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A Review of the 51st Session of the United Nations Sub-Commission on Promotion and Protection of Human Rights

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Part C: Appendices

Appendix I: A Review of the 51st Session of the United Nations Sub-Commission on the Promotion and Protection of Human Rights

David Weissbrodt, Mayra Gómez, and Bret Thiele*

I Introduction

The United Nations Sub-Commission on the Promotion and Protection of Human Rights (Sub-Commission)¹ met at the European Headquarters of the UN in Geneva, Switzerland, from 2 August through 27 August 1999 for its fifty-first session. The Sub-Commission is a subsidiary body of the Commission on Human Rights (Commission).

II Sub-Commission's Actions on Country Situations

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

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 expressed in chair statements. In response to such a statement of the Sub-Commission's chair, the relevant government would publicly

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¹ 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 <http://www.un.org/esa/coordination/ecosoc/doc99-23.htm>. See also David Weissbrodt, Mayra Gómez and Bret Thiele, 'Highlights of the 50th Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities', *Law & Ineq. J.*, Vol. 17, 1999, p. 445; David Weissbrodt, Mayra Gómez and Bret Thiele, 'Brief Summary of the 50th Session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities', *Netherlands Quarterly of Human Rights*, Vol. 16, No. 4, 1998, pp. 553-562; International Service for Human Rights, No. 55, *UN Sub-Commission, 51st Session, Geneva, 2-27 August 1999, Results of Resolutions & Decisions*, August 1999.

state its intent to move forward on a number of agreed initiatives that would improve the human rights situation within their country.²

This year, the Sub-Commission issued chair statements on the human rights situations in Belarus, Indonesia, Mexico, and Togo, as well as a statement on persons in Nepal claiming to be refugees from Bhutan and a more general statement on the problem of political kidnappings, but which mentioned the country of Colombia by name.³ Several of these chair statements, including Belarus,⁴ Bhutan,⁵ Indonesia,⁶ and Togo⁷ began as country resolutions that were eventually withdrawn.

In 1998, 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.⁸ The 1999 chair statement on the human rights situation in Belarus reflected negotiations that had taken place with the Belorussian Government. The statement indicated 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 as well as to sign and ratify the European Convention on Human Rights; 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'; 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 that it has made with regard to these objectives.

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.⁹ 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 1998.¹⁰ The Government of Togo denied the killings and enlisted the support of Mr. Jacques Chirac, President of the French Republic, who happened to be visiting the country in July 1999. At the Sub-Commission, 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

² 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 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.

³ All available online at: www.unhchr.ch/huridocda/huridoca.nsf/FramePage/Body+SC+En?OpenDocument.

⁴ UN Doc. E/CN.4/Sub.2/1999/L.6, 1999.

⁵ UN Doc. E/CN.4/Sub.2/1999/L.18, 1999.

⁶ UN Doc. E/CN.4/Sub.2/1999/L.19, 1999.

⁷ UN Doc. E/CN.4/Sub.2/1999/L.7, 1999.

⁸ See Resolution 1998/1, UN Doc. E/CN.4/Sub.2/1998/45, 1998, at pp. 15-16.

⁹ Available online at: www.unhchr.ch/huridocda/huridoca.nsf/FramePage/Body+SC+En?OpenDocument.

¹⁰ Amnesty International, Togo: Rule of Terror, AI Doc. AFR 57/01/99 (1999); <http://www.amnesty.org/ailib/aipub/1999/AFR/15700199.htm>.

collaboration of not only the Sub-Commission, but also of the Secretary-General of the United Nations, the Office of the High Commissioner for Human Rights, and the Organization of African Unity.¹¹

The Sub-Commission took similar steps with regard to both the human rights situation in Indonesia and the human rights situation in Mexico. 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 45 years in the context of a process of democratization'. 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'. While the chair statement did not explicitly mention the violence in East Timor, because that subject had been pursued by the Commission on Human Rights, 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, which does imply an awareness of the situation within that region.¹²

In 1998, the Sub-Commission adopted a resolution on the situation of human rights in Mexico.¹³ This year, in regard to Mexico, 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 Government.¹⁴ 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'. 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*. It is expected that Ms. Daes will present a report to the Sub-Commission in 2000 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 the 1999 session. One, on persons in Nepal claiming to be refugees from Bhutan,¹⁵ continued a theme that was first addressed in a chair statement made the previous year.¹⁶ 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.¹⁷ Thousands of Bhutanese refugees have been denied the right to return to their country and have been living in camps within Nepal for as many as eight years.¹⁸ The draft thematic resolution also noted that the 15-year conflict in southeast Turkey has led to the internal displacement of over 2 million people.¹⁹

¹¹ *Supra* note 3.

¹² *Idem.*

¹³ Resolution 1998/4, UN Doc. E/CN.4/Sub.2/1998/45, 1998, at pp. 22-23.

¹⁴ *Supra* note 3.

¹⁵ *Idem.*

¹⁶ See UN Doc. E/CN.4/Sub.2/1998/45, 1998, at pp. 92-93.

¹⁷ UN Doc. E/CN.4/Sub.2/1999/L.18, 1999.

¹⁸ *Ibidem*, at p. 3.

¹⁹ *Ibidem*, at p. 4. 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.

After much debate, the coincidence of a major earthquake causing the death of thousands in Turkey, and many expressions of sympathy, 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 the 1999 chair statement the Sub-Commission reiterated its hope that meetings between the Bhutanese and Nepalese Governments would result in an agreement which would allow Bhutanese refugees to return to their place of origin in safety and dignity.²⁰ 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, and noting in particular the prevalence of this problem within the country of Colombia.²¹ The Sub-Commission condemned these actions, labelling 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'.²²

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 an effort 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 in 1999.

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', and raised concern over reports of massacres, arbitrary and extrajudicial execution, deportations, arbitrary detentions, and the lack of freedom of expression as well as a *de facto* lack of independence of the judiciary within the country.²³ The issue of human rights violations in the Congo had been the subject of a Sub-Commission resolution in 1997.²⁴ The situation had changed since 1997 and the Sub-Commission drew particular attention during its 1999 session to violence in Brazzaville and within the Pool region.²⁵

Based on the single precedent established in 1998 when the Sub-Commission adopted a thematic resolution on human rights defenders naming individuals who were threatened or killed in several countries,²⁶ 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

²⁰ *Supra* note 3.

²¹ *Idem.*

²² *Idem.*

²³ UN Doc. E/CN.4/Sub.2/RES/1999/1, 1999.

²⁴ Resolution 1997/1, UN Doc. E/CN.4/Sub.2/1997/50, 1997, p. 15.

²⁵ *Supra* note 23.

²⁶ SC Resolution 1998/3, UN Doc. E/CN.4/Sub.2/1998/45, 1998, pp. 18-19.

defenders,²⁷ continuing of obligations under international human rights treaties,²⁸ and the execution of juvenile offenders.²⁹

Using the approach developed in 1998, the Sub-Commission named specific individuals who had been killed, targeted, or otherwise harassed for 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.³⁰ In 1999 Mr. Bengoa, with the assistance of Mr. Alberto Diaz 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.³¹ While a few of the identified Governments (e.g. Tunisia and Turkey) expressed opposition to the resolution, the thematic resolution appeared to receive broad support in the Sub-Commission and it passed with 18 in favour, 6 against, and 1 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.³²

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 International Covenant on Civil and Political Rights (ICCPR)), while others do not (e.g. ICCPR). 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 conducted, all of which resulted in keeping the original text, which included withdrawals or attempted withdrawals, from international *and* regional treaties.³³

²⁷ UN Doc. E/CN.4/Sub.2/RES/1999/3, 1999.

²⁸ UN Doc. E/CN.4/Sub.2/RES/1999/5, 1999.

²⁹ UN Doc. E/CN.4/Sub.2/RES/1999/4, 1999.

³⁰ *Supra* note 27. 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.

³¹ *Idem*.

³² *Supra* note 28.

³³ The first vote addressed the Democratic People's Republic of Korea and their attempted withdrawal from the ICCPR, the withdrawal of Jamaica from the Optional Protocol to the ICCPR, and the denunciation by Guyana and Trinidad and Tobago of their obligations under the Optional Protocol to the ICCPR, which was followed by Guyana, Jamaica, and Trinidad and Tobago re-accessing 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 a vote of 17 in favour, 8 against, 0 abstentions. The second vote dealt with the text in preambular

Ms. Françoise Hampson (expert from the UK and the principal sponsor of this resolution) argued that in so far as the Sub-Commission was 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. 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' Rights 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 17 in favour, 7 against, and 1 abstention.

Another controversial resolution was also sponsored by Ms. Hampson, this time addressing the death penalty, particularly in regard to juvenile offenders.³⁴ 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 18 at the time of the offense.³⁵ That annex, however, was eventually deleted. Yet, the body of the resolution continued to name all the countries that had sentenced to death or executed a minor since 1990, including Iran, Nigeria, Pakistan, Saudi Arabia, the United States of America, and Yemen.

The resolution was pointedly criticised by a few members of the Sub-Commission who did not want countries, or specific countries, to be named. Mr. Fan Guoxiang (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 11 in favour of removing the original paragraph, 14 against, and 0 abstentions. Ms. Halima Warzazi (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.³⁶ 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, 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

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 a vote of 17 in favour, 8 against, 0 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 14 in favour, 10 against, 1 abstention.

³⁴ *Supra* note 29.

³⁵ *Ibidem*, pp. 4-6.

³⁶ The first proposal failed on a vote of 12 in favour, 12 against, and 1 abstention. The second failed on a vote of 11 in favour, 12 against, and 2 abstentions.

regardless of the ratification status of the Convention on the Rights of the Child, 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 a vote of 14 in favour, 5 against, and 5 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 it had promised to use in adopting resolutions naming countries. As discussed below, the Commission on Human Rights 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 15 in favour, 7 against, and 3 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’.³⁷ This conclusion may have been engendered by disapproval of the NATO action which was initiated without UN Security Council authority, but raises serious questions about the competence of the Sub-Commission and apparently questions the capacity of the UN to respond to grave human rights situations which threaten the peace, such as mass instances of genocide.

C. 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, and which would be important to mention here. 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 non-governmental organisations (NGOs) and is used as one efficient avenue to the Commission. NGO 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, inter-governmental organisations, and non-governmental organisations, it maintains a high degree of visibility on both thematic and country-specific human rights concerns. This transparency helps to 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 and against country resolutions, they might not attend Sub-

³⁷ UN Doc. E/CN.4/Sub.2/RES/1999/2, 1999.

Commission's sessions 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/or 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, however, 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 as opposed to waiting for the Commission's next session, which may be up to six months away. If the situation, however, is particularly grave, 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 for 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.

D. 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, and 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 United Nations human rights system by highlighting countries which would otherwise escape attention, and also by allowing a framework where negotiations are possible and meaningful agreements are made.

The Sub-Commission has been able, in past years and again in 1999, to apply its expertise by addressing some of the most severe human rights situations in the world. By combining strategies of thematic and country-specific resolutions (such as the resolutions on Human Rights Defenders, Withdrawal from Treaties, and the Execution of Juvenile Offenders), consensus chair-statements (such as on the human rights situations in Togo, Belarus, Indonesia, Mexico, and Colombia) 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 Realisation of Economic, Social, and Cultural Rights Including the Right to Development

A. The Social, Economic, and Cultural Forum

In its 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.³⁸ In its 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.³⁹ After discussion on 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.⁴⁰

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.⁴¹ The Social, Economic, and Cultural Forum is an innovative step for UN human rights bodies, in general, and for the Sub-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 organisations including:

the United Nations Development Programme and the United Nations Children's Fund; specialized agencies, in particular the World Bank; the International Monetary Fund; the International Labour Organization; the United Nations Educational, Scientific, and Cultural Organization; and the United Nations Industrial Development Organization; and other bodies concerned with the promotion and protection of economic, social, and cultural rights.⁴²

The main objectives of the Social, Economic, and Cultural Forum are (1) the '[e]xchange of information on the enjoyment of economic, social and cultural rights and its relationship with the processes of globalization';⁴³ (2) '[f]ollow-up on the relationship between income distribution and human rights, at both the international and national levels';⁴⁴ (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';⁴⁵ (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 Group 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';⁴⁶ and

³⁸ See UN Doc. E/CN.4/Sub.2/1997/9, 1997, and its addendum E/CN.4/Sub.2/1998/8, 1998.

³⁹ See CHR Resolution 1999/53, UN Doc. E/1999/23, E/CN.4/1999/167, 1999.

⁴⁰ See UN Doc. E/CN.4/Sub.2/RES/1999/10, 1999.

⁴¹ *Idem.*

⁴² *Idem.*

⁴³ UN Doc. E/CN.4/Sub.2/1997/9, para. 96(a), 1997.

⁴⁴ *Ibidem*, at para. 96(b).

⁴⁵ *Ibidem*, at para. 96(c).

⁴⁶ *Ibidem*, at para. 96(d).

(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 fulfilment of questions relating to this final report, and to economic, social and cultural rights in general'.⁴⁷

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

B. Sessional Working Group on Transnational Corporations

In its 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 (TNC).⁴⁸ 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. 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 collection of data on how TNCs affect the enjoyment of civil, political, economic, social and cultural 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 analyse 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 in order to ensure that their methods and activities are in keeping with the promotion of human rights. To this end, the working group asked Mr. 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 analysing relevant human rights standards. The Chairman-Rapporteur, Mr. Guissé, agreed to prepare a paper on (1) the identification and examination of the effects of the activities of transnational corporations on the enjoyment of human rights as well as (2) on 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 jeopardise the well-being of individuals and entire

⁴⁷ *Ibidem*, at para. 96(e).

⁴⁸ Resolution 1998/8, UN Doc. E/CN.4/1999/4, E/CN.4/Sub.2/1998/45, 1998.

communities.⁴⁹ 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 those questions, the sessional working group could help to make significant gains toward establishing universal standards of conduct for TNCs, and may also help to 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 globalisation. 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 either by national borders or by 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, and how the United Nations human rights bodies and mechanisms could play a central role in this regard.⁵⁰ 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.⁵¹ Because 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.⁵²

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.⁵³ The authors argued that the overriding objective of promoting and protecting international human rights and of enhancing sustainable human development for

⁴⁹ See Working document on the impact of the activities of transnational corporations on the realization of economic, social and cultural rights, UN Doc. E/CN.4/Sub.2/1998/6, 1998.

⁵⁰ *Idem*.

⁵¹ UN Doc. E/CN.4/Sub.2/1999/11, 1999.

⁵² See *ibidem*, at para. 3.

⁵³ Statement of Joseph Oloka-Onyango (expert from Uganda), UN Press Release, UN Doc. HR/SC/99/10, 11 August 1999.

both individuals and States should be central to contemporary systems of international trade, investment, and capital flows.⁵⁴

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.⁵⁵ 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 globalisation.

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

In 1998, the Sub-Commission took an innovative step with its adoption on 26 August 1998 of Resolution 1998/26. 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 habitual residence in their country or place of origin.⁵⁶ 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'.⁵⁷ The resolution deals with one of the most difficult problems facing the UN High Commissioner for Refugees and other organisations 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.⁵⁸ Accordingly, it decided to ask the Commission to transmit Resolution 1998/26 to governments, inter-governmental organisations, NGOs, the Secretary-General's Special Representative on Internally Displaced Persons, and the UN High Commissioner for Refugees for comments. The Sub-Commission also decided to continue its consideration of this question, along with the solicited comments, at its fifty-second session.⁵⁹

⁵⁴ *Idem.*

⁵⁵ UN Doc. E/CN.4/Sub.2/RES/1999/30, 1999.

⁵⁶ Resolution 1998/26, UN Doc. E/CN.4/1999/4, E/CN.4/Sub.2/1998/45, 1998, at p. 72.

⁵⁷ *Idem.*

⁵⁸ See UN Doc. E/CN.4/Sub.2/DEC/1999/108, 1999.

⁵⁹ See *idem.*

IV Studies

A. Globalisation

Mr. Oloka-Onyango (Uganda) presented his working paper on globalisation in the context of increased incidents of racism, racial discrimination, and xenophobia.⁶⁰ By considering the relationship with racism, racial discrimination, and xenophobia, his working paper provides a unique perspective to the ongoing globalisation discourse.

Mr. Oloka-Onyango noted that globalisation is an emerging phenomenon with many human rights implications. He indicated that globalisation 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'.⁶¹ 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 globalisation raised in the working paper.

The Commission has also expressed an interest in the link between globalisation and human rights. At its fifty-fifth session the Commission adopted Resolution 1999/59 on globalisation 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 globalisation 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 globalisation; 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 globalisation 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 globalisation and its impact on the full enjoyment of all human rights.⁶² The Sub-Commission expects to consider a preliminary report at its next session in August 2000.

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

One way in which the Sub-Commission contributes to the field of human rights is by cooperating with the treaty-monitoring bodies. In an effort to further such cooperation, the Sub-Commission has prepared studies for the benefit of those bodies.

In continuing its ongoing cooperation with the Committee on the Elimination of Racial Discrimination (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

⁶⁰ UN Doc. E/CN.4/Sub.2/1999/8, 1999.

⁶¹ *Ibidem*, at para. 37.

⁶² UN 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 joint study of Mr. Oloka-Onyango and Ms. Udagama. See UN Doc. E/CN.4/Sub.2/RES/1999/29, 1999.

also received its requested authorisation from the Commission to undertake a comprehensive study on the concept and practice of affirmative action.

i) Affirmative Action

The Sub-Commission received authorisation 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.⁶³ Mr. Bossuyt made an oral presentation to the Sub-Commission elaborating on his working paper⁶⁴ 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 organisations, and NGOs inviting them to provide all relevant national documentation on the subject of affirmative action.⁶⁵ The preliminary report of the Special Rapporteur is expected to be presented to the Sub-Commission at its fifty-second session in August 2000.⁶⁶

ii) Rights of Non-Citizens

Mr. David Weissbrodt (United States) presented his working paper on the rights of non-citizens.⁶⁷ 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.⁶⁸ 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. 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. The paper expressed concern, however, that these developments have not adequately protected the human rights of non-citizens. Mr. Weissbrodt concluded that, as CERD had itself said, 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, *etc.*) regarding different categories of rights (e.g. political rights, civil rights, the right to an education, social security, other economic rights, *etc.*) 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.

⁶³ See CHR Decision 1999/107, UN Doc. E/1999/23, E/CN.4/1999/167, 1999.

⁶⁴ UN Doc. E/CN.4/Sub.2/1998/5, 1998.

⁶⁵ UN Doc. E/CN.4/Sub.2/DEC/1999/106, 1999.

⁶⁶ See SC Resolution 1998/5, UN Doc. E/CN.4/1998/2, E/CN.4/Sub.2/1998/45, 1998.

⁶⁷ UN Doc. E/CN.4/Sub.2/1999/7 and E/CN.4/Sub.2/1999/7/Add.1, 1999.

⁶⁸ See UN Doc. E/CN.4/Sub.2/1997/31, Annex, 1997.

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 authorise it to appoint one of its members as a Special Rapporteur on the rights of non-citizens.⁶⁹ 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.⁷⁰

iii) Reservations to Human Rights Treaties

At its fiftieth session in 1998 the Sub-Commission decided to request Ms. Françoise Hampson (United Kingdom) to prepare a working paper on the question of reservations to human rights treaties.⁷¹ Ms. Hampson presented her working paper at this year's session.⁷² The working paper was undertaken not only in response to CERD but also in response to concerns expressed by the Committee on the Elimination of Discrimination against Women.⁷³

Ms. Hampson's working paper introduced and examined the relevant 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.⁷⁴ The paper also examined whether there are special characteristics of human rights treaties which 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.⁷⁵

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.⁷⁶ 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.⁷⁷

The working paper next examined the difficulties resulting from the application of Article 19 of the Vienna Convention to human rights treaties.⁷⁸ 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

⁶⁹ UN Doc. E/CN.4/Sub.2/RES/1999/7, 1999.

⁷⁰ UN Doc. E/CN.4/Sub.2/DEC/1999/109, 1999.

⁷¹ See Decision 1998/113, UN Doc. E/CN.4/1998/2, E/CN.4/Sub.2/1998/45, 1998.

⁷² UN Doc. E/CN.4/Sub.2/1999/28, 1999.

⁷³ See UN Doc. E/CN.4/Sub.2/RES/1999/26, 1999.

⁷⁴ See UN Doc. E/CN.4/Sub.2/1999/28, at para. 5.

⁷⁵ *Idem.*

⁷⁶ *Ibidem*, para. 9.

⁷⁷ See Vienna Convention of the Law of Treaties, 1155 UNTS, 331 (entered into force 27 January 1980).

⁷⁸ See UN Doc. E/CN.4/Sub.2/1999/28, at paras 10-30.

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.⁷⁹ The author suggested a comprehensive review to be carried out in cooperation with the treaty-monitoring bodies, States, and NGOs.⁸⁰

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 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.⁸¹

V Future of the Sub-Commission

The future role of the Sub-Commission is in serious question. The Bureau of the 54th session of the Commission has proposed to reduce the membership of the Sub-Commission to 15 individuals selected by the Chair of the Commission, rather than by election in the entire Commission, for no longer than two four-year terms and thus to reduce significantly the geographical representativeness of Sub-Commission membership.⁸² The Bureau has also recommended that the Sub-Commission should be deprived of the authority to adopt resolutions and particularly country-specific resolutions.⁸³ The Sub-Commission would be authorised to continue holding its open debate on country situations, but instead of resolutions expressing concerns about specific countries, it would only be requested to summarise the debate in its report.⁸⁴ Accordingly, the Sub-Commission would apparently not be able to apply human rights issues to concrete situations and would thus be deprived of one of its most important functions. Similarly, the Commission Bureau proposed that the Sub-Commission 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 be replaced by a working group under the aegis of the Commission. At the same time, however, the Bureau would reduce the length of the Sub-Commission sessions from four to two weeks and thus diminish drastically its capacity to have any substantive debates, summarise those controversial discussions, or do other useful work.⁸⁵ Such limits will likely discourage NGOs from participating 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. It is likely that NGOs would lose interest in the Sub-Commission as restructured by the proposals of the Commission's Bureau.

⁷⁹ *Ibidem*, at para. 33.

⁸⁰ *Idem*.

⁸¹ UN Doc. E/CN.4/Sub.2/RES/1999/27, 1999.

⁸² UN Doc. E/CN.4/1999/104, 1999.

⁸³ *Idem*.

⁸⁴ *Idem*.

⁸⁵ *Idem*.

The Commission's Bureau also proposed that the Sub-Commission's Working Group on Contemporary Forms of Slavery should be replaced by a Special Rapporteur of the Commission.⁸⁶ Two other working groups (on indigenous populations and minorities) would remain (at least for now). The Sub-Commission would principally or only do studies. Most of the recommendations proposed by the Bureau, if adopted, will diminish substantially the role currently played by one of the few independent human rights bodies within the United Nations. The Bureau did sensibly recommend that the outmoded name of the Sub-Commission be updated to 'the Sub-Commission on the Promotion and Protection of Human Rights', which became effective this summer, but it simultaneously urged that the Sub-Commission be deprived of most of its role in promoting and protecting human rights.⁸⁷

After substantial and sometimes heated debate, the Commission was unable to complete the review of mechanisms at its 55th session. In order to resolve these contentious issues, the Commission established an inter-sessional open-ended working group on enhancing the effectiveness of the mechanisms of the Commission on Human Rights. The aim of the working group was articulated in a chairperson's statement issued on 29 April 1999.⁸⁸ The Commission believed the working group was essential given the scope of the issues involved and the limited time available at this year's session. The working group met at the Palais des Nations in Geneva from 27 September to 1 October 1999, 6-10 December 1999, and 7-11 February 2000.

The Sub-Commission responded to the proposals for reform prepared by the Bureau of the fifty-fourth session of the Commission. The Sub-Commission explained in a document to be transmitted to the Commission's working group its reasons for rejecting many of the proposals of the Bureau's proposals.⁸⁹ For example, the most significant of the proposals would forbid the Sub-Commission to adopt resolutions relating to country situations. The Sub-Commission responded to this proposal by stating:

Several members of the Sub-Commission favoured 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 Governments, giving preference to the prevention of human rights violations, and ensure objectivity in the choice of situations addressed.⁹⁰

The Sub-Commission also decided to authorise one of its members (Asbjørn Eide of Norway) as a representative to the open-ended working group.

While 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 54th session of the Commission, which observed that 'the cost of [the Sub-

⁸⁶ *Idem.*

⁸⁷ *Idem.*

⁸⁸ See UN Doc. E/1999/23, E/CN.4/1999/167, at para. 552, 1999.

⁸⁹ See UN Doc. E/CN.4/Sub.2/1999/47, 1999.

⁹⁰ *Idem.*

Commission's] annual sessions [are] higher than the Commission itself'.⁹¹ This argument appeared questionable considering that the Commission consists of delegations from 53 countries meeting for six weeks while the Sub-Commission consists of 26 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 27E 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.⁹²

To arrive at a more accurate accounting, the Sub-Commission used Sections 22 and 27E in comparing its own costs to the similar costs of the Commission, the Human Rights Committee, and the Committee on the Rights of the Child respectively.⁹³ In doing so, it was discovered that the Sub-Commission was the *least* costly of these four human rights bodies while the Commission was the *most* expensive. In fact, the total cost of the Sub-Commission was only one-third of that of the Commission.⁹⁴ 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's working group would 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 past and present debate on the review of mechanisms illustrates that governments and non-governmental organisations 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. If the Commission's working group is unable to develop consensus proposals for reform, it is likely that the Commission will be asked to vote on various recommendations for improving both the Sub-Commission and other procedures of the Commission. It remains to be seen as to whether NGOs and other interested parties are willing to articulate their support for the Sub-Commission at the Commission's working group and at the March-April 2000 session of the Commission.

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

⁹¹ UN Doc. E/CN.4/1999/104, Observation 27, 1999.

⁹² 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.

⁹³ Tables containing the comparisons can be found in Annex II of UN Doc. E/CN.4/Sub.2/1999/47, 1999.

⁹⁴ According to data received from the UNOG Budget Section, the cost of one session of the Commission is approximately USD 6.1 million and that of one session of the Sub-Commission is USD 2.2 million.