154) issued pursuant to that resolution,

Noting the reports of the United Nations High Commissioner for Human Rights on systematic rape, sexual slavery and slavery-like practices during armed conflicts (E/CN.4/Sub.2/2000/20, E/CN.4/Sub.2/2001/29, E/CN.4/Sub.2/2002/28, E/CN.4/Sub.2/2003/27 and E/CN.4/Sub.2/2004/35),

Taking into consideration resolutions of the Commission on Human Rights, including resolution 2005/41 of 19 April 2005 on the elimination of violence against women and resolution 2005/81 of 21 April 2005 on impunity, and the report of the Special Rapporteur on violence against women, its causes and consequences to the Commission at its sixty-first session (E/CN.4/2005/72 and Corr.1, Add.1 and Corr.1, and Add.2-5),

Taking also into consideration the updated Set of Principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1) and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law annexed to Commission resolution 2005/35 of 19 April 2005,

Conscious that, despite legal advances at the international level on the issues of systematic rape and sexual enslavement directed against civilian populations, women continue to face widespread sexual gender-based violence during conflicts,

1. *Welcomes* the work of the Secretary-General and notes with appreciation his report on women, peace and security (S/2002/1154);
2. *Also welcomes* the work of the United Nations High Commissioner for Human Rights on systematic rape, sexual slavery and slavery-like practices and takes note with great appreciation of her report (E/CN.4/Sub.2/2005/33);
3. *Deeply concerned* that systematic rape, sexual slavery and slavery-like practices are still being used to humiliate civilians and military personnel, to destroy society and to diminish prospects for a peaceful resolution of conflicts and that the resulting severe physical and psychological trauma endangers not only personal recovery but post-conflict reconstruction of the whole society, as pointed out in the above-mentioned reports;
4. *Considers* that the verdicts of the International Criminal Tribunal for the Former Yugoslavia, the International Tribunal for Rwanda and the Special Court for Sierra Leone acknowledging that rape and, more recently, sexual enslavement are crimes against humanity, and the special recognition in the Rome Statute of the International Criminal Court that sexual violence and sexual slavery committed in the context of either an internal or an international armed conflict may constitute crimes against humanity, war crimes and genocide falling within the jurisdiction of the Court, represent a significant step in the protection of women's human rights as they challenge widespread acceptance that torture, rape and violence against women are an integral part of war and conflict and hold the perpetrators of such crimes accountable;

5. *Reiterates* that States should provide effective criminal penalties and compensation for unremedied violations in order to end the cycle of impunity with regard to sexual violence committed during armed conflicts;

6. *Encourages* States to promote human rights education on the issues of systematic rape, sexual slavery and slavery-like practices during armed conflicts, ensuring the accuracy of accounts of historical events in the educational curricula, in an effort to prevent the recurrence of such violations and to encourage better understanding among all peoples;

7. *Calls upon* the High Commissioner for Human Rights to submit an updated report to the Sub-Commission at its fifty-eighth session on the issues of systematic rape, sexual slavery and slavery-like practices during armed conflicts;

8. *Decides* to consider the issue at its fifty-eighth session under the same agenda item.

*20th meeting
11 August 2005*
[Adopted without a vote. See chap. VIII.]

**2005/28. Harmful traditional practices affecting the health
of women and the girl child**

The Sub-Commission on the Promotion and Protection of Human Rights,

Recalling its resolution 2004/25 of 12 August 2004 and Commission on Human Rights decision 2004/111 of 20 April 2004,

Emphasizing the importance of the Plan of Action for the Elimination of Harmful Traditional Practices affecting the Health of Women and Children (E/CN.4/Sub.2/1994/10/Add.1 and Corr.1) adopted by the Sub-Commission,

Noting the consideration given by the General Assembly to the issue of harmful traditional and customary practices,

Emphasizing that all harmful traditional practices affect women and girls first and foremost,

Noting that such practices are not exclusively based on specific traditions or cultures, but are also an expression of violence against women and girls,

1. *Welcomes* the ninth report (E/CN.4/Sub.2/2005/36) of the Special Rapporteur, Halima Embarek Warzazi, and shares her concern at the damaging effects of harmful traditional practices and the need to put an end to them;
2. *Takes note with deep regret* of the decision of the Special Rapporteur that the report submitted at its present session will be her final report on the subject;
3. *Welcomes* the progress made in combating harmful traditional practices, including female genital mutilation, through the impetus of non-governmental organizations, in particular the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children, which should be given maximum encouragement;
4. *Regrets*, however, the continuation and further development of existing and new forms of harmful practice;
5. *Invites* the Commission on Human Rights to request its Special Rapporteur on violence against women, its causes and consequences to continue to consider and examine, in a more systematic way, the effects of harmful traditional practices affecting the health of women and girls as an integral part of her mandate;
6. *Invites* the Special Rapporteur on violence against women to cooperate closely with non-governmental organizations working on harmful traditional practices, especially the Inter-African Committee;
7. *Appeals* to all States concerned to intensify efforts to develop awareness of and mobilize national public opinion concerning the harmful effects of all forms of harmful traditional practice, in particular through education, information and training, in order to achieve the total eradication of these practices;
8. *Requests* all non-governmental organizations dealing with women's issues to continue to devote part of their activities to the study of the various harmful practices and ways and means of eradicating them;

9. *Appeals* to the international community to provide material, technical and financial support to the non-governmental organizations and groups working with dedication to achieve the total elimination of practices that are harmful to girl children and women;

10. *Calls upon* all Governments to give their full attention to the implementation of the Plan of Action for the Elimination of Harmful Traditional Practices affecting the Health of Women and Children;

11. *Reiterates* its proposal that three seminars be held in Africa, Asia and Europe in order to review progress achieved since 1985 and to explore ways and means of overcoming the obstacles encountered in the implementation of the Plan of Action, and appeals for funding for these activities;

12. *Requests* the United Nations High Commissioner for Human Rights to assist the issue by raising funds for the organization of the seminars, especially the organization of a first seminar to be held in Europe, in light of disturbing information on the increase of harmful practices in that region;

13. *Welcomes* the adoption by the African Union of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and urges Governments to ratify this instrument and incorporate it into their domestic legislation;

14. *Also welcomes* the many activities carried out in Africa by Governments and non-governmental organizations, particularly in the context of the International Day of Zero Tolerance of Female Genital Mutilation (6 February);

15. *Further welcomes* the commitment of many States to efforts to combat all harmful traditional practices, and encourages them to intensify their efforts;

16. *Decides* to continue to give consideration to this issue at its fifty-eighth session under the relevant agenda item.

20th meeting
11 August 2005
[Adopted without a vote. See chap. VIII.]

2005/29. Report of the Working Group on Contemporary Forms of Slavery

The Sub-Commission on the Promotion and Protection of Human Rights,

Recalling its resolution 2004/19 of 12 August 2004,

Taking note of the report of the Working Group on Contemporary Forms of Slavery on its thirtieth session (E/CN.4/Sub.2/2005/34) and in particular the recommendations contained in chapter V,

Recalling that the priority theme of the thirtieth session was the review and assessment of the activities of the Working Group since its establishment,

Emphasizing that the sessions of the Working Group provide a unique platform for non-governmental organizations and victims of slavery and slavery-like practices to appear before an international forum, and acknowledging the value of their contributions to international awareness of and debate about slavery-related issues,

1. *Recommends* that States ratify treaties on slavery-related issues, such as the Slavery Conventions of 1926, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, the Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949, the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

2. *Invites* States to provide information to the Working Group on Contemporary Forms of Slavery concerning the implementation of the human rights

standards enshrined in the Slavery Conventions of 1926 and 1956 and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949;

3. *Recommends* that the human rights treaty bodies and other bodies established under the auspices of specialized agencies duly take into account the obligations under the conventions on slavery in discharging their respective mandates;

4. *Requests* Mr. Ibrahim Salama to draft a working paper examining the feasibility of a study on the human rights dimension of prostitution, taking into account the latest developments in this matter;

5. *Notes* the decision of the Working Group that priority thematic issues to be addressed at upcoming sessions of the Working Group include trafficking in persons, the exploitation of prostitution, forced labour, the exploitation of domestic workers, forced marriage and domestic violence;

6. *Also notes* the decision of the Working Group to select as the thematic focus for the thirty-first session the human rights dimensions of prostitution, and the need to strengthen international cooperation to suppress international transfers of profits from the exploitation of the prostitution of others and trafficking in persons;

7. *Welcomes* the decision of the Working Group to recall the recommendations adopted at previous sessions and to draw attention, in particular, to the substantive conclusions and recommendations concerning trafficking in persons and all forms of sexual exploitation, elimination of forced labour, migrant workers and domestic migrant workers, and protection of children against all forms of exploitation;

8. *Welcomes* the participation of the International Labour Organization in the thirtieth session of the Working Group and decides to continue to invite Governments, international organizations, national institutions and non-governmental organizations that have information relating to the agenda of the Working Group to assist the Working Group by providing it with relevant information, preferably in advance of the session;

9. *Requests* the Office of the United Nations High Commissioner for Human Rights to bring the present resolution to the attention of States, international organizations and national human rights institutions, with a request that they forward relevant information to the Office for the attention of the Working Group.

*20th meeting
11 August 2005*
[Adopted without a vote. See chap. VIII.]

**2005/30. United Nations Voluntary Trust Fund on
Contemporary Forms of Slavery**

The Sub-Commission on the Promotion and Protection of Human Rights,

Recalling General Assembly resolution 46/122 of 17 December 1991, by which the Assembly established the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery,

Recalling also its resolution 2004/20 of 12 August 2004,

Recalling further the close relationship between the mandate and the activities of the Working Group on Contemporary Forms of Slavery and those of the Board of Trustees of the Fund and the necessary cooperation between them, and stressing the need for continued and strengthened cooperation,

Expressing its gratitude to Governments, organizations, trade unions and individuals, including young students, who have contributed to the Fund and strongly encouraging them to continue doing so,

1. *Considers* that the participation at the thirtieth session of the Working Group of seven representatives of non-governmental organizations working in different countries in Africa, the Americas and Asia financed by the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery, including victims of contemporary forms of slavery, is a valuable contribution to the work of the Working Group on Contemporary Forms of Slavery;

2. *Invites* the Board of Trustees of the Fund to continue to promote the participation at the annual sessions of the Working Group of individuals and organizations from as large a number of countries as possible, in accordance with the priorities established in the agenda of the Working Group;

3. *Welcomes* the participation of a member of the Board of Trustees of the Fund at the thirtieth session of the Working Group and encourages the members of the Board to attend the next session of the Working Group;

4. *Invites* the Board of Trustees to continue to contribute to projects implemented at the grass-roots level and that directly assist victims of contemporary forms of slavery;

5. *Recalls* the appeal made by the General Assembly in its resolution 46/122 of 17 December 1991 to all Governments to respond favourably to requests for contributions to the Fund, urges them and non-governmental organizations, other private or public entities and individuals to contribute to the Fund and encourages them to do so if possible by September 2005, in order to enable the Fund to fulfil its mandate effectively in the year 2006.

20th meeting
11 August 2005
[Adopted without a vote. See chap. VIII.]

2005/31. Working group to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism

The Sub-Commission on the Promotion and Protection of Human Rights,

Reaffirming the purposes and principles of the Charter of the United Nations,

Reaffirming also the fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and fundamental freedoms and the rule of law,

Recalling that States are under the obligation to protect all human rights and fundamental freedoms of all persons,

Acknowledging the important contribution of measures at all levels against terrorism, consistent with international law, in particular international human rights, humanitarian and refugee law, for the functioning of democratic institutions, the maintenance of peace and security and thereby to the full enjoyment of human rights, as well as the need to continue this fight, including through international cooperation and the strengthening of the role of the United Nations in this respect,

Deeply deploring the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism,

Recognizing that the respect for human rights, democracy and the rule of law are interrelated and mutually reinforcing,

Welcoming the various initiatives to strengthen the promotion and protection of human rights in the context of counter-terrorism adopted by the United Nations and regional intergovernmental bodies, as well as by States,

Reaffirming its unequivocal condemnation of all acts, methods and practices of terrorism, in all their forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable, and renewing its commitment to strengthen international cooperation to prevent and combat terrorism,

Stressing that everyone is entitled to all the rights and freedoms recognized in the Universal Declaration of Human Rights without distinction of any kind, including on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling its decision 2004/109 of 12 August 2004 entitled “Guidelines and principles for the promotion and protection of human rights when combating terrorism” in which it decided to establish at its fifty-seventh session a sessional working group of the Sub-Commission with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism, based, inter alia, on the preliminary framework draft of principles and guidelines contained in the working paper prepared by Kalliopi Koufa (E/CN.4/Sub.2/2004/47),

1. *Expresses its deep appreciation and thanks* to Ms. Koufa for her comprehensive expanded working paper entitled “A preliminary framework draft of principles and guidelines concerning human rights and terrorism” (E/CN.4/Sub.2/2005/39);
2. *Also express its deep appreciation and thanks* to all those who participated in the first session of the working group of the Sub-Commission mandated to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism;
3. *Reaffirms* the importance of respecting international human rights, humanitarian and refugee law in the fight against terrorism;
4. *Welcomes with satisfaction* the report of the sessional working group and takes note of its discussions and its agreed programme of work;
5. *Endorses* all the recommendations contained in the report of the sessional working group, including the request to Ms. Koufa to update her preliminary framework draft of principles and guidelines based on the discussions in the working group;
6. *Requests* the Office of the United Nations High Commissioner for Human Rights to disseminate, by all appropriate means, to States, organizations and bodies of the United Nations system, the specialized agencies, the treaty bodies and other United Nations human rights mechanisms, including the special procedures of the Commission on Human Rights, regional intergovernmental organizations, national human rights institutions and non-governmental organizations, information about the Sub-Commission’s working group and bring to their attention its recommendations;
7. *Invites* those mentioned in the preceding paragraphs to provide information and data to the working group that would assist it in carrying out its mandate;
8. *Decides* to reconvene the working group at the fifty-eighth session of the Sub-Commission.

2005/32. Methods of work of the Sub-Commission

The Sub-Commission on the Promotion and Protection of Human Rights,

Commended with appreciation the working paper prepared by Mr. Emmanuel Decaux on the methods of work of the Sub-Commission relating to the choice of subjects and the preparation of reports and on how the Sub-Commission should organize its work so as to ensure full consideration of reports by members of the Sub-Commission, non-governmental organizations, national delegations and other interested parties (E/CN.4/Sub.2/2005/5),

Welcoming the in-depth and constructive debate held on the working paper at the fifty-seventh session and the concrete prospects for improving its methods of work that resulted from that debate,

Reaffirming the relevance of the guidelines contained in chapter XV of the Guidelines for the application by the Sub-Commission on the Promotion and Protection of Human Rights of the rules of procedure of the functional commissions of the Economic and Social Council and other decisions and practices relating thereto (Sub-Commission decision 1999/114, annex),

Emphasizing the need for the Sub-Commission to prepare a regular programme of work, establishing priorities and setting target dates,

Recommending the development of the official site of the Office of the High Commissioner devoted to the work of the Sub-Commission with a view to facilitating thematic research and exchange of information,

Encouraging transparency, dialogue and consultation with respect to all stakeholders, particularly non-governmental organizations,

Welcoming the new role that independent national institutions for the promotion and protection of human rights can play in the Sub-Commission,

1. *Requests* the Secretariat to ensure the official transmittal of document E/CN.4/Sub.2/2005/5 to the treaty bodies, and wishes to continue its established cooperation with these bodies;

2. *Decides* to request Mr. Decaux to submit a more detailed working paper to the Sub-Commission at its fifty-eighth session, containing recommendations on ways of improving the effectiveness of the Sub-Commission, in particular:

(a) The number of studies and working papers that can be prepared and discussed by members of the Sub-Commission;

(b) The choice of priorities of the Sub-Commission and the identification of possible gaps in the discussion of certain themes;

(c) Constructive cooperation with treaty bodies, special procedures and relevant agencies or organizations of the United Nations;

(d) Modalities for the preparation of a scientific publication tracing the history of the major studies carried out by the Sub-Commission since its establishment.

*20th meeting
11 August 2005*

[Adopted without a vote. See chap. III.]

B. Decisions

2005/110. Prevention of human rights violations committed with small arms and light weapons

At its 20th meeting, on 11 August 2005, the Sub-Commission on the Promotion and Protection of Human Rights, recalling its actions on this question, including resolutions 2001/120 of 16 August 2001 and 2002/25 of 14 August 2002 and decisions 2003/105 of 13 August 2003 and 2004/123 of 13 August 2004, as well as Commission on Human Rights decisions 2003/112 of 25 April 2003 and 2004/124 of 21 April 2004; having received the working paper (E/CN.4/Sub.2/2002/39), two progress reports (E/CN.4/Sub.2/2003/29 and E/CN.4/Sub.2/2004/37 and Add.1) and the draft principles on the prevention of human rights violations committed with small arms (E/CN.4/Sub.2/2005/35) submitted to date by the Special Rapporteur, Barbara Frey; taking note of the Special Rapporteur's request for additional time for further collection and evaluation of responses from Governments, national human rights institutions and non-governmental organizations to her questionnaire soliciting information in connection with her study; and expressing appreciation to those Governments that have

responded to the questionnaire and encouraging other Governments to submit responses to the questionnaire (copy is available on request from the Secretariat) preferably by 1 November 2005 to enable the Special Rapporteur to complete her work; decided, without a vote, to request the Special Rapporteur to submit her final report on the prevention of human rights violations committed with small arms and light weapons for consideration at its fifty-eighth session, taking into account the discussion at the present session.

[See chap. VIII.]

2005/111. Human rights and the human genome

At its 20th meeting on 11 August 2005, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote:

(a) To express its deep appreciation to the Special Rapporteur, Antoanella-Iulia Motoc, for her interim report on the study on human rights and the human genome (E/CN.4/Sub.2/2005/38) and welcomed the rich discussion that took place thereon;

(b) To request the Special Rapporteur to submit a final report to the fifty-eighth session;

(i) To request the Secretary-General to provide the Special Rapporteur with all necessary assistance to enable her to carry out her mandate, inter alia by facilitating her contacts with States and intergovernmental and non-governmental organizations, and by enabling her to send them a questionnaire at the appropriate time to help in the preparation on her final report.

[See chap. VIII.]

2005/112. Human rights and non-State actors

At its 20th meeting on 11 August 2005, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote:

(a) To express its deep appreciation to Gáspár Bíró and Antoanella-Iulia Motoc for their working paper on human rights and non-State actors (E/CN.4/Sub.2/2005/40) and welcomed the rich discussion that took place thereon;

(b) To request Mr. Bíró, Ms. Motoc, David Rivkin and Ibrahim Salama to prepare, without financial implications, an expanded working paper on human rights and non-State actors in order to approach, in a systematic way, the question of accountability under international human rights law and to submit the working paper to the Sub-Commission at its fifty-eighth session, taking into account the discussions at the Sub-Commission at its fifty-seventh session.

[See chap. VIII.]

2005/113. Composition of working groups of the Sub-Commission for 2006

At its 20th meeting, on 11 August 2005, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to approve the following composition of its working groups for 2006, with the understanding that, in view of the forthcoming elections for half of the members of the Sub-Commission, to be held during the sixty-second session of the Commission on Human Rights, the Chairperson of the Sub-Commission, in consultation with the regional groups, would take the necessary action to replace any members of the working groups not re-elected to the Sub-Commission:

| Regional group | Minorities | Slavery | Indigenous populations | Communications | Social Forum |
|----------------|---------------------------|----------------------------|----------------------------|---------------------------|-------------------------|
| Africa | Mr. Cherif | Mr. Salama | Ms. Mbonu | Ms. Warzazi | Ms. Mbonu Mr. Salama |
| | Ms. Mbonu (alternate) | Ms. Warzazi (alternate) | Mr. Salama (alternate) | Mr. Cherif (alternate) | |
| Asia | Mr. Sorabjee | Mr. Sattar | Mr. Yokota | Mr. Chen | Ms. Chung Mr. Sattar |
| | Mr. Sattar (alternate) | Ms. Chung (alternate) | Ms. Hayashi (alternate) | Mr. Liu (alternate) | |

| Regional group | Minorities | Slavery | Indigenous populations | Communications | Social Forum |
|---------------------------------|-----------------------------------|-----------------------------|----------------------------------|----------------------------------|---|
| Eastern Europe | Mr. Kartashkin | Ms. Motoc | Mr. Bíró | Mr. Kartashkin | Mr. Bíró Ms. Motoc |
| | Ms. Sandru-Popescu (alternate) | Mr. Bíró (alternate) | Ms. Motoc (alternate) | Mr. Bíró (alternate) | |
| Latin America | Mr. Bengoa | Mr. Pinheiro | Mr. Alfonso Martínez | Mr. Alfonso Martínez | Ms. O'Connor Mr. Bengoa |
| | Ms. O'Connor (alternate) | Ms. O'Connor (alternate) | Mr. Tuñón Veilles (alternate) | Mr. Tuñón Veilles (alternate) | Mr. Pinheiro Mr. Tuñón Veilles (alternates) |
| Western Europe and other States | Mr. Alfredsson | Mr. Bossuyt | Ms. Hampson | Mr. Decaux | Mr. Alfredsson Mr. Bossuyt |
| | Ms. Koufa (alternate) | Mr. Decaux (alternate) | Ms. Koufa (alternate) | Ms. Hampson (alternate) | |

[See chap. III.]

2005/114. Role of an independent expert body within the reform of the United Nations human rights machinery

The Sub-Commission on the Promotion and Protection of Human Rights,

Decides to request its Chairperson to transmit the document on the role of an independent expert body within the reform of the United Nations human rights machinery annexed to the present decision to:

- (a) The Chairperson of the Commission on Human Rights;
- (b) The United Nations High Commissioner for Human Rights, with the request to distribute it widely, in particular, to the permanent missions of Member States at Headquarters and in Geneva.

Annex

ROLE OF AN INDEPENDENT EXPERT BODY WITHIN THE REFORM OF THE UNITED NATIONS HUMAN RIGHTS MACHINERY

Summary

The present text seeks to contribute to the debate about reform of the United Nations human rights machinery. It addresses the following matters:

- (a) The principles on which the reforms need to be based;
- (b) The functions to be performed, including:
 - (i) Policy initiatives;
 - (ii) Standard-setting with regard to:
 - a. New norms;
 - b. Guidelines relating to implementation;
 - (iii) Identifying gaps in standards and methods of monitoring;
 - (iv) Identifying good practice.

These functions are not performed by the treaty bodies, the special procedures or the Office of the High Commissioner for Human Rights. They can best be performed by an elected, collegial, independent expert body. The body must listen to and work closely with as wide a range of representatives of civil society as possible, including non-governmental organizations, national human rights institutions and intergovernmental organizations.

The document also identifies ways to improve the functioning of the Sub-Commission on the Promotion and Protection of Human Rights.

Introduction

1. The Sub-Commission on the Promotion and Protection of Human Rights wishes to contribute to the discussions regarding reform of the human rights system within the United Nations. Such a reform should:

- Be in conformity with the Charter of the United Nations;
- Protect and enhance the strengths of the current system;
- Improve synergies between components in the human rights system.

I. THE NEED FOR A COLLEGIAL INDEPENDENT EXPERT BODY

2. **There is a clear need for a collegial independent expert body within the United Nations human rights machinery because certain essential functions within the United Nations human rights machinery can best be fulfilled by such a body.** The activities of the United Nations with regard to the promotion and protection of and respect for human rights must form a coherent whole and require greater clarity in relation to the different types of activities performed by different bodies. The reform should improve coherence in the system.

3. The various activities involved in the promotion of human rights are of a clearly different nature:

(a) The treaty bodies perform important monitoring and enforcement functions when they make findings with regard to violations or when they engage in monitoring by adopting concluding observations. The role of the special procedures is more akin to that of an overseer, gathering evidence and identifying criticisms;¹

¹ Generally speaking special procedures, with the exception of the Working Group on Arbitrary Detention, on account of conflicting evidence, cannot reach a conclusion as to the existence of a violation. In the process of discharging their mandates, they may clarify the scope of a particular norm. That does not represent standard-setting in the usual sense but resembles rather the function of a court in determining the scope of a norm that it is called upon to apply. Peer review represents a very particular form of quasi-judicial function. It is based on obligations as Members of the United Nations, rather than on obligations arising under international law generally.

(b) The role that involves the implementation in practice of human rights standards, through law, regulation, policies and practices, is performed principally by the Office of the High Commissioner for Human Rights. The Plan of Action (A/59/2005/Add.3, annex), envisages a greatly enhanced role for the Office, especially through field presences. That would suggest that it will become even more difficult for the Office to be engaged simultaneously in standard-setting, monitoring and implementation;

(c) The first stage in a process that consists in the identification of issues that may require the adoption of certain rules, regulations, policies and practices should be debated by a group of experts considering the implications of any proposals before making specific suggestions. In this initial phase, as wide a range of input as possible from a variety of sources, including civil society, is needed. Specific proposals can then be considered by a political body which gives legitimacy to the proposals adopted by endorsing them. There is a real danger that the “legislation” will be inadequately considered if it has only been considered by the political body. Generally speaking, rules, principles, guidelines and standards should only be adopted after they have been subjected to scrutiny and discussion by an independent expert body.

4. Standard-setting relates to both primary rules, such as those contained in treaties, and secondary rules, which generally take the form of soft law, in which the scope of the primary rules is clarified and operationalized, as the work and the achievements of the Sub-Commission demonstrates. The ongoing need for primary standard-setting emerges in three contexts:

(a) First, there may be an entirely novel development, requiring a new legal regime to take account of the human rights implications of the development;²

² An example is the current study on the human rights implications of the work on the human genome.

(b) The second context is where the factual situation changes and there is a need to develop standards to address a particular factual situation;³

(c) The third situation is when a gap in the current standards or in the methods of monitoring is identified.⁴

There is a significant and ongoing need for secondary standard-setting across the whole spectrum of human rights. An example is the Standard Minimum Rules for the Treatment of Prisoners. Previous authoritative examples initiated by the Sub-Commission include the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity. Ongoing studies which operationalize general principles in relation to specific issues include the draft principles governing the administration of justice through military tribunals; the work on the guidelines on discrimination in the criminal justice system and the guiding principles for the implementation of existing human rights norms and standards in the context of extreme poverty, the draft guidelines for the realization of the right to drinking water supply and sanitation and future guidelines on best practices with regard to corruption and its impact on the full enjoyment of human rights.

5. The first stage of the standard-setting process, as identified, can best be performed by such a body:

(a) The Office of the High Commissioner, on account of its role in implementing standards, should not undertake standard-setting functions. It can make proposals with regard to standards but they need to be considered by a body independent of the Office;

³ An example is the work on developing guidelines in order to ensure that counter-terrorism measures are in conformity with human rights requirements.

⁴ An example is the development of the Principles on Housing and Property Restitution for Refugees and Internally Displaced Persons.

- (b) The special procedures cannot perform this role because:
 - (i) They have specific mandates, and what is required is a body with a general mandate;
 - (ii) They can only clarify their mandates and not enlarge them; and
 - (iii) One person cannot do the work of a group representing a variety of legal systems, situations and professional disciplines;

Even if every special procedure were to have the benefit of an advisory group or even if the special procedures were to get together to propose new standards, their experience would remain compartmentalized according to their mandates;

(c) The treaty bodies cannot perform that role because they are limited by the terms of the particular treaty. They can provide guidance as to the scope of particular provisions, for example by means of general comments, but they cannot create detailed guidelines for the implementation or operationalization of the rules.

6. Consequently, there is a need for a representative independent expert body that is able to think collectively, free from specialized mandate constraints and political considerations, in order to initiate and pursue new and innovative thinking in human rights standards and implementation. It should ensure balanced attention to civil and political rights and economic, social and cultural rights.

II. THE FORM SUCH AN INDEPENDENT EXPERT BODY SHOULD TAKE

7. The independent expert body must be sufficiently large in number to represent not only different regions but differences within regions. The body should be of sufficient size to represent a variety of legal traditions, professional backgrounds, and regional and national expertise. Experience suggests that the body would function best with a membership of around 25 or 26, perhaps somewhat larger. The members need to be both independent and expert. Membership should be by election, rather than by appointment, in order to ensure the transparency and democratic legitimacy of the body.

III. RELATIONSHIP OF THE INDEPENDENT EXPERT BODY WITH OTHER ORGANS AND INSTITUTIONS

8. The independent expert body needs to have close links with the political body which can adopt standards (the Commission on Human Rights or Human Rights Council) and with special procedures and treaty bodies. The secondary standard-setting on implementation will be of considerable assistance to the treaty bodies and the special procedures, on condition that it takes into account the principles which they have already established. It is also important for such a body to coordinate with the International Law Commission, to avoid duplication and to ensure that human rights concerns are taken into account in the work of that Commission.⁵

9. The body should ensure the widest possible access - at least the same as that currently provided - by and the active involvement of civil society in its work. This includes both non-governmental organizations and national human rights institutions. The current Sub-Commission is generally recognized as providing the best access to non-governmental organizations in the field of human rights activity within the United Nations. The intersessional working groups of the Sub-Commission are particularly important in this regard, as are others such as the Social Forum. They allow focused, specialized and interactive participation to both non-governmental organizations in consultative status with the Economic and Social Council and other associations and non-governmental organizations. Evolution in practice starts in these working groups.⁶

⁵ Examples of the need for coordination in the current work of the International Law Commission include reservations to treaties, the effect of war on treaties and the responsibility of international organizations.

⁶ For example, there have been reports jointly authored by non-governmental organizations and members of the Sub-Commission.

10. The body should also be in dialogue with the specialized agencies of the United Nations and other international organizations. The current work of the Sub-Commission is followed by many agencies such as the United Nations High Commissioner for Refugees and the United Nations Children's Fund. The representatives of the International Labour Organization, the World Bank, the United Nations Development Programme, the International Monetary Fund and the World Trade Organization, among others, actively contribute to the work of the Social Forum.

IV. THE SUB-COMMISSION

11. The Sub-Commission has at its fifty-seventh session continued to prove its willingness to scrutinize its own working methods. Issues which require examination include:

(a) Consideration should be given to the formulation of guidelines or criteria for membership; the issue of term limits;

(b) The improvement of the prioritization, choice and discussion of working papers and reports;⁷

(c) The examination of how to make more effective use in its work of information on empirical country situations to identify themes, emerging issues and threats to human rights protection as befits a think tank;

(d) Consideration of restoring the role of the plenary Sub-Commission in the 1503 procedure.

⁷ Working paper by Mr. Decaux on the methods of work of the Sub-Commission with regard to reports (E/CN.4/Sub.2/2005/5); resolution 2005/32; working paper by Mr. Alfredsson on research and study topic proposals (E/CN.4/Sub.2/2004/46).

V. CONCLUSION

12. For 58 years, the political standard-setting organs have felt the need for an independent expert body.⁸ The need for a think tank and for an independent group of experts to engage in initial standard-setting and the formulation of guidelines and principles to operationalize human rights rules has not disappeared and will increase in the future.

[See chap. III.]

⁸ “Over the years, the Sub-Commission has provided the Commission on Human Rights with insights and ideas, based on expertise and experience of its members (and) helped to identify and develop new areas for further consideration”. Louise Arbour, United Nations High Commissioner for Human Rights, 25 July 2005. “[The Commission on Human Rights] recognized not only the valuable contribution made by this body [the Sub-Commission] to the human rights work of the United Nations over the past 58 years, but also its important contribution to the development of a better understanding of human rights through the study of important issues, the elaboration of international standards and the promotion and protection of human rights throughout the world.” Ambassador Makarim Wibisono, Chairman of the sixty-first session of the Commission on Human Rights, 25 July 2005.