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Brief Summary of the 50th Session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities

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Appendix II: Brief Summary of the 50th Session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities'

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The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission) met in Geneva, Switzerland, from 3 to 28 August 1998 for its fiftieth session.¹ The Sub-Commission is a subsidiary body of the Commission on Human Rights (Commission). It is composed of 26 members who are nominated by their respective governments and elected to staggered 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 specific review of country situations and current human rights issues in all parts of the world. Because of its role in initiating action within the United Nations human rights system and its accessibility to non-governmental 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.

Country Situations

During its 50th session, Sub-Commission members listened to statements from representatives from NGOs about the human rights situations in over thirty countries and regions. Most frequently mentioned were Afghanistan, Algeria, Indonesia, Kashmir, Kosovo, Mexico, Rwanda, Sri Lanka, Sudan, Turkey, and the United States. To avoid duplication, the Sub-Commission principally focused its resolutions on countries that had not been the subject of resolutions in its parent body, the Commission.² Accordingly, the

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

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¹ See also D. Weissbrodt, S. Garrigues, R. Kroke, 'An Analysis of the Forty-ninth Session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities', *11 Harvard Human Rights* j. 221, 1998; International Service for Human Rights, UN Sub-Commission, 50th Session, Geneva, 3-28 August 1998, List of Resolutions & Decisions (August 1998); D. Weissbrodt, S. Samuel, 'Review of Developments at the 48th Session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities', *Netherlands Quarterly of Human Rights*, 1997, Vol. 15, No. 1, p. 103; D. Weissbrodt, J. Prestholdt, '1995 Developments at the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities', *Netherlands Quarterly of Human Rights*, 1995, Vol. 13, No. 4, p. 481.

² CHR Res. 1997/22, UN ESCOR Comm. on Human Rights, 53th Sess., p. 89, Paragraph 3(b), UN Doc. E/CN.4/1997/150, 1997.

Sub-Commission adopted resolutions on the human rights situations in Belarus,³ the Democratic People's Republic of Korea (DPRK),⁴ and Mexico.⁵ In addition, the Sub-Commission took a new initiative by adopting a thematic resolution, focusing on the protection of human rights defenders in nine countries, including Burma/Myanmar, Colombia, the Democratic Republic of the Congo, Honduras, Indonesia, Nigeria, the Philippines, Tunisia, Turkey, and the Federal Republic of Yugoslavia.⁶ Furthermore, the Sub-Commission responded to a joint effort brought forth by Muslim members of the Sub-Commission to voice a uniquely Islamic response to the situation for women and girls in Afghanistan.⁷

A compromise was reached whereby a resolution on Bahrain was withdrawn after the Government of Bahrain agreed (1) to withdraw its reservations on Article 20 and Article 30(1) of the Convention against Torture and (2) to accept a visit by the Commission's Working Group on Arbitrary Detention, with a possible follow-up visit by the Committee Against Torture. Another compromise was accepted by the Government of Bhutan to withdraw a resolution and to pursue a consensus Chairman's statement calling for the Bhutanese and Nepalese Governments to 'negotiate in good faith towards a peaceful solution consistent with international human rights standards'⁸ of the plight of thousands of Bhutanese refugees in Nepal. Sub-Commission members also agreed to a consensus statement presented by the Chairman of the Sub-Commission on the human rights situation in Kosovo.⁹ Further, the Sub-Commission agreed to a brief decision highlighting the humanitarian consequences of the economic embargo against Iraq.¹⁰ The Sub-Commission, however, for the second year in a row,¹¹ considered but was unable to adopt a resolution on the human rights situation in Algeria, where an estimated 80,000 persons have been killed since 1992.¹²

Economic, Social, and Cultural Rights

The Sub-Commission completed considerable work in the area of economic, social, and cultural rights, including the final report on the Relationship Between the Enjoyment of Human Rights, in Particular Economic, Social, and Cultural Rights, and Income Distribution.¹³ Pursuant to the recommendations in this final report, the Sub-Commission will restructure its agenda so as to include a Social Forum that will invite the participation of major international financial organisations such as the World Bank and International Monetary Fund. The Sub-Commission also decided to form a sessional working group, for a three-year period, to examine the working methods and activities of transnational

³ See SC Res. 1998/1, UN Doc. E/CN.4/Sub.2/1998/L.11, 1998, p. 3.

⁴ See SC Res. 1998/2, UN Doc. E/CN.4/Sub.2/1998/L.11, 1998, p. 5.

⁵ See SC Res. 1998/4, UN Doc. E/CN.4/Sub.2/1998/L.11, 1998, p. 11.

⁶ See SC Res. 1998/3, UN Doc. E/CN.4/Sub.2/L.11, 1998, pp. 7-10.

⁷ 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 UN Doc. E/CN.4/Sub.2/1998/1/Add.1, 1998.

⁸ UN Doc. E/CN.4/Sub.2/1998/L.10/Add.4, 1998, p. 4.

⁹ See UN Doc. E/CN.4/Sub.2/1998/L.10/Add.4, 1998, p. 11.

¹⁰ See SC dec. 1998/114, UN Doc. E/CN.4/Sub.2/1998/L.11/ Add.3, 1998, p. 9.

¹¹ See UN Doc. E/CN.4/Sub.2/1997/50, 1997, p. 112 and UN Doc. E/CN.4/Sub.2/1998/L.10/Add.4, 1998, p. 8.

¹² See Amnesty International, *Algeria: Civilian Population Caught in a Spiral of Violence*, Report-MDE 28/23/97, November 1997.

¹³ See UN Doc. E/CN.4/Sub.2/1997/9, 1997.

corporations.¹⁴ In addition, the Sub-Commission expressed its concern over the possible negative impact on human rights resulting from Multilateral Agreement on Investment (MAI) which is being drafted by the Organisation for Economic Cooperation and Development (OECD).¹⁵ Accordingly, the Sub-Commission asked two of its members 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.¹⁶ Further, the Sub-Commission recommended to the Commission that a Special Rapporteur be appointed to conduct a detailed study on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realisation of the right to drinking water supply and sanitation, at both the national and international levels. Furthermore, the Sub-Commission requested one of its members to review and update his report on the right to food, and to submit the final version of the study to the Sub-Commission at its 51th session in 1999.¹⁷

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

'all States to ensure the free and fair exercise of the right to return to one's home and place of habitual residence by all refugees and internally displaced persons and to develop effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms designed to resolve outstanding housing and property problems.'¹⁸

This 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, and Bhutan.

The Sub-Commission noted with satisfaction a member's working paper on the right to education and requested him to continue towards a more detailed working paper to be presented during the 51th session in 1999.¹⁹ There remains, however, a concern about a possible duplication of effort, as the Commission has authorized its own Special Rapporteur on the right to education, and has taken several initiatives regarding the United Nations Decade for Human Rights Education.²⁰

Working Groups

The Sub-Commission makes a unique contribution to the human rights field through its inter-sessional working groups on minorities, indigenous populations, contemporary forms of slavery, and communications as well as its intra-sessional working group on the

¹⁴ SC Res. 1998/8, UN Doc. E/CN.4/Sub.2/L.11, 1998, p. 21.

¹⁵ See SC Res. 1998/12, UN Doc. E/CN.4/Sub.2/1998/L.11, 1998, p. 31.

¹⁶ *Idem.*

¹⁷ SC dec. 1998/106, UN Doc. E/CN.4/Sub.2/1998/L.11/Add.3, 1998, p. 5.

¹⁸ SC Res. 1998/26, UN Doc. E/CN.4/Sub.2/1998/L.11/Add.2, 1998, p. 6.

¹⁹ SC Res. 1998/11, UN Doc. E/CN.4/Sub.2/1998/L.11, 1998, p. 29.

²⁰ See CHR Res. 1998/45, UN ESCOR Comm. on Human Rights, 54th Sess., UN Doc. E/1998/23, 1998. See also CHR Res. 1996/46, UN ESCOR Comm. on Human Rights, 52nd Sess., UN Doc. E/1996/23, 1996.

administration of justice. 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.

1. Working Group on Minorities

In 1998 the Working Group on Minorities convened for its fourth session from 25 to 29 May 1998.²¹ This Working Group is a subsidiary of the Sub-Commission and was authorized by the Commission on Human Rights in its resolution 1995/24 of 3 March 1995, and endorsed by the Economic and Social Council in its resolution 1995/31 of 25 July 1995.²² This Working Group's mandate is to:

'promote the rights of persons belonging to national or ethnic, religious and linguistic minorities, as set out in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities and to examine possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments.'²³

There is no other place in the UN 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 generally on constructive ways to handle situations involving minorities. Its agenda for the coming years includes language rights and ways and means to involve minorities in the planning and implementation of national policies. Throughout the session the Working Group was attended by representatives from 37 different governments, 6 UN specialised agencies and intergovernmental organisations, and close to 100 non-governmental organisations.²⁴

As one of its primary efforts, the Working Group reviewed the promotion and practical realisation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.²⁵ The Chairman of the Working Group presented his commentary to the Declaration,²⁶ the aims of the which he viewed as contributing to the 'realization of the principles of the United Nations including peace, territorial integrity, cooperation, the solution of common problems and the realization of international human rights instruments at the universal and regional levels'.²⁷ His commentary highlighted the importance of the provisions in Article 1 of the Declaration, specifically understanding that recognition and respect for the rights of minorities necessitates national policies of non-exclusion, non-assimilation,²⁸ and non-discrimination.²⁹ According to Article 1 of the Declaration, not only is the existence and identity of persons belonging to minorities

²¹ Report of the Working Group on Minorities on its Fourth Session, UN Doc. E/CN.4/Sub.2/1998/18, Para. 1, 1998.

²² *Idem*.

²³ *Ibidem*, p. 2.

²⁴ For a complete list of participants see *ibidem*, pp. 6-11.

²⁵ *Ibidem*, p. 7.

²⁶ *Idem*. UN Doc. E/CN.4/Sub.2/AC.5/1998/WP.1, 1998.

²⁷ UN Doc E/CN.4/Sub.2/1998/18, 1998, p. 24.

²⁸ Some debate ensued during the meeting of the working group regarding the notion of assimilation. Several members noted that a distinction should be made between voluntary and forced assimilation into dominant cultures and societies, and that only forced assimilation should be a concern before the working group.

Ibidem, p. 31 and p. 34.

²⁹ *Ibidem*, p. 30.

to be protected, but also the State is under special obligation to encourage and promote the social conditions in which these identities are maintained and preserved. The commentary noted that State obligations and minority rights 'reflected respect for pluralism and diversity in national societies while at the same time maintaining the identity and characteristics of minorities'.³⁰ Other members, however, also emphasized the need to incorporate further dialogue and commentary on the Declaration so as to ensure its ultimate, effective implementation.³¹

The Working Group has been able to address a variety of serious concerns relating to minority rights, and has helped to identify some of the major issues and obstacles facing minority populations. The future of the Working Group, however, remains in question. The Bureau of the Commission is presently considering 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.

2. Working Group on Indigenous Populations

In 1998 the Working Group on Indigenous Population³² convened for its sixteenth session from 27 to 31 July.³³ The sixteenth session of the Working Group had a record attendance of nearly 1,000 persons, including 19 observer governments, 9 United Nations and inter-governmental organisations, and 312 indigenous nations, organisations, and communities.³⁴

The Working Group on Indigenous Populations has in the past made a decisive contribution by drafting the Declaration on the Rights of Indigenous Peoples. In recent years the Working Group has focused on issues relating to indigenous education, language, and health. This Working Group also plays an important role in reviewing developments related to the situation of indigenous communities throughout the world and 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.

The principal theme of this year's session was: Indigenous Peoples - Education and Language. In conjunction with the central theme, the Working Group considered the Draft Declaration on the Rights of Indigenous Peoples, which it had completed at its eleventh session in 1994.³⁵ 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. The participants stressed to the Sub-Commission's Working Group that the language of the draft should not be subjected to any more changes that would weaken the document, as it already constituted a minimum standard with respect to the protection of indigenous rights.

Other highlights of this year's session included the presentation of a Study on Treaties, Agreements, and Other Constructive Arrangements between States and Indigenous

³⁰ *Ibidem*, p. 24.

³¹ *Ibidem*, p. 27.

³² The Working Group is a subsidiary of the Sub-Commission and was established pursuant to Economic and Social Council resolution 1982/34 of 7 May 1982. See UN Doc. E/CN.4/Sub.2/1998/9, 1998.

³³ The report of the Working Group is contained in UN Doc. E/CN.4/Sub.2/1998/16, 1998.

³⁴ For a complete list of participants, see UN Doc. E/CN.4/Sub.2/AC.4/1998/MISC.1, 1998.

³⁵ See UN Doc. E/CN.4/Sub.2/1994/2/Add.1, 1994.

Populations³⁶ and a Preliminary Working Paper on Indigenous Peoples and Their Relationship to Land.³⁷

The Commission is currently considering the establishment of a Permanent Forum for Indigenous People.³⁸ If established, the Commission is seriously contemplating the abolition of the Sub-Commission's Working Group on Indigenous Populations. There is much debate over whether the Permanent Forum will replace all of the present functions of the Working Group. Of particular concern for organisations representing indigenous interests is whether NGOs and indigenous communities will have direct access to the Permanent Forum. Such direct access has been one of the unique and beneficial characteristics of the Working Group. Furthermore, some governments have not supported equal participation by indigenous representatives. One government delegation to the second workshop on a permanent forum stated that 'it could not support a forum within the United Nations system where indigenous peoples were granted the same legal status as Member States'³⁹

3. 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. This Working Group took the initiative in developing programs of action against the sale of children, child prostitution, and child pornography; on child labour; and on prevention of the traffic in persons and the exploitation of the prostitution of others.

In 1998 the Working Group on Contemporary Forms of Slavery convened for its twenty-third session from 18 to 28 May.⁴⁰ The Working Group is a subsidiary of the Sub-Commission and was established pursuant to Economic and Social Council decisions 16 (LVI) and 17 (LVI) of 17 May 1974.⁴¹ The Working Group was established in 1975 and has met regularly between sessions of the Sub-Commission.⁴²

During this year's session, the Working Group accepted an NGO proposal for a forum on prostitution and trafficking in women and children which is scheduled to take place 21 to 22 June 1999, just before the Working Group meets from 23 June to 2 July 1999. This forum will represent a joint effort by United Nations organisations and non-governmental organizations, which are expected to voice a range of perspectives on the issue of sexual trafficking. While there are some international instruments which address the issue of sexual trafficking, most notably the 1959 Convention on Trafficking in Persons, there have nonetheless been virtually no concrete enforcement mechanisms available which would actually help deter the practice.⁴³ Many of these organisations will no doubt present

³⁶ UN Doc. E/CN.4/Sub.2/1998/17, 1998.

³⁷ *Idem.*

³⁸ For further information regarding the establishment of a Permanent Forum for Indigenous Peoples see *Report of the second workshop on a permanent forum for indigenous people within the United Nations system held in accordance with Commission on Human Rights resolution 1997/30*, UN Doc. E/CN.4/1998/11, 1998.

³⁹ *Idem.*

⁴⁰ Report of the Working Group on Contemporary Forms of Slavery on its Twenty-Third Session, UN Doc. E/CN.4/Sub.2/1998/14, 1998, p. 2.

⁴¹ *Ibidem*, p. 1.

⁴² *Idem.*

⁴³ Stephanie Farrior, 'The International Law on Trafficking in Women and Children for Prostitution: Making it Live up to its Potential', 10 *Harvard Human Rights j.*, Spring 1997, p. 213.

different, and perhaps at times contrary, viewpoints on the issue of prostitution. The aim of the forum, however, will be to incorporate these divergent perspectives into a common set of objectives against the most severe abuses inherent in sexual trafficking. Presumably, participants can agree upon the most grievous violations such as abduction, fraud, illicit transfer, and sexual bondage so that progress can be made in these areas.

The Bureau of the Commission is considering abolishing the Sub-Commission's Working Group on Contemporary Forms of Slavery and assigning its functions to a Special Rapporteur on slavery within the context of the Commission on Human Rights who will also be given responsibility for the work of the existing Special Rapporteur on the sale of children, child prostitution and child pornography.

4. Working Group on Communications

The Sub-Commission each year receives a confidential report from its Working Group on Communications under the procedure established by ECOSOC resolution 1503.⁴⁴ The confidential recommendations of the Sub-Commission do not become evident, however, until the Chairperson of the Commission on Human Rights announces in April of the following year which countries have been the subject of consideration. In April 1998 the Chairman of the Commission announced that the Commission had kept under consideration three countries (Chad, Gambia, and Sierra Leone) and discontinued consideration of a few countries evidently recommended by the Sub-Commission in August 1997, namely communications relating to Japan, Kyrgyzstan, Paraguay, Peru, Saudi Arabia, and Yemen.⁴⁵ The Sub-Commission has in the past year or so, evidently become much more careful in recommending countries to the Commission.

The Working Group on Communications has played an extremely important role for the past 27 years in sorting through thousands of communications and selecting a limited number, for example, a dozen or a few more, to be considered further by the Sub-Commission and then possibly by the Commission and its Working Group on Situations. Despite the Sub-Commission's increased care in referring matters to the Commission, however, the Bureau of the Commission, is considering a proposal which would abolish the Working Group on Communications and remove the Sub-Commission from its role in the confidential 1503 process. Instead, the Commission's Working Group on Situations, which is comprised not of independent experts but of five government representatives, would take over the very substantial roles played by the Working Group on Communications and by the Sub-Commission.

5. Working Group on Administration of Justice

The intra-sessional Working Group on Administration of Justice met several times formally and informally without interpreters during the 1998 session of the Sub-Commission.⁴⁶ The most important accomplishment of the 1998 session was its completion, after several years of work, of the Draft International Convention on the

⁴⁴ ESC Res. 1503 (XLVIII), UN ESCOR (No. 1A), p. 8, UN Doc. E/4832/Add.1. The working group is the first stage in the confidential country procedure. It determines the admissibility of a communication and the existence of a consistent pattern of gross violations.

⁴⁵ <http://www.unhchr.ch/html/menu2/8/stat1.htm>.

⁴⁶ Report of the sessional working group on the administration of justice, UN Doc. E/CN.4/Sub.2/1998/18, 1998.

Protection of all Persons from Enforced Disappearance, which was then adopted by the Sub-Commission and transmitted to the Commission.⁴⁷

The Working Group on Administration of Justice received a working paper on the death penalty and decided to continue receiving such a working paper next year. The Working Group also decided to request a similar working paper on privatisation of prisons, which would be presented when it meets again in 1999.

In addition, the Working Group learned that the Human Rights Committee had accepted its recommendation of 1997 that the Committee 'consider preparing a new general comment on article 4 of the International Covenant on Civil and Political Rights reaffirming the developing consensus that habeas corpus and the related aspects of amparo, as well as cognate rights, should be considered to be non-derogable in all circumstances'.⁴⁸

Other Activities

The Sub-Commission welcomed the final report on Systematic Rape, Sexual Slavery, and Slavery-Like Practices During Armed Conflict, Including Internal Armed Conflict.⁴⁹ The final report had three primary objectives: (1) to reiterate the call for a response to the use of sexual violence and sexual slavery during armed conflict; (2) to emphasise the true nature and extent of the harms suffered by women who are raped, sexually abused, and enslaved by parties to an armed conflict; and (3) to examine prosecutorial strategies for penalizing and preventing international crimes committed against women during armed conflict.⁵⁰ In addition, the report drew international attention to the abuses perpetrated against the more than 200,000 women enslaved by the Japanese military in so-called 'comfort stations' during World War II.⁵¹ The appendix of the report discussed at length the legal and normative issues surrounding the comfort women issue, prompting a response from the Japanese Government.⁵²

One of the more difficult issues facing the Sub-Commission in recent years has been the responsibility of non-State actors as perpetrators of human rights abuses. For example, terrorist groups target 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.⁵³

The Sub-Commission has in the past addressed the issue of human rights and terrorism, and in its resolution 1997/39 voiced its 'unequivocal condemnation of all acts, methods and practices of terrorism regardless of their motivation, in all its forms and manifestations, wherever and by whomever committed, as acts of aggression aimed at the

⁴⁷ See E/CN.4/Sub.2/1998/19, 1998.

⁴⁸ Sub-Commission Decision 1997/115, 'Report of the sessional working group on the administration of justice', can be found in UN Doc. E/CN.4/Sub.2/1997/L.11/Add.3, 1997.

⁴⁹ See E/CN.4/Sub.2/1998/13, 1998.

⁵⁰ Report of the Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict, UN Doc. E/CN.4/Sub.2/1998/13, 1998, pp. 9-11.

⁵¹ The appendix to the report addresses specifically the issue of 'comfort women', as many of these women have sought legal redress against the Government of Japan for 'establishing, supervising and maintaining rape centres during the Second World War'. *Ibidem*, appendix, p. 1.

⁵² See UN Doc. E/CN.4/Sub.2/1998/L.10/Add.8, 1998, p. 2.

⁵³ See UN Doc. E/CN.4/Sub.2/1997/28, 1997.

annihilation of human rights ...⁵⁴ In 1997, the Sub-Commission recommended that the Commission authorise the appointment of a Special Rapporteur to conduct a comprehensive study on the subject of human rights and terrorism. The preliminary report was scheduled for the Sub-Commission at its 50th session, but unfortunately due to time constraints this report could not be prepared in time.⁵⁵ The Sub-Commission, in its resolution 1998/29 requested the preliminary report for presentation at the 51st session of the Sub-Commission next year.

Reform of the Sub-Commission and its Future

One of the significant events of this year's session was the visit from 10 to 15 August 1998 by the Bureau of the Commission, the Sub-Commission's parent body, which is undertaking a review of the mechanisms of the Commission including the working methods of the Sub-Commission.⁵⁶ In preparation for this visit, the Sub-Commission prepared a document entitled: 'Enhancing the Effectiveness of the Sub-Commission'.⁵⁷ Unfortunately, this document did not receive the attention it deserved from the members of the Commission Bureau.

On the morning of 10 August 1998 the Sub-Commission met in a private session with the members of the Bureau of the Commission. During this session, Judge El-Hadji Guissé (Senegal), Chairperson of the Sub-Commission 50th session, presented the document prepared by the Sub-Commission. The document reflected on the Sub-Commission's past contributions, its present contributions, and offered an evaluation of and discussed further enhancements for the Sub-Commission. The document noted that the Sub-Commission makes three relatively unique contributions to the human rights field, namely: (1) undertaking comprehensive studies that contribute to the work of human rights bodies, particularly to the UN treaty-monitoring bodies; (2) bringing to the attention of the Commission situations not under review by the Commission but which appear to reveal gross and systematic violations of human rights or emerging human rights concerns; and (3) supporting its working groups.

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

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

⁵⁴ See SC Res. 1997/39, UN Doc. E/CN.4/Sub.2/1997/50, 1997, p. 83.

⁵⁵ See UN Doc. E/CN.4/Sub.2/1998/24, 1998.

⁵⁶ In its decision 1998/112 of 24 April 1998, the Commission, with a view to enhancing the effectiveness of the mechanisms of the Commission, agreed, without a vote, to appoint its Bureau to undertake a review of the mechanisms of the Commission with a view to making recommendations to the Commission at its fifty-fifth session. The Sub-Commission is a prominent mechanism of the Commission.

⁵⁷ See *Enhancing the Effectiveness of the Sub-Commission*, Note by the Chairman, UN Doc. E/CN.4/Sub.2/1998/38, 1998.

'When examining a situation which appears to reveal a pattern of gross and consistent violation of human rights in a country of which an expert of the Sub-Commission is a national, it would be desirable that the expert concerned not participate in the debates. The ultimate decision on whether or not such expert will intervene in the public discussion remains the responsibility of the expert concerned.'⁵⁸

Following this formulation will enhance the appearance of and actual independence of the Sub-Commission and will allow experts a way of avoiding undue influence by their governments. This formulation, however, is ambiguous as to whether it applies only to country situations under public review or also to discussions in plenary session under the 1503 confidential procedure. Resolving this ambiguity would further the independence of Sub-Commission members.

The further reforms proposed will likely have a significant impact on the future of the Sub-Commission. For example, the Commission's Bureau is seriously considering proposals in connection with its review of Commission mechanisms, including the Sub-Commission, which may deprive the Sub-Commission of the right to deal with country matters; may shift to the Commission the functions of the Sub-Commission's inter-sessional working groups on communications, indigenous populations, minorities, and slavery; reduce the number of Sub-Commission members; lengthen the term of Sub-Commission members; decrease the length of the Sub-Commission session; and impose term limits. The Bureau may propose that the Sub-Commission's sole role would be to prepare studies.

The future role of the Sub-Commission is in serious question. The proposals considered by the Commission's Bureau, if adopted, will diminish substantially the role currently played by one of the few independent human rights bodies within the United Nations. The Sub-Commission will meet for its 51th session from 2 to 27 August 1999, but, as one member stated: 'When we come back next year, this may be a very different institution from the one we know'.⁵⁹

⁵⁸ UN Doc. E/CN.4/Sub.2/1998/38, 1998.

⁵⁹ Intervention by Sub-Commission member Miguel Alfonso Martínez (Cuba) on 28 August 1998.