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An Analysis of the Fifty-first Session of the United Nations Sub-Commission on the Promotion and Protection of Human Rights¹

David Weissbrodt,* Mayra Gómez,** & Bret Thiele***

I. INTRODUCTION

The United Nations Sub-Commission on the Promotion and Protection of Human Rights (Sub-Commission),² formerly the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, met at the European Headquarters of the United Nations in Geneva, Switzerland, from 2 August through 27 August 1999 for its fifty-first session.³ The Sub-Commission is a subsidiary body of the Commission on Human Rights

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1. The authors would like to thank Alexis Mansfield and Steve Marshall for their excellent work and indispensable help during the 1999 Sub-Commission session.

2. The Sub-Commission was formerly known as the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Pursuant to a recommendation of the Commission on Human Rights of 28 April 1999, the Economic and Social Council in July 1999 decided to change the name. See *Commission on Human Rights: Report on the Fifty-fifth Session*, U.N. ESCOR, Comm'n on Hum. Rts., 55th Sess., at 27, U.N. Doc. E/1999/23, E/CN.4/1999/167 (1999), available in <<http://www.un.org/esa/coordination/ecosoc/doc99-23.htm>>.

3. See David Weissbrodt et al., *Highlights of the 50th Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 17 LAW & INEQ. J. 445 (1999); ACLU INTERNATIONAL HUMAN RIGHTS TASK FORCE, 1999 INT'L CIVIL LIBERTIES REPORT,

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

The mandate of the Sub-Commission includes human rights standard setting as well as reviewing specific country situations and current human rights issues in all parts of the world.⁴ Because of its role in initiating action within the UN human rights system and its accessibility to nongovernmental 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, UN bodies and specialized agencies, and other intergovernmental organizations. Over one thousand participants attended this year's session, representing 116 Governments, nineteen UN agencies, ten specialized agencies, and 124 NGOs.

The Sub-Commission develops resolutions that are presented to and often adopted by the Commission.⁵ Members of the Sub-Commission also prepare working papers and studies on human rights problems.⁶ This year's

SUMMARY OF DEVELOPMENTS AT THE 50TH SESSION OF THE U.N. SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES 59 (1999); 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. ADVOCATES 1 (1998); INTERNATIONAL SERVICE FOR HUMAN RIGHTS, No. 55, U.N. SUB-COMMISSION, 51ST SESSION, GENEVA, 2-27 AUGUST 1999: RESULTS OF RESOLUTIONS & DECISIONS (1999); 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 (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, *1995 Developments at the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 13 NETH. Q. HUM. RTS. 481 (1995).

4. 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 Commission Resolutions 8 (16 March 1967) and 17 (10 March 1981); Economic and Social Council Resolutions 1235 (6 June 1967) and 1503 (27 May 1970). See E.S.C. Res. 8, U.N. ESCOR, 42d Sess., Comm'n on Hum. Rts., 23d Sess., Supp. No. 6, U.N. Doc. E/4322 (1967); E.S.C. Res. 17, U.N. ESCOR, Comm'n on Hum. Rts., 37th Sess.; E.S.C. Res. 1235, U.N. ESCOR, Comm'n on Hum. Rts., 42d Sess., Supp. No. 1, U.N. Doc. E/4393 (1967); E.S.C. Res. 1503, U.N. ESCOR, 48th Sess., Supp. No. 1A, U.N. Doc. E/4832/Add.1 (1970) [hereinafter Resolution 1503].
5. See FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* 11 (2d ed. 1996).
6. See *id.*

session, the fifty-first session, generated thirty resolutions, sixteen decisions, and six chair statements. Since many treaties and other human rights instruments have been promulgated, the Sub-Commission has de-emphasized its standard setting function⁷ and has given greater attention to promotion, problem solving, implementation, and the use of public pressure to improve human rights.⁸

A. The Importance of Country Work at the Sub-Commission

There are a number of the reasons why country work by the Sub-Commission is of value to the Commission and to the international human rights community. First and foremost, when handled appropriately, country resolutions have proven most successful as tools to gain leverage in the context of persuading governments to make human rights improvements. Indeed, some of the most valuable and effective resolutions have been the ones that were ultimately withdrawn, and instead resulted in negotiated agreements or consensus statements of the Sub-Commission Chair. Those resolutions are often able to motivate governments to sit down at the negotiating table and make concrete concessions to improve human rights.

Second, the Sub-Commission provides a high degree of accessibility and visibility to NGOs and is one efficient avenue to the Commission. NGOs participation is critical to the relevance and integrity of the institution. NGOs can provide a great service to the Sub-Commission by providing information and keeping strong links between the United Nations and the global human rights movement.

Third, because country work attracts the attention of governments, intergovernmental organizations, and NGOs, it maintains a high degree of visibility on both thematic and country-specific human rights concerns. This transparency helps ensure not only the Sub-Commission's effectiveness, but also gives human rights situations much needed visibility. Since many NGOs and governments attend the Sub-Commission in order to lobby for

7. Several Sub-Commission members believe that most international human rights standards have been established. The new challenge lies, for the Sub-Commission as well as other international and regional human rights bodies, in ensuring that these standards are implemented.

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

and against country resolutions, they might not attend if the body could not take effective action on countries. If the Sub-Commission sessions fail to receive significant attendance and attention from NGOs and governments, it will become much less effective as a human rights institution.

Fourth, because the Commission cannot possibly, for political and practical reasons, shed light on all countries in which there are severe and consistent patterns of human rights abuse, the Sub-Commission helps to identify and place pressure on those countries which may have otherwise been forgotten or overlooked by other human rights bodies. Because the Sub-Commission is comprised, not of government representatives, but of at least nominally independent experts, it can raise concerns about some countries the Commission will not consider. Once the Sub-Commission has identified a government as a violator of human rights, it is more likely that the Commission may be motivated to act on that situation.

Fifth, the Sub-Commission provides an opportunity to address developing human rights crises or emergency situations immediately, whereas the Commission's next session may be up to six months away. If the situation is particularly grave, however, the Commission can hold a special session as it has done in the past on Rwanda, Kosovo, and East Timor.

In short, having the ability to propose, negotiate, and adopt resolutions affords the Sub-Commission an important tool for encouraging human rights improvements and applying its thematic expertise to concrete situations. Indeed, often even a suggestion that the Sub-Commission might adopt a resolution on a country situation is enough to inspire dialogue and human rights progress. Perhaps most importantly, however, the capacity to conduct country-specific work gives the Sub-Commission a mechanism for expressing its concerns about serious human rights situations and for serving as an active and relevant voice for international human rights. It is uncertain how useful the Sub-Commission can really be, in terms of promoting and protecting human rights around the world, if it is stripped of its capacity to apply its expertise to specific countries.

II. SUB-COMMISSION'S ACTIONS ON COUNTRY SITUATIONS

For many years, the Sub-Commission has adopted resolutions identifying at least a few countries whose human rights violations require expressions of UN concern. In 1999, the Sub-Commission changed its approach by issuing more chair statements and adopting three thematic resolutions naming several countries.

The Sub-Commission makes decisions as to which country situations to address after considering information from a number of sources. These sources may include reports from NGOs, as well as NGOs submissions and

comments that are made directly to the Sub-Commission during the session. The Sub-Commission also attempts to maintain an open dialogue between its members, NGOs representatives, inter-governmental organizations, and governments. In some instances, the idea to address a particular country situation may also arise from an individual member's expertise and research.

After this information is considered and its validity established, the Sub-Commission attempts to focus its attention on those country situations that have not been adequately addressed through other UN human rights bodies—particularly its parent body, the Commission. Having identified countries that ought to be the subject of particular attention, the Sub-Commission considers whether to pursue a country resolution or to make a chair statement. A country-specific resolution is generally viewed to be a stronger expression of concern over a country's human rights situation and is adopted by secret vote. Resolutions are frequently much more substantive and detailed than are chair statements.

Chair statements express the consensus of the Sub-Commission and are not generally viewed to be as forceful as resolutions. Chair statements do, however, have two strong advantages, as discussed below, when used in conjunction with the ability to adopt resolutions. First, chair statements are adopted by consensus. While any member of the Sub-Commission can block acceptance of a statement by the chair, a consensus statement may carry considerable weight—particularly as compared with a resolution on which there is a divided vote. Further, chair statements may offer an avenue for negotiations between Sub-Commission members and government representatives. Such negotiations often result in governments making specific commitments to improve their respective human rights situations.

A. Chair Statements

One highlight of the fifty-first session was the Sub-Commission's use of constructive dialogue and negotiation with governments to produce chair statements by consensus rather than resolutions. In order to escape the criticism of a country-specific resolution, governments were often more willing to negotiate, to make significant concessions, and to commit themselves to concrete measures in chair statements. In response to a statement of the Sub-Commission's chair, the relevant government would publicly state their intent to move forward on a number of agreed initiatives that would improve the human rights situation within their country.⁹

9. The use of such a negotiated approach in 1999 was encouraged by the success of the Sub-Commission in 1998 in withdrawing a resolution on Bahrain on condition that the Government of Bahrain would agree to rescind its reservation to Article 20 of the

This year, the Sub-Commission issued chair statements on the human rights situations in Belarus,¹⁰ Indonesia,¹¹ Mexico,¹² and Togo,¹³ as well as a statement on persons in Nepal claiming to be refugees from Bhutan¹⁴ and a more general statement on the problem of political kidnappings that mentioned the country of Colombia by name.¹⁵ Several of these chair statements, including Belarus,¹⁶ Bhutan,¹⁷ Indonesia,¹⁸ and Togo¹⁹ began as country resolutions that were eventually withdrawn.

Last year, the Sub-Commission adopted a resolution on the human rights situation in Belarus that expressed concern about the lack of democratic protection within the country as well as the oppression of political dissent.²⁰ The 1999 chair statement on the human rights situation in

Convention Against Torture, Cruel, Inhuman and Degrading Treatment or Punishment and would invite the UN Working Group on Arbitrary Detention to visit the country. The Government of Bahrain fulfilled both agreements prior to the beginning of the Sub-Commission's 1999 session. See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* 10 Dec. 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at art. 20, U.N. Doc. A/39/51 (1985) (*entered into force* 26 June 1987), *reprinted in* 23 I.L.M. 1027 (1984), *substantive changes noted in* 24 I.L.M. 535 (1985).

10. *See Situation of Human Rights in Belarus*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. OHCHR/STM/99/36 (1999).
11. *See Situation of Human Rights in Indonesia*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. OHCHR/STM/99/35 (1999).
12. *See Situation of Human Rights in Mexico*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. OHCHR/STM/99/34 (1999).
13. *See Situation of Human Rights in Togo*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. OHCHR/STM/99/33 (1999).
14. *See Persons in Nepal Claiming to be Refugees from Bhutan*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. OHCHR/STM/99/31 (1999).
15. *See Kidnapping and Hostage Taking*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. OHCHR/STM/99/32 (1999).
16. *See Situation of Human Rights in Belarus*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/L.6 (1999).
17. *See Situation of Long-Term Refugees and Internally-Displaced Persons*, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/L.18 (1999).
18. *See Situation of Human Rights in Indonesia*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/L.19 (1999).
19. *See Situation of Human Rights in Togo*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/L.7 (1999).
20. *See Situation of Human Rights in Belarus*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 50th Sess., 25th mtg., U.N. Doc. E/CN.4/Sub.2/RES/1998/1 (1998); *Report of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities on its Fiftieth Session*, U.N. ESCOR, Comm'n on Hum. Rts., Sub-Comm'n on Prevention and Protection of Minorities, 54th Sess., at 15-16, U.N. Doc. E/CN.4/Sub.2/1998/45 (1998) [hereinafter *Report of the Sub-Commission*].

Belarus reflected negotiations that had taken place with the Belarussian Government. The statement reflected the government's willingness to invite the Special Rapporteur on the independence of judges and lawyers to visit the country; to invite the Working Group on Arbitrary Detention; to take all steps necessary to join the Council of Europe and to sign and ratify the European Convention on Human Rights;²¹ to "make best efforts" to withdraw its reservation to Article 20 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; to "undertake a series of legislative reforms to improve the protection of human rights and democracy";²² to hold free and fair parliamentary elections; and finally, to prepare a written report for the Sub-Commission at its fifty-second session which will serve to update the members as to the progress it has made with regard to these objectives.²³

The human rights situation in Togo was another country situation which was considered at the Sub-Commission and which also resulted in the adoption of a chair statement this year.²⁴ Some members of the Sub-Commission were concerned with reports of persistent human rights violations within the country, including political killings and kidnappings, as well as an enduring climate of impunity maintained by the government. Those concerns were supported by an Amnesty International report of May 1999 which reported on a massacre in June 1998.²⁵ The Government of Togo denied the killings and enlisted the support of Jacques Chirac, President of the French Republic, who happened to be visiting the country in July 1999.²⁶ At the Sub-Commission, Mr. Louis Joinet (expert from France) approached the Togolese Government and negotiated the establishment of an international commission of inquiry to investigate the allegations of disappearance and political killing. This innovative approach to verifying human rights violations will require the collaboration of not only the Sub-Commission, but also the UN Secretary-General, the Office of the High Commissioner for Human Rights (OHCHR), and the Organization of African Unity (OAU).²⁷

21. See European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 Nov. 1950, 213 U.N.T.S. 221, Europ. T.S. No. 5 (entered into force 3 Sept. 1953).

22. See *Situation of Human Rights in Belarus*, *supra* note 10.

23. See *id.*

24. See *Situation of Human Rights in Togo*, *supra* note 13.

25. See Amnesty International, *Togo: Rule of Terror*, AI Doc. AFR 57/01/99 (5 May 1999) <<http://www.amnesty.org/ailib/aipub/1999/AFR/15700199.htm>>.

26. See Amnesty International, *Togo: Amnesty International Rejects Categorically Accusations of Manipulation*, AI Doc. AFR 57/26/99 (23 July 1999) <<http://www.amnesty.org/news/1999/15702699.htm>>.

27. See *Situation of Human Rights in Togo*, *supra* note 13.

The Sub-Commission took similar steps with regard to both the human rights situation in Indonesia²⁸ and the human rights situation in Mexico.²⁹ In the case of Indonesia, the Sub-Commission welcomed the positive national reforms that had taken place, including the ratification by the Government of Indonesia of several human rights treaties and "the holding in 1999 of the first free elections in forty-five years in the context of a process of democratization."³⁰ The Sub-Commission, however, also expressed concern about "persistent reports of human rights violations, including extrajudicial killing and ill-treatment, as well as continued serious violence and abuses, for example in Aceh and Ambon."³¹ While the chair statement did not explicitly mention the violence in East Timor, a subject pursued by the Commission, the Sub-Commission did express its desire to see that the armed forces and the police force be completely separated within the country over the next two years, implying an awareness of the situation within that region.³²

Last year, the Sub-Commission adopted a resolution on the situation of human rights in Mexico.³³ This year, the Sub-Commission issued a chair statement in which it welcomed the National Programme for the Defense and Promotion of Human Rights, as well as other positive steps taken by the Mexican government.³⁴ The Sub-Commission, however, took the opportunity to raise concerns over allegations of "torture, extrajudicial executions and 'disappearances,' as well as violations perpetrated against indigenous communities within the country."³⁵ The Sub-Commission also noted the invitation for a local visit addressed to the Chairperson of the Sub-Commission's Working Group on Indigenous Populations, Ms. Erica Irene Daes (expert from Greece), by the Instituto Nacional Indigenista.³⁶ It is expected that Ms. Daes will present a report to the Sub-Commission next year regarding her trip, including any observations she may have made with respect to the human rights situation in the country.

Two other chair statements were made during this year's session. One, on persons in Nepal claiming to be refugees from Bhutan,³⁷ continued a

28. See *Situation of Human Rights in Indonesia*, *supra* note 11.

29. See *Situation of Human Rights in Mexico*, *supra* note 12.

30. *Situation of Human Rights in Indonesia*, *supra* note 11.

31. *Id.*

32. See *id.*

33. See *Developments in the Situation in Mexico*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 50th Sess., 26th mtg., U.N. Doc. E/CN.4/Sub.2/RES/1998/4 (1998); *Report of the Sub-Commission*, *supra* note 20, at 23–24.

34. See *Situation of Human Rights in Mexico*, *supra* note 12.

35. *Id.*

36. See *id.*

37. See *Persons in Nepal Claiming to be Refugees from Bhutan*, *supra* note 14.

theme that was first addressed in a chair statement made the previous year.³⁸ This year, the Sub-Commission began an effort to address the situation of long-term refugees and internally displaced persons in a thematic resolution that not only named Bhutan and Nepal, but also Turkey.³⁹ Thousands of Bhutanese refugees have been denied the right to return to their country and have been living in camps within Nepal for nearly a decade.⁴⁰ The draft thematic resolution also noted that the fifteen-year conflict in southeast Turkey has led to the internal displacement of over two million people.⁴¹

After much debate and the coincidence of a major earthquake causing the death of thousands in Turkey, the Sub-Commission decided to postpone an expression of concern about internally displaced persons in Turkey until next year, and to proceed with a negotiated agreement with the Governments of Bhutan and Nepal. That agreement eventually led to the adoption of a chair statement. In this year's chair statement, the Sub-Commission reiterated its hope that meetings between the Bhutanese and Nepalese Governments would result in an agreement allowing Bhutanese refugees to return to their place of origin in safety and dignity.⁴² If progress continues to be impeded, however, it is likely that the Sub-Commission will take stronger action at its next session.

Nearly at the end of the Sub-Commission session, the chair read a consensus statement addressing the problem of kidnapping and hostage taking, noting in particular the prevalence of this problem within the country of Colombia.⁴³ The Sub-Commission condemned these actions, labeling them "vile and barbaric," and urged "all organizations that utilize them in order to achieve political advantage to immediately abandon these practices and liberate, without condition, the people they are holding in their power."⁴⁴

The use of chair statements this session represented the efforts of the Sub-Commission not only to negotiate with governments and seek agreements, but also to seek consensus among member-experts. In some ways this consensus gives the impression of a stronger, more unified voice with regard to these human rights issues. If indeed the agreements reached this year are able to change the policies and practices within the concerned nations, it will have been one of the most significant accomplishments that the Sub-Commission achieved this year.

38. See *Report of the Sub-Commission*, *supra* note 20, at 92-93.

39. See *Situation of Long-Term Refugees and Internally-Displaced Persons*, *supra* note 17.

40. See *id.* at 3.

41. The Sub-Commission had issued a chair statement in 1998, but there had been very little progress in the negotiations between Bhutan and Nepal during the year. See *id.* at 4.

42. See *Persons in Nepal Claiming to be Refugees from Bhutan*, *supra* note 14.

43. See *Kidnapping and Hostage Taking*, *supra* note 15.

44. *Id.*

B. Resolutions Adopted

The Sub-Commission adopted one country-specific resolution during its fifty-first session. This resolution was entitled "The Situation of Human Rights in the Congo,"⁴⁵ and raised concern over reports of massacres, arbitrary and extrajudicial executions, deportations, arbitrary detentions, the lack of freedom of expression, and a *de facto* lack of independence of the judiciary within the country.⁴⁶ The issue of human rights violations in the Congo had been the subject of a Sub-Commission resolution in 1997.⁴⁷ The situation had changed since 1997, and the Sub-Commission drew particular attention this year to violence in Brazzaville and within the Pool region.⁴⁸

Based on the single precedent established in 1998 with the Sub-Commission's adoption of a thematic resolution naming human rights defenders who were threatened or killed in several countries,⁴⁹ the Sub-Commission in 1999 adopted three thematic resolutions under its Agenda Item 2, combining its thematic and country-specific objectives. Accordingly, during its fifty-first session, the Sub-Commission adopted resolutions expressing concern about developments in several countries with regard to human rights defenders,⁵⁰ continuing obligations under international human rights treaties,⁵¹ and the execution of juvenile offenders.⁵²

Using the approach developed in 1998, the Sub-Commission named specific individuals who had been killed, targeted, or otherwise harassed for

45. See *Situation of Human Rights in the Congo*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 24th mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/1 (1999).

46. See *id.*

47. See *Situation of Human Rights in the Congo*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 49th Sess., 23rd mtg., U.N. Doc. E/CN.4/Sub.2/RES/1997/1 (1997); Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Forty-Ninth Session, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 49th Sess., ¶ 54–57, U.N. Doc. E/CN.4/Sub.2/1997/50 (1997).

48. See *Situation of Human Rights in the Congo*, *supra* note 45.

49. See *Violation of the Rights of Human Rights Defenders in All Countries*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 50th Sess., 26th mtg., U.N. Doc. E/CN.4/Sub.2/RES/1998/3 (1998) [hereinafter *Violation of the Rights of Human Rights Defenders* (1998)]; *Report of the Sub-Commission*, *supra* note 20, at 18–19.

50. See *Violation of the Rights of Human Rights Defenders in All Countries*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 25th mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/3 (1999) [hereinafter *Violation of the Rights of Human Rights Defenders* (1999)].

51. See *Continuing of Obligations Under International Human Rights Treaties*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 31st mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/5 (1999).

52. See *The Death Penalty, Particularly in Relation to Juvenile Defenders*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 30th mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/4 (1999) [hereinafter *The Death Penalty*].

their activities relating to the promotion of human rights. Sponsored once again by Mr. José Bengoa (expert from Chile), the resolution mentioned several human rights defenders from all regions of the world.⁵³ In 1999, Mr. Bengoa, with the assistance of Mr. Alberto Díaz Uribe (alternate from Colombia), sought to consult more broadly than in 1998 as to the individuals who should be named in the resolution. Some effort was also made to include a range of human rights defenders, including individuals who worked for women's rights, indigenous rights, and gay/lesbian rights. With regard to those individuals whose security was deemed to be in jeopardy, the Sub-Commission requested the High Commissioner for Human Rights to undertake inquiries about each individual and to inform the Sub-Commission as to their status next year.⁵⁴ While a few of the identified governments (e.g., Tunisia and Turkey) expressed opposition to the resolution, the thematic resolution received broad support in the Sub-Commission, passing with eighteen in favor, six against, and one abstention.

The resolution on continuing obligations under international human rights treaties was initiated in part because of recent attempts by certain countries to deny or otherwise severely limit their participation under treaties that they had previously ratified. The resolution named the Democratic People's Republic of Korea, Guyana, Jamaica, and Trinidad and Tobago for their recent efforts to withdraw from international or regional human rights treaties, or in the case of Peru, to attempt to withdraw from the jurisdiction of the Inter-American Court of Human Rights.⁵⁵

Mr. Miguel Alfonso Martínez (expert from Cuba) opposed the resolution because he contended that the Sub-Commission lacked a mandate to deal with regional matters. Mr. Alfonso Martínez also noted that some treaties provide for withdrawal (e.g., the Optional Protocol to the Civil and Political Covenant),⁵⁶ while others do not (e.g., the Civil and Political Covenant).⁵⁷ Mr. Alfonso Martínez suggested that the Sub-Commission vote separately on the paragraphs that named particular states and their attempts to withdraw from international or regional treaties. Three consecutive votes were

53. The resolution identified individuals in Colombia, Democratic Republic of the Congo, Ecuador, Guatemala, Indonesia, Iran, Myanmar (Burma), Sri Lanka, Togo, Tunisia, Turkey, former Yugoslavia (Kosovo), and Zimbabwe. See *Violation of the Rights of Human Rights Defenders* (1998), *supra* note 49.

54. See *id.*

55. See *Violation of the Rights of Human Rights Defenders* (1999), *supra* note 50.

56. Optional Protocol to the International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 Mar. 1976), reprinted in 6 I.L.M. 383 (1967).

57. International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 Mar. 1976).

conducted, all of which resulted in keeping the original text, which included withdrawals or attempted withdrawals, from international *and* regional treaties.⁵⁸

Ms. Françoise Hampson (expert from the United Kingdom), the principal sponsor of this resolution, argued that, insofar as the Sub-Commission was authorized to "promote and protect" human rights throughout the world, this resolution was well within the scope of the Sub-Commission's work. This resolution, she also noted, did not attempt to sort out the legal and technical questions relating to withdrawal from treaty obligations, but rather was intended as a normative statement which would encourage all countries to participate within international and regional human rights communities. Meaningful participation within the field of human rights would entail the universal ratification of human rights treaties, especially regional treaties and those comprising the International Bill of Human Rights.⁵⁹ The Sub-Commission's resolution on Congo had already encouraged ratification of a regional treaty, that is, the Additional Protocol to the African Charter on Human and Peoples' Rights⁶⁰ establishing the African Court on Human and Peoples' Rights. Meaningful participation would also entail the continued engagement of member states in these processes once they have committed themselves to such treaties. Hampson's arguments were convincing for many members. After it was decided to keep the original language of the resolution, it passed on a vote with seventeen in favor, seven against, and one abstention.

58. The first vote addressed the Democratic People's Republic of Korea and their attempted withdrawal from the International Covenant on Civil and Political Rights, the withdrawal of Jamaica from the Optional Protocol to the International Covenant on Civil and Political Rights, and the denunciation by Guyana and Trinidad and Tobago of their obligations under the Optional Protocol to the International Covenant on Civil and Political Rights, which was followed by Guyana, Jamaica, and Trinidad and Tobago re-acceding to the treaty, but with new reservations relating to the death penalty. All of these cases were included in this vote on the theory that they all dealt with international human rights treaties. This first vote decided whether to keep the text found in preambular paragraphs 11-13, and operative paragraphs 4, 5, and 6. The Sub-Commission voted to keep the original text with seventeen in favor, eight against, zero abstentions.

The second vote dealt with the text in preambular paragraph 14 and operative paragraph 7, which addressed the withdrawal of Trinidad and Tobago from the American Convention on Human Rights. The Sub-Commission again voted to keep the original text with seventeen in favor, eight against, zero abstentions.

The third vote dealt with the text found in preambular paragraph 15 and operative paragraph 8, which noted that the Government of Peru had sought to withdraw from the jurisdiction of the Inter-American Court of Human Rights. Again, the Sub-Commission voted to keep the original text with a vote of fourteen in favor, ten against, one abstention.

59. See UNITED NATIONS, *THE INTERNATIONAL BILL OF HUMAN RIGHTS* (1993).

60. Additional Protocol to the African Charter on Human and Peoples' Rights, OAU/LEG/MIN/AFCHPR/PROT.1 rev.2 (1997).

Another controversial resolution was also sponsored by Ms. Hampson, this time addressing the death penalty, particularly in regard to juvenile offenders.⁶¹ As originally presented, the resolution was accompanied by an annex which provided information on the imposition and carrying out of the death penalty since 1 January 1990 on those aged under eighteen at the time of the offense.⁶² That annex, however, was eventually deleted. Yet, the body of the resolution continued to name all the countries that had sentenced or executed a minor to death since 1990, including Iran, Nigeria, Pakistan, Saudi Arabia, the United States, and Yemen.

The resolution was pointedly criticized by a few members of the Sub-Commission who did not want countries, or specific countries, to be named. Mr. Fan Guoxiang, the member-expert from China, proposed an amendment completely eliminating Paragraph 8, which named specific countries within the body of the resolution. That amendment was rejected by a vote of eleven in favor of removing the original paragraph, fourteen against, and zero abstentions. Ms. Halima Warzazi (member-expert from Morocco) made two proposals that would have removed all the Islamic countries from the resolution and would have mentioned only the United States. Both of those proposals failed.⁶³ Ms. Warzazi argued that to choose 1 January 1990 as a beginning date was in fact an arbitrary decision and that since 1990 all of the Islamic countries named had ratified the Convention on the Rights of the Child (CRC),⁶⁴ a step which the United States had not taken.

Ms. Hampson countered these points by noting that this resolution was even-handed in naming all the countries that had executed minors since 1990, and that no countries should be deleted from her comprehensive list. Second, Ms. Hampson argued that regardless of the ratification status of the CRC, all of the countries named had national legislation in place that allowed the execution of minors. After a considerable debate, the resolution was put to a vote and passed with fourteen in favor, five against, and five abstentions.

The Government of the United States of America made a statement after the vote was conducted. The United States stated that while it respected the independence of the Sub-Commission, the Sub-Commission had in this case "flagrantly violated" its mandate and had failed to exercise the restraint

61. See *Situation of Human Rights in the Congo*, *supra* note 45.

62. *Id.* at 4-6.

63. The first proposal failed on a vote of twelve in favor, twelve against, and one abstention. The second failed on a vote of eleven in favor, twelve against, and two abstentions.

64. See Convention on the Rights of the Child, adopted 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (entered into force 2 Sept. 1990), reprinted in 28 I.L.M. 1448 (1989).

it had promised to use in adopting resolutions naming countries. As discussed below, the Commission has questioned whether the Sub-Commission should continue to adopt resolutions naming countries.

The Sub-Commission also considered a controversial resolution that initially discussed NATO actions in Kosovo, but in its final version mentioned no country. In the resolution, the Sub-Commission by a majority of fifteen in favor, seven against, and three abstaining, expressed

its firmest conviction that the so-called 'duty' and 'right' to carry out 'humanitarian intervention,' in particular by means of the threat or use of force, is juridically totally unfounded under current general international law and consequently cannot be considered as a justification for violations of the principles enshrined in Article 2 of the Charter of the United Nations.⁶⁵

This conclusion may have been engendered by disapproval of the NATO action which was initiated without UN Security Council authority, but it raises serious questions about the competence of the Sub-Commission and apparently questions the capacity of the United Nations to respond to grave human rights situations which threaten the peace, such as mass instances of genocide.

C. Non-Duplication Issue

The Sub-Commission continued to reform its methods regarding discussions under Agenda Item 2 on human rights violations. Beginning in 1993, the Commission increasingly criticized the Sub-Commission for needlessly repeating the Commission's actions on country situations.⁶⁶ Most of the

65. *Question of the Violation of Human Rights and Fundamental Freedoms in All Countries*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 25th mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/2 (1999).

66. See, e.g., *Work of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities*, U.N. ESCOR, Comm'n on Hum. Rts., Sub-Comm'n on Prevention and Protection of Minorities, 50th Sess., 25th mtg., U.N. Doc. E/CN.4/RES/1994/23 (1994); *Work of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities*, U.N. ESCOR, Comm'n on Hum. Rts., Sub-Comm'n on Prevention and Protection of Minorities, 51st Sess., 52d mtg., U.N. Doc. E/CN.4/RES/1995/26 (1995); *Work of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities*, U.N. ESCOR, Comm'n on Hum. Rts., Sub-Comm'n on Prevention and Protection of Minorities, 52d Sess., 51st mtg., U.N. Doc. E/CN.4/RES/1996/25 (1996); *Work of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities*, U.N. ESCOR, Comm'n on Hum. Rts., Sub-Comm'n on Prevention and Protection of Minorities, 53d Sess., 56th mtg., U.N. Doc. E/CN.4/RES/1997/22 (1997) [hereinafter *Work of the Sub-Commission* (1997)]; *Work of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities*, U.N. ESCOR, Comm'n on Hum. Rts., Sub-Comm'n on Prevention and Protection of Minorities, 54th Sess., 51st mtg., U.N. Doc. E/CN.4/RES/1998/28 (1998).

country resolutions adopted by the Sub-Commission for several years 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 29 August 1996, however, the Sub-Commission laid the basis for a path-breaking reform with respect to its country resolutions. 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 which the Commission was considering under public procedures for dealing with human rights violations. The Commission expressed in Resolution 1997/22 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 with the work of the Commission by not taking action during its forty-ninth session on human rights situations under consideration in the public procedures of the Commission"⁶⁷ and requested the Sub-Commission "to refrain henceforth from duplicating action by the Commission 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."⁶⁸

With its decision 1997/113 of 27 August 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."⁶⁹ In Resolution 1998/28 of 17 April 1998, the Commission took note with interest of Sub-Commission decisions 1996/115 and 1997/113 and invited the Sub-Commission to continue its efforts to avoid duplication with the work of the Commission.⁷⁰ The Commission reaffirmed this stance in Resolution 1999/81.⁷¹ Although the work of the Sub-Commission under Agenda Item 2 during its fifty-first session strongly reflected this new approach, a number of actions tended marginally to weaken the Sub-Commission's efforts at avoiding duplication with the work of the Commission.

67. *Work of the Sub-Commission* (1997), *supra* note 66, at 89 ¶ 2.

68. *Id.* ¶ 3(b).

69. *Methods of Work of the Sub-Commission Regarding Agenda Item 2*, U.N. ESCOR, Comm'n on Hum. Rts., Sub-Comm'n on Prevention of Discrimination and Protection of Minorities, 49th Sess., U.N. Doc. E/CN.4/Sub.2/DEC/1997/113 (1997).

70. *See Methods of Work of the Sub-Commission Regarding Agenda Item 2*, U.N. ESCOR, Comm'n on Hum. Rts., 54th Sess., 51st mtg., U.N. Doc. E/CN.4/RES/1998/28 (1998).

71. *See Enhancement of International Cooperation in the Field of Human Rights*, U.N. ESCOR, Comm'n on Hum. Rts., 55th Sess., 60th mtg., U.N. Doc. E/CN.4/RES/1999/81 (1999).

D. Overlap with the Work of the Commission

Much of the work performed by the Sub-Commission under Agenda Item 2 during its fifty-first 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. A few initiatives, however, did continue to overlap marginally with the work of the Commission.

On 25 August 1999, for instance, the Sub-Commission adopted Resolution 1999/14 which expressed concern over the situation of women and girls in Afghanistan.⁷² This resolution discussed 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.⁷³ 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.⁷⁴ The Muslim members asked the Sub-Commission to express its opposition to the religious extremism of the Taliban Government in Afghanistan and show its concern over the severe human rights abuses that have resulted.⁷⁵ The resolution was subsequently co-sponsored by many of the non-Muslim members.

While the human rights situation within Afghanistan is extremely troublesome and should be of great concern, it has received significant attention from the Commission, and has long been the subject of Commission resolutions adopted under the agenda item for human rights situations.⁷⁶ The Commission has also assigned a Special Rapporteur to the

72. 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'n on the Prevention of Discrimination and Protection of Minorities, 50th Sess., U.N. Doc. E/CN.4/Sub.2/1998/1/Add.1 (1998).

73. See *Situation of Women and Girls in Afghanistan*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 32d mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/14 (1999) [hereinafter *Situation of Women and Girls in Afghanistan* (Resolution 1999/14)].

74. See *id.*

75. See *id.*

76. See *Situation of Human Rights in Afghanistan*, U.N. ESCOR, Comm'n on Hum. Rts., 55th Sess., 50th mtg., U.N. Doc. E/CN.4/RES/1999/9 (1999) [hereinafter *Situation of Women and Girls in Afghanistan* (1999)]; *Situation of Women and Girls in Afghanistan*, U.N. ESCOR, Comm'n on Hum. Rts., 54th Sess., 57th mtg., U.N. Doc. E/CN.4/RES/1998/70 (1998); *Situation of Women and Girls in Afghanistan*, U.N. ESCOR, Comm'n on Hum. Rts., 53d Sess., 67th mtg., U.N. Doc. E/CN.4/RES/1997/65 (1997); *Situation of Women and Girls in Afghanistan*, U.N. ESCOR, Comm'n on Hum. Rts., 52d Sess., 60th mtg., U.N. Doc. E/CN.4/RES/1996/75 (1996).

human rights situation in Afghanistan, who presented his latest report on that country to the Commission at its fifty-fifth session.⁷⁷ 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. In regard to the rights of women and girls, the Commission has certainly already voiced its own concern. For example, in Resolution 1999/9 on the human rights situation in Afghanistan, the Commission specifically addressed the plight of women and girls within the country and urged "all Afghan parties, and in particular the Taliban, to bring to an end without delay all violations of human rights of women and girls"⁷⁸ Accordingly, the Sub-Commission's resolution on women in Afghanistan appears to duplicate the Commission's work under a different agenda item.

Further, the Sub-Commission also took some steps to highlight the humanitarian situation in Iraq by adopting decision 1999/110 in which it advocated increasing economic aid to Iraq and urged lifting the economic embargo against the country.⁷⁹ Iraq has also been the focus of considerable attention from the Commission in previous years under its agenda item for human rights violations.⁸⁰ The decision from the Sub-Commission was different from the Commission's resolutions, however, in that it raised concerns about the consequences of the UN sanctions that harmed the civilian population of Iraq rather than about human rights violations by the

77. See *Traffic in Women and Girls*, U.N. ESCOR, Comm'n on Hum. Rts., 55th Sess., 55th mtg., U.N. Doc. E/CN.4/1999/40 (1999).

78. This resolution urged "all the Afghan parties, in particular the Taliban to take urgent measures to ensure:

- (a) The repeal of all legislative and other measures which discriminate against women;
- (b) The effective participation of women in civil, cultural, economic, political and social life throughout the country;
- (c) Respect for the right of women to work, and reintegration in their employment;
- (d) 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;
- (e) Respect for women's right to security of person, and to ensure that those responsible for physical attacks on women are brought to justice;
- (f) 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.

Situation of Human Rights in Afghanistan, *supra* note 76, ¶ 10.

79. See *Humanitarian Situation in Iraq*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 55th Sess., U.N. Doc. E/CN.4/Sub.2/DEC/1999/110 (1999).

80. See *Situation of Women and Girls in Afghanistan* (Resolution 1999/14), *supra* note 73; *Situation of Human Rights in Iraq*, U.N. ESCOR, Comm'n on Hum. Rts., 54th Sess., 56th mtg., U.N. Doc. E/CN.4/RES/1998/65 (1998).

Government of Iraq.⁸¹ Also, the Sub-Commission's decision on the humanitarian consequences of UN sanctions was not adopted under Agenda Item 2 relating to human rights violations. Accordingly, the Sub-Commission's decision may not be considered an explicit response to a country situation, but rather as an expression of humanitarian concern on somewhat distinct issues. Furthermore, as with the chair statements of the Sub-Commission, its decision on the humanitarian consequences of the UN sanctions against Iraq was adopted by consensus rather than by vote on a country-specific resolution. Nonetheless, the Sub-Commission's action on Iraq does, to some extent, duplicate the work of the Commission.

The Sub-Commission 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 at all, may still become a difficult one. In the future, if country work continues to be part of the mandate of the Sub-Commission, this expert body will increasingly have to balance concerns over institutional duplication, international urgency, and strategic appropriateness.

E. Concluding Remarks on Country Work

At its fifty-first session, the Sub-Commission was again able to take action on a variety of country situations. The Sub-Commission has also continued to incorporate innovative methods into its repertoire of work. These innovations will arguably enable the Sub-Commission to further engage in its work of protecting and promoting human rights throughout the world. Again, to the credit of the Sub-Commission, duplication of the work of the Commission was kept to a minimum this year. The ability of the Sub-Commission to perform its own country-related work offers an important contribution to the UN human rights system by highlighting countries which would otherwise escape attention and allowing a framework where negotiations are possible and meaningful agreements are made.

The Sub-Commission has been able, in past years and again this year, to apply its expertise by addressing some of the most severe human rights abuses in the world. By combining strategies of thematic and country-specific resolutions (such as the resolutions on Human Rights Defenders,⁸² Withdrawal from Treaties,⁸³ and the Execution of Juvenile Offenders),⁸⁴

81. See *Humanitarian Situation in Iraq*, *supra* note 79.

82. See *Violations of the Rights of Human Rights Defenders* (1999), *supra* note 50.

83. See *Continuing of Obligations Under International Human Rights Treaties*, *supra* note 51.

84. See *The Death Penalty*, *supra* note 52.

consensus chair statements (such as on the human rights situations in Togo,⁸⁵ Belarus,⁸⁶ Indonesia,⁸⁷ Mexico,⁸⁸ and Colombia⁸⁹), with more traditional country-related resolutions, the Sub-Commission is continuing to pursue a range of strategies when addressing its country concerns. These developments have provided the Sub-Commission with a degree of flexibility in dealing with country situations, and have therefore allowed the Sub-Commission to again enhance the scope and effectiveness of its work.

III. REALIZATION OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS INCLUDING THE RIGHT TO DEVELOPMENT

A. The Social, Economic, and Cultural Forum

In Resolution 1998/14 of 20 August 1998, the Sub-Commission endorsed the establishment of a Social Forum as recommended in Mr. Bengoa's (Chile) final report on the relationship of human rights and income distribution.⁹⁰ In Resolution 1999/53 of 27 April 1999, the Commission decided that the Sub-Commission should further review, in the light of the ongoing discussions by the Commission on its working methods, the establishment of the Social Forum.⁹¹ After discussing the mandate and scope of the Social Forum, the Sub-Commission decided to hold the Forum, under the new title of the Social, Economic, and Cultural Forum, for three days during the fifty-second session.⁹²

If fully implemented, the Social, Economic, and Cultural Forum should have a significant impact on the work of the Sub-Commission. Beginning in 2000, the Social, Economic, and Cultural Forum is to meet during the Sub-Commission's annual sessions to consider ways of improving economic, social, and cultural rights.⁹³ The Social, Economic, and Cultural Forum is an innovative step for UN human rights bodies in general, and for the Sub-

85. See *Situation of Human Rights in Togo*, *supra* note 13.

86. See *Situation of Human Rights in Belarus*, *supra* note 10.

87. See *Situation of Human Rights in Indonesia*, *supra* note 11.

88. See *Situation of Human Rights in Mexico*, *supra* note 12.

89. See *Kidnapping and Hostage Taking*, *supra* note 15.

90. See *Final Report of Mr. José Bengoa, Special Rapporteur on the Realization of Economic, Social and Cultural Rights*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 49th Sess., Provisional Agenda Item 4, U.N. Doc. E/CN.4/Sub.2/1997/9 (1997), *addendum* E/CN.4/Sub.2/1998/8 (1998).

91. See *Forum on Economic, Social and Cultural Rights: the Social Forum*, U.N. ESCOR, Comm'n on Hum. Rts., 55th Sess., 56th mtg., U.N. Doc. E/CN.4/RES/1999/53 (1999).

92. See *The Social Forum*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 32d mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/10 (1999).

93. See *id.*

Commission in particular. In addition to input from NGOs and governments, the proposed Social, Economic, and Cultural Forum will break new ground by inviting the participation of international organizations including: the UN Development Programme (UNDP); the UN Children's Fund (UNICEF); specialized agencies, including the World Bank; the International Monetary Fund (IMF); the International Labour Organization (ILO); the UN Educational, Scientific, and Cultural Organization (UNESCO); the UN Industrial Development Organization; and other bodies concerned with the promotion and protection of economic, social, and cultural rights.⁹⁴

There are five main objectives of the Social, Economic, and Cultural Forum: (1) the "[e]xchange of information on the enjoyment of economic, social and cultural rights and its relationship with the processes of globalization";⁹⁵ (2) "[f]ollow-up on the relationship between income distribution and human rights, at both the international and national levels";⁹⁶ (3) "[f]ollow-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";⁹⁷ (4) the "[p]roposal of standards and initiatives of the 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";⁹⁸ and (5) "[f]ollow-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."⁹⁹

Establishment of the Social, Economic, and Cultural Forum raises a number of interesting issues. The 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 Forum. In addition, there is a question of whether prominent institutions such as the World Bank and IMF will bother to attend the Sub-Commission. If they do attend, a question arises as whether the Sub-Commission will be able to manage the Forum with such dominant international organizations in attendance.

94. See *id.*

95. *Final Report of Mr. José Bengoa*, *supra* note 90, ¶ 96(a).

96. *Id.* ¶ 96(b).

97. *Id.* ¶ 96(c).

98. *Id.* ¶ 96(d).

99. *Id.* ¶ 96(e).

B. Sessional Working Group on Transnational Corporations

In Resolution 1998/8 of 20 August 1998, the Sub-Commission decided to establish, for a three-year period, a sessional working group to examine the working methods and activities of transnational corporations (TNCs).¹⁰⁰ The first meeting of this working group took place on 3 August 1999. Mr. El Hadji Guissé (expert from Senegal) was elected by acclamation as Chairperson-Rapporteur of the working group. Mr. Zhong (alternate from China), Mr. Shamshur (alternate from Ukraine), Mr. Pinheiro (expert from Brazil), and Mr. Asbjørn Eide (expert from Norway) were also elected to the working group. The working group held two additional meetings on 6 and 10 August 1999.

During the fifty-first session, the working group adopted its agenda for the next two years. The agenda includes gathering information on the present activities of transnational corporations and the effect of TNCs on the enjoyment of civil, cultural, economic, political, and social rights, including the right to development and the right to a healthy environment. The working group also expected to prepare a list of countries and TNCs indicating their respective profits or benefits.

The working group will also analyze how existing human rights standards address the activities of TNCs and the need for additional standards. Ultimately, the working group will consider the need to produce a code of conduct for TNCs to ensure that their methods and activities are in keeping with the promotion of human rights. To this end, the working group asked Mr. David Weissbrodt (expert from the United States) to prepare a draft code of conduct for TNCs to be submitted to the working group at its next session. In addition, Mr. Eide was asked to prepare a paper compiling and analyzing relevant human rights standards. The Chairman-Rapporteur, Mr. Guissé, agreed to prepare a paper identifying and examining the effects of the activities of TNCs on the enjoyment of human rights and proposing a draft mechanism for the implementation of the proposed code of conduct to be prepared by Mr. Weissbrodt. The Working Group is expected to consider those three papers at its second session in August 2000.

The Sub-Commission has noted that TNCs have been implicated in a variety of human rights practices, which may at times jeopardize the well-

100. See *The Relationship Between the Enjoyment of Economic, Social and Cultural Rights and the Right to Development and the Working Methods and Activities of Transnational Corporations*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Human Rights, 50th Sess., 26th mtg., U.N. Doc. E/CN.4/Sub.2/RES/1998/8 (1998).

being of individuals and entire communities.¹⁰¹ This sessional working group is the first step towards establishing an effective mechanism for the gathering of information relating to the human rights implications of TNCs. Several questions remain unanswered and could benefit from further study. For example, the working group should consider how the profit motive of TNCs can offer incentives toward bringing TNCs into compliance with international human rights standards. In addressing such questions, the sessional working group could help make significant gains toward establishing universal standards of conduct for TNCs and suggest other strategies for ensuring compliance from TNCs.

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

The Sub-Commission's work on income distribution, transnational corporations, and international trade and investment during its fiftieth and fifty-first sessions suggests a growing concern with the human rights implications of economic globalization. The Sub-Commission is beginning to study the potential negative impact on all aspects of human rights engendered by global economic forces that are not adequately constrained by national borders or international legal and normative mechanisms.

In 1998, 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. The working paper would also discuss how the UN human rights bodies and mechanisms could play a central role in this regard.¹⁰² In particular, Mr. Oloka-Onyango and Ms. Udagama were asked to consider the human rights implications of the Multilateral Agreement on Investments (MAI).

At this year's session Mr. Oloka-Onyango and Ms. Udagama presented their working paper on Human Rights as the Primary Objective of International Trade, Investment, and Finance Policy and Practice.¹⁰³ Because

101. See El Hadji Guissé, *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'n on the Prevention of Discrimination and Protection of Human Rights, 50th Sess., U.N. Doc. E/CN.4/Sub.2/1998/6 (1998).

102. See *id.*

103. See J. Oloka-Onyango & Deepika Udagama, *Human Rights as the Primary Objective of International Trade, Investment & Finance Policy and Practice*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/11 (1999).

negotiations on the MAI ceased in December 1998, the authors focused their examination more broadly on multilateral and regional institutions that formulate policy on international and regional trade and on international investment and finance. The authors pointed out, however, that the MAI process raised a number of human rights concerns and that the debate generated by the negotiations continues to be relevant.¹⁰⁴

The authors noted that, contrary to the growing belief that multilateral regimes of trade, investment, and finance should be left unfettered, the current international system of trade and finance was having harmful effects on developing countries, destroying opportunities and livelihoods, harming the environment, and causing unacceptable levels of exploitation.¹⁰⁵ The authors argued that the overriding objective of promoting and protecting international human rights and of enhancing sustainable human development for both individuals and states should be central to contemporary systems of international trade, investment, and capital flows.¹⁰⁶

On 26 August 1999, the Sub-Commission adopted Resolution 1999/30 in which it, *inter alia*, requested all governments and economic policy forums to take international human rights obligations and principles fully into account in international economic policy formation.¹⁰⁷ The Sub-Commission, however, did not request the authors to produce a more comprehensive study of the relationship between trade, investment, and finance and the protection of human rights as recommended in the working paper. Instead, as discussed below, the Sub-Commission asked Mr. Oloka-Onyango and Ms. Udagama to prepare a study on the human rights implications of globalization.

D. 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 26 August 1998. In this resolution, entitled "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

104. See *id.* ¶ 3.

105. See Statement of Joseph Oloka-Onyango (expert from Uganda), UN Press Release, U.N. Doc. HR/SC/99/10 (11 Aug. 1999).

106. See *id.*

107. See *Trade Liberalization and its Impact on Human Rights*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 55th Sess., 33d mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/30 (1999).

habitual residence in their country or place of origin.¹⁰⁸ That 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.¹⁰⁹

The resolution deals with one of the most difficult problems facing the UN High Commissioner for Refugees (UNHCR) 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, Bhutan, and the Republic of Georgia.

During its 1999 session, the Sub-Commission noted that this subject was of increasing importance.¹¹⁰ Accordingly, it decided to ask the Commission to transmit Resolution 1998/26 to governments, intergovernmental organizations, NGOs, the Secretary-General's Special Representative on Internally Displaced Persons, and the UNHCR for comments. The Sub-Commission also decided to continue its consideration of this question, along with the solicited comments, at its fifty-second session.¹¹¹

E. Education, Food, and Water

The Sub-Commission also continued its work on the right to education,¹¹² the right to food,¹¹³ and the right to water.¹¹⁴ In 1999, the Sub-Commission received a working paper, submitted by Mr. Mustapha Mehedi (expert from Algeria), on the content of the right to education, which discussed the right to "good education" and explored the possibilities of thinking about the

108. See *Racism, Racial Discrimination, Xenophobia, and Related Intolerance*, U.N. ESCOR, Comm'n on Hum. Rts., 54th Sess., 51st mtg., U.N. Doc. E/CN.4/RES/1998/26 (1998).

109. *Id.*

110. See *Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/DEC/1999/108 (1999).

111. See *id.*

112. See, e.g., Mustapha Mehedi, *The Realization of the Right to Education, Including Education in Human Rights*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/10 (1999).

113. See, e.g., *The Right to Adequate Food and to be Free from Hunger*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 32d mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/12 (1999).

114. See, e.g., *Promotion of the Realization of the Right to Drinking Water Supply and Sanitation Services*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/DEC/1999/107 (1999).

right to education as a collective right.¹¹⁵ A resolution on the right to education was also adopted by the Sub-Commission, which noted the working paper submitted by Mr. Mehedi, decided to continue its consideration of this question, and requested Mr. Mehedi to prepare a final paper for submission to the Sub-Commission at its next session.¹¹⁶

Mr. Eide (Norway) submitted an updated study on the right to adequate food and to be free from hunger that focused on issues relating specifically to malnutrition and human rights.¹¹⁷ The study also discussed the nature of international and State obligations with regard to ensuring the right to food for all peoples around the world, and explored some of the consequences of globalization on the right to adequate food.¹¹⁸ By resolution, the Sub-Commission welcomed the updated study provided by Mr. Eide.¹¹⁹ This resolution acknowledged that "the right to food is part of the broader right to an adequate standard of living and that the ultimate purpose of promoting the right to adequate food is to secure nutritional well-being for a healthy and productive life for every individual"¹²⁰ The Sub-Commission recommended that the Commission publish the updated study in all official languages and request the wide distribution of the study.¹²¹

The Sub-Commission also passed a resolution on the promotion of the realization of the right to drinking water supply and sanitation.¹²² This resolution requested Mr. Guissé (Senegal) to prepare a supplement to his earlier working paper,¹²³ which was presented to the Sub-Commission in 1998, and asked that this new supplement be submitted at the fifty-second session of the Sub-Commission next year.

115. See Mehedi, *supra* note 112.

116. See *The Realization of the Right to Education, Including Education in Human Rights*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 32d mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/11 (1999).

117. See *The Right to Adequate Food and to be Free from Hunger: Updated Study on the Right to Food, Submitted by Mr. Asbjørn Eide in Accordance with Sub-Commission Decision 1998/106*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/12 (1999).

118. See *id.*

119. See *The Right to Adequate Food and to be Free from Hunger*, *supra* note 113.

120. *Id.* at 1.

121. See *id.* at 4.

122. See *Promotion of the Realization of the Right to Drinking Water Supply and Sanitation Services*, *supra* note 114.

123. See *id.*

IV. STUDIES

A. Globalization

Mr. Oloka-Onyango (Uganda) presented his working paper on globalization in the context of increased incidents of racism, racial discrimination, and xenophobia.¹²⁴ By considering the relationship with racism, racial discrimination, and xenophobia, his working paper provides a unique perspective to the ongoing globalization discourse.

Mr. Oloka-Onyango noted that globalization is an emerging phenomenon with many human rights implications. He indicated that globalization has received a great deal of attention but that its nexus with racism has for the most part been overlooked. His working paper "provided only a very broad outline of a phenomenon that is fairly complex and intricate in its varied manifestations."¹²⁵ Mr. Oloka-Onyango also noted that the Committee on the Elimination of Racial Discrimination (CERD), in its own examination of the matter, needs to consider the various aspects of globalization raised in the working paper.

The Commission has also expressed an interest in the link between globalization and human rights. At its fifty-fifth session, the Commission adopted Resolution 1999/59 on globalization and its impact on the full enjoyment of all human rights, in which it requested the Sub-Commission to undertake a study on the issue of globalization and its impact on the full enjoyment of all human rights. The Commission intends to consider this study at its fifty-seventh session in 2001.

In light of the concerns expressed in Mr. Oloka-Onyango's working paper on racism and globalization; the parallel working paper by Mr. Oloka-Onyango and Ms. Udagama on human rights as the primary objective of trade, investment, and finance; the ensuing discussion; and the request of the Commission; the Sub-Commission decided that the subject of globalization required a careful and comprehensive inquiry. The Sub-Commission thus decided to ask the Commission to appoint Mr. Oloka-Onyango and Ms. Udagama as Special Rapporteurs to undertake a study on globalization and its impact on the full enjoyment of all human rights.¹²⁶

124. See J. Oloka-Onyango, *Globalization in the Context of Increased Incidents of Racism, Racial Discrimination & Xenophobia*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/8 (1999).

125. *Id.* ¶ 37.

126. See *Globalization and its Impact on the Full Enjoyment of Human Rights*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 32d mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/8 (1999). At the request of Mr. Guissé, the Sub-Commission also requested Mr. Oloka-Onyango to make sure that the Commission will have a paper to review in 2001, but that separate paper will probably coincide with the

The Sub-Commission expects to consider a preliminary report at its next session in August 2000.

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

The Sub-Commission once again addressed human rights violations perpetrated against civilians during periods of armed conflict during its fifty-first session. Ms. Gay McDougall (alternate from the United States), as Special Rapporteur, presented an update to her final report on rape, sexual slavery, and slavery-like practices during armed conflict which she originally presented to the fiftieth session of the Sub-Commission in 1998.¹²⁷

This year, the Sub-Commission expressed its appreciation to Ms. McDougall in a resolution on systematic rape, sexual slavery and slavery-like practices,¹²⁸ and strongly endorsed her call for "national and international responses to the increasing occurrence during armed conflicts, including internal armed conflicts, of acts of sexual violence and sexual slavery."¹²⁹ The Sub-Commission also indicated its awareness that "the provision of the Hague Convention (IV) of 1907 Respecting the Laws and Customs of War on Land which states that States 'shall be responsible for all acts committed by persons forming part of [their] armed forces' and 'shall, if the case demands, be liable to pay compensation' for violations of the rules is part of customary international law."¹³⁰ In addition, that resolution notes "that the rights and obligations of States and individuals with respect to the violations referred to in the present resolution cannot, as a matter of international law, be extinguished by peace treaty, peace agreement, amnesty or by any other means."¹³¹ Although the Sub-Commission resolu-

joint study of Mr. Oloka-Onyango and Ms. Udagama. See *Globalization and its Impact on the Full Enjoyment of Human Rights*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 33d mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/29 (1999).

127. See *Final Report of the Special Rapporteur, Ms. Gay J. McDougall on Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 50th Sess., Provisional Agenda Item 6, U.N. Doc. E/CN.4/Sub.2/1998/13 (1998).

128. See *Systematic Rape, Sexual Slavery, and Slavery-like Practices*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 33rd mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/16 (1999). There was considerable debate on this resolution, and operative paragraphs 4, 6, 13, 14, and 16 were submitted to separate votes. In all cases, the Sub-Commission voted to retain the original language and the resolution eventually proceeded to a final vote with only minor changes. For a summary of these discussions, see UN Press Release HR/SC/99/30 (26 Aug. 1999).

129. *Id.*

130. *Id.*

131. *Id.*

tion does not mention any country, it would appear to support the claims of "comfort women" against the Government of Japan for compensation with regard to the systematic rape and sexual slavery which they suffered during World War II. In addition, the Sub-Commission requested Ms. McDougall to submit to the Sub-Commission at its fifty-second session next year a formal updated report containing the new information which was presented this year.¹³²

C. Studies Undertaken Pursuant to the Sub-Commission's Cooperation with the CERD

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 studies for the benefit of those bodies.

In continuing its ongoing cooperation with the CERD in particular, the Sub-Commission received working papers on the rights of non-citizens and on reservations to human rights treaties. The Sub-Commission also received its requested authorization from the Commission to undertake a comprehensive study on the concept and practice of affirmative action.

1. Affirmative Action

The Sub-Commission received authorization from the Commission to appoint Mr. Marc Bossuyt (expert from Belgium) as Special Rapporteur with the task of completing a comprehensive study on the concept and practice of affirmative action.¹³³ Mr. Bossuyt made an oral presentation to the Sub-Commission elaborating on his working paper¹³⁴ submitted to the Sub-Commission at its fiftieth session in 1998. He noted recent developments in the United States and in the European Court of Justice and mentioned the need for more study and legal action to define further the term "affirmative action." To facilitate Mr. Bossuyt's ongoing work, the Sub-Commission decided to request authority from the Commission so that the Secretary-General can send a questionnaire to governments, international organizations, and NGOs inviting them to

132. See *id.*

133. See *The Concept and Practice of Affirmative Action*, U.N. ESCOR, Comm'n on Hum. Rts., 55th Sess., U.N. Doc. E/CN.4/DEC/1999/107 (1999).

134. See *Working Paper on the Concept of Affirmative Action, Prepared by Mr. Marc Bossuyt*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 50th Sess., Provisional Agenda Item 3, U.N. Doc. E/CN.4/Sub.2/1998/5 (1998).

provide all relevant national documentation on the subject of affirmative action.¹³⁵ The preliminary report of the Special Rapporteur is expected to be presented to the Sub-Commission at its fifty-second session in August 2000.¹³⁶

2. *Rights of Non-citizens*

Mr. Weissbrodt (United States) presented his working paper on the rights of non-citizens.¹³⁷ As had been the case in regard to the study of affirmative action, this working paper was in response to a direct request from CERD.¹³⁸ The working paper explored the rights of non-citizens under the relevant international standards and examined in particular the developments since the 1985 Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live.¹³⁹ The paper noted that these developments include General Comment 15 of the Human Rights Committee, various concluding observations and comments of CERD, and the International Convention on the Protection of All Migrant Workers and Members of Their Families.¹⁴⁰ The paper expressed concern, however, that these developments have not adequately protected the human rights of non-citizens. Mr. Weissbrodt concluded, as CERD itself had said, that governments have increasingly been making distinctions between different categories of non-citizens and between non-citizens from different nations. Those distinctions sometimes have racist implications.

The working paper on the rights of non-citizens generated a very lively and useful discussion. Members of the Sub-Commission indicated that any approach to discrimination against non-citizens should take into account several critical factors including different categories of non-citizens (e.g., permanent residents, temporary residents, undocumented aliens) regarding

135. See *The Concept and Practice of Affirmative Action*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/DEC/1999/106 (1999).

136. See *The Concept and Practice of Affirmative Action*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 54th Sess., 26th mtg., U.N. Doc. E/CN.4/Sub.2/RES/1998/5 (1998).

137. See David Weissbrodt, *The Rights of Non-citizens*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/7, E/CN.4/Sub.2/1999/7/Add.1 (1999).

138. See *Note by the Secretariat*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 49th Sess., U.N. Doc. E/CN.4/Sub.2/1997/31 (1997).

139. See Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, adopted 13 Dec. 1985, G.A. Res. 40/144, GAOR 40th Sess., 116th plen. mtg. U.N. Doc. A/Res/40/144 (1985), available on <gopher://gopher.un.org:70/00/ga/recs/40/a40r144.txt>.

140. See International Convention on the Protection of All Migrant Workers and Members of Their Families, adopted 18 Dec. 1990, G.A. Res. 45/150, GAOR 45th Sess., 69th plen. mtg. U.N. Doc. A/Res/45/158 (1990), available on <gopher://gopher.un.org:70/00/ga/recs/45/158>.

different categories of rights (e.g., political rights, civil rights, the right to an education, social security, other economic rights) in countries of different levels of development with different rationales to be offered for such distinctions (e.g., issues of national reciprocity). Furthermore, concerns about specific groups of non-citizens, such as migrant workers and the Roma, were highlighted.

Because of the working paper and subsequent discussion, the Sub-Commission concluded that the question of the human rights of non-citizens required an in-depth examination. To that end, the Sub-Commission adopted a resolution in which it recommends, through the Commission, that the Economic and Social Council authorize it to appoint one of its members as a Special Rapporteur on the rights of non-citizens.¹⁴¹ If the Commission approves, the Special Rapporteur will prepare a comprehensive study of the rights of non-citizens, with the preliminary study to be submitted to the Sub-Commission in 2001.

The discussion also led the Sub-Commission to conclude that the Roma were often subject to discrimination on account of their unique circumstances. The Sub-Commission, therefore, decided to entrust Mr. Sik Yuen (expert from Mauritius) with preparing a working paper on the human rights problems and protections of the Roma.¹⁴²

3. *Reservations to Human Rights Treaties*

At its fiftieth session in 1998, the Sub-Commission requested that Ms. Françoise Hampson (United Kingdom) prepare a working paper on the question of reservations to human rights treaties.¹⁴³ Ms. Hampson presented her working paper at this year's session.¹⁴⁴ The working paper was undertaken not only in response to CERD but also to concerns expressed by the Committee on the Elimination of Discrimination against Women.¹⁴⁵

Ms. Hampson's working paper introduced and examined the relevant

141. See *The Rights of Non-citizens*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 32d mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/7 (1999).

142. See *The Human Rights Problems and Protections of the Roma*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/DEC/1999/109 (1999).

143. See *Reservations to Human Rights Treaties*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 50th Sess., U.N. Doc. E/CN.4/Sub.2/RES/1998/113 (1998).

144. See Françoise Hampson, *Reservations to Human Rights Treaties*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/28 (1999).

145. See *Reservations to Human Rights Treaties*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 33d mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/26 (1999).

issues regarding reservations as they apply to human rights treaties. One of the key issues addressed was whether there is a unique feature of human rights treaties such that a special regime applies to reservations to those treaties, and if so, what is that special regime, and if not, what is the general regime applicable to those reservations.¹⁴⁶ The paper also examined whether there are special characteristics of human rights treaties that may be relevant to the interpretation of a reservation, whether the reserving state or the relevant treaty-monitoring body determines the validity of a reservation, and the effect of finding a reservation invalid on the reserving state's ratification.¹⁴⁷

Ms. Hampson did not find that human rights treaties contained special features warranting a special regime, rather, Ms. Hampson concluded that Article 19 of the Vienna Convention on the Law of Treaties (Vienna Convention) applied.¹⁴⁸ In other words, a human rights treaty may prohibit a specific reservation or all reservations, and if reservations are permitted, they must not be incompatible with the object and purpose of the treaty.¹⁴⁹

The working paper next examined the difficulties resulting from the application of Article 19 of the Vienna Convention to human rights treaties.¹⁵⁰ One difficulty results from the dynamic nature of human rights treaties. Because of this dynamic nature, the effect of reservations becomes distorted over time; yet, according to Article 19, the reservations remain in place if not objected to within a specified time period. Ms. Hampson also noted that the Vienna Convention did not contemplate treaty-monitoring bodies taking a view on reservations, and thus, it is unclear what effect a finding of such a body has on the reserving state or the other parties to the treaty in question.

These difficulties, the paper concluded, warrant a detailed and substantive examination of the reservations themselves, across different human rights treaties.¹⁵¹ The author suggested a comprehensive review to be carried out in cooperation with the treaty-monitoring bodies, states, and NGOs.¹⁵²

The Sub-Commission, in its Resolution 1999/27 of 26 August 1999, decided to request the Commission for authority to appoint Ms. Hampson as Special Rapporteur with the task of preparing a comprehensive study on reservations to human rights treaties based on her working paper and the

146. See Hampson, *supra* note 144, ¶ 5.

147. See *id.*

148. See *id.* ¶ 9.

149. See *Vienna Convention on the Law of Treaties*, U.N. Doc. A/CONF.39/27 (1969), 1155 U.N.T.S. 331 (entered into force 27 Jan. 1980), reprinted in RICHARD B. LILICH, *INTERNATIONAL HUMAN RIGHTS INSTRUMENTS* 540.1 (2d ed. 1990).

150. See Hampson, *supra* note 144, ¶¶ 10–30.

151. *Id.* ¶ 33.

152. *Id.*

discussions that took place at the fifty-first session of the Sub-Commission. Ms. Hampson was asked to submit a preliminary report to the Sub-Commission at its fifty-second session, a progress report at its fifty-third session, and a final report at its fifty-fourth session.¹⁵³

D. Terrorism and Human Rights

One of the more difficult issues facing the Sub-Commission in recent years is the responsibility of non-state actors as perpetrators of human rights abuses. For example, terrorist groups 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, disappearance, and torture.¹⁵⁴

The Sub-Commission has in the past addressed the issue of human rights and terrorism. In 1997 the Sub-Commission 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."¹⁵⁵ In 1998, it stated "that acts of terrorism in all their forms and manifestations, aimed at the destruction of human rights, have continued despite national and international efforts."¹⁵⁶

At this year's session, Ms. Kalliopi Koufa (alternate from Greece) presented her preliminary report on the subject of human rights and terrorism.¹⁵⁷ Ms. Koufa stressed that modern day terrorism is an international phenomenon with both domestic and international ramifications. Furthermore, 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.

153. See *Reservations to Human Rights Treaties*, *supra* note 145.

154. See *Working Paper on Terrorism and Human Rights*, Submitted by Ms. Kalliopi K. Koufa in Accordance with Sub-Commission Resolution 1996/20, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 49th Sess., Provisional Agenda Item 11, U.N. Doc. E/CN.4/Sub.2/1997/28 (1997).

155. *Human Rights and Terrorism*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 49th Sess., 37th mtg., U.N. Doc. E/CN.4/Sub.2/RES/1997/39 (1997).

156. *Human Rights and Terrorism*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 50th Sess., 35th mtg., U.N. Doc. E/CN.4/Sub.2/RES/1998/29 (1998).

157. See Kalliopi K. Koufa, *Terrorism and Human Rights*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/27 (1999).

Ms. Koufa elaborated on the difficulties in reaching a consensus as to what types of acts constituted terrorism and what persons or entities were terrorists. A thoughtful discussion ensued regarding the question of defining terrorism and terrorist. Ms. Hampson (United Kingdom) believed that the key to the problem of terrorism was effective judicial cooperation rather than labels.¹⁵⁸ She stated that nothing was to be gained by saying that criminal acts violated human rights and that the way to deal with so-called terrorism was through criminal law and international judicial cooperation.¹⁵⁹ Mr. Joinet (France) agreed with Ms. Hampson that states were human rights violators while individuals were criminals.¹⁶⁰ Mr. Rajenda Gooneskere (expert from Sri Lanka), however, stated that ordinary criminal law was insufficient to deal with the problem of terrorism.¹⁶¹

The report also generated discussion regarding state responses to terrorism—with some Sub-Commission members voicing the concern that states frequently resorted to state terrorism to suppress non-state terrorism.¹⁶² The Sub-Commission will continue to examine the topic of human rights and terrorism at its next session when Ms. Koufa is expected to present her progress report.¹⁶³

V. 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 United Nations where minority issues are being addressed as intensively as in the Working Group on Minorities. 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

158. See UN Press Release, U.N. Doc. HR/SC/99/26 (23 Aug. 1999).

159. See *id.*

160. See *id.*

161. See *id.*

162. See Statements of Mr. Gooneskere (expert from Sri Lanka) & Mr. Sorabjee (expert from India), UN Press Release, U.N. Doc. HR/SC/99/26 (23 Aug. 1999); Statement of Mr. Ahmed Khalil (alternate from Egypt), UN Press Release, U.N. Doc. HR/SC/99/25 (23 Aug. 1999).

163. See *Terrorism and Human Rights*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 33d mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/26 (1999).

the world. The other working groups also help maintain the Sub-Commission's distinct role in protecting and promoting human rights.

Each working group is composed of one Sub-Commission expert from each of the five geographic regions.¹⁶⁴ 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 a report 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.

The Bureau of the Commission has given particular attention to a number of reforms that could, if adopted, have a substantial 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 directly under the authority of the Commission.¹⁶⁵

A. Working Group on Minorities

The Working Group on Minorities convened for its fifth session from 25 to 31 May 1999.¹⁶⁶ This Working Group is a subsidiary of the Sub-Commission, was authorized by Commission Resolution 1995/24 of 3 March 1995, and was endorsed by the Economic and Social Council in its resolution 1995/31 of 25 July 1995.¹⁶⁷ The 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 . . . to examine possible solutions to problems involving minorities, including the

164. 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).

165. See *Rationalization of the Work of the Commission*, U.N. ESCOR, Comm'n on Hum. Rts., 55th Sess., U.N. Doc. E/CN.4/1999/104 (1999).

166. See *Report of the Working Group on Minorities on its Fifth Session*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., ¶ 4, U.N. Doc. E/CN.4/Sub.2/1999/21 (1999).

167. See *id.*

promotion of mutual understanding between and among minorities and Governments.¹⁶⁸

There is no other place in the UN system 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 in regard to minorities, and constructive ways to handle situations involving minorities.¹⁶⁹ Its agenda for the coming years includes language rights and ways and means to involve minorities in the planning and implementation of national policies.¹⁷⁰ During its first meeting in 1999, the Working Group reelected Mr. Eide as Chairman-Rapporteur for a two-year term.¹⁷¹ Mr. Miguel Alfonso Martínez (expert from Cuba and Mr. Bengoa's alternate on the Working Group), Mr. Vladimir Kartashkin (alternate from the Russian Federation), Mr. Mustapha Mehedi (expert from Algeria), and Ms. Deepika Udagama (alternate from Sri Lanka and Mr. Soli Sorabjee's alternate on the Working Group) comprised the remainder of this session's Working Group.¹⁷² Throughout the session the Working Group was attended by representatives from forty different governments, four UN specialized agencies and intergovernmental organizations, twenty-four scholars from some of the world's leading universities, and close to 100 NGOs.¹⁷³

As one of its primary efforts, the Working Group continued to review the promotion and practical realization of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (Declaration).¹⁷⁴ Mr. Eide referred to the working paper he prepared for the Working Group at its last session containing the Commentary to the Declaration¹⁷⁵ and to the observations received thereon from governments, specialized agencies, NGOs, and experts.¹⁷⁶ The Working Group examined

168. *Report of the Working Group on Minorities on its Fourth Session*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 49th Sess., ¶ 4, U.N. Doc. E/CN.4/Sub.2/1998/18 (1998).

169. See, e.g., *Report of the Working Group on Minorities on its Fifth Session*, *supra* note 166.

170. See *id.*

171. See *id.* ¶ 4.

172. See *id.*

173. For a complete list of participants, see *id.* ¶¶ 6–11.

174. See *id.* ¶¶ 16–56.

175. See Asbjørn Eide, *Commentary to the Declaration on the Rights of Person Belonging to National or Ethnic, Religious and Linguistic Minority*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 50th Sess., Working Group on Minorities, 4th Sess., U.N. Doc. E/CN.4/Sub.2/AC.5/1998/WP.1 (1998).

176. See *Observations to the Commentary to the Declaration on the Rights of Person Belonging to National or Ethnic, Religious and Linguistic Minority*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 51st Sess., Working Group on Minorities, 5th Sess., U.N. Doc. E/CN.4/Sub.2/AC.5/1999/WP.1 (1999).

the impact of the Declaration at the national, bilateral/regional, and global levels.

With respect to the national level, the Working Group considered the constitutional and legal provisions protecting the existence and identities of minorities as elaborated in Article 1.1 of the Declaration.¹⁷⁷ A number of observers representing minority groups described situations in which the existence and identity of the minority concerned were not adequately protected. These observers mentioned specific situations including those of the Batwa, Bagogwe, Bayambo, and Albino minorities in Rwanda; the Crimean Tatars in Ukraine; the Kurdish minority in Iraq, the Islamic Republic of Iran, the Syrian Arab Republic, and Turkey; the Turkish Muslim minority in Greece; the Macedonian minority in Bulgaria and Greece; the Lhotshampa population in Bhutan; the Arab population in Israel; and the Dalits in India.¹⁷⁸

The Working Group also considered, in keeping with Articles 2.1 and 3 of the Declaration, the rights of minority persons 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.¹⁷⁹ Further, the Working Group considered the rights of minorities to participate in the cultural, religious, social, economic, and public life of their communities, as well as in the decision-making processes at both the national and regional levels.¹⁸⁰ 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 inter-cultural education, and the right of minorities to learn their native language.¹⁸¹

Mr. Eide presented his working paper on "Citizenship and the Minority Rights of Non-citizens"¹⁸² in which the issues concerning citizenship and the applicability of minority rights to non-citizens were explored. Mr. Eide's paper presented an overview of relevant rights in international instruments that refer to nationality and highlighted specific areas of controversy. These areas include situations pertaining to persons who already had the citizenship of the state concerned but risked losing it; lived in a territory which had come under new sovereignty; were stateless; or had moved from their country of citizenship to another country. Mr. Eide concluded by noting that while most human rights applied to persons belonging to minorities and not

177. See *Report of the Working Group on Minorities on its Fifth Session*, *supra* note 166, ¶¶ 26–27 (1999).

178. See *id.* ¶ 26.

179. See *id.* ¶¶ 28–29.

180. See *id.* ¶¶ 30–33.

181. See *id.* ¶¶ 40–44.

182. See Asbjørn Eide, *Citizenship and the Minority Rights of Non-citizens*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/AC.5/1999/WP.3 (1999).

only to citizens, there existed important rights which could be claimed only by citizens, such as political rights.

With respect to the Declaration's impact at the bilateral/regional level, Mr. Kartashkin presented his working paper entitled "Universal and regional mechanisms for minority protection."¹⁸³ Mr. Kartashkin's paper examined the regional mechanisms—including the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), and the Commonwealth of Independent States (CIS)—for the protection of minorities. The paper, however, made no reference to regional organizations in Latin America or Africa because, according to the working paper, the relevant regional instruments did not contain special provisions for minorities.

Regarding the global level, the Working Group discussed the role that the UN High Commissioner for Human Rights (UNHCHR) should play in implementing the Declaration.¹⁸⁴ The Working Group also explored the potential use of UN treaty bodies and specialized agencies in promoting the rights of minorities.¹⁸⁵ The role of the Human Rights Committee, the Committee on the Rights of the Child, the CERD, the ILO, the UNHCR, UNICEF, and the World Health Organization (WHO) were discussed.¹⁸⁶ 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.¹⁸⁷ The discussion with representatives of the specialized agencies focused on the need to encourage support systems at the community level for the implementation of agency policies and programs, the distinction between and possible different aspirations of indigenous peoples and minorities, the issue of statelessness, and the particular needs of specific groups such as Roma children and Kurdish refugees.¹⁸⁸

The Working Group also examined a number of possible solutions to problems involving minorities.¹⁸⁹ These possible solutions included the promotion of mutual understanding between and among minorities and governments. The Working Group also examined the causes, nature of, and possible solutions to the problems affecting minorities and group accommodation.

The Working Group has been able to address a variety of serious

183. See Vladimir Kartashkin, *Universal and Regional Mechanisms for Minority Protection*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/AC.5/1999/WP.6 (1999).

184. See *Report of the Working Group on Minorities on its Fifth Session*, *supra* note 166, ¶¶ 47–51.

185. See *id.* ¶¶ 52–56.

186. See *id.*

187. See *id.*

188. See *id.* ¶ 56.

189. See *id.* ¶¶ 57–60.

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 fifty-fourth session 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.¹⁹⁰

To facilitate positive reform, the Working Group received the working paper entitled "The Future Role of the Working Group."¹⁹¹ This working paper elaborated on ways to improve the efficiency and effectiveness of the Working Group.¹⁹² As to future work of the Working Group, Mr. Alfonso Martínez (Cuba) recommended the drafting of a convention on the rights of minorities.¹⁹³

B. Working Group on Indigenous Populations

Among its many past accomplishments, the Working Group on Indigenous Populations has made a decisive contribution by drafting the Declaration on the Rights of Indigenous Peoples.¹⁹⁴ In recent years the Working Group has focused on issues relating to indigenous education, language, and health.¹⁹⁵ The 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 over the world to assemble in Geneva, exchange experiences, engage in a dialogue with their respective governments, and develop common proposals addressed to the UN system.

190. See *Rationalization of the Work of the Commission*, *supra* note 165, at 7.

191. International Centre for Ethnic Studies, *The Future Role of the Working Group*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/AC.5/1999/WP.9 (1999).

192. See *Report of the Working Group on Minorities on its Fifth Session*, *supra* note 166, ¶¶ 63–64.

193. *Id.* ¶ 65.

194. See *Draft Declaration*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 46th Sess., U.N. Doc. E/CN.4/Sub.2/1994/2/Add. 1 (1994).

195. See *Report of the Working Group on Indigenous Populations on its Sixteenth Session*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 50th Sess., ¶¶ 49–89, U.N. Doc. E/CN.4/Sub.2/1998/16 (1998); *Report of the Working Group on Indigenous Populations on its Fifteenth Session*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 49th Sess., sec. III, U.N. Doc. E/CN.4/Sub.2/1997/14 (1997).

In 1999, the Working Group on Indigenous Populations¹⁹⁶ convened for its seventeenth session from 26 to 30 July.¹⁹⁷ This Working Group's mandate is to:

(a) Review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually . . . ;

(b) Give special attention to the evolution of standards concerning the rights of indigenous populations . . .¹⁹⁸

At its first meeting Ms. Erica-Irene A. Daes (Greece) was elected Chairperson-Rapporteur by acclamation. Mr. Alfonso Martínez (Cuba), Mr. Guissé (Senegal), and Mr. Ribot Hatano (expert from Japan) also attended as members of the Working Group. Mr. Volodymyr Boutkevitch (expert from Ukraine) was unable to attend.

The seventeenth session of the Working Group had a record attendance of nearly 1,000 persons, including forty-seven observer governments with high-level delegates from Australia and Canada;¹⁹⁹ ten UN and intergovernmental organizations; thirty NGOs; and 207 indigenous nations, organizations, and communities.²⁰⁰ In addition, a number of individual scholars, human rights experts, human rights advocates, and other observers attended this year's session.²⁰¹

The principal theme of this year's session was "Indigenous Peoples and their Relationship to Land."²⁰² In conjunction with the central theme, the Working Group considered the second progress report on "Indigenous peoples and their relationship to land."²⁰³ The final report prepared by Mr. Alfonso Martínez (Cuba), as Special Rapporteur on Treaties, Agreements, and Other Constructive Arrangements Between States and Indigenous Populations, was also considered during the session.

196. The Working Group is a subsidiary organ of the Sub-Commission and Commission and was established pursuant to Economic and Social Council Resolution 1982/34 of 7 May 1982.

197. See *Report of the Working Group on Indigenous Populations on its Seventeenth Session*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/19 (1999).

198. *Id.* ¶ 1.

199. Senator John Herron, Minister for Aboriginal and Torres Strait Islander Affairs, represented the Government of Australia. Mr. Robert Watts, Assistant Deputy Minister, Department of Indian and Northern Affairs, represented the Government of Canada.

200. For a complete list of participants, see *Report of the Working Group on Indigenous Populations on its Seventeenth Session*, *supra* note 197, ¶¶ 6–13.

201. See *id.* ¶ 13.

202. *Id.* ¶ 20.

203. Erica-Irene A. Daes, *Indigenous People and Their Relationship to the Land*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/18 (1999).

The Working Group reviewed developments under its Agenda Item 2, which authorizes it to "review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations."²⁰⁴ Such review provides invaluable information to members of the Working Group and they consider comments under this agenda item in strengthening ongoing efforts of the UN system to recognize, promote, protect, and restore the rights of indigenous peoples.²⁰⁵

Ms. Daes, in her capacity as Special Rapporteur, presented her second progress report on indigenous people and their relationship to land.²⁰⁶ The report was submitted in the form of a revised and updated working paper based on the first preliminary working paper,²⁰⁷ on the relevant first progress report,²⁰⁸ and on the suggestions, data, and information received from governments, indigenous peoples' communities, and NGOs.²⁰⁹ Ms. Daes expressed deep regret that no comments, submission, or recommendations had been received over the past year from any government, and only a few replies had been submitted from indigenous peoples.²¹⁰ For this reason, Ms. Daes proposed that additional time should be given so that governments, indigenous communities, and others could provide her with the relevant data and material necessary for her to carry out her mandate.²¹¹ The Sub-Commission responded to this problem by recommending that the Commission transmit the second progress report to governments, indigenous peoples and organizations, and NGOs with a formal request to provide the Special Rapporteur with comments, data, and suggestions.²¹²

Mr. Alfonso Martínez, presented his final report on Treaties, Agreements, and Other Constructive Arrangements between States and Indigenous Populations to the Working Group.²¹³ Mr. Alfonso Martínez's study

204. *Report of the Working Group on Indigenous Populations on its Seventeenth Session*, *supra* note 197, ¶¶ 29–74.

205. *See id.*

206. *See* Daes, *supra* note 203.

207. *See* Erica-Irene Daes, *Indigenous People and Their Relationship to the Land*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 49th Sess., U.N. Doc. E/CN.4/Sub.2/1997/17 (1997).

208. *See* Erica-Irene Daes, *Indigenous People and Their Relationship to the Land*, U.N. ESCOR, Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities, 50th Sess., U.N. Doc. E/CN.4/Sub.2/1998/15 (1998).

209. *See Report of the Working Group on Indigenous Populations on its Seventeenth Session*, *supra* note 197, ¶ 75.

210. *See id.* ¶ 76.

211. *See id.*

212. *See Working Paper on Indigenous People and Their Relationship to the Land*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 33d mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/21 (1999).

213. *See* Miguel Alfonso Martínez, *Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, U.N. Doc. E/CN.4/Sub.2/1999/20 (1999).

was generally well received by participants in the Working Group. It was, however, not without criticism. Mr. Guissé commented that the study was not complete. In particular, Mr. Guissé was critical of the study's questionable conclusion that no indigenous populations existed in Africa and Asia.²¹⁴ NGOs representing African and Asian indigenous interests applauded Mr. Guissé's comment, which was generally supported by many of the Working Group's participants.²¹⁵

Many participants of the Working Group called for a quick approval of the draft Declaration on the Rights of Indigenous Peoples, which is presently under consideration by an open-ended Working Group of the Commission.²¹⁶ The participants stressed to the Sub-Commission's Working Group that the adoption of the draft Declaration was one of the most important tasks for the United Nations to complete before the end of the International Decade of the World's Indigenous People in 2004.²¹⁷

The Commission is currently considering the establishment of a Permanent Forum for Indigenous People.²¹⁸ If established, the Commission is seriously considering abolishing the Sub-Commission's Working Group on Indigenous Populations.²¹⁹ There is much debate over whether the Permanent Forum will replace all of the present functions of the Working Group.²²⁰ The resolution of two concerns expressed at last year's session, namely the accessibility of the Permanent Forum to indigenous peoples and organizations and other NGOs and the status of indigenous peoples relative to governments, were well-received.

Participants welcomed the agreement that the Forum should be organized as an open assembly in which all governments, indigenous peoples and organizations, and NGOs could participate.²²¹ Furthermore, the Working Group supported a proposal that the Permanent Forum should be

214. See *Report of the Working Group on Indigenous Populations on its Seventeenth Session*, *supra* note 197, ¶ 133.

215. See *id.* ¶¶ 140–41.

216. See *Report of the Working Group Established in Accordance with Commission of Human Rights Resolution 1995/32*, U.N. ESCOR, Comm'n on Hum. Rts., 55th Sess., ¶ 1, U.N. Doc. E/CN.4/1999/82 (1999).

217. See *Report of the Working Group on Indigenous Populations on its Seventeenth Session*, *supra* note 197, ¶ 145.

218. For further information regarding the establishment of a Permanent Forum for Indigenous Peoples, see *Report of the Open-ended Inter-sessional Ad Hoc Workshop on a Permanent Forum for Indigenous People in the United Nations System*, U.N. ESCOR, Comm'n on Hum. Rts., 55th Sess., U.N. Doc. E/CN.4/1999/83 (1999).

219. See *Rationalization of the Work of the Commission*, *supra* note 165, recommendation 12(e)(ii).

220. See *id.*

221. See *Report of the Working Group on Indigenous Populations on its Seventeenth Session*, *supra* note 197, ¶ 145.

composed of representatives of governments and indigenous peoples on an equal basis.²²²

Because of the many pressing issues regarding indigenous populations, the Sub-Commission proposed that the Working Group meet for eight days at its eighteenth session in July 2000.²²³ The Sub-Commission also recommended that the Working Group select "Indigenous Children and Youth" as the principal theme of its eighteenth session and that the OHCHR invite UNICEF and the Committee on the Rights of the Child to provide relevant information and, if possible, participate in the meetings of the Working Group.²²⁴ The Sub-Commission also appealed to all governments, organizations, NGOs, and indigenous groups, as well as to individuals in a position to do so, to consider contributing to the UN Voluntary Fund for Indigenous Populations in order to assist representatives of indigenous communities and organizations in participating in the deliberations of the Working Group on Indigenous Populations, the open-ended inter-sessional working group on the draft UN Declaration on the Rights of Indigenous People, and the open-ended inter-sessional ad hoc working group on a permanent forum.²²⁵

The Sub-Commission noted the need to examine the intersection of the rights of minorities and indigenous populations. To that end, the Sub-Commission decided to entrust Mr. Eide (Norway) and Ms. Daes (Greece) with the preparation of a working paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples.²²⁶ This working paper will be submitted to the next sessions of the Working Group on Minorities and the Working Group on Indigenous Populations and to the Sub-Commission at its Fifty-second Session.²²⁷

C. Working Group on Contemporary Forms of Slavery

The Working Group on Contemporary Forms of Slavery is the only mechanism in the UN system for monitoring compliance with several multilateral human rights treaties relating to slavery and slavery-like practices.

222. *See id.*

223. *See Working Group on Indigenous Populations*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 33d mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/20 (1999).

224. *See id.*

225. *See id.*

226. *See Prevention of Discrimination Against and the Protection of Minorities*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., 33rd mtg., U.N. Doc. E/CN.4/Sub.2/RES/1999/23 (1999).

227. *See id.*

The Working Group took the initiative in developing programs of action against the sale of children, child prostitution, and child pornography; on child labor; on prevention of the traffic in persons and the exploitation of the prostitution of others; and on economic exploitation including the rights of domestic and migrant workers, bonded labor, forced labor, and slavery-like practices in armed conflicts.²²⁸

In 1999, the Working Group on Contemporary Forms of Slavery convened for its twenty-fourth session from 23 June to 2 July.²²⁹ The Working Group is a subsidiary of the Sub-Commission and Commission and was established pursuant to Economic and Social Council Economic and Social Council decisions 16 (LVI) and 17 (LVI) of 17 May 1974.²³⁰ The Working Group was established in 1975 and has met regularly before each session of the Sub-Commission.²³¹ 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.²³²

At its first meeting the Working Group elected Ms. Halima Warzazi (Morocco) as Chairperson-Rapporteur by acclamation. The remainder of the Working Group was composed of Ms. Kalliopi Koufa (alternate from Greece), Mr. Sang Yong Park (expert from the Republic of Korea), Ms. Marianela Ferriol Echevarría (alternate from Cuba), and Ms. Antoanella Iulia Motoc (alternate from Romania).

Twenty-three government representatives, four UN agencies, and twenty-five NGOs attended this year's session of the Working Group.²³³

On 21–22 June 1999, immediately preceding this year's session, a forum on prostitution and trafficking in women and children took place.²³⁴ This forum represented a joint effort by UN agencies and NGOs concerned with the issue of sexual trafficking. While there are some international instruments which address the issue of sexual trafficking, most notably the

228. See *Report of the Working Group on Contemporary Forms of Slavery on its Twenty-fourth Session*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., ¶ 2, U.N. Doc. E/CN.4/Sub.2/1999/17 (1999).

229. See *id.*

230. See *id.* ¶ 1.

231. See *id.*

232. *Id.*

233. For a complete list of attendees, see *id.* ¶¶ 6–11.

234. See *id.* ¶¶ 13–34.

1959 Convention on Trafficking in Persons, there have nonetheless been virtually no concrete enforcement mechanisms available which would actually help deter such practices.²³⁵

The participants of the forum expressed a wide range of views, including opposing views on whether legalization of prostitution would protect persons from exploitation.²³⁶ The forum aimed to incorporate these divergent perspectives into a common set of objectives against the most severe abuses inherent in sexual trafficking. The participants of the forum arrived at consensus on a number of issues.²³⁷ The forum offered recommended measures and mechanisms to be established at the national level, means of strengthening the international system, and monitoring and enforcement mechanisms.²³⁸

During the 1999 session, the Working Group also 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.²³⁹

The Working Group recalled the large number of international instruments relating to slavery.²⁴⁰ In connection with its consideration of the status of those instruments, the Working Group had before it reports on the status of conventions on slavery.²⁴¹ The Working Group also had before it a working paper prepared by Mr. Weissbrodt (United States) in cooperation with Anti-Slavery International on the Consolidation and Review of the Conventions on Slavery.²⁴² The working paper consisted of a historical review of international efforts to define and prohibit slavery and slavery-like practices.²⁴³ The study revealed that between 1815 and 1957 some 300 international instruments had been adopted relating to the suppression of

235. 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. J. 213 (1997).

236. See *Report of the Working Group on Contemporary Forms of Slavery on its Twenty-fourth Session*, *supra* note 228, ¶¶ 16–20.

237. The recommendations of the forum are available in Annex II to the Report of the Working Group. See *id.*

238. See *id.*

239. See *id.*

240. 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. See *id.*

241. See *id.* ¶ 4.

242. See *id.*

243. See *id.* ¶ 41 (1999).

slavery.²⁴⁴ It also reviewed the mechanisms established by existing instruments and apparent gaps in monitoring. Existing instruments were found to be lacking in effectiveness. The authors recommended three possible ways in which the Working Group could strengthen its contribution to the eradication of slavery.²⁴⁵ First, to broaden the mandate of the Working Group so as to allow it to receive reports submitted by states on the implementation of the provisions of the conventions on slavery and to make recommendations thereon. Secondly, for the Working Group to define its sessional theme two years in advance in order to receive timely input from NGOs and governments. This approach would permit better-targeted requests for information and a more rational follow-up of the themes discussed. The third option, in line with the proposal of the Bureau of the fifty-fourth session of the Commission, would be to replace the Working Group with a Special Rapporteur on contemporary forms of slavery. In light of these recommendations, the Working Group in Resolution 8 on the "Implementation of the Conventions on Slavery," decided "to focus each of its annual sessions on a particular issue of great importance for the abolition of slavery and to designate that issue two years prior to the annual session at which it will be discussed."²⁴⁶ The Working Group selected "debt bondage" as its theme for 2000 and "trafficking in persons" for 2002, but it was unwilling to identify a few countries to be considered at those forthcoming sessions.

In a rather unfocused fashion, the Working Group devoted the remainder of its 1999 session to receiving information about 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.²⁴⁷ At the conclusion of the session, the Working Group adopted a number of recommendations on these and other topics.²⁴⁸

The Bureau of the fifty-fourth session of the Commission has proposed abolishing 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 who may also be given responsibility for the work of the existing Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography.²⁴⁹ The Com-

244. *See id.*

245. *See id.*

246. *Id.* ¶ 107.

247. *See id.* ¶¶ 53–97.

248. *See id.* ¶ 107.

249. *See Rationalization of the Work of the Commission, supra* note 165.

mission's inter-sessional working group on enhancing the effectiveness of the Commission did not accept that proposal.²⁵⁰

D. Working Group on Communications

During this year's session, the Sub-Commission received the report of its Working Group on Communications under the confidential procedure authorized by ECOSOC Resolution 1503²⁵¹ for dealing with allegations that governments are engaged in consistent patterns of gross violations of internationally recognized human rights. The contents of this report remain confidential and available only to member-governments of the Commission.

E. Sessional Working Group on Methods of Work of the Sub-Commission

At its second meeting, on 3 August 1999, the Sub-Commission decided to establish a sessional working group on the methods of work of the Sub-Commission.²⁵² The task of this working group was to consider and complete the examination of the new revised working paper on methods of work of the Sub-Commission²⁵³ prepared by Mr. Hatano (Japan) pursuant to Sub-Commission decision 1998/108.²⁵⁴

The Sub-Commission elected Mr. Bossuyt (Belgium) as Chairperson/Rapporteur. The remainder of the working group consisted of Mr. Héctor Fix-Zamudia (expert from Mexico), Mr. Hatano (Japan), Mr. Oleg Shamshur (alternate from Ukraine), and Ms. Warzazi (Morocco). The working group held three meetings, on 9, 11, and 13 August 1999, which were open to participation by all Sub-Commission members as well as to observers from states, intergovernmental organizations, and NGOs.

The working group completed work on the final draft of Mr. Hatano's working paper. The Sub-Commission ultimately adopted the final draft as

250. See *Report of the Inter-Sessional Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights*, U.N. ESCOR, Comm'n on Hum. Rts., 56th Sess., U.N. Doc. E/CN.4/2000/112 (2000).

251. See Resolution 1503, *supra* note 4, at 8.

252. See *Establishment of a Sessional Working Group on the Methods of Work of the Sub-Commission*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/DEC/1999/102 (1999).

253. See *Organization of Work*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/2 (1999).

254. See *Report of the Sessional Working Group*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/22 (1999).

"Guidelines for the Application by the Sub-Commission on the Promotion and Protection of Human Rights of the Rules of Procedure of the Functional Commissions of the Economic and Social Council and other Decisions and Practices Relating Thereto."²⁵⁵

VI. FUTURE OF THE SUB-COMMISSION

The future role of the Sub-Commission is in serious question. At its fifty-fifth session the Commission established an inter-sessional open-ended working group on enhancing the effectiveness of the mechanisms of the Commission. The aim of the working group was articulated in a chairperson's statement issued on 29 April 1999. The working group met at the European Headquarters of the United Nations from 27 September to 1 October 1999, 6–10 December 1999, and 7–11 February 2000.

The Sub-Commission responded to proposals²⁵⁶ submitted to the Commission's working group. The Sub-Commission explained in a document to be transmitted to the working group its reasons for rejecting many of the proposals.²⁵⁷ For example, the most significant of the proposals forbids the Sub-Commission from adopting resolutions relating to country situations. The Sub-Commission responded to this proposal by stating:

Several members of the Sub-Commission favored the proposal of the Bureau (recommendation 12(e)(i)) that instead of country-specific resolutions the outcome of the annual debate of the Sub-Commission on human rights violations in all parts of the world should be a summary for submission to the Commission. One member preferred that the annual debate on country situations be abolished, but if it was retained, country-specific resolutions were preferable. Other members argued that the Sub-Commission should become more even-handed in identifying situations to be the subject of resolutions. The majority suggested that the Sub-Commission should continue to apply its expertise to country situations not under consideration at the Commission on Human Rights by adopting country-specific or thematic resolutions, decisions or statements by the Chair. The Sub-Commission should use such authority with restraint, however. In that context it should seek dialogue and cooperation with

255. *Methods of Work of the Sub-Commission*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/DEC/1999/114 (1999).

256. The main proposals submitted to the working group were those proposed by the Bureau of the fifty-fourth session of the Commission. See *Rationalization of the Work of the Commission*, *supra* note 165.

257. See *Common Position of the Sub-Commission on Future Tasks, Length of Session, Working Methods, Composition and Election of Members*, U.N. ESCOR, Sub-Comm'n on the Promotion and Protection of Human Rights, 51st Sess., UN Doc. E/CN.4/Sub.2/1999/47 (1999).

Governments, giving preference to the prevention of human rights violations, and ensure objectivity in the choice of situations addressed.²⁵⁸

The Sub-Commission sent one of its members, Mr. Eide of Norway, as its representative to the working group.

The Sub-Commission also analyzed its cost relative to other UN human rights bodies. While members generally agreed that costs should not be a high priority when evaluating the worth of human rights machinery, the question of the cost of the Sub-Commission was raised by the Bureau of the fifty-fourth session of the Commission, which observed that "the cost of [the Sub-Commission's] annual sessions [are] higher than the Commission itself."²⁵⁹ This argument appeared questionable considering that the Commission consists of delegations from fifty-three countries meeting for six weeks while the Sub-Commission consists of twenty-six individuals meeting for four weeks. The Sub-Commission found that the Bureau's observation had relied on questionable accounting methods. The figures used in support of the argument were derived solely from Section 22 of the UN budget. Section 22 deals with human rights machinery, specifically travel and per diem allowances. The majority of the costs for both the Commission and Sub-Commission, however, are allocated to areas of the UN budget other than Section 22. For example, Section 22 does not include conference servicing, which is under Section 27(E) of the UN budget and accounts for the bulk of the costs for both the Sub-Commission and Commission. Furthermore, while Section 22 does include the costs of travel for members of the Sub-Commission and the costs of its working groups, it does not include the travel costs of the Commission's Special Rapporteurs and working group chairs nor of the Commission's working groups themselves. The travel costs of the Commission's Special Rapporteurs come directly from the budgets of their respective mandates. Similarly, the travel costs for the Commission's working group chairpersons and the working groups themselves come directly from the budgets for the respective working groups.

In order to arrive at a more accurate accounting, the Sub-Commission used Sections 22 and 27(E) in comparing its own costs to the similar costs of the Commission, the Human Rights Committee, and the Committee of the Rights of the Child respectively.²⁶⁰ In doing so, it was discovered that the Sub-Commission was the *least* costly of these four human rights bodies

258. *Id.*

259. *Id.*

260. Tables containing the comparisons can be found in Annex II of the Note by the Chairman of the Sub-Commission on the Promotion and Protection of Human Rights. See *id.*

while the Commission was the *most* expensive. In fact, the total cost of the Sub-Commission was only one-third that of the Commission.²⁶¹ According to data received from the UNOG Budget Section, the cost of one session of the Commission is approximately US \$6.1 million and that of one session of the Sub-Commission is US \$2.2 million.²⁶² When the costs of the Commission's working groups and its Special Rapporteurs are included, the cost of the Commission is even higher.

The Sub-Commission expressed the hope that the Commission and its working group will consider these more accurately defined costs in assessing the value of the respective human rights bodies and the necessity for reform to enhance the effectiveness of the Commission's mechanisms.

The working group did indeed propose that the Sub-Commission should be deprived of the authority to adopt resolutions naming specific countries.²⁶³ 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 authorized to summarize the debate in its report. Accordingly, the Sub-Commission would apparently not be able to apply its expertise on human rights issues to concrete situations and would thus be deprived of one of its most important functions. Similarly, the Commission's working group proposed that the Sub-Commission as a whole would have no role in the confidential 1503 process for dealing with consistent patterns of gross violations; its Working Group on Communications under ECOSOC Resolution 1503 would continue in its present form, however, it would transmit its report directly to a Working Group on Situations under the aegis of the Commission.

Given these proposals, the working group also proposed to reduce the length of the Sub-Commission sessions from four to three weeks. Sub-Commission members and human rights advocates are concerned, however, that such a reduction would diminish drastically its capacity to have any substantive debates, summarize controversial discussions, or do other useful work.

Many Sub-Commission members and human rights advocates are also concerned that, in the long run, if the Sub-Commission is compelled to stop adopting country resolutions, NGOs may well be discouraged from partici-

261. According to data received from the UNOG Budget Section, the cost of one session of the Commission is approximately US \$6.1 million and that of one session of the Sub-Commission is US \$2.2 million.

262. For the complete accounting, see *Common Position of the Sub-Commission on Future Tasks, Length of Session, Working Methods, Composition and Election of Members*, *supra* note 257, Annex II.

263. For a complete list of proposals of the Commission's working group, see *Report of the Inter-Sessional Open-Ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights*, *supra* note 250.

pating in Sub-Commission sessions and thus 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. This accessibility provides NGOs with a single forum that can be used to bring human rights initiatives to the attention of the Commission. Without the Sub-Commission, NGOs would be left with no alternative but to lobby the respective governments that make up the Commission—a process that is far more cumbersome and inefficient than gaining access to the Commission via the Sub-Commission.

The past and present debate on the review of mechanisms illustrates that governments and NGOs are keenly aware that the reform of the future role of the UN human rights machinery may be at hand. The review of mechanisms may result in a weakening of human rights mechanisms or result in the reform necessary to enhance those mechanisms. At its fifty-sixth session the Commission is expected to act on its working group's proposals. It remains to be seen as to whether NGOs and other interested parties are willing to articulate their support for the Sub-Commission at that time.

The Sub-Commission is expected to meet for its fifty-second session from 31 July to 25 August 2000 unless its session is shortened to three weeks.