

Highlights of the Fiftieth Session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities

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I. Introduction

The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission) met in Geneva, Switzerland, from August 3rd through August 28th, 1998 for its fiftieth session.² The Sub-Commission is a subsidiary body of the Commission on Human Rights (Commission). It is composed of twenty-six members who are nominated by their respective governments and elected to four-year terms by the Commission. Under the principle of geographic distribution, the Sub-Commission has seven members from Africa, five from Latin America, five from

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1. The authors would like to thank Alexandra Arbogast and Aarthi Belani for their excellent work and indispensable help during the 1998 Sub-Commission session.

2. See David Weissbrodt et al., *Brief Summary of the 50th Session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 16 NETH. Q. HUM. RTS. 553 (1998); David Weissbrodt et al., *U.N. Sub-Commission on Human Rights*, 32 HUM. RTS. ADVOC. 1 (1998); David Weissbrodt et al., *An Analysis of the Forty-ninth Session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 11 HARV. HUM. RTS. J. 221 (1998); International Service for Human Rights, U.N. Sub-Commission, 50th Session, Geneva, 3-28 August 1998, *List of Resolutions & Decisions* (Aug. 1998); David Weissbrodt & Sosamma Samuel, *Review of Developments at the 48th Session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 15 NETH. Q. HUM. RTS. 103 (1997); David Weissbrodt & Jennifer Prestholdt, *The 47th Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 13 NETH. Q. HUM. RTS. 481 (1995).

Asia, three from Eastern Europe, and six from Western Europe and other nations (including Australia, Canada, New Zealand and the United States).

The mandate of the Sub-Commission includes human rights standard-setting as well as specific review of country situations and current human rights issues in all parts of the world.³ Because of its role in initiating action within the United Nations human rights system and its accessibility to non-government organizations (NGOs), each year hundreds of human rights activists from dozens of countries travel to Geneva to attend and address the session of the Sub-Commission. In addition, the Sub-Commission is attended by observers from governments, U.N. bodies and specialized agencies, and other intergovernmental organizations.

The Sub-Commission develops resolutions that are presented to and often adopted by the Commission.⁴ Members of the Sub-Commission also prepare working papers and studies on human rights problems.⁵ Since many treaties and other human rights instruments have been promulgated, the Sub-Commission has de-emphasized its standard-setting function⁶ and has given greater attention to promotion, problem solving, implementation, and the use of public pressure to improve human rights.⁷

3. For further details on the mandate of the Sub-Commission, see the terms of reference of the Sub-Commission on Prevention of Discrimination and Protection of Minorities as defined by the Commission, and its particular responsibilities established, *inter alia*, in C.H.R. Res. 8, U.N. ESCOR Comm. on Hum. Rts., 42d Sess., Supp. No. 6, at 131, U.N. Doc. E/CN.4/940 (1967); C.H.R. Res. 17, U.N. ESCOR Comm. on Hum. Rts., 37th Sess., Supp. No. 5, at 219, U.N. Doc. E/CN.4/1475 (1981); E.S.C. Res. 1235, U.N. ESCOR, 42d Sess., Supp. No. 1, U.N. Doc. E/4393 (1967); and E.S.C. Res. 1503, U.N. ESCOR, 48th Sess., Supp. No. 1A, at 8, U.N. Doc. E/4832/Add.1 (1970).

4. See FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* 11 (2d ed. 1996).

5. See *id.*

6. Several Sub-Commission members believe that most international human rights standards have been established. The new challenge lies in ensuring that these standards are implemented.

7. It is important to note the significant role public criticism can play with respect to the assurance of human rights. Countries are very eager to avoid negative international attention. Indeed, as a result, government delegates launch extensive lobbying efforts to prevent resolutions criticizing or even mentioning their countries. International public attention can strengthen local human rights advocacy. See generally MARGARET KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998).

A. Summary of the Fiftieth Session

At its fiftieth session in 1998, the Sub-Commission celebrated the fiftieth anniversary of the Universal Declaration of Human Rights.⁸ The Sub-Commission also considered resolutions on country situations in Afghanistan, Algeria, Bahrain, Belarus, Bhutan, the Democratic People's Republic of Korea and Mexico.⁹ In addition, the Sub-Commission took a new initiative by adopting a thematic resolution, focusing on the protection of human rights defenders in nine countries, including Burma, Colombia, the Democratic Republic of the Congo, Honduras, Indonesia, Nigeria, the Philippines, Tunisia, Turkey and the Federal Republic of Yugoslavia.¹⁰ The Sub-Commission completed considerable work in the area of economic, social and cultural rights, including the Final Report on the Relationship Between the Enjoyment of Human Rights, in Particular Economic, Social, and Cultural Rights, and Income Distribution.¹¹ The recommendations in this final report will have a significant impact on the future work of the Sub-Commission. In particular, the Sub-Commission will restructure its agenda so as to include a Social Forum that will invite the participation of major international financial organizations such as the World Bank and International Monetary Fund. The Sub-Commission also decided to form a sessional working group, for a three-year period, to examine the working methods and activities of transnational corporations.¹² In addition, the Sub-Commission welcomed the Final Report on Systematic Rape, Sexual Slavery, and Slavery-Like Practices During Armed Conflict, Including Internal Armed Conflict.¹³ Furthermore, the Sub-Commission adopted the Draft International Convention on the Protection of all Persons from Enforced Disappearance.¹⁴

The Sub-Commission also continued to reform its working

8. *Universal Declaration of Human Rights*, G.A. Res. 217 A(III), at 71, U.N. Doc. A/810 (1948), available at <<http://www1.umn.edu/humanrts/instrree/bludhr.htm>>.

9. See *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on Its Fiftieth Session*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., U.N. Doc. E/CN.4/1999/4, E/CN.4/Sub.2/1998/45 (1998) [hereinafter *Report of the Sub-Commission*].

10. See S.C. Res. 1998/3, *Report of the Sub-Commission*, *supra* note 9, at 18.

11. See U.N. Doc. E/CN.4/Sub.2/1997/9 (1997).

12. See S.C. Res. 1998/8, *Report of the Sub-Commission*, *supra* note 9, at 31.

13. See U.N. Doc. E/CN.4/Sub.2/1998/13 (1998).

14. See U.N. Doc. E/CN.4/Sub.2/1998/19 (1998).

methods. This year, members of the Bureau of the Commission¹⁵ visited the Sub-Commission in an effort to encourage these reforms. During the second week of the Sub-Commission session, the Commission Bureau met with the Sub-Commission in private and public sessions as well as with non-governmental organizations and government representatives. The reforms proposed will likely have a significant impact on the future of the Sub-Commission.

During its fiftieth session, Sub-Commission members listened to statements from representatives from non-governmental organizations (NGOs). Collectively, these NGO representatives raised their concerns over the human rights situations in over thirty countries. Among those countries most frequently mentioned were Afghanistan, Algeria, Indonesia, Kashmir, Kosovo, Mexico, Rwanda, Sri Lanka, Sudan, Turkey and the United States of America.

B. Fiftieth Anniversary of the Universal Declaration

During its fiftieth session in August 1998, the Sub-Commission held a special meeting to celebrate the adoption of the Universal Declaration of Human Rights fifty years ago in 1948.¹⁶ Sub-Commission members from each of the five regions of the world noted that the Declaration's promulgation marked the beginning of the modern struggle to protect human rights. The Declaration provides a worldwide definition of human rights and an authoritative interpretation of the human rights obligations of U.N. Member States under the Charter.¹⁷

The Universal Declaration of Human Rights reflects its place in history because it responds to the wounds and horrors of its era and thus articulates the importance of rights which were placed at great risk during the decade of the 1940s with the Holocaust and World War II,¹⁸ that is: the rights to life, liberty and security of person; freedoms of expression, peaceful assembly, association, movement, thought, conscience, religion and belief; and protections from slavery, discrimination, arbitrary arrest, unfair trial and invasions of privacy. The Universal Declaration contains pro-

15. The Commission on Human Rights elects five of its members to the Bureau of the Commission. This Bureau presides over the functions of the Commission.

16. See generally *Report of the Sub-Commission*, *supra* note 9.

17. See *Universal Declaration of Human Rights*, *supra* note 8.

18. See FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* 8 (2d ed. 1996); PAUL GORDON LAUREN, *THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS* 139-240 (1998); JOHN P. HUMPHREY, *HUMAN RIGHTS & THE UNITED NATIONS: A GREAT ADVENTURE* 29-36 (1984).

visions for economic, social and cultural rights, including the rights to free choice of employment; equal pay for equal work; and a standard of living adequate for the health and well-being of each person, including food, clothing, housing and medical care, as well as social security. In addition, the Declaration provides for duties to the community with regard to the rights of others.

The Universal Declaration has had its greatest impact as an inspiration and foundation for international and national efforts throughout the world to protect human rights. The Universal Declaration has entered the pantheon of core inspirational utterances of humankind, along with the Magna Carta,¹⁹ the French Declaration of the Rights of Man and Citizen,²⁰ and the U.S. Declaration of Independence.²¹ The Universal Declaration has become part of a worldwide culture or powerful ideology of human rights which is more pervasive than any political philosophy or economic system. During the Sub-Commission's special meeting on the Universal Declaration, Rajenda Goonesekere (expert from Sri Lanka) responded eloquently to some arguments that have been raised against the universality of the Declaration:

It is my observation . . . that almost always those arguments are raised not by the ordinary people, but by governments or groups in society which have much to lose by recognizing the universality and indivisibility of human rights. No ordinary human being would deny the need to be treated equally and with dignity, to speak freely, not to be arrested and detained arbitrarily, to be free from torture, to have an adequate state of living, to be entitled to just conditions of labour and so on. To say these norms are nothing but a western development is to deny to non-western societies the humane and democratic legacies of their own religions and cultures.²²

Following adoption of the Universal Declaration, which Mr. Asbjørn Eide (expert from Norway) identified as the most important resolution ever adopted by the United Nations General Assembly, the U.N. Commission on Human Rights and the General Assembly drafted the three treaties which comprise the remainder of the International Bill of Human Rights, that is, the Covenant on Economic, Social and Cultural Rights;²³ the Covenant on Civil and

19. MAGNA CARTA (Eng. 1215) (visited Feb. 14, 1999) <<http://www1.umn.edu/humanrts/education/historical.html>>.

20. DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN (visited Feb. 2, 1999) <<http://www1.umn.edu/humanrts/education/historical.html>>.

21. THE DECLARATION OF INDEPENDENCE (U.S. 1776).

22. Intervention by Sub-Commission expert Rajenda K. Wimala Goonesekere on August 26, 1998.

23. See *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), 993

Political Rights;²⁴ and an Optional Protocol to the Civil and Political Covenant.²⁵

Inspired by the Universal Declaration and the related International Bill of Human Rights, the U.N. and regional structures in Africa, Europe and the Western Hemisphere have drafted, promulgated and now help to implement more than eighty human rights treaties, declarations and other instruments dealing with such concerns as genocide, racial discrimination, discrimination against women, violence against women, torture, the prevention of torture, religious intolerance, the rights of disabled persons, the right to development, the rights of migrants, the rights of non-citizens and the rights of the child.²⁶ These treaties and other instruments have been the subject of further elaboration and interpretation by international and regional supervisory mechanisms which are often able to establish a new level of protection for human rights.²⁷ Human rights law has thus become the most codified domain of international law.

The Universal Declaration is also cited and/or its provisions are reflected in the rights guaranteed by constitutions and statutes of many countries.²⁸ The Universal Declaration has been cited and used as a basis for establishing both internal and external or foreign policies of nations and regional groupings.²⁹

U.N.T.S. 3, entered into force Jan. 3, 1976.

24. See *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

25. See *Optional Protocol to the International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force Mar. 23, 1976.

26. See generally United Nations Centre for Human Rights, *Human Rights: A Compilation of International Instruments*, U.N. Doc. ST/HR/1/Rev.5 (1994, 1997); University of Minnesota Human Rights Library, *International Human Rights Instruments* by Topic (visited Feb. 2, 1999) <<http://www1.umn.edu/humanrts/instree/ainstls2.htm>>.

27. See DAVID J. HARRIS & STEPHEN LIVINGSTONE, *THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS* 213-394 (1998). See generally DOMINIC MCGOLDRICK, *THE HUMAN RIGHTS COMMITTEE: ITS ROLE IN THE DEVELOPMENT OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* (1991); MANFRED NOWAK, *U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY* (1993); PETER VAN DIJK & G.J.H. VAN HOOF, *THEORY AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (3d ed. 1998); University of Minnesota Human Rights Library, *Decisions and Views of the Human Rights Committee* (visited Feb. 2, 1999) <<http://www1.umn.edu/humanrts/undocs/undocs.htm>>.

28. See *Filartiga v. Peña-Irala*, 630 F.2d 876, 882 n.10 (2d Cir. 1980); HENC VAN MAARSEVEEN & GER VAN DER TANG, *WRITTEN CONSTITUTIONS: A COMPUTERIZED COMPARATIVE STUDY* 103 (1978); Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 292-312 (1996).

29. See DAVID P. FORSYTHE, *HUMAN RIGHTS AND FOREIGN POLICY: CONGRESS*

The Universal Declaration of Human Rights has also inspired a broad human rights movement with a global network of hundreds, if not a couple thousand, non-governmental organizations at the local, national, and international levels whose work is mutually reinforcing and effective.³⁰ Some non-governmental organizations have a significant impact on the formulation of foreign policy; others influence national or local policies or actions.³¹ International non-governmental organizations have an important role in providing credibility and protection for the indispensable efforts of local organizations.

Members of the Sub-Commission noted, however, that there remain many challenges in bringing reality to the rights set forth in the Universal Declaration. The horrible abuses occurring in some countries demonstrate that there is much that needs to be done. Françoise Hampson (expert from the United Kingdom) further suggested that each nation celebrate the fiftieth anniversary by ratifying one additional human rights treaty and by withdrawing one reservation to a human rights treaty that had previously been ratified.³²

II. Sub-Commission's Actions on Country Situations

A. *Non-Duplication Issue*

The Sub-Commission continued to reform its methods regarding discussions under Agenda Item 2. Beginning in 1993, the Commission increasingly criticized the Sub-Commission for needlessly repeating the Commission's actions on country situations.³³ Most of the country resolutions adopted by the Sub-Commission prior to its forty-ninth session (in 1997) were repetitions of actions taken by the Commission and were often weakened by drafting and procedural problems.

On August 29, 1996, however, the Sub-Commission laid the basis for a path-breaking reform with respect to its country resolu-

RECONSIDERED (1988); DAVID P. FORSYTHE, *HUMAN RIGHTS AND WORLD POLITICS* (1983); David Weissbrodt, *Human Rights Legislation and United States Foreign Policy* 7 GA. J. INT'L & COMP. L. 231, 265 (1977).

30. See WILLIAM KOREY, *NGOS AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 1-4 (1998).

31. See MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998).

32. Intervention by Sub-Commission expert Françoise Hampson on August 26, 1998.

33. See, e.g., C.H.R. Res. 1994/23 (1994); C.H.R. Res. 1995/26 (1995); C.H.R. Res. 1996/25 (1996); C.H.R. Res. 1997/22 (1997); C.H.R. Res. 1998/28 (1998).

tions. In its Decision 1996/115, the Sub-Commission agreed to take no action at its forty-ninth session under Agenda Item 2 in respect of human rights situations that the Commission was considering under public procedures for dealing with human rights violations. The Commission, in its Resolution 1997/22, expressed its appreciation of the steps undertaken by the Sub-Commission to reform and improve its methods of work, in particular "the decision to avoid duplication of the work of the Commission on Human Rights by not taking action during its forty-ninth session on human rights situations under consideration in the public procedures of the Commission"³⁴ and requested the Sub-Commission "to refrain henceforth from duplicating action by the Commission on Human Rights with regard to country situations under consideration in the public procedures of the Commission and, furthermore, limit action to exceptional cases in which new and particularly grave circumstances arise."³⁵

With its Decision 1997/113 of August 27, 1997, the Sub-Commission decided "not to adopt resolutions or decisions henceforth under [Agenda Item 2] in respect of human rights situations which the Commission is considering under the public procedures for dealing with human rights violations."³⁶ In its Resolution 1998/28 of April 17, 1998, the Commission took note with interest of Sub-Commission Decisions 1996/115 and 1997/113, and encouraged the Sub-Commission to continue its efforts to avoid duplication with the work of the Commission.³⁷ Although the work of the Sub-Commission under Agenda Item 2 during its fiftieth session strongly reflected this new approach, a number of actions tended to marginally weaken the Sub-Commission's efforts at avoiding duplication with the work of the Commission.

B. Overlap with the Work of the Commission

Much of the work performed by the Sub-Commission under Agenda Item 2 during its fiftieth session represented new efforts to address violations that had not been given adequate attention by the Commission. Indeed, the principal focus of the Sub-Commission's work related to new countries, each of which is dis-

34. C.H.R. Res. 1997/22, U.N. ESCOR Comm. on Hum. Rts., 53d Sess., 56th mtg. at 89, ¶ 2, U.N. Doc. E/CN.4/1997/150 (1997).

35. *Id.* ¶ 3(b).

36. S.C. Dec. 1997/113, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 49th Sess., 35th mtg. at 95, U.N. Doc. E/CN.4/Sub.2/1997/50 (1997).

37. See C.H.R. Res. 1998/28, U.N. ESCOR Comm. on Hum. Rts., 54th Sess., 51st mtg. ¶ 3, U.N. Doc. E/1998/23 (1998).

cussed separately in the following section. A few initiatives of the Sub-Commission, however, did continue to overlap marginally with the work of the Commission.

On August 21, 1998, for instance, the Sub-Commission adopted Resolution 1998/17, which expressed concern over the situation of women and girls in Afghanistan.³⁸ This resolution noted the "continuous suffering of Afghan women under the prohibitions placed upon them by the Taliban, which include confinement to the home and other restrictions on their freedom of movement, as well as denial of the right to work, denial of education and limitations on their access to medical care."³⁹ Most importantly, the resolution represented a joint effort brought forth by Muslim members of the Sub-Commission to voice a uniquely Islamic response to the situation in Afghanistan.⁴⁰ The Muslim members asked the Sub-Commission to express its opposition to the religious extremism of the Taliban Government in Afghanistan, and also to show its concern over the severe abuses of human rights which have resulted from that extremism.⁴¹

While the human rights situation within Afghanistan is quite severe, however, it has received significant attention at the level of the Commission, and has for many years been the subject of resolutions adopted by that human rights body.⁴² The Commission has also assigned a Special Rapporteur to the human rights situation in Afghanistan, who presented his latest report on that country to the Commission at its fifty-fourth session.⁴³ The argument may be raised that the Sub-Commission's efforts in this instance specifically revolved around the repression of the rights of women and girls, and also focused on the Taliban's extremist religious perspective, thereby minimizing the substantive overlap between the work of the Commission and Sub-Commission. With regard to the rights of women and girls, the Commission has certainly already voiced its own concern. For example, in Resolution 1998/70 on the

38. This resolution, while dealing with a specific country situation, was adopted under Sub-Commission Agenda Item 5, which gives particular attention to the human rights of women. See *Annotations to the Provisional Agenda*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Agenda Item 5, at 2, U.N. Doc. E/CN.4/Sub.2/1998/1/Add.1 (1998).

39. S.C. Res. 1998/17, *Report of the Sub-Commission*, *supra* note 9, at 50.

40. See *id.*

41. See *id.*

42. See C.H.R. Res. 1998/70, U.N. ESCOR Comm. on Hum. Rts., 54th Sess., 57th mtg., U.N. Doc. E/1998/23 (1998); see also C.H.R. Res. 1997/65, U.N. ESCOR Comm. on Hum. Rts., 53d Sess., 56th mtg., U.N. Doc. E/1997/23 (1997); C.H.R. Res. 1996/75, U.N. ESCOR Comm. on Hum. Rts., 52d Sess., 60th mtg., U.N. Doc. E/1996/23 (1996).

43. See U.N. Doc. E/CN.4/1998/71 (1998).

human rights situation in Afghanistan, the Commission paid specific attention to the plight of women and girls within the country and urged the Government of Afghanistan to "bring to an end without delay all violations of human rights of women and girls."⁴⁴

While the situation of women in Afghanistan no doubt merits international attention, it remains a question as to whether the efforts made by the Sub-Commission in this matter were in fact needed. Duplication, therefore, remains an important issue not only pragmatically, for the sake of institutional efficiency, but also ethically, as there are many human rights situations around the globe which merit attention from the U.N. human rights bodies.

Secondly, as an expression of support for the United Nations Draft Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,⁴⁵ the Sub-Commission passed, under Agenda Item 2, Resolution 1998/3 advocating the protection of human rights defenders in all countries of the world.⁴⁶ While the substance of this resolution is discussed in greater detail during the next section, the issue of duplication with the work of the Commission will be, for now, the primary focus. The Sub-Commission specifically expressed concern over the violations of the rights of human rights defenders in Algeria, Colombia, Congo, Guatemala, Honduras, Indonesia, Northern Ireland, Kosovo, Myanmar, Nigeria, the Philippines, Tunisia and Turkey.⁴⁷ Several of the countries mentioned, however, are countries that have been addressed by the Commission in recent years, including Congo,⁴⁸ Guatemala,⁴⁹ Myanmar,⁵⁰ Nigeria⁵¹ and the

44. C.H.R. Res. 1998/70, U.N. ESCOR Comm. on Hum. Rts., 54th Sess., 57th mtg., U.N. Doc. E/1998/23 (1998). This resolution also urged the Government of Afghanistan to:

[T]ake urgent measures to ensure: (1) the repeal of all legislative and other measures which discriminate against women; (2) effective participation of women in civil, cultural, economic, political and social life throughout the country; (3) respect for the right of women to work, and reintegration in their employment; (4) the right of women and girls to education without discrimination, the reopening of schools and the admission of women and girls to all levels of education; (5) respect for women's right to security of person, and to ensure that those responsible for physical attacks on women are brought to justice; (6) respect for women's freedom of movement and effective and equal access to facilities necessary to protect their right to the highest attainable standard of physical and mental health.

Id.

45. See C.H.R. Res. 1998/7, U.N. ESCOR Comm. on Hum. Rts., 54th Sess., 31st mtg., U.N. Doc. E/1998/23 (1998).

46. S.C. Res. 1998/3, *Report of the Sub-Commission*, *supra* note 9, at 18.

47. See *id.*

48. See C.H.R. Res. 1998/61, U.N. ESCOR Comm. on Hum. Rts., 54th Sess.,

Federal Republic of Yugoslavia.⁵²

There was also some criticism stating that the Sub-Commission may have acted prematurely in the adoption of this resolution, as the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms has not yet been approved by the General Assembly. Still, this resolution does represent a positive development insofar as it attempts to break new ground by combining thematic and country related concerns.⁵³ Resolutions of this kind may offer the Sub-Commission a different mechanism for advancing and promoting human rights concerns. While this strategy holds considerable opportunity for the crafting of more effective and balanced country related resolutions, the question of duplication of effort remains problematic and needs to be considered by the Sub-Commission in the future if it increasingly drafts these types of resolutions.

In addition to the resolutions passed on the human rights situation in Afghanistan and on the violations of the rights of human rights defenders, Sub-Commission members also agreed to a consensus statement presented by the Chairman of the Sub-Commission on the human rights situation in Kosovo.⁵⁴ This statement gave voice to serious concern over ethnic hostilities, endemic violence, and mass displacement within the region.⁵⁵ As mentioned, the Republic of Yugoslavia has already gained a significant degree of attention from the Commission on Human Rights. The situation in Kosovo, however, may highlight the need for some flexibility with regard to the general rule of non-duplication. First, the human rights situation in Kosovo is striking in part due to its accelerated deterioration and, with the displacement of nearly ten percent of the population, to the sheer scope of its regional ramifications.⁵⁶ By issuing a chair statement,

56th mtg., U.N. Doc. E/1998/23 (1998).

49. See C.H.R. Res. 1998/22, U.N. ESCOR Comm. on Hum. Rts., 54th Sess., 43d mtg., U.N. Doc. E/1998/23 (1998).

50. See C.H.R. Res. 1998/63, U.N. ESCOR Comm. on Hum. Rts., 54th Sess., 56th mtg., U.N. Doc. E/1998/23 (1998).

51. See C.H.R. Res. 1998/64, U.N. ESCOR Comm. on Hum. Rts., 54th Sess., 56th mtg., U.N. Doc. E/1998/23 (1998).

52. See C.H.R. Res. 1998/79, U.N. ESCOR Comm. on Hum. Rts., 54th Sess., 59th mtg., U.N. Doc. E/1998/23 (1998).

53. The thematic approach focuses on specific categories of human rights abuses regardless of geographic location, while the country approach focuses on all categories of human rights abuse in a specific country.

54. See *Report of the Sub-Commission*, *supra* note 9, at 98-99.

55. See *id.*

56. See *id.*

the Sub-Commission was able to demonstrate its support for the humanitarian and relief efforts within Kosovo, while at the same time serving again to bring international attention back to the unraveling of human rights and fundamental freedoms within the region. Second, because the Sub-Commission was able to act on the situation in Kosovo through a statement of *consensus*, there was arguably no duplication with the work of the Commission on this matter. There was, therefore, no resolution to be disputed and no contentiousness on the part of Sub-Commission members over the final statement. Because the Sub-Commission did not consider a full resolution on the human rights situation in Kosovo, opting for a chair statement may have helped balance the issues of non-duplication and international urgency.

Further, the Sub-Commission also took some steps to highlight the human rights situation in Iraq by adopting Decision 1998/114, which advocated increasing humanitarian aid to Iraq and urged lifting policies of economic embargo against that country.⁵⁷ As with all of the countries previously mentioned, Iraq has also been the focus of considerable attention from the Commission in previous years.⁵⁸ The decision from the Sub-Commission was somewhat unique, however, in that it raised specific concern over the consequences of international economic policies which effectively harmed the civilian population of Iraq.⁵⁹ The substantive nature of the decision on humanitarian aid to Iraq was largely distinct from the efforts brought forth by the Commission. This decision, therefore, may not be considered an explicit response to a national situation as normally defined, but rather as an expression of humanitarian concern on the part of the Sub-Commission. Again, as with the use of a chairman statement, the adoption of a decision on the human rights situation within a country offers the Sub-Commission an alternative to the adoption of a full resolution. The Sub-Commission, then, can effectively employ different kinds of strategies which will allow it to address specific country issues and needs. The question of which strategy to employ, if any at all, is still a difficult one. In the future, if work in individual countries continues to be part of the mandate of the Sub-Commission, this expert body will have to increasingly balance concerns over institutional duplication, international urgency and strategic appropriateness.

57. S.C. Dec. 1998/114, *Report of the Sub-Commission*, *supra* note 9, at 84.

58. See C.H.R. Res. 1998/65, U.N. ESCOR Comm. on Hum. Rts., 54th Sess., 56th mtg., U.N. Doc. E/1998/23 (1998).

59. See S.C. Dec. 1998/114, *Report of the Sub-Commission*, *supra* note 9, at 89.

C. Resolutions Adopted

Despite some overlap with the work of the Commission, the Sub-Commission was generally successful in taking action with respect to country situations which had been unaddressed at the level of the Commission. During its fiftieth session, the Sub-Commission considered resolutions on the human rights situations in Algeria,⁶⁰ Bahrain,⁶¹ Belarus,⁶² the Democratic People's Republic of Korea (DPRK)⁶³ and Mexico.⁶⁴ In addition, two other resolutions were sponsored, one by Mr. Asbjørn Eide (expert from Norway) on the situation of Bhutanese refugees,⁶⁵ the other sponsored by Mr. José Bengoa (expert from Chile) on the violations of the rights of human rights defenders in all countries.⁶⁶ As in previous years, the Sub-Commission agreed in its Decision 1998/102 to vote on all resolutions relating to country matters by secret ballot.⁶⁷

The Sub-Commission was able to adopt four important resolutions under Agenda Item 2 during its fiftieth session. The resolution addressing the human rights situation in Belarus is a good example of the Sub-Commission's ability to do country work that does not duplicate the efforts of the Commission. While there had been some discussion at the Commission during its latest session as to the human rights situation in Belarus, no resolution was ever adopted through that body. The Human Rights Committee, however, did issue its concluding observations on Belarus in November 1997, in which it stated:

The Committee notes with concern that remnants of the former totalitarian rule persist and that the human rights situation in Belarus has deteriorated significantly since the Committee's consideration of the State party's third periodic report in 1992. The Committee notes in particular the persistence of political attitudes that are intolerant of dissent or criticism and adverse to the promotion and full protection of human rights, the lack of legislative limits on the powers of the executive, and the growing concentration of powers, including legislative powers, in the hands of the executive, without judicial control.⁶⁸

60. See *Report of the Sub-Commission*, *supra* note 9, at 95-97.

61. See *id.* at 94-95.

62. See S.C. Res. 1998/1, *Report of the Sub-Commission*, *supra* note 9, at 15.

63. See S.C. Res. 1998/2, *Report of the Sub-Commission*, *supra* note 9, at 17.

64. See S.C. Res. 1998/4, *Report of the Sub-Commission*, *supra* note 9, at 22.

65. See *Report of the Sub-Commission*, *supra* note 9, ¶ 39.

66. See S.C. Res. 1998/3, *Report of the Sub-Commission*, *supra* note 9, at 18.

67. See S.C. Dec. 1998/102, *Report of the Sub-Commission*, *supra* note 9, at 79.

68. *Concluding Observations of the Human Rights Committee: Belarus*, U.N. GAOR, Hum. Rts. Comm., 61st Sess., 1643d mtg. ¶ 7, U.N. Doc. CCPR/C/79/Add.86 (1997).

The Sub-Commission took the opportunity, then, to express its concern over the reports of severe restrictions of civil rights and political freedoms within Belarus, especially noting the difficult situation faced by independent journalists and human rights defenders within Belarus. The Sub-Commission also voiced its criticism of the governmental structure within the country, noting a "concentration of legislative power in the executive branch of Government and a weak judiciary whose independence has been continuously undermined, such that the rule of law has not been preserved."⁶⁹ The Sub-Commission further called on the government of Belarus to lift restrictions on freedom of expression, to take steps to comply with international human rights standards and to ensure the independence of the judiciary.⁷⁰ The resolution on Belarus was strongly supported and was adopted by a vote of seventeen in favor, four against, with three abstentions and was met with enthusiasm from human rights organizations who worked on issues of state repression within that country.⁷¹

Sub-Commission Resolution 1998/2, sponsored by Mr. Louis Joinet (expert from France), on the human rights situation in the Democratic People's Republic of Korea (DPRK) was the second resolution in a row to be adopted by the Sub-Commission on that country.⁷² During public discussions, members of the Sub-Commission noted that the human rights situation in the DPRK had not improved since the forty-ninth session, and recalled also the efforts made by the DPRKs in August 1997 to withdraw from the International Covenant on Civil and Political Rights (ICCPR).⁷³ The DPRK has continued, for a period of well over ten years, to refuse to present its report before the Human Rights Committee. Presenting this report is part of the country's treaty obligations as a member of the ICCPR, and refusing to comply with this obligation has only deepened international scrutiny over the human rights situation within the DPRK. In 1997, the DPRK

69. S.C. Res. 1998/1, *Report of the Sub-Commission*, *supra* note 9, at 16.

70. See S.C. Res. 1998/1, *Report of the Sub-Commission*, *supra* note 9, at 17. The resolution also took note of the activities of the United Nations Development Programme and the Organization for Security and Cooperation in Europe in helping to address and alleviate human rights concerns within the country. The Sub-Commission also urged the Government of Belarus to invite, and cooperate with, such activities. See *id.*

71. See *id.*

72. See S.C. Res. 1997/3, *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on Its Forty-Ninth Session*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 49th Sess., at 18, U.N. Doc. E/CN.4/1998/2, E/CN.4/Sub.2/1997/50 (1997); S.C. Res. 1998/2, *Report of the Sub-Commission*, *supra* note 9, at 17.

73. See Weissbrodt et al., *supra* note 2, at 229-34.

had also threatened to—and did in fact—postpone its appearance before the September 1997 session of the Committee on the Rights of the Child.⁷⁴ In May 1998, however, the DPRK did present a delayed report to that Committee. While the Sub-Commission welcomed the submission of this report, it also reiterated its concern as to the “frequent reports of extrajudicial execution and disappearances within the Democratic People’s Republic of Korea, as well as at similar reports that thousands of political prisoners are currently being detained within the country, many of whom have suffered severe ill-treatment and have consequently died of disease, starvation, and exposure.”⁷⁵

Serious concerns were also raised over the lack of even the most basic human rights information from the DPRK. Generally, the Sub-Commission during its fiftieth session was especially concerned with the role of human rights defenders within all of the countries to which it gave attention. The DPRK was no exception in this regard. The situation in the DPRK highlighted the need for strong links between the Sub-Commission and human rights monitoring organizations. Without these organizational contacts within a country, the work of the Sub-Commission suffers simply due to a lack of accurate and available information. The Sub-Commission noted this problem in its Resolution 1998/2 and held the DPRK government responsible for making information difficult to obtain by repressing human rights defenders and independent journalists.⁷⁶ As with the resolution on Belarus, there was strong support from Sub-Commission members over the resolution on the DPRK. This resolution passed with a vote of nineteen in favor, four opposed and one abstention.⁷⁷

Sub-Commission Resolution 1998/4, which addressed recent developments in the situation in Mexico, represented one of the first efforts made by the Sub-Commission to address human rights concerns within that country.⁷⁸ This modest resolution on Mexico noted as an

encouraging sign and a positive development the statement made to the Sub-Commission by the observer for Mexico on the general strategy decided by the Government to resolve the question of Chiapas with the help of dialogue and without first requiring the Zapatista National Liberation Army to hand

74. The Committee on the Rights of the Child is the U.N. treaty-monitoring body responsible for promoting and ensuring compliance with the Convention on the Rights of the Child.

75. S.C. Res. 1998/2, *Report of the Sub-Commission*, *supra* note 9, at 17.

76. *See id.*

77. *See id.*

78. *See* S.C. Res. 1998/4, *Report of the Sub-Commission*, *supra* note 9, at 22.

over its weapons, by reconciliation and peace in dignity and in justice, by re-establishing and maintaining the rule of law, including the disarming of armed groups and the resumption of dialogue with the Zapatista National Liberation Army, and by tackling the structural causes of marginalization and extreme linked to the underdevelopment of that region.⁷⁹

While the resolution did deal specifically with the situation in Chiapas, it also noted that human rights violations were not limited to this situation and that the perpetrators of abuse should be brought to justice in all circumstances.⁸⁰ The resolution on Mexico was one of the few country specific resolutions sponsored by an expert of the Sub-Commission who did not belong to the "Western European and Other" group. Mr. José Bengoa (expert from Chile) sponsored and worked toward the adoption of the resolution on Mexico, a considerable task considering the political strength of the Mexican delegation's lobbying efforts to defeat the resolution. This resolution gained a surprising amount of support from Sub-Commission members and was adopted by a vote of twelve in favor, six against, with six abstentions.⁸¹

As mentioned in the previous section with regard to issues of duplication, Mr. Bengoa also sponsored Sub-Commission Resolution 1998/3 on human rights defenders, which was also considered under Agenda Item 2.⁸² In general, protecting the important role of human rights defenders showed itself to be a prominent theme found in nearly every country resolution considered by the Sub-Commission at its fiftieth session. In addition to combining thematic and country specific concerns, this resolution was also unique in that it was accompanied by an annex listing the actual names of notable human rights defenders, representing every region of the world, who were at risk of persecution within their countries. The Office of the High Commissioner for Human Rights was encouraged through this resolution to make inquiries throughout the coming year as to the safety of these persons and organizations.⁸³ The resolution further condemned the killings of promi-

79. *Id.*

80. *See id.*

81. *See id.* at 23.

82. *See* S.C. Res. 1998/3, *Report of the Sub-Commission*, *supra* note 9, at 18.

83. The human rights defenders mentioned in the annex to the resolution included: Mr. Akin Birdal, President of the Turkish Human Rights Association and Vice President of the International Federation of Human Rights Leagues; Mr. Khemaïs Ksila, Vice President of the Tunisian League of Human Rights; Mr. Ramón Custodio, President of the Human Rights Committee of Honduras; Fr. Javier Giraldo, Executive Director of the Intercongregational Commission of Justice and Peace of Colombia; Mr. Clement Nwankwo, Director of the Constitutional Rights Project of Nigeria; Mr. Destan Rukichi, lawyer and member of the Council

nent human rights defenders in Algeria, Colombia, Guatemala, Honduras, Kosovo and Northern Ireland,⁸⁴ and again affirmed the positive role played by grass-roots level human rights defenders in promoting and protecting human rights.⁸⁵ The Sub-Commission also took the opportunity to invite the United Nations General Assembly to adopt the draft Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, as contained in the annex of Commission on Human Rights Resolution 1998/7.⁸⁶ Despite taking issue with the human rights situations in several countries, the resolution on human rights defenders was well-supported by the Sub-Commission and was passed with a vote of twenty-one in favor, three against, with no abstentions.

D. Resolutions Rejected or Withdrawn

While the Sub-Commission was able to take very positive steps towards the adoption of resolutions on new country situations during its fiftieth session, and while several of these initiatives received widespread support from Sub-Commission members, there were a few resolutions which did not proceed through to this stage. For example, the Sub-Commission, for the second year in a row,⁸⁷ considered but was unable to adopt a resolution on the human rights situation in Algeria, where an estimated 80,000 persons have been killed since 1992.⁸⁸ The draft resolution was originally co-sponsored by Ms. Françoise Hampson (expert from the United Kingdom) and Mr. David Weissbrodt (expert from the United States), and would have condemned "the campaign of brutality and violence being waged against the residents of Algeria by terrorist groups, including all incidents of massacre, bombing, dis-

for the Defence of Human Rights and Freedoms in Pristina, Kosovo, Federal Republic of Yugoslavia; Mr. Viktor Kaisiepo, human rights activist and spokesperson of the West Papua Peoples' Front of Indonesia; Mr. Pierre Samba, President of the human rights non-governmental organization Grande Vision in the Democratic Republic of the Congo; and the lawyers who are members of the Judicial Center of Public Interest of the Philippines. See S.C. Res. 1998/3, Annex, *Report of the Sub-Commission*, *supra* note 9, at 21.

84. See S.C. Res. 1998/3, *Report of the Sub-Commission*, *supra* note 9, at 18, 20.

85. See *id.*

86. See *id.* at 21; see also C.H.R. Res. 1998/7, *supra* note 45, at 1.

87. See *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on Its Forty-Ninth Session*, *supra* note 72, at 112; *Report of the Sub-Commission*, *supra* note 9, at 95-97.

88. See AMNESTY INTERNATIONAL, ALGERIA: CIVILIAN POPULATION CAUGHT IN A SPIRAL OF VIOLENCE, REPORT-MDE 28/23/97 (Nov. 1997).

appearance, rape, torture, mutilation and other related human rights abuses."⁸⁹ The draft resolution also expressed concern over the general climate of fear and violence within the country of Algeria, resulting in serious difficulties carrying out effective inquiries as to the identity of persons responsible for perpetrating human rights abuse.⁹⁰ International human rights organizations had expressed their continuing concern over the level of passive complicity (or active participation) from state security forces in the perpetuation of widespread human rights abuse in Algeria.⁹¹ The draft resolution therefore noted the responsibility of the Government of Algeria to take steps, in accordance with human rights norms, to protect their civilian population.⁹² In response, however, the Government of Algeria expressed the view that the only real threat to human rights in their country came not from the Government, but rather from terrorist organizations which targeted the civilian population with brutality and violence.⁹³

While the Human Rights Committee had issued its concluding observations on the human rights situation in Algeria only a few days before the voting by the Sub-Commission on the resolution, and while these concluding observations seriously brought into question the validity of the Government's position,⁹⁴ it was not

89. *Report of the Sub-Commission*, *supra* note 9, at 96.

90. *See id.* at 95-97.

91. Amnesty International has raised concern as to possible human rights abuses perpetrated by state security forces in Algeria:

The large-scale massacres of civilians of the past year have taken place against a background of increasingly widespread human rights abuses by security forces, state-armed militias and armed opposition groups The Algerian authorities claim that "terrorist" groups are responsible for all the killings, abductions, and other human right abuses and acts of violence which have been committed since the beginning of the conflict. They also blame the massacres of the past year on these same groups. Yet, while most of the massacres have been in areas around the capital, in the most heavily militarized region of the country, and often in close proximity to army barracks and security forces outposts, on no occasion have the army or security forces intervened to stop or prevent the massacres or to arrest those responsible. At the very least, the Algerian authorities are responsible and should account for the consistent failure to provide protection for the civilian population. However, there is growing concern, from testimonies of survivors and eyewitnesses of the massacres, that death squads working in collusion with, and under the protection of, certain units or factions of the army, security forces, and state-armed militias, may have been responsible for some of the massacres.

AMNESTY INTERNATIONAL, *supra* note 88, at 2.

92. *See id.* at 3.

93. Response by observer from Algerian government.

94. The Concluding Observations from the Human Rights Committee expressed deep concern over the allegations of wide-spread human rights abuse in Algeria and urged governmental responsibility when it expressed that:

The Committee is appalled at the widespread massacre of men, women

enough to ensure the successful adoption of the controversial resolution. Supporters and opponents of this draft resolution both worked very diligently to advocate their views, and in the end the resolution failed by the very narrowest of margins with a tie: a vote of ten in favor and ten against, with four abstentions.⁹⁵

Two other country resolutions were withdrawn from consideration before the voting occurred. A draft resolution on the human rights situation in Bahrain was sponsored this year by Ms. Françoise Hampson (expert from the United Kingdom).⁹⁶ This draft resolution would have welcomed the ratification by the Government of Bahrain of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁹⁷ but also expressed concern over continuing reports of human rights violations within that country.⁹⁸ After a period of negotiations between resolution sponsors and the Government of Bahrain, a compromise was reached whereby the resolution would be withdrawn if Bahrain agreed to (1) withdraw its reservations on Article 20 and Article 30 (paragraph 1) of the Torture Convention, and (2) to accept a visit by the Commission's Working Group on Arbitrary Detention, with a possible follow-up visit by the Committee Against Torture.⁹⁹ The Government of Bahrain agreed to these conditions in order to escape the embarrassment of a potential resolution on Bahrain for the second year in a row. While the Sub-Commission did not adopt a resolution, this case still points to the effectiveness of the Sub-Commission's work relating to specific

and children in a great number of villages and towns. The Committee is also seriously concerned that women have been the victims of not only killings, but also of abduction, rape and severe violence. The Committee is also concerned at the lack of timely or preventive measures of protection to the victims from police or military officials in the vicinity and at the persistent allegations of collusion of members of the security forces in terrorist attacks.

The Committee urges the State party to adopt effective measures:

- (a) to prevent those attacks and, if they nevertheless occur, to come promptly to the defense of the population;
- (b) to ensure that proper investigations are conducted by an independent body to determine who the offenders are and to bring them to justice; and
- (c) in all cases of massacres to conduct an independent enquiry into the conduct of the security forces, from the lowest to the highest levels, and where appropriate, to subject them to penal and disciplinary sanctions.

U.N. Doc. CCPR/C/SR.1696 ¶ 6 (1998).

95. See *Report of the Sub-Commission*, *supra* note 9, at 97.

96. See *id.* at 94.

97. See *id.*

98. See *id.*

99. The Committee Against Torture is the U.N. treaty-monitoring body responsible for promoting and ensuring compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

country situations. Because governments would generally prefer not to have their human rights record be the subject of international scrutiny, having the capacity to take action on country situations affords the Sub-Commission some leverage when encouraging governments to reform problematic human rights practices and policies.

Another resolution considered under the second agenda item was sponsored by Mr. Asbjørn Eide (expert from Norway) and concerned the situation of Bhutanese refugees.¹⁰⁰ The resolution expressed concern over the

plight of the approximately ninety-thousand individuals of Nepali ethnicity, the majority of whom had previously lived in Bhutan, who have been residing in camps in eastern Nepal for as long as seven years, as well as an additional ten thousand or more who are living outside the camps in Nepal and India.¹⁰¹

While this resolution most likely had a good chance of success, the Bhutanese Government had expressed a willingness to cooperate in order to avoid the adoption of the draft resolution. In an effort to encourage negotiations between the Bhutanese and Nepalese Governments, Mr. Eide opted for the presentation of a consensus chairman's statement, which has a slightly lower profile than the adoption of a full resolution.¹⁰²

In substance, the chair statement was quite similar to the proposed resolution, and also served to urge the two Governments to "negotiate in good faith towards a peaceful solution consistent with international human rights standards."¹⁰³ Unfortunately, after the presentation of the chair statement, the Government of Bhutan expressed some hesitance in addressing the concerns of the Sub-Commission, suggesting a lack of will on the part of the Government to take concrete steps to help alleviate the problems faced by thousands of Bhutanese refugees. If steps are not taken by the Bhutanese and Nepalese governments within the next year to ensure the safe and voluntary return of refugees to Bhutan, it is likely that this situation will remain on the Sub-Commission's agenda during its fifty-first session in 1999.

In summary, the Sub-Commission was able to take innovative actions on a variety of country situations during its fiftieth session. While there were some minor concerns raised relating to organizational overlap with other U.N. bodies, there was no out-

100. See *Report of the Sub-Commission*, *supra* note 9, at 91-93.

101. *Id.* at 91.

102. See *id.* at 92-93.

103. *Id.* at 93.

right duplication of the work of the Commission. The ability of the Sub-Commission to perform its own country-related work, and its capacity to offer a unique contribution to the U.N. system, is a significant credit to efforts made by this body during its fiftieth session. The Sub-Commission showed its strength and competence by addressing some of the most severe and previously overlooked human rights situations in the world. By combining strategies of thematic and country-specific resolutions (such as the resolution on Human Rights Defenders), consensus chairman's statements (such as on the situation in Kosovo), along with more traditional country-related resolutions, the Sub-Commission has increasingly pursued a range of strategies when addressing country concerns. These developments have provided the Sub-Commission with a degree of flexibility in dealing with country situations, therefore allowing the Sub-Commission to enhance the scope and effectiveness of its work.

III. Realization of Economic, Social, and Cultural Rights Including the Right to Development

A. *Final Report on the Relationship Between the Enjoyment of Human Rights, in Particular Economic, Social and Cultural Rights, and Income Distribution*

In its Resolution 1998/14 of August 20, 1998, the Sub-Commission welcomed the final report prepared by Mr. José Bengoa (expert from Chile), entitled "The Relationship Between the Enjoyment of Human Rights, in Particular Economic, Social, and Cultural Rights, and Income Distribution,"¹⁰⁴ and its addendum, entitled "Poverty, Income Distribution, and Globalization: A Challenge for Human Rights."¹⁰⁵ In this report, Mr. Bengoa analyzed the global distribution of income with particular focus on the process of "globalization of the economy."¹⁰⁶ Mr. Bengoa noted that the process of globalization is perceived as producing new and growing inequities both within countries and between the countries and regions of the world.¹⁰⁷

Coupled with a "diminishing ability of States to control the

104. See S.C. Res. 1998/14, *Report of the Sub-Commission*, *supra* note 9, at 42.

105. See U.N. Doc. E/CN.4/Sub.2/1998/8 (1998).

106. See *The Relationship Between the Enjoyment of Human Rights, in Particular Economic, Social and Cultural Rights, and Income Distribution*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 49th Sess., Provisional Agenda Item 4, ¶ 1, U.N. Doc. E/CN.4/Sub.2/1997/9 (1997).

107. See *id.*

economic development of their countries," Mr. Bengoa concluded that the process of globalization and the resulting inequities in income distribution required international attention.¹⁹ To this end, Mr. Bengoa recommended the formation of a "Forum on Economic, Social and Cultural Rights, hereinafter called the Social Forum"¹⁰⁸

1. The Social Forum

In its Resolution 1998/14 of August 20, 1998, the Sub-Commission endorsed the recommendation in Mr. Bengoa's report of the establishment of a Social Forum within the Sub-Commission.¹⁰⁹ If fully implemented, the Social Forum should have a significant impact on the work of the Sub-Commission. Beginning in 1999, the Social Forum is to meet during the Sub-Commission's annual sessions to analyze violations of economic, social and cultural rights.¹¹⁰ Resolution 1998/14 also seeks authorization from the Commission to appoint a Sub-Commission expert as Special Rapporteur on economic, social and cultural rights to coordinate the work of the Social Forum.¹¹¹

The Social Forum is an innovative step for U.N. human rights bodies, in general, and for the Sub-Commission, in particular. In addition to input from non-governmental organizations and governments, the proposed Social Forum will break new ground by inviting the participation of international organizations including:

the United Nations Development Programme and the United Nations Children's Fund, specialized agencies, in particular the World Bank; the International Monetary Fund; the International Labour Organization; the United Nations Educational, Scientific, and Cultural Organization; and the United Nations Industrial Development Organization; and other bodies concerned with the promotion and protection of economic, social, and cultural rights.¹¹²

The main objectives of the Social Forum are: (1) the "exchange of information on the enjoyment of economic, social and cultural rights and its relationship with the processes of globalization;"¹¹³ (2) the "follow-up on the relationship between income distribution and human rights, at both the international and national

¹⁹ *Id.* ¶ 35.

108. *Id.* ¶ 94.

109. See S.C. Res. 1998/14, *Report of the Sub-Commission*, *supra* note 9, at 42.

110. See *id.* at 10-11, 42.

111. See *id.*

112. *Id.* at 10-11.

113. *The Relationship Between the Enjoyment of Human Rights, in Particular Economic, Social and Cultural Rights, and Income Distribution*, *supra* note 106, ¶ 96(a).

levels;"¹¹⁴ (3) the "follow-up on situations of poverty and destitution in the world, bearing in mind that this amounts to complete and permanent denial of the rights of persons;"¹¹⁵ (4) the "proposal of standards and initiatives of a juridical nature, guidelines and other recommendations for consideration by the Commission on Human Rights, the Working Groups on the Right to Development, the Committee on Economic, Social and Cultural Rights, the specialized agencies and other instances of the international system of the United Nations;"¹¹⁶ and (5) the "follow-up to the agreements reached at the World Summit for Social Development in Copenhagen and the Earth Summit in Rio de Janeiro on the fulfillment of questions relating to this final report, and to economic, social and cultural rights in general."¹¹⁷

The establishment of the Social Forum raises a number of interesting issues. The Social Forum will require a significant amount of time during the already overloaded Sub-Commission sessions. Presently, the Sub-Commission lacks sufficient time to deliberate and consult adequately. Therefore, major restructuring of the agenda will be needed to accommodate the Social Forum. In addition, there is a question as to whether prominent institutions such as the World Bank and International Monetary Fund will bother to attend the Sub-Commission meetings. If they do attend, will the Sub-Commission be able to manage the Social Forum with such dominant international organizations in attendance?

B. Sessional Working Group on Transnational Corporations

Pursuant to Sub-Commission Resolution 1997/11¹¹⁸, Mr. El-Hadji Guissé (expert from Senegal) presented a working document to the Sub-Commission at its fiftieth session on the issue of human rights and transnational corporations. Transnational corporations (TNCs), it was noted, have been implicated in a variety of human rights practices, which may at times jeopardize the well-being of individuals and entire communities. TNCs have been known to adopt policies which perpetuate child labor practices, hazardous working conditions and exploitation of workers, and which may at times interfere with the work of trade unions. This document addressed, similar to the study by Mr. Bengoa, the impact of transna-

114. *Id.* ¶ 96(b).

115. *Id.* ¶ 96(c).

116. *Id.* ¶ 96(d).

117. *Id.* ¶ 96(e).

118. S.C. Res. 1997/11, *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on Its Forty-Ninth Session*, *supra* note 72, at 34.

tional economic actors on income inequality both nationally and internationally.¹¹⁹ Mr. Guissé also raised concerns about the far-reaching impact of TNC policies and practices—for example, the threat to environmental sustainability posed by TNCs.¹²⁰

TNCs have come to occupy a prominent position within international economic relationships. The working document noted that there is a need for the international community to give its attention to these influential, yet understudied, economic actors.¹²¹ Their economic strength coupled with a lack of accountability may have very serious consequences in the area of human rights.¹²² Underscoring the powerful nature of TNCs in the global economy, the document noted that:

Transnational corporations play an important part in international economic life. Of the 100 biggest concentrations of wealth in the world, 51 per cent are owned by transnational corporations and 49 per cent by States. Mitsubishi's turnover exceeds Indonesia's gross national product (GNP); Ford's turnover exceeds South Africa's GNP; and Royal Dutch Shell earns more than Norway. Transnational corporations are very active in the most dynamic areas of the economy, in particular telecommunications, transport, banking, insurance and the wholesale trade. They have a presence in the vital sectors and are thus in a position to block any moves towards the respect for and protection of human rights.¹²³

The document also noted fragments of the international legal framework available to regulate the human rights practices of TNCs.¹²⁴ In general, the integration of both national and international mechanisms of accountability was viewed as the most effec-

119. See *Working Document on the Impact of the Activities of Transnational Corporations on the Realization of Economic, Social and Cultural Rights*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Provisional Agenda Item 4(c), at 2, U.N. Doc. E/CN.4/Sub.2/1998/6 (1998).

The globalization of the economy may lead to the creation of even more wealthy transnational corporations but also even greater numbers of poor people, particularly in countries whose economy is weak. It will be necessary to consider how we are going to manage the development and proliferation of transnational corporations to the benefit of all. They can and must participate, while abiding by the rules, in the economic development of the States where they are located and in whose economies they operate.

Id. ¶ 8.

120. See *Working Document on the Impact of the Activities of Transnational Corporations on the Realization of Economic, Social and Cultural Rights*, *supra* note 119, ¶ 21.

121. See *id.* ¶ 28.

122. See *id.* ¶¶ 8-9.

123. *Id.* ¶ 7.

124. See *id.* ¶¶ 11-15.

tive strategy towards human rights protection.¹²⁵ Yet, the potential for using international law to hold non-state actors, such as TNCs, responsible for violations of human rights is an underdeveloped area within international human rights law and must be further explored by the Sub-Commission and other U.N. bodies. The document on TNCs carefully noted, however, that most of the efforts devoted to regulating the working methods of transnational corporations have not derived from international instruments, but from other sources such as non-legal guidelines.¹²⁶

Because of the changing landscape of modern global financial relations, and because of the degree of influence that TNCs now have over domestic economies, the Sub-Commission in its Resolution 1998/8 of August 20, 1998, decided:

[T]o establish, for a three-year period, a sessional working group of the Sub-Commission, composed of five of its members, taking into account the principle of equitable geographic distribution, to examine the working methods and activities of transnational corporations.¹²⁷

125. *See id.* ¶¶ 17-23.

126. *See id.* ¶ 10; *see also* ILO Tripartite Declaration of Principle Concerning Multilateral Enterprises and Social Policy (1977), available in <<http://www.ilo.org>>.

127. S.C. Res. 1998/8, *Report of the Sub-Commission*, *supra* note 9, at 31. The mandate of this sessional working group is:

(a) [t]o identify and examine the effects of the working methods and activities of transnational corporations on the enjoyment of economic, social and cultural rights and the right to development, as well as civil and political rights;

(b) [t]o examine, receive and gather information, including any working paper submitted by a member of the Sub-Commission, on the effects of the working methods and activities of transnational corporations on the enjoyment of economic, social and cultural rights and the right to development, as well as of civil and political rights;

(c) [t]o analyse [sic] the compatibility of the various international human rights instruments with the various investment agreements, regional as well as international, including, in particular, the Multilateral Agreement on Investment;

(d) [t]o make recommendations and proposals relating to the methods of work and activities of transnational corporations in order to ensure that such methods and activities are in keeping with the economic and social objectives of the countries in which they operate, and to promote the enjoyment of economic, social and cultural rights and the right to development, as well as of civil and political rights;

(e) [t]o prepare each year a list of countries and transnational corporations, indicating, in United States dollars, their gross national product or financial turnover, respectively; [and]

(f) [t]o consider the scope of the obligation of States to regulate the activities of transnational corporations, where their activities have or are likely to have a significant impact on the enjoyment of economic, social and cultural rights and the right to development, as well as of civil and political rights of all persons within their jurisdiction.

This sessional working group will be the first step toward establishing an effective mechanism for the gathering of information relating to the human rights implications of TNCs. Several questions remain unanswered and require further study. For example, how the profit-driven nature of TNCs can offer incentives toward bringing TNCs into compliance with international human rights standards remains a potential avenue of inquiry. In addressing such questions, the sessional working group could help make significant gains toward establishing universal standards of conduct for TNCs, and may also help to suggest other strategies which ultimately ensure compliance from TNCs themselves.

The sessional working group is scheduled to meet during the fifty-first session of the Sub-Commission in 1999; however, it remains unclear how this meeting will relate to the Social Forum established by Mr. Bengoa. A timing issue will no doubt need to be resolved, as both of these important and related discussions are scheduled to occur in an already over-scheduled session. The Sub-Commission may need to combine the complimentary work of the Social Forum and the sessional working group.

*C. Human Rights as the Primary Objective of Trade,
Investment and Financial Policy*

In its Resolution 1998/12 of August 20, 1998, the Sub-Commission expressed its concern over the controversy surrounding the Multilateral Agreement on Investment (MAI) which is being drafted by the Organization for Economic Cooperation and Development (OECD), and further expressed its concern as to the possible negative impact on human rights resulting from the implementation of the Agreement.¹²⁸ The Sub-Commission was particularly concerned over "the extent to which the Agreement might limit the capacity of States to take proactive steps to ensure the enjoyment of economic, social and cultural rights by all people, creating benefits for a small privileged minority at the expense of an increasing disenfranchised majority."¹²⁹ In keeping with a thematic focus on economic globalization, and building upon the efforts of Mr. Bengoa on income distribution and of Mr. Guissé on the working methods of transnational corporations, the Sub-Commission urged U.N. financial agencies, such as the International Monetary Fund and the World Bank, to "at all times be conscious of and respect the human rights obligations of the countries

128. See S.C. Res. 1998/12, *Report of the Sub-Commission*, *supra* note 9, at 39.

129. *Id.* at 40.

with which they work.”¹³⁰ This view was also consistent with the previous recommendations issued by the Committee on Economic, Social and Cultural Rights in May 1998, in which the Committee asserted that financial institutions have an obligation to formulate policies which are consistent with human rights standards, and that these obligations apply to the areas of trade, finance and investment.¹³¹

The Sub-Commission’s work on income distribution, transnational corporations and international trade and investment during its fiftieth session suggests a growing concern with the human rights implications of economic globalization. As all human rights are increasingly seen as interdependent and indivisible, the Sub-Commission expressed its concern over the potential negative impact on all aspects of human rights, engendered by economic forces which are not adequately constrained either by national borders or by international legal and normative mechanisms.

Increasing the institutional competence of U.N. human rights bodies in this area is a necessary step toward addressing the complexities of the issues raised. Accordingly, the Sub-Commission asked two of its members, Joseph Oloka-Onyango (expert from Uganda) and Deepika Udagama (alternate from Sri Lanka), to prepare a working paper on ways and means by which the primacy of human rights norms and standards could be better reflected in—and could better inform—international and regional trade, investment and financial policies, agreements and practices, and how the U. N. human rights bodies and mechanisms could play a central role in this regard.¹³²

130. *Id.* at 41.

131. See Committee on Economic, Social and Cultural Rights, *Globalization and Economic, Social and Cultural Rights* (visited June 22, 1999) <<http://www.unhchr.ch/html/menu2/6/cescrnote.htm#note18b>>.

In calling for a renewed commitment to respect economic, social and cultural rights, the Committee wishes to emphasize that international organizations, as well as the governments that have created and manage them, have a strong and continuous responsibility to take whatever measures they can to assist governments to act in ways which are compatible with their human rights obligations and to seek to devise policies and programmes which promote respect for those rights. It is particularly important to emphasize that the realms of trade, finance and investment are in no way exempt from these general principles and that the international organizations with specific responsibilities in those areas should play a positive and constructive role in relation to human rights.

Id.

132. See *id.*

D. Working Paper on the Right to Access to Drinking Water

The Sub-Commission in Resolution 1997/18¹³³ asked Mr. Guissé to prepare a working paper on the right of access of every person to drinking water supply and sanitation services. This paper was presented before the Sub-Commission at its latest session, and stressed the urgency of the global situation regarding the right to drinking water.¹³⁴ This right is intimately related to other basic rights such as the right to development, the right to health, the right to a clean environment and the right to food.¹³⁵ It is estimated that by the year 2025, some three *billion* people will lack adequate access to safe drinking water, thereby jeopardizing the health and sustainability of entire populations. The paper also suggested that due to the global nature of the drinking water problem, with unequal access both within and between nations, the issue is one which must be confronted through international cooperation and sharing of resources. In addition to problems of water shortage, however, the report also noted that

this resource is undergoing increasing degradation and contamination The main causes of these problems include the inadequate treatment of both domestic and industrial sewage water, the destruction of catchment areas, deforestation and the harmful effects of agricultural practices based on the heavy use of pesticides and other chemicals, as well as the dumping of toxic wastes.¹³⁶

In this way, the issues which surround the right to safe drinking water are also heavily affected by economic globalization and resulting environmental degradation.

The right to access to drinking water and sanitation is likely to become even more pressing in the near future. The report offered some hope, however, when it discussed the potential usefulness of groundwater supplies, and noted that if accessed correctly, these supplies would "meet the minimum drinking water and sanitation needs of the entire population of the world."¹³⁷ The Sub-Commission, in Resolution 1998/7¹³⁸ on the Promotion of the Re-

133. S.C. Res. 1997/18, *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on Its Forty-Ninth Session*, *supra* note 72, at 46.

134. See *The Right of Access of Everyone to Drinking Water Supply and Sanitation Services*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Agenda Item 4, U.N. Doc. E/CN.4/Sub.2/1998/7 (1998).

135. See *id.* ¶ 8.

136. *Id.* ¶ 19.

137. *Id.* ¶ 17.

138. S.C. Res. 1998/7, *Report of the Sub-Commission*, *supra* note 9, at 28.

alization of the Right to Drinking Water Supply and Sanitation, echoed the concerns voiced by Mr. Guissé, and recommended to the Commission that he be appointed as a "Special Rapporteur to conduct a detailed study on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation, at both the national and international levels."²⁰ The study should also take into account "questions related to the realization of the right to development" as it affects the right to water.²¹ If the Commission approves the full study, Mr. Guissé is scheduled to present a preliminary report before the fifty-first session of the Sub-Commission in 1999, followed by a more extensive progress report to be submitted at the fifty-second session in 2000, and a final report at the fifty-third session of the Sub-Commission in 2001.¹³⁹

E. Updated Study on Right to Food

Mr. Asbjørn Eide presented a related report updating the Sub-Commission's study on the right to food.¹⁴⁰ The report noted the severe scope of the problem of malnutrition within the world, especially within developing nations and presented alarming statistics suggesting the need for urgent action in order to ensure the universal right to food:¹⁴¹

Approximately 840 million people in developing countries subsist on diets that are deficient in calories (compared with 730 million in the 1987 report). Roughly 96 per cent of food-insecure persons suffer from chronic deficiencies, and approximately 4 per cent experience temporary energy shortfalls caused by natural or human-induced events. Approximately

²⁰ *Id.* at 29.

²¹ *Id.*

139. *Id.*

140. See *Report Updating the Study on the Right to Food*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Agenda Item 4, U.N. Doc. E/CN.4/Sub.2/1998/9 (1998).

141. The report also noted that:

The number of people who are food-insecure due to specific nutrient deficiencies is less well known mainly because of difficulties in definition, measurement and lack of data, but the numbers are likely to be much greater. The best available estimates suggest that approximately 250 million children are deficient in vitamin A, over 800 million people suffer from iodine deficiency, and up to 2,000 million people are affected by iron deficiency and anemia. The vast majority of the food-insecure, whether their undernourishment is due to deficiencies in energy or micro-nutrients, live in low-income developing countries. Millions more live in conditions which expose them to varying degrees of risk—a concept which is generally well understood but rarely quantified.

Id. ¶ 12.

170 million children under 5 years of age are underweight, representing 30 per cent of the developing world's children.¹⁴²

Mr. Eide also advocated that a broadened conception of nutritional health be adopted which included care for especially vulnerable groups including young children, the elderly, pregnant women and lactating mothers, as well as the disabled and destitute.¹⁴³ The report was careful to note that the right to food must be understood to mean not only adequate caloric intake, but also includes access to safe and nutritious food, as well as to be free from hunger.¹⁴⁴ In order to best address these issues, and to solve the problem of malnutrition, the report suggests that a joint effort be made by experts in the fields of agriculture, nutrition, health, education, social welfare, economics, public works and environmental protection.¹⁴⁵

Much progress has been made in bringing together experts from these different fields in order to solve the problems of hunger and malnutrition. The report applauded the recent achievements made at the World Food Summit which met in Rome in 1996, and hailed this event as a "milestone in the efforts to bring attention to the right to food and nutrition as a human right."¹⁴⁶ The report specifically addressed the issue of child malnutrition and expressed hope that the adoption of the Convention on the Rights of the Child, with its subsequent near universal ratification, would provide both a normative and legal framework in which to promote the right to food. Further, Mr. Eide also voiced support for the evolving policy discussions relating to the right to food and nutrition which developed from the recent policy document finalized by the United Nations Development Programme in December 1997, entitled "Integrating Human Rights with Sustainable Human Development."¹⁴⁷

142. *Id.*

143. *See id.* ¶ 15.

144. *See id.*

145. *See id.* ¶ 17.

146. *Id.* ¶ 30.

147. The report suggested that the United Nations Development Programme (UNDP) could play an active role in promoting the right to food:

UNDP is a development agency and therefore its main human rights contributions will be in and through its development activities. Here, it is crucial that UNDP can develop a human rights-based approach to sustainable human development programming, thereby ensuring that human rights will be mainstreamed in UNDP activities and not relegated to specific human rights projects alone. Special attention is paid to economic, social and cultural rights and to the human right to development, e.g., by developing indicators to measure progressive realization. UNDP's human rights-based approach to poverty alleviation emphasizes empowerment, participation and non-discrimination and addresses issues of vulnerabil-

In its Decision 1998/106, the Sub-Commission asked Mr. Eide to review and update his report on the right to food, and to submit the final version of the study to the Sub-Commission at its fifty-first session in 1999.¹⁴⁸

F. Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons

The Sub-Commission took an innovative step with its adoption of Resolution 1998/26 on August 26, 1998. In this resolution, titled "Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons," the Sub-Commission reaffirmed the right of all refugees and internally displaced persons to return to their homes and places of habitual residence in their country or place of origin.¹⁴⁹ This resolution, however, went one step further by urging

all States to ensure the free and fair exercise of the right to return to one's home and place of habitual residence by all refugees and internally displaced persons 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 resolve outstanding housing and property problems.¹⁵⁰

This resolution deals with one of the most difficult problems facing the U.N. High Commissioner for Refugees and other organizations trying to achieve the return with dignity of refugees to their homes and places of habitual residence in countries such as the former Yugoslavia, Rwanda and Bhutan.

G. Working Paper on the Right to Education Including Human Rights Education

With its Resolution 1998/11 entitled "The Realization of the Right to Education, Including Education in Human Rights,"¹⁵¹ the Sub-Commission noted with satisfaction the working paper on the right to education prepared by Mr. Mustapha Mehedi (expert from Algeria), and requested his continuation toward a more detailed

ity, marginalization and exclusion. The human rights approach of UNDP is universal and holistic, stressing the indivisibility and inter-relatedness of all human rights, economic, social, cultural, civil and political. Special attention will also be paid to ensure that civil and political rights are fully respected in the processes involved in UNDP's programming and implementation of sustainable human development.

Id. ¶ 38.

148. See S.C. Dec. 1998/106, *Report of the Sub-Commission*, *supra* note 9, at 80.

149. See S.C. Res. 1998/26, *Report of the Sub-Commission*, *supra* note 9, at 72.

150. *Id.*

151. S.C. Res. 1998/11, *Report of the Sub-Commission*, *supra* note 9, at 37.

working paper to be presented during the fifty-first session in 1999. During the fiftieth session, Mr. Mehedi presented a preliminary working paper on the subject of education, especially addressing the need to develop methods of teaching which specifically incorporate a human rights-centered curriculum.¹⁵² The right to education and the right to human rights education were seen as necessarily linked. Mr. Mehedi's paper emphasized the indivisibility of all human rights generally, but specifically advocated the special cross-sectoral nature of the right to education.¹⁵³ Mr. Mehedi pointed out that the right to education cannot be adequately classified under either the "political/civil" or the "economic/social/cultural" rubric of human rights, as it has implications both within and across each of these conceptual domains.¹⁵⁴

The paper also addressed the existing legal framework already available at the international level to help protect and promote the right to education. In this respect, the paper cited human rights instruments such as the Universal Declaration of Human Rights,¹⁵⁵ the International Covenant on Economic, Social and Cultural Rights,¹⁵⁶ the International Covenant on Civil and Political Rights,¹⁵⁷ the Convention on the Rights of the Child¹⁵⁸ and the Vienna Declaration and Programme of Action,¹⁵⁹ all of which contain provisions ensuring the right to education. The effectiveness of these legal tools, however, must be assessed with reference to the fundamental objectives of education. The paper supported a multi-leveled approach to the goals of education, centering around the definition provided to the United Nations Educational, Scientific and Cultural Organization (UNESCO) by the International Commission on Education for the Twenty-first Century.¹⁶⁰ This definition emphasizes the importance of developing

152. See *The Realization of the Right to Education, Including Education in Human Rights*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Agenda Item 4(d), U.N. Doc. E/CN.4/Sub.2/1998/10 (1998).

153. See *id.* ¶¶ 2-6.

154. *Id.*

155. *Id.* ¶ 8.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. The International Commission on Education for the Twenty-first Century offered the following suggestions:

If it is to succeed in its tasks, education must be organized around four fundamental types of learning which, throughout a person's life, will in a way be the pillars of knowledge: learning to know, that is acquiring the

individual competence and learning, while at the same time promoting and maintaining social tolerance and peace.

Mr. Mehedi is scheduled to present a more substantial paper on the right to education at the fifty-first session of the Sub-Commission in 1999.¹⁶¹ There remains, however, a concern about the duplications of effort, as the Commission has authorized its own Special Rapporteur on the right to education and has taken several initiatives regarding the U.N. Decade for Human Rights Education.¹⁶²

IV. Reform of the Sub-Commission

One of the significant events of this year's session was the visit from August 10-15, 1998, by the Bureau of the Commission,¹⁶³ the Sub-Commission's parent body, which is undertaking a review of the mechanisms of the Commission including the working methods of the Sub-Commission.¹⁶⁴ In preparation for this visit, the Sub-Commission prepared a document entitled "Enhancing the Effectiveness of the Sub-Commission."¹⁶⁵ Unfortunately, this document did not receive the attention it deserved from the members of the Commission Bureau.

A. Note by the Chairperson of the Sub-Commission on Enhancing the Effectiveness of the Sub-Commission

On the morning of August 10, 1998, the Sub-Commission met in a private session with the members of the Bureau of the Commission. During this session, Judge El-Hadji Guissé (Senegal),

instruments of understanding; learning to do, so as to be able to act creatively on one's environment; learning to live together, so as to participate and cooperate with other people in all human activities; and learning to be, an essential progression which proceeds from the previous three. Of course, these four paths of knowledge all form a whole, because there are many points of contact, intersection and exchange among them.

Id. ¶ 13.

161. See S.C. Res. 1998/11, *Report of the Sub-Commission*, *supra* note 9, at 37.

162. See C.H.R. Res. 1998/45, U.N. ESCOR Comm. on Hum. Rts., 54th Sess., U.N. Doc. E/1998/23 (1998); *see also* C.H.R. Res. 1996/46, U.N. ESCOR Comm. on Hum. Rts., 52d Sess., U.N. Doc. E/1996/23 (1996).

163. See *supra* note 15.

164. In its Decision 1998/112 of August 26, 1998, the Commission, with a view to enhancing the effectiveness of the mechanisms of the Commission, acceded, without a vote, to appoint its Bureau to undertake a review of the mechanisms of the Commission with a view to making recommendations to the Commission at its fifty-first session. See S.C. Dec. 1998/112, *Report of the Sub-Commission*, *supra* note 9, at 84. The Sub-Commission is a prominent mechanism of the Commission.

165. *Enhancing the Effectiveness of the Sub-Commission*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Agenda Item 1(c), U.N. Doc. E/CN.4/Sub.2/1998/38 (1998).

Chairperson of the Sub-Commission's fiftieth session, presented the document prepared by the Sub-Commission. The document reflected on the Sub-Commission's past contributions, its present contributions, and offered an evaluation of and discussed further enhancements for the Sub-Commission.¹⁶⁶

1. Past Contributions

Judge Guissé discussed how "[t]he Sub-Commission has played and continues to play a unique role in the field of human rights as the only expert body serving the main United Nations policy-making body, the Commission on Human Rights."¹⁶⁷ Judge Guissé stated further that "[t]he Sub-Commission has been a key engine of the overall expansion of the human rights activities of the United Nations, and has the potential to continue to do so."¹⁶⁸

The Sub-Commission's functions have expanded and changed in emphasis from standard-setting to promotion and protection of human rights and encouragement of implementation by States of human rights norms and standards in accordance with international instruments.¹⁶⁹ A review of its activities demonstrates that the Sub-Commission has considerable achievements to its credit. For example, the Sub-Commission played a major role in mobilizing the U.N. system in the struggle against apartheid, and prepared the initial draft of the U.N. Declaration and later the International Convention on the Elimination of All Forms of Racial Discrimination,¹⁷⁰ the Declaration on the Protection of All Persons from Forced Disappearance,¹⁷¹ the draft U.N. Declaration on the Rights of Indigenous Peoples¹⁷² now pending before the Commission, the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live,¹⁷³ the Principles

166. See generally *id.*

167. *Id.* ¶ 2.

168. *Id.*

169. See *id.* ¶ 3.

170. See *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 U.N.T.S. 195, entered into force Jan. 4, 1969.

171. See *Declaration on the Protection of All Persons from Enforced Disappearances*, G.A. Res. 47/133, 47 U.N. GAOR Supp. No. 49, at 207, U.N. Doc. A/47/49 (1992), available at <<http://www1.umn.edu/humanrts/instree/h4paped.htm>>.

172. See *Technical Review of the United Nations Draft Declaration on the Rights of Indigenous People*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 46th Sess., Agenda Item 15, E/CN.4/Sub.2/1994/2/Add.1 (1994).

173. See *Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live*, G.A. Res. 40/144, Annex, 40 U.N. GAOR Supp. No. 53, at 252, U.N. Doc. A/40/53 (1985), available at <<http://www1.umn.edu/humanrts/instree/w4dhri.htm>>.

for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care¹⁷⁴ and the Guidelines for the Regulation of Computerized Personal Data Files.¹⁷⁵

2. Present Contributions

The document presented to the Bureau of the Commission elaborated on the present contributions of the Sub-Commission, including its unique role in the human rights field, its review of country situations, and its access to NGOs.¹⁷⁶

The Sub-Commission makes three relatively unique contributions to the human rights field, namely: (a) undertaking comprehensive studies that contribute to the work of the human rights bodies, particularly to the United Nations treaty-monitoring bodies; (b) bringing to the attention of the Commission situations not under review by the Commission but which appear to reveal gross and systematic violations of human rights or emerging human rights concerns; and (c) supporting its working groups . . .¹⁷⁷

The annual review that the Sub-Commission holds on situations of violations of human rights and fundamental freedoms and, in particular, of the policies of racial discrimination and segregation in all countries constitutes a central part of its work. In particular, the Sub-Commission: (a) represents one of the most relevant international forums in the field of human rights; (b) allows new situations, trends and facts that emerge in the world to be expressed; (c) enables an analysis of concrete situations to be undertaken together with more general items that are considered by the Sub-Commission, thus giving to thematic studies a wider comprehension and objectivity; (d) allows the study of countries and cases not considered by the Commission, or allows new facts worthy of attention to be considered; and (e) enables the adoption of urgent measures in cases of emergency situations . . .¹⁷⁸

An important aspect of the evolution of the Sub-Commission is precisely that it has provided a platform for NGOs which is much more accessible than that offered by any other United Nations body. [This] unique role manifests itself in particular in the functioning of its thematic working groups. [The working groups] facilitate interaction between the civil soci-

174. See *Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care*, G.A. Res. 46/119, 46 U.N. GAOR Supp. No. 49, at 189, U.N. Doc. A/46/49 (1991), available at <<http://www1.umn.edu/humanrts/instree/t2pppmii.htm>>.

175. See *Guidelines for the Regulation of Computerized Personal Data Files*, G.A. Res. 45/95, 44 U.N. GAOR Supp. No. 49, at 211, U.N. Doc. A/44/49 (1989), available at <<http://www1.umn.edu/humanrts/instree/q2grcpd.htm>>.

176. See *Enhancing the Effectiveness of the Sub-Commission*, *supra* note 165.

177. *Id.* ¶ 9.

178. *Id.* ¶¶ 9-10, 14.

ety, Governments and the intergovernmental system, and provide a forum for vulnerable groups which otherwise have little or no access to the international system.

3. Critical Evaluations and Future Enhancements

The Sub-Commission noted in its presentation to the Bureau of the Commission that it is quite aware that each U.N. mechanism must evaluate its own performance critically in light of new developments and needs.¹⁷⁹

[O]ver the last few years, [the Sub-Commission has] carried out a thorough review of its methods of work and made significant changes.¹⁸⁰ In 1991-92, an inter-sessional working group prepared [a study entitled] "Guidelines concerning its methods of work."¹⁸¹ Further revisions were made in 1994 and 1995. [This work has] been communicated to the Commission.¹⁸² In 1996 the Sub-Commission initiated a process to adopt a consolidated set of its rules of procedure and methods of work, based on a working paper by one of its members.¹⁸³

The intention is to complete this work in 1999.

a. Improvement in Cooperation with Other Human Rights Bodies

A much broader and systematic consultation with other U.N. and regional human rights bodies should be undertaken. To this end, the Sub-Commission should continue to enhance its cooperation with the treaty-monitoring bodies.¹⁸⁴

b. Improvement in the Preparation of Studies

Efforts are now being made to plan future studies on the basis of identification of priorities among issues that need exploration. The Commission, in its Resolutions 1197/22 and 1998/28, has suggested that the Sub-Commission should concentrate on studies that meet the needs of the Commission, the treaty-monitoring bodies and the core issues facing the human rights world. The Sub-Commission fully endorses this view, and has taken several recent initiatives in this direction. In its Decision 1997/112 of

179. See *id.* ¶ 22.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.* ¶ 22.

184. For a discussion of the Sub-Commission's cooperative efforts with treaty-monitoring bodies, and in particular with the Committee on the Elimination of Racial Discrimination (CERD), see *infra* Part V.B.

August 27, 1997, the Sub-Commission took note of a conference paper entitled "Criteria for New Studies"¹⁸⁵ and added the criteria contained in this report¹⁸⁶ to its guidelines concerning its methods of work contained in the annex to its Resolution 1992/8 of August 26, 1992.¹⁸⁷

c. Improvement in Membership: Independence and Expertise

The quality of the Sub-Commission's work depends greatly on the independence and expertise of its members. Governments and inter-governmental bodies should strictly observe this independence. Criteria for elections have been established and should be applied by governments in their nomination of candidates and by members of the Commission in their election of Sub-Commission members.

Additional mechanisms should be adopted to enhance the independence of the Sub-Commission. This year, there was considerable discussion about whether members should be allowed to speak on human rights situations in their own countries. At the conclusion of that discussion, the Sub-Commission developed a compromise formulation:

When examining a situation which appears to reveal a pattern of gross and consistent violation of human rights in a country of which an expert of the Sub-Commission is a national, it would be desirable that the expert concerned not participate in the debates. The ultimate decision on whether or not such expert will intervene in the public discussion remains the responsibility of the expert concerned.¹⁸⁸

Following this formulation will enhance the appearance of and actual independence of the Sub-Commission and allow experts a way of avoiding undue influence by their governments. This formulation, however, is ambiguous as to whether it applies only

185. See U.N. Doc. E/CN.4/Sub.2/1997/CRP.2 (1997).

186. The following criteria were annexed to Sub-Commission's guidelines concerning its methods of work:

(a) Priority should be given to subjects for study recommended by the Commission on Human Rights; (b) From among other proposals, priority should be given to subjects suggested by the working groups of the Sub-Commission; (c) Special attention should be given to subjects proposed by treaty bodies, as requested in paragraph 3 (c) of Commission on Human Rights resolution 1997/22 of 11 April 1997; (d) Economic, social and cultural rights should also be considered as a priority area in the selection of new studies; (e) Proposals for isolated studies, i.e. not having the necessary background and framework, should be discouraged.

S.C. Dec. 1997/112, *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on Its Forty-Ninth Session*, *supra* note 72, at 94.

187. See *id.*

188. *Enhancing the Effectiveness of the Sub-Commission*, *supra* note 165, ¶ 28.

to country situations under public review or also to discussions in plenary session under the 1503 confidential procedure.¹⁸⁹ Resolving this ambiguity would further the independence of Sub-Commission members.

*B. Statement of the Chairperson of the Bureau of the
Commission on Human Rights*

In the afternoon of August 10, 1998, Ambassador Jacob Selebi (South Africa), Chairperson of the Commission, addressed the Sub-Commission.¹⁹⁰ Ambassador Selebi noted that while the appearance of the Chairperson of the Commission before the Sub-Commission was a tradition of many years, it was particularly critical this year in the context of the Sub-Commission's discussion of its working methods. Ambassador Selebi stated that the Sub-Commission has much to offer the human rights community, so long as it takes care to follow the guidance received from the Commission. In particular, he stated that the Sub-Commission should focus on issues as to which it can make a distinctive contribution to the work of the Commission and avoid duplicating the work of the Commission. Ambassador Selebi mentioned that the Commission has praised the Sub-Commission's restructuring of its agenda, its decision to limit the initiation of new studies and its efforts to achieve a compilation of the existing rules of procedure and procedural questions to be resolved.¹⁹¹ Despite these positive points, however, the Commission expected more efforts at reform during the Sub-Commission's fiftieth session.

Ambassador Selebi referred to Commission Resolution 1998/28,¹⁹² which mentioned five areas of work of the Sub-Commission that required attention. In its Resolution 1998/28, the Commission requested the Sub-Commission to further improve its efficiency and called upon the Sub-Commission to: (1) focus on its primary role as an advisory body of the Commission; (2) focus strictly on questions relating to human rights in accordance with its mandate; (3) pay particular attention to the selection of studies; (4) improve the efficiency of its work with non-governmental organizations; and (5) make efforts to increase the perception and reality of its independence. Ambassador Selebi went on to state

189. See *Procedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms*, E.S.C. Res. 1503 (XLVIII), U.N. ESCOR, No. 1A, at 8, U.N. Doc. E/4832/Add.1 (1970).

190. See *Report of the Sub-Commission*, *supra* note 9, ¶ 18.

191. See C.H.R. Res. 1998/28, *supra* note 37, ¶ 3.

192. See *id.*

that the principal role of the Sub-Commission was to support its working groups, undertake studies that contributed to human rights bodies and deal with country situations not under consideration by the Commission.¹⁹³

At the conclusion of his speech, Ambassador Selebi announced a series of sessions to meet with the Bureau of the Commission from August 11-13, 1998, at which specific proposals for reform of the Commission's mechanisms, including the Sub-Commission's working methods, would be discussed with non-governmental organizations and government representatives. Participants at these sessions had before them an informal working paper containing 166 proposals received from non-governmental organizations and governments.¹⁹⁴ Proposals ranged from enhancing the qualifications for experts¹⁹⁵ to abolishing the Sub-Commission altogether.¹⁹⁶ Proposals receiving the most favorable attention included the recommendation that the Sub-Commission focus on its original role as a think-tank for the Commission,¹⁹⁷ term limits for experts¹⁹⁸ and the avoidance of duplication of work being considered by the Commission.¹⁹⁹

One of the more controversial proposals, supported mainly by governments, is that the Sub-Commission should neither consider nor pass resolutions on country situations.²⁰⁰ Most non-governmental organizations, however, supported the Sub-Commission's current mandate of considering country situations.²⁰¹ Removing its authority to consider country situations would have a deleterious effect on protection and promotion of human rights. The Sub-Commission plays a rather unique role in the U.N. human rights system, and the value of this role is appar-

193. See *id.*

194. The list of proposals is contained in an informal working paper, dated July 28, 1998, prepared by the Secretariat, entitled: *Summary of the Main Proposals Concerning the Review of Mechanisms of the Commission on Human Rights Undertaken Pursuant to Commission Decision 1998/112.*

195. See *id.* ¶ 109 (proposed by Australia).

196. See *id.* ¶ 119 (proposed by the United States).

197. See *id.* ¶ 116 (supported by Australia, Cuba, Egypt, Germany, India, Ireland, Japan, New Zealand, Nigeria, Philippines, Spain, Switzerland and Turkey).

198. See *id.* ¶ 110 (supported by Austria, Australia, Germany, New Zealand and Uganda).

199. See *id.* ¶ 124 (supported by Cuba, Egypt, Ireland, Switzerland and Turkey).

200. See *id.* ¶ 127 (supported by Amnesty International, Germany, India and Ireland).

201. See *id.* ¶ 129 (supported by International Commission of Jurists and the International Federation of Human Rights). Amnesty International expressly supported the proposal to remove the Sub-Commission's authority to review country situations.

ent in the consideration of country situations. Indeed, the Sub-Commission's independence allows it to address and identify human rights problems that the government representatives at the Commission may be reluctant to handle.

V. Studies

A. Systematic Rape, Sexual Slavery and Slavery-Like Practices During Armed Conflict, Including Internal Armed Conflict

The Sub-Commission addressed the human rights violations perpetrated against civilians during periods of armed conflict during its fiftieth session. Ms. Gay McDougall (alternate member, United States), Special Rapporteur, presented her final report on rape, sexual slavery and slavery-like practices during armed conflict, which had three primary objectives: (1) to reiterate the call for a response to the use of sexual violence and sexual slavery during armed conflict; (2) to emphasize the true nature and extent of the harms suffered by women who are raped, sexually abused and enslaved by parties to an armed conflict; and (3) to examine prosecutorial strategies for penalizing and preventing international crimes committed against women during armed conflict.²⁰²

Ms. McDougall highlighted the need for the United Nations to take effective steps towards curtailing the abuses perpetrated against women during periods of armed conflict, and noted that too many times in the past, the international community has remained complicit and silent on these issues. Women remain at special risk during periods of war and armed conflict. By viewing sexual slavery as a crime against humanity, a form of genocide, slavery, torture or as a war crime, international legal instruments may be successfully employed to hold individuals responsible for their abuses.²⁰³ Ms. McDougall noted, however, that:

[A] new attitude is evolving with respect to the prosecution of sexual violence committed during armed conflict as serious international crimes. The international community has increased its efforts to end the cycle of impunity for these crimes by ensuring, for both victims and perpetrators, that justice is done. The International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, as

202. See *Report of the Special Rapporteur on Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Provisional Agenda Item 6, ¶¶ 9-11, U.N. Doc. E/CN.4/Sub.2/1998/13 (1998).

203. See *id.* ¶¶ 34-73.

well as the proposed permanent International Criminal Court, are welcome advances in this campaign for justice, and it is hoped that these tribunals will endeavour to implement the best practices possible in this regard.²⁰⁴

In addition, in one of its more controversial aspects, the report drew international attention to the abuses perpetrated against the more than 200,000 women enslaved by the Japanese military in so-called "comfort stations" during World War II.²⁰⁵ The appendix of the report discussed at length the legal and normative issues surrounding the "comfort women" issue, prompting a response from the Japanese government.²⁰⁶

Recognizing the contribution made by this report, the Sub-Commission recommended in its Resolution 1998/18 that the Commission extend the mandate of Ms. McDougall as the Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict, including internal armed conflict, for another year.²⁰⁷ Upon approval from the Commission, Ms. McDougall is scheduled to present an update to her report at the Sub-Commission's fifty-first session in 1999.

B. Studies Undertaken Pursuant to the Sub-Commission's Cooperation with the Committee on the Elimination of Racial Discrimination

One way in which the Sub-Commission contributes to the field of human rights is by cooperating with the treaty-monitoring bodies. In an effort to further such cooperation, the Sub-Commission has prepared joint studies with treaty-monitoring bodies. In its Decision 1996/120 of August 29, 1996, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to entrust two of its members, Mr. José Bengoa and Mr. Mustafa Mehedi, with the preparation of a joint working paper on Article 7 of the International Convention on the Elimina-

204. *Id.* ¶ 110; see also Rome Statute of the International Criminal Court, art. 7, ¶ 1(g), available at http://www1.umn.edu/humanrts/instree/Rome_Statute_ICC/Rome_ICC_part2.html (granting the Court jurisdiction over all crimes against humanity, defined to include "[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity").

205. The appendix to the report addresses specifically the issue of "comfort women," as many of these women have sought legal redress against the Government of Japan for "establishing, supervising and maintaining rape centres during the Second World War." *Report of the Special Rapporteur on Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict*, *supra* note 202, at app. ¶ 1.

206. See *id.* at app. ¶¶ 1-69.

207. See S.C. Res. 1998/18, *Report of the Sub-Commission*, *supra* note 9, at 50.

tion of All Forms of Racial Discrimination,²⁰⁸ together with two members of the Committee on the Elimination of Racial Discrimination (CERD), Mr. Ivan Garvalov and Mrs. Shanti Sadiq Ali. During the 1998 session, the Sub-Commission had before it the working paper that resulted from this cooperative effort.²⁰⁹

The Commission on Human Rights, in its Resolutions 1996/25,²¹⁰ 1997/22²¹¹ and 1998/28,²¹² called upon the Sub-Commission and its members to "[f]urther . . . enhance cooperation with mechanisms of the Commission and, within their competence, with all relevant bodies, including human rights treaty bodies."²¹³

The Committee on the Elimination of Racial Discrimination discussed this issue²¹⁴ and decided to propose to the Sub-Commission nine topics for the preparation of studies.²¹⁵ In response to this request, the Sub-Commission adopted Decision 1997/118 on August 28, 1997, at its forty-ninth session, entrusting one of its members, Mr. Marc Bossuyt, with the preparation of a working paper on the concept of affirmative action.²¹⁶ At this year's session, the Sub-Commission had before it this working pa-

208. See *Joint Working Paper on Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination*, U.N. Doc. E/CN.4/Sub.2/1998/4 (1998).

209. See *id.*

210. C.H.R. Res. 1996/25, *Report of the Commission on Human Rights on Its 52nd Session*, U.N. Doc. E/1996/23 (1996).

211. C.H.R. Res. 1997/22, *Report of the Commission on Human Rights on Its 53rd Session*, U.N. Doc. E/1997/23 (1997).

212. C.H.R. Res. 1998/28, *Report of the Commission on Human Rights on Its 54th Session*, U.N. Doc. E/1998/23 (1998).

213. *Id.* ¶ 4(f). In paragraph 53 of the Report of the Seventh Meeting of Persons Chairing the Human Rights Treaty Bodies, the chairpersons recommended that "the treaty bodies take a more active role in supporting, suggesting topics for, and cooperating in the preparation of studies by the Subcommission [sic] on Prevention of Discrimination and Protection of Minorities, as well as by special rapporteurs and other experts appointed by the Commission on Human Rights." U.N. GAOR, 51st Sess., Annex, Agenda Item 110(a), at 12, U.N. Doc. A/51/482 (1996).

214. See *Summary of the 1119th Meeting*, Comm. on Elimination of Racial Discrimination, 50th Sess., 1119th mtg. at 6, U.N. Doc. CERD/C/SR.1189 (1997).

215. The list of nine topics included: Succession to human rights obligations; reservations to treaties; the advisability of referring to definitions of the terms "race" and "racism" in texts prohibiting racism and its implications; claims by States parties that racial discrimination is absent in their territory; an elaboration of the implications of Article 4 of the Convention; the application of Article 7 regarding freedom of the press; "affirmative action," rights of non-citizens; and the return of refugees' property. *Comprehensive Examination of Thematic Issues Relating to the Elimination of Racial Discrimination: Note by the Secretariat*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 49th Sess., Annex, Provisional Agenda Item 3, at 3-4, U.N. Doc. E/CN.4/Sub.2/1997/31 (1997).

216. See *The Concept of Affirmative Action*, S.C. Dec. 1997/118 (visited Apr. 30, 1999) <<http://www.unhchr.ch/html/menu4/subres/49subdec.htm>>.

per. In its Resolution 1998/5 of August 20, 1998, the Sub-Commission expressed its gratitude to Mr. Bossuyt and decided, since the concept and practice of affirmative action requires careful and comprehensive inquiry, to request that the Commission approve Mr. Bossuyt as Special Rapporteur of the Sub-Commission with the task of preparing a study on this subject.²¹⁷

The Sub-Commission also considered other topics proposed by CERD. In its Decision 1998/103 of August 20, 1998, the Sub-Commission entrusted Mr. David Weissbrodt with the preparation, without financial implications, of a working paper on the rights of persons who are not citizens of the country in which they live. The paper will be submitted under the agenda item entitled "Comprehensive Examination of Thematic Issues Relating to the Elimination of Racial Discrimination," in order to enable the Sub-Commission to make a decision at its fifty-first session on the feasibility of a full study on that subject.²¹⁸

The Sub-Commission further considered ways of contributing material to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Racism Conference) to be held not later than the year 2001. In its Resolution 1998/6 of August 20, 1998, the Sub-Commission recommended that the topics for studies undertaken in response to the suggestions from CERD be considered using materials developed by the Sub-Commission, in the preparatory process and at the World Conference itself.²¹⁹ Furthermore, the Sub-Commission decided to request that one of its members, Mr. Paulo Sergio Pinheiro (expert from Brazil), prepare a paper on proposals for the work of the World Conference to be considered by the Sub-Commission at its fifty-first session.²²⁰ The Sub-Commission decided to carry out further studies without delay and to transmit recommendations for studies to the Commission at its fifty-fifth session and, through the Commission, to the Preparatory Committee for the Racism Conference.²²¹

C. Terrorism

One of the more difficult issues facing the Sub-Commission in recent years has been the responsibility of non-state actors as perpetrators of human rights abuse. For example, terrorist groups

217. See U.N. Doc. E/CN.4/Sub.2/1998/5 (1998).

218. See S.C. Dec. 1998/103, *Report of the Sub-Commission*, *supra* note 9, at 79.

219. See S.C. Res. 1998/6, *Report of the Sub-Commission*, *supra* note 9, at 24.

220. See *id.*

221. See *id.*

threaten fundamental human rights by targeting civilian populations with widespread killing, bombing, mutilation and other forms of intimidation. Further compounding and escalating these problems, some states may react against real or perceived internal terrorism with their own counter-terrorism campaigns, resulting in serious human rights violations including indiscriminate killings, disappearances and torture.²²²

The Sub-Commission has in the past addressed the issue of human rights and terrorism, and in its Resolution 1997/39 voiced its "unequivocal condemnation of all acts, methods and practices of terrorism regardless of their motivation, in all its forms and manifestations, wherever and by whomever committed, as acts of aggression aimed at the annihilation of human rights" ²²³ In 1997, the Sub-Commission recommended that the Commission authorize the appointment of Ms. Koufa (alternate member, Greece) as Special Rapporteur to conduct a comprehensive study on the subject of human rights and terrorism.²²⁴ Ms. Koufa was scheduled to present her preliminary report to the Sub-Commission at its fiftieth session, but unfortunately, due to time constraints this report could not be prepared in time.²²⁵ The Sub-Commission, in its Resolution 1998/29, requested that Ms. Koufa prepare her preliminary report for presentation at the fifty-first session of the Sub-Commission in 1999.²²⁶

While the report remained unfinished at the time of the session, Ms. Koufa was able to present a statement on the relationship between human rights and terrorism, in which she highlighted several of the major contributions of her work.²²⁷ In this regard, Ms. Koufa stressed that modern day terrorism is an international phenomenon with both domestic and international ramifications. Further, because terrorism jeopardizes the lives of the innocent, potentially at the hands of both State and non-State agents, the international community has an obligation to intervene in these situations. At the fifty-first session, Ms. Koufa is scheduled to elaborate on the different international mechanisms which are available to bring terrorists to justice, as well as to reiterate that States must not abuse the basic human rights of citizens in

222. See U.N. Doc. E/CN.4/Sub.2/1997/28 (1997).

223. S.C. Res. 1997/39, *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on Its Forty-Ninth Session*, *supra* note 72, at 83.

224. See *id.*

225. See U.N. Doc. E/CN.4/Sub.2/1998/24 (1998).

226. See S.C. Res. 1998/29, *Report of the Sub-Commission*, *supra* note 9, at 75.

227. See *Report of the Sub-Commission*, *supra* note 9, at 125.

their attempts to maintain internal security.

VI. Working Groups

The Sub-Commission makes a unique contribution to the human rights field through its working groups. These working groups provide the possibility for a participatory study of current issues, trends, and difficulties in thematically important areas, and involve monitoring of human rights problems by providing a channel for the airing of grievances. In particular, there is no other venue in the U.N. where minority issues are being addressed as intensively as in the Working Group on Minorities.²²⁸ The Working Group on Indigenous Populations has also made important strides in previously drafting a proposed declaration on indigenous rights and continuing to hear the concerns of indigenous communities from around the world.²²⁹ The other working groups, too, help maintain the Sub-Commission's distinct role in protecting and promoting human rights.

Each working group is composed of one expert from each of the five geographic regions.²³⁰ All of the working groups—with the exception of the Working Group on Communications—is open to participation by observers. Consequently, they have become important fora for specialist agencies and organizations to participate in a discussion of a particular subject. In addition, expert participation in working groups allows Sub-Commission members to focus on a particular area of interest or expertise. Further, the working groups allow for reports of human rights violations and give governments the chance to respond.

The working groups compile reports of their respective sessions, to submit to the Sub-Commission's plenary session. In addition, working groups may place proposals before the Sub-Commission to take action with respect to a particular issue. As such, the working groups can influence the agenda and the performance of the Sub-Commission.

A number of proposed reforms given particular attention by the Bureau of the Commission could, if adopted, have a substantial

228. See *Enhancing the Effectiveness of the Sub-Commission*, *supra* note 165, ¶ 17.

229. See *Report of the Working Group on Indigenous Populations on Its Sixteenth Session*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Agenda Item 7, U.N. Doc. E/CN.4/Sub.2/1998/16 (1998).

230. For general rules regarding working groups, see *Rules of Procedure of the Functional Commissions of the Economic and Social Council*, U.N. Doc. E/5975/Rev.1 (1983).

impact on the working groups of the Sub-Commission. These reforms would remove two of the working groups from the Sub-Commission and place their duties within existing institutions.

A. Working Group on Minorities

In 1998, the Working Group on Minorities convened for its fourth session from May 25-29, 1998.²³¹ This Working Group is a subsidiary of both the Sub-Commission and the Commission. The Working Group was authorized by the Commission on Human Rights in its Resolution 1995/24 of March 3, 1995, and endorsed by the Economic and Social Council in its Resolution 1995/31 of July 25, 1995.²³² This Working Group's mandate is to:

promote the rights of persons belonging to national or ethnic, religious and linguistic minorities, as set out in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities ... [and to] [e]xamine possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments.²³³

There is no other place where issues relating to minorities are addressed as intensively and constructively as the Working Group on Minorities. It has taken a topic-by-topic approach, focusing on matters such as intercultural and multicultural education for minorities, the role of the media regarding minorities, and more generally on constructive ways to handle situations involving minorities.²³⁴ Its agenda for the coming years includes language rights and ways and means to involve minorities in the planning and implementation of national policies.²³⁵ During its first meeting, the Working Group re-elected Mr. Eide as Chairman-Rapporteur for a two-year term.²³⁶ Throughout the session, the Working Group was attended by representatives from thirty-seven different governments, six U.N. specialized agencies and intergovernmental organizations, and close to one hundred non-governmental organizations.²³⁷

As one of its primary efforts, the Working Group reviewed the

231. *Report of the Working Group on Minorities on Its Fourth Session*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Provisional Agenda Item 8, ¶ 3, U.N. Doc. E/CN.4/Sub.2/1998/18 (1998).

232. *See id.* ¶ 1

233. *Id.* ¶ 2.

234. *See generally id.*

235. *See id.*

236. *See id.* ¶ 4.

237. For a complete list of participants, *see id.* ¶ 6-11.

promotion and practical realization of the Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities.²³⁸ Mr. Eide presented his commentary to the Declaration,²³⁹ the aims of which he viewed as contributing to the "realization of the principles of the United Nations including peace, territorial integrity, cooperation, the solution of common problems and the realization of international human rights instruments at the universal and regional levels."²⁴⁰ His commentary highlighted the importance of the provisions laid out in Article 1 of the Declaration, specifically the understanding that recognition and respect for the rights of minorities necessitates national policies of non-exclusion, non-assimilation²⁴¹ and non-discrimination.²⁴² According to Article 1 of the Declaration, not only is the existence and identity of persons belonging to minorities to be protected, the State is also under a special obligation to encourage and promote the social conditions in which these identities are maintained and preserved. Mr. Eide noted that his understanding of State obligations and minority rights "reflected respect for pluralism and diversity in national societies while at the same time maintaining the identity and characteristics of minorities."²⁴³ Other members, however, emphasized the need to incorporate further dialogue and commentary on the Declaration so as to ensure its ultimate, effective implementation.²⁴⁴

In addition to these comments, the Working Group also considered the constitutional and legal provisions protecting the existence and identities of minorities as elaborated in Article 1.1 of the Declaration.²⁴⁵ It was noted, however, that one fundamental problem in the discussion was the conceptual ambiguity over defining the existence of a minority population.²⁴⁶ Official non-

238. *Id.* ¶ 2.

239. See U.N. Doc. E/CN.4/Sub.2/AC.5/1998/WP.1 (1998).

240. *Report of the Working Group on Minorities on Its Fourth Session, supra* note 231, ¶ 24.

241. Some debate ensued during the meeting of the working group regarding the notion of assimilation. Several members noted that a distinction should be made between voluntary and forced assimilation into dominant cultures and societies, and that only forced assimilation should be a concern before the Working Group. See *id.* ¶¶ 31, 34.

242. See *id.* ¶ 30.

243. *Id.* ¶ 24.

244. See *id.* ¶ 27.

245. See *id.* ¶¶ 37-46.

246. See *id.*

Mr. Eide argued that the existence of a minority must be determined by a set of objective and subjective facts which were independent of the recognition by the Government. The objective factors might or might not in-

recognition of minority groups is problematic because some States may simply refuse to acknowledge the existence of particular groups, thereby effectively nullifying any obligation that the State may have in protecting the rights of such minorities.²⁴⁷ Mr. Bengoa noted that "it was not sufficient for minorities to be 'allowed' to exercise their rights; they should also be able to 'assert' their rights."²⁴⁸ Being able to "assert" their rights means that minority groups must be granted legitimate avenues through which to make claims relating *specifically* to the rights of minorities.²⁴⁹ As such, an independent definition must be developed so as to recognize the existence of minority groups, even if they are not granted this visibility by particular States.

The Working Group also considered, in keeping with Articles 2.1 and 3 of the Declaration, the rights of persons belonging to minorities to, individually or in community, enjoy their own culture, profess and practice their own religion, and use their own language, both in private and in public.²⁵⁰ Further, the Working Group considered the rights of minorities to participate in the cultural, religious, social, economic and public life of their communities, and also to participate in decision-making processes at both the national and regional levels.²⁵¹ In order to ensure meaningful participation in the society, however, the rights of minority groups should be acknowledged in an environment which promotes toler-

clude questions of descent, the mother tongue spoken by the persons concerned and the religion they practised. The subjective factors referred to self-identification by the persons concerned. It remained important, however, that States recognize minorities on their territory and it was therefore incumbent upon the Working Group to encourage States to do so.

Id. ¶ 46.

247. *See id.* ¶ 45.

248. *Id.*

Mr. Bengoa stressed that many cases of non-recognition of minorities had been brought to the attention of the Working Group. It was therefore essential to address the question of the recognition of the existence of a minority. There was a difference between the collective nature of the rights of persons belonging to minorities, in community with other members of their group, to profess and practise their own religion, speak their own language and enjoy their own culture as provided for in article 27 of the International Covenant on Civil and Political Rights, and the more individual nature of the rights contained in the Declaration In view of the very diverse and complex situations which had been presented, Mr. Bengoa suggested that the Working Group should seek to clarify its approach in respect of the existence and recognition of minorities and then address some of the issues raised.

Id.

249. *See id.*

250. *See id.* ¶¶ 47-53.

251. *See id.* ¶¶ 54-61.

ance, peace and cooperation.²⁵² In promoting this climate of tolerance, human rights education was discussed as playing a critical role. The right to education was discussed within the framework of minority rights, including the right to intercultural education, and the right of minorities to learn their native language.²⁵³

The Working Group explored the potential use of U.N. treaty bodies in promoting the rights of minorities.²⁵⁴ The role of the Human Rights Committee, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination were therein discussed.²⁵⁵ Again, it was noted that with specific regard to the work of the treaty monitoring bodies, a definition of what constitutes a minority population would be helpful to facilitate the work of these committees.²⁵⁶ In addition, the Working Group also examined the contributions to be made by U.N. Special Rapporteurs, U.N. specialized agencies and other inter-governmental or non-governmental organizations.²⁵⁷

The Working Group has been able to address a variety of serious concerns relating to minority rights, and has helped to identify some of the major issues and obstacles facing minority populations. The future of the Working Group was, however, potentially in question. The Bureau of the Commission reportedly considered a proposal to abolish the Sub-Commission's Working Group on Minorities and place its existing duties within the context of a working group of the Commission. Nonetheless, while the Bureau did make recommendations as to other Sub-Commission working groups, the Bureau recommended in its report to the Commission the continuation of the Working Group on Minorities.²⁵⁸

B. Working Group on Indigenous Populations

The Working Group on Indigenous Populations has made a decisive contribution by drafting the Declaration on the Rights of Indigenous Peoples.²⁵⁹ In recent years the Working Group has focused on issues relating to indigenous education, language and

252. *See id.* ¶ 55.

253. *See id.* ¶¶ 62-65.

254. *See id.* ¶¶ 71-77.

255. *See id.*

256. *See id.*

257. *See id.* ¶¶ 81-91.

258. *See Report of the Bureau of the 54th Session of the Commission on Human Rights, Pursuant to Commission Decision 1998/112*, U.N. ESCOR Comm. on Hum. Rts., 55th Sess., at 7, U.N. Doc. E/CN.4/1999/104 (unedited version of Dec. 18, 1998) (copy on file with the author).

259. *See* U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994).

health.²⁶⁰ This working group also plays an important role in reviewing developments related to the situation of indigenous communities throughout the world, providing a unique forum for indigenous peoples from all corners of the globe to assemble in Geneva, exchange experiences, engage in a dialogue with their respective governments and develop common proposals addressed to the U.N. system.

In 1998, the Working Group on Indigenous Populations²⁶¹ convened for its sixteenth session from Monday, July 27 through Friday, July 31.²⁶² This working group's mandate is to:

[r]eview developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, together with information requested by the Secretary-General annually ... [and to] [g]ive special attention to the evolution of standards concerning the rights of indigenous populations.²⁶³

The sixteenth session of the Working Group had a record attendance of nearly one thousand persons, including nineteen observer governments, nine U.N. and inter-governmental organizations; and 312 indigenous nations, organizations and communities.²⁶⁴

The Working Group reviewed developments under its Agenda Item 4, which authorizes it to "review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations."²⁶⁵ Such review provides invaluable information to members of the Working Group; comments under this agenda item are considered by members in strengthening ongoing efforts of the U.N. system to recognize, promote, protect and restore the rights of indigenous peoples.²⁶⁶ It must be noted, however, that the Working Group does not want to be a "chamber of complaints" and does not act upon specific allegations

260. See *Report of the Working Group on Indigenous Populations on Its Sixteenth Session*, *supra* note 229, ¶¶ 49-89; *Report of the Working Group on Indigenous Populations on Its Fifteenth Session*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 49th Sess., Agenda Item 7, ¶¶ 36-84, U.N. Doc. E/CN.4/Sub.2/1997/14 (1997).

261. The Working Group is a subsidiary of the Sub-Commission and Commission and was established pursuant to Economic and Social Council Resolution 1982/34 of May 7, 1982. See *Report of the Working Group on Indigenous Populations on its Sixteenth Session*, *supra* note 229.

262. See *id.*

263. *Id.* ¶ 1(a)-(b).

264. For a complete list of participants, see U.N. Doc. E/CN.4/Sub.2/AC.4/1998/MISC.1.

265. *Report of the Working Group on Indigenous Populations on its Sixteenth Session*, *supra* note 229, ¶ 1(a).

266. See *id.* ¶ 15.

concerning violations of human rights.

Many governments and NGOs have used Agenda Item 4 as an opportunity to report on efforts to promote and protect the human rights of indigenous populations, focusing particularly on this year's principle theme of education and language.²⁶⁷ Many NGOs, however, used Agenda Item 4 as an opportunity to lodge complaints against various government actors.²⁶⁸ The Chairperson repeatedly reminded speakers that the Working Group was not the proper forum for such complaints, but her warning appeared to go unheeded.

The principal theme of this year's session was: Indigenous Peoples—Education and Language.²⁶⁹ In conjunction with the central theme, the Working Group considered the Draft Declaration on the Rights of Indigenous Peoples, which it completed at its eleventh session in 1994.²⁷⁰ Many participants of the Working Group called for a quick approval of the Draft Declaration, which is presently under consideration by an open-ended Working Group of the Commission.²⁷¹ The participants stressed to the Sub-Commission's Working Group that the language of the draft should not be subjected to any more changes that would weaken the document, as it already constituted a minimum standard with respect to the protection of indigenous rights.²⁷² The Working Group also considered the establishment of a permanent forum for indigenous people, a development which is discussed later in this section.²⁷³

267. See U.N. Doc E/CN.4/Sub.2/AC.4/1998/1 (1998); see also *Report of the Working Group on Indigenous Populations on its Sixteenth Session*, *supra* note 229.

268. See *id.*

269. See generally *id.*

270. See *Technical Review of the United Nations Draft Declaration on the Rights of Indigenous Peoples*, Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 46th Sess., Provisional Agenda Item 15, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994).

271. See generally C.H.R. Res. 1998/14 (1998); see also *Report of the Working Group on Indigenous Populations on its Sixteenth Session*, *supra* note 229, ¶ 19.

272. See generally *Report of the Working Group on Indigenous Populations on its Sixteenth Session*, *supra* note 260; see also E/CN.4/1998/106*/1 (1998).

273. In the Vienna Declaration and Programme of Action, the World Conference on Human Rights recommended that the establishment of a permanent forum for indigenous people in the U.N. system be considered. See *Vienna Declaration and Programme of Action: Note by the Secretariat*, Part II, ¶ 32, U.N. Doc. A/CONF.157/24 (1993), available in <<http://www1.umn.edu/humanrts/instree/11viedec.html>>. The General Assembly, in its Resolution 48/163, asked the Commission on Human Rights during its fiftieth session to give the proposal priority consideration. See *International Decade of the World's Indigenous People*, U.N. GAOR Res. 48/163, ¶ 4, U.N. Doc. A/RES/48/163 (1993). The Commission, in its Resolution 1994/28 of March 4, 1994, requested the Assistant Secretary-General for Human Rights to invite Govern-

Other highlights of this year's session included the presentation of Professor Alfonso Martínez's (expert from Cuba) Study on Treaties, Agreements, and Other Constructive Arrangements between States and Indigenous Populations²⁷⁴ and Dr. Daes' Preliminary Working Paper on Indigenous Peoples and Their Relationship to Land.²⁷⁵

The Commission is currently considering the establishment of a Permanent Forum for Indigenous People.²⁷⁶ If established, the Commission is seriously considering abolishing the Sub-Commission's Working Group on Indigenous Populations.²⁷⁷ There is much debate over whether the Permanent Forum will replace all of the present functions of the Working Group.²⁷⁸ Of particular concern for organizations representing indigenous interests is whether NGOs will have direct access to the Permanent Forum.²⁷⁹ Such direct access has been one of the unique and beneficial characteristics of the Working Group. Furthermore, some governments have not supported equal participation by indigenous representatives. One government delegation to the second workshop on a permanent forum stated that "it could not support a forum within the United Nations system where indigenous peoples were granted the same legal status as member States."²⁸⁰

Professor Martínez, member of the Working Group on Indigenous Populations and Special Rapporteur, presented his study on Treaties, Agreements, and Other Constructive Arrangements Between States and Indigenous Populations to the Working Group

ments and indigenous organizations to give their views on this matter and transmit contributions received to the Working Group. See C.H.R. Res. 1994/28, *A Permanent Forum in the United Nations for Indigenous People*, U.N. ESCOR Comm. on Hum. Rts., 50th Sess., 55th mtg., U.N. Doc. E/CN.4/RES/1994/28 (1994).

274. U.N. Doc. E/CN.4/Sub.2/1998/17 (1998). Prof. Martínez's Study was presented and commented upon under Agenda Item 8.

275. U.N. Doc. E/CN.4/Sub.2/1997/17 (1998). Dr. Daes' Preliminary Working Paper was presented and commented upon under Agenda Item 9.

276. For further information regarding the establishment of a Permanent Forum for Indigenous People, see Report of the Second Workshop on a Permanent Forum for Indigenous People Within the United Nations System Held in Accordance with Commission on Human Rights Resolution 1997/30, U.N. ESCOR Comm. on Hum. Rts., 54th Sess., Provisional Agenda Item 23, U.N. Doc. E/CN.4/1998/11 (1998).

277. See *supra* note 271 and accompanying text.

278. See U.N. Doc. E/CN.4/1998/11 (1998); see also U.N. Doc. E/CN.4/1998/11/Add.1 (1998).

279. See *id.*

280. *Report of the Second Workshop on a Permanent Forum for Indigenous People Within the United Nations System Held in Accordance with Commission on Human Rights Resolution 1997/30*, U.N. ESCOR Comm. on Hum. Rts., 54th Sess., Provisional Agenda Item 22, ¶ 25, U.N. Doc. E/CN.4/1998/11 (1998).

on Indigenous Populations.²⁸¹ Professor Martínez's study was generally well-received. It did not go without criticism, however. Judge Guissé, another member of the Working Group, commented that the study was not complete and that it raised many important questions but lacked many answers. In particular, Judge Guissé was critical of the study's exclusion of indigenous populations from Africa and Asia.²⁸² Judge Guissé's comment received applause from NGOs representing African and Asian indigenous interests.

Professor Martínez's study was not forwarded to the Secretariat in time for translations into all of the working languages and thus was not available in official form during the Working Group's session.²⁸³ This delay received a great amount of criticism, particularly because the reason for the delay was that the study was not yet translated into Spanish. A number of Spanish speaking NGOs were particularly insulted by this fact.

This study also contained several controversial conclusions and recommendations, including the conclusion that the "treaty of annexation between the United States and Hawaii . . . could be declared invalid"²⁸⁴ and the recommendation that the "case of Hawaii [could be] re-entered on the list of non-self-governing territories of the United Nations and resubmitted to the bodies in the Organization competent in the field of decolonisation."²⁸⁵ The United States government responded to an omission in the study by pointing out that the General Assembly, in Resolution 1469 of December 12, 1959, found that "the people of . . . Hawaii have effectively exercised their right to self-determination and have freely chosen [statehood]."²⁸⁶ Professor Martínez responded that he would include, with his own comments, the United States government's response.

C. Working Group on Contemporary Forms of Slavery

The Working Group on Contemporary Forms of Slavery is the only mechanism in the U.N. system for monitoring compliance

281. See *supra* note 261; *Report of the Working Group on Indigenous Populations on Its Sixteenth Session*, *supra* note 229, ¶ 101.

282. See *id.* ¶ 103.

283. See *id.* ¶ 101.

284. *Study on Treaties, Agreements, and Other Constructive Arrangements Between States and Indigenous Populations, Final Report by Mr. Miguel Alfonso Martínez, Special Rapporteur*, ¶ 163, unofficial U.N. Doc. (1998) (copy on file with author).

285. *Id.* ¶ 164.

286. G.A. Res. 1469, U.N. GAOR, 14th Sess., 855th mtg. at 127, U.N. Doc. A/4343 (1959).

with several multilateral human rights treaties relating to slavery and slavery-like practices. This Working Group took the initiative in developing programs of action against the sale of children, child prostitution and child pornography; on child labor; and on prevention of the traffic in persons and the exploitation of the prostitution of others.²⁸⁷

In 1998, the Working Group on Contemporary Forms of Slavery convened for its twenty-third session from May 18-28, 1998.²⁸⁸ The Working Group is a subsidiary of the Sub-Commission and Commission, established pursuant to Economic and Social Council Decisions 16 and 17 of May 17, 1974.²⁸⁹ The Working Group was established in 1975 and has met regularly before each session of the Sub-Commission.²⁹⁰ This working group's mandate is to:

review developments in the field of slavery, the slave trade and the slavery-like practices, of apartheid and colonialism, the traffic in persons and the exploitation of the prostitution of others, as defined in the Slavery Convention of 1926, the Supplementary Convention of 1956 on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and the Convention of 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.²⁹¹

During this year's session, the Working Group also accepted an NGO proposal for a forum on prostitution and trafficking in women and children, which is scheduled to take place on June 21-22, 1999, just before the Working Group meets between June 23-July 2, 1999.²⁹² This forum will represent a joint effort by U.N. organizations and non-governmental organizations, who are expected to voice a range of perspectives on the issue of sexual trafficking. While there are some international instruments that address the issue of sexual trafficking—most notably the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others—there have nevertheless been virtually no concrete enforcement mechanisms available that would actually help deter the practice.²⁹³ Many of these or-

287. See *Report of the Working Group on Contemporary Forms of Slavery on Its Twenty-Third Session*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Provisional Agenda Item 6, U.N. Doc. E/CN.4/Sub.2/1998/14 (1998).

288. See *id.* ¶ 2.

289. See *id.* ¶ 1.

290. See *id.*

291. *Id.*

292. See S.C. Res. 1998/19, *Report of the Sub-Commission*, *supra* note 9, at 55.

293. See Stephanie Farrior, *The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to its Potential*, 10 HARV. HUM. RTS.

ganizations will no doubt present different, and perhaps at times contrary, viewpoints on the issue of prostitution. The aim of the forum, however, will be to incorporate these divergent perspectives into a common set of objectives against the most severe abuses inherent in sexual trafficking.²⁹⁴ Presumably, participants can agree upon the most grievous violations such as abduction, fraud, illicit transfer and sexual bondage so that progress can be made in these areas.

During the 1998 session, the Working Group took initial steps toward a consolidation of conventions on slavery; reviewed, *inter alia*, developments in the field of contemporary forms of slavery, including economic exploitation of domestic and migrant workers, bonded labor, child labor and sexual exploitation; and recommended a number of resolutions to the Sub-Commission.²⁹⁵

The Working Group recalled the large number of international instruments relating to slavery.²⁹⁶ The Working Group continued to receive information about and be aware of the contemporary manifestations of slavery-like practices, including debt bondage, exploitation of child labor, forced labor, illicit traffic in migrant workers and traffic in women and children for prostitution.²⁹⁷ The Working Group asked David Weissbrodt and Anti-Slavery International, in consultation with non-governmental organizations having an established record in this field, to prepare a comprehensive review of existing treaty and customary law covering all the traditional and contemporary slavery-related practices and relevant monitoring mechanisms.²⁹⁸ The end product will be a restatement of international norms against slavery, principle-by-principle, and would thus assess whether there are gaps in the legal norms against slavery. The working paper should also review the mechanisms established by existing instruments and any apparent gaps in monitoring.

J. 213, 220 (1997).

294. See S.C. Res. 1998/19, *Report of the Sub-Commission*, *supra* note 9, at 53-61.

295. See *id.*

296. The Working Group noted that international instruments relating to slavery include, *inter alia*: The relevant provisions of the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights, the 1926 Slavery Convention; the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Other; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and the Institutions and Practices Similar to Slavery; and International Labour Organization Convention No. 29 on Forced Labour.

297. See *Report of the Working Group on Contemporary Forms of Slavery on Its Twenty-Third Session*, *supra* note 287.

298. See *id.* ¶ 22.

The Bureau of the Commission has proposed abolition of the Sub-Commission's Working Group on Contemporary Forms of Slavery and assigning its functions to a Special Rapporteur on contemporary forms of slavery within the context of the Commission on Human Rights. The Commission's Special Rapporteur may also be given responsibility for the work of the existing Special Rapporteur on the sale of children, child prostitution and child pornography.²⁹⁹

D. Sessional Working Group on Administration of Justice

The Working Group on Administration of Justice met periodically throughout the Sub-Commission³⁰⁰ session to discuss issues related to deprivation of the right to life,³⁰¹ habeas corpus as a non-derogable right and as one of the requirements for the right to a fair trial,³⁰² measures to be taken to give full effect to the Convention on the Prevention and Punishment of the Crime of Genocide,³⁰³ juvenile justice,³⁰⁴ privatization of prisons³⁰⁵ and the Draft International Convention on the Protection of All Persons From Enforced Disappearances.³⁰⁶

As one of its primary tasks, the Working Group addressed the issue of the death penalty, and took note of the worldwide abolitionist movement which has sought to eliminate the practice.³⁰⁷ The Working Group agreed that, while some progress has been made toward the universal eradication of the death penalty, unfortunately much work remains to be done. To date, ninety-seven countries not only legally allow the death penalty as a method of punishment, but also regularly apply it in practice.³⁰⁸ The Sub-

299. See *supra* note 258 and accompanying text.

300. See *Report of the Sessional Working Group on the Administration of Justice*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Agenda Item 9, U.N. Doc. E/CN.4/Sub.2/1998/19 (1998).

301. See *Report of the Sessional Working Group on the Administration of Justice*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 49th Sess., Agenda Item 2, ¶ 7, U.N. Doc. E/CN.4/Sub.2/1997/21 (1997).

302. See *id.* at Agenda Item 3; see also *The Administration of Justice and the Human Rights of Detainees: Habeas Corpus, Amparo and Similar Procedures as Non-Derogable Rights*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Provisional Agenda Item 9, U.N. Doc. E/CN.4/Sub.2/1998/WG.1/CRP.1 (1998).

303. See *Report of the Sessional Working Group on the Administration of Justice*, *supra* note 301, at Agenda Item 4.

304. See *id.* at Agenda Item 5.

305. See *id.* at Agenda Item 6.

306. See *id.* at Agenda Item 1.

307. See *Report of the Sessional Working Group on the Administration of Justice*, *supra* note 300, ¶¶ 65-76.

308. See *id.* ¶ 65.

Commission, drawing on the work of Amnesty International, did voice some optimism by reporting that in total:

Fifty-four countries have abolished the death penalty by legal enactment for all offenses regardless of their gravity or complexion or when they were committed. *De jure* abolition means that the penalty cannot be pronounced, or at the very least cannot be executed. If it is reintroduced, the measures ordering its reintroduction can in no event have retroactive effect for prior acts.³⁰⁹

The Working Group also expressed its concern over the unequal administration of the death penalty, and noted that "[t]he largest number of persons sentenced to death are those who have no resources and are thus materially and intellectually incapable of defending themselves. In many countries their cases are lost in advance."³¹⁰ In this regard, the Working Group suggested that measures be implemented to guarantee the fair trial of accused persons, and that these individuals be provided with the legal and material resources necessary their proper defense.³¹¹ In addition, the Working Group voiced its concern for especially vulnerable groups, including minors, pregnant women and mothers of young children, the elderly, the mentally ill and mentally disabled, who may be executed without consideration of their unique circumstances.³¹²

Perhaps the most formidable work of this year's session came during the Working Group's consideration of the Draft Convention on the Protection of All Persons from Enforced Disappearance.³¹³ During the 1998 session, Chairman-Rapporteur Louis Joinet submitted a revised version of the Convention, and after some debate concerning the text of the document, the Working Group was able to agree to send the draft Convention to the full Sub-Commission for its approval.³¹⁴ The Sub-Commission was then able, in its Resolution 1998/25,³¹⁵ to approve the draft Convention, and de-

309. *The Administration of Justice and the Human Rights of Detainees: Issues Related to the Deprivation of the Right to Life*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Provisional Agenda Item 9, ¶ 8, U.N. Doc. E/CN.4/Sub.2/1998/WG.1/CRP.3 (1998).

310. *Id.* ¶ 13.

311. *See id.* ¶ 23.

312. *See id.* ¶¶ 18-22.

313. *See The Administration of Justice and the Human Rights of Detainees: Follow-Up Measures to the Declaration on the Protection of All Persons from Enforced Disappearances*, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 50th Sess., Provisional Agenda Item 9, U.N. Doc. E/CN.4/Sub.2/1998/WG.1/CRP.2 (1998).

314. *See Report of the Sessional Working Group on the Administration of Justice*, *supra* note 300, ¶¶ 9-64, 96.

315. S.C. Res. 1998/25, *Report of the Sub-Commission*, *supra* note 9, at 70.

cided to transmit the document to the Commission for consideration, together with the comments of the Working Group and the Sub-Commission.³¹⁶

If approved by the Commission, the draft Convention will be sent on to the General Assembly for consideration. Ultimately, if the draft Convention succeeds and is approved by all of the relevant U.N. bodies, the new Convention will be opened for signing and ratification by member states. Thereafter, a new treaty monitoring body, the Committee against Enforced Disappearances, will be created to monitor state compliance with the Convention.³¹⁷

E. Working Group on Communications

During the fiftieth session, the Sub-Commission received the report of its Working Group on Communications. According to the International Service for Human Rights, a Geneva-based NGO, the Sub-Commission decided to transmit to the Commission on Human Rights reports concerning Afghanistan, Armenia, Azerbaijan, Gambia, Nepal, Saudi Arabia, Chad and Yemen.³¹⁸

VII. Future of the Sub-Commission

The future role of the Sub-Commission is in serious question. The Bureau of the Commission has proposed reducing the membership of the Sub-Commission to fifteen individuals selected by the Chair of the Commission—rather than by election in the entire Commission—for no longer than two four-year terms, thereby reducing significantly the geographical representation of Sub-Commission membership.³¹⁹ The Bureau has recommended that the Sub-Commission should be deprived of the authority to adopt resolutions.³²⁰ The Sub-Commission would be authorized to continue holding its open debate on country situations, but instead of resolutions expressing concerns about specific countries, it would only be asked to summarize the debate in its report.³²¹ Accordingly, the Sub-Commission apparently would not be able to apply

316. See *id.* ¶ 1.

317. See *The Administration of Justice and the Human Rights of Detainees: Follow-Up Measures to the Declaration on the Protection of All Persons from Enforced Disappearances*, *supra* note 313, at art. 27-30.

318. International Service for Human Rights, HUM. RTS. MONITOR, No. 43, at 44 (1998).

319. See *Summary of the Main Proposals Concerning the Review of Mechanisms of the Commission on Human Rights Undertaken Pursuant to Commission Decision 1998/112*, *supra* note 194.

320. See *id.*

321. See *id.*

human rights issues to concrete situations and would thus be deprived of one of its most important functions. Similarly, the Sub-Commission would have no role in the confidential ECOSOC Resolution 1503 process for dealing with consistent patterns of gross violations, and its Working Group on Communications under 1503 would be replaced by a working group under the aegis of the Commission. At the same time, however, the Bureau would reduce the length of the sessions from four weeks to two weeks and would thus diminish drastically its capacity to have any substantive debates, summarize controversial discussions or do other useful work.³²² Such limits will likely discourage NGOs from participating in Sub-Commission sessions and will make the Sub-Commission much less visible and useful. One of the principal strengths of the Sub-Commission has been its accessibility to NGOs and their initiatives. It is likely that NGOs would lose interest in the Sub-Commission as restructured by the proposals of the Commission's Bureau.

The Sub-Commission's Working Group on Contemporary Forms of Slavery would be replaced by a Special Rapporteur of the Commission.³²³ Two other working groups on indigenous populations and minorities would remain—at least for now. The Sub-Commission's principal or sole responsibility would be to conduct studies. All of these changes would come into effect in 2000, but there is considerable uncertainty as to how transitions will affect its work in 1999. Most of the proposals considered by the Bureau of the Commission, if adopted, will diminish substantially the role currently played by one of the few independent human rights bodies within the U.N. The Bureau did sensibly recommend that the outmoded name of the Sub-Commission be updated to "the Sub-Commission on the Promotion and Protection of Human Rights," but it simultaneously urged that the Sub-Commission be deprived of most of its current and traditional role in protecting human rights.³²⁴

The Sub-Commission will meet for its fifty-first session from August 2-27, 1999, but, as one member stated during the fiftieth session: "When we come back next year this may be a very different institution from the one we know."³²⁵

322. *See id.*

323. *See id.*

324. *See id.*

325. Intervention by Sub-Commission expert Miguel Alfonso Martínez on August 28, 1998.

