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The Forty-Fourth Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Special Session of the Commission on Human Rights on the Situation in the Former Yugoslavia

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I. INTRODUCTION

The twenty-six members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (hereinafter Sub-Commission) convened

for the Sub-Commission's forty-fourth session during 3–28 August 1992 in Geneva, Switzerland.[1] The Sub-Commission conducted its 1992 session amid growing crises in the former Yugoslavia and continuing problems in Iraq. Once again, the Sub-Commission faced an overcrowded agenda with little time to give consideration to the multitude of studies and reports presented. The Sub-Commission, however, adopted a resolution to which were annexed significant reforms of its methods of work, as well as path-breaking resolutions on human rights violations in Bosnia-Herzegovina (former Yugoslavia), East Timor, Bougainville, and Haiti. In addition, the Sub-Commission faced new initiatives, for example, in regard to arms production and trade, international norms concerning detained juveniles, and discrimination against gay and lesbian people.

This article discusses the accomplishments of the forty-fourth session, including resolutions regarding human rights violations in specific countries, studies on various human rights issues, pre-sessional working groups on indigenous populations and on contemporary forms of slavery, reform of the Sub-Commission, and new initiatives.

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1. The official report of the forty-fourth session is found in U.N. Doc. E/CN.4/Sub.2/1992/58 (1992) [hereinafter *1992 Report*]. The United Nations Economic and Social Council (ECOSOC) established the Sub-Commission in 1947 to study issues related to discrimination and protection of minorities. The Sub-Commission is an expert body of twenty-six members who serve in their individual capacity. Members are elected to four-year terms by the Commission on Human Rights. Like other UN subsidiary bodies, the composition of the Sub-Commission reflects a geographical balance that is maintained by allocating seats on the basis of five regional groups: Africa, Asia, Eastern Europe, Latin America, and West European and Other. The 1992 members of the Sub-Commission were: Miguel Alfonso Martínez (Cuba), Awn Shawket Al-Khasawneh (Jordan), Judith Sefi Attah (Nigeria), Marc Bossuyt (Belgium), Volodymyr Boutkevitch (Ukraine), Linda Chavez (United States), Stanislav Chernichenko (Russian Federation), Erica-Irene A. Daes (Greece), Leandro Despouy (Argentina), Asbjørn Eide (Norway), Clemencia Forero Ucros (Colombia), El Hadji Guissé (Senegal), Maksum-Ul-Hakim (Bangladesh), Ribot Hatano (Japan), Claude Heller (Mexico), Louis Joinet (France), Ahmed Khalifa (Egypt), Fatma Zohra Ksentini (Algeria), Ioan Maxim (Romania), Claire Palley (United Kingdom of Great Britain and Northern Ireland), Saïd Naceur Ramadhane (Tunisia), Gilberto Vergne Saboia (Brazil), Rajinder Sachar (India), Tian Jin (China), Halima Embarek Warzazi (Morocco), and Fisseha Yimer (Ethiopia).

This article is adapted from one which appeared in 9 AIUSA Legal Support Network Newsletter 49 (1992). For other analyses of the 1992 session, *see generally* Martin MacPherson, Rebecca Elliott, & Polly Stewart, *United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-Fourth Session*, Quaker United Nations Office (1992): Adrien-Claude Zoller, *Analytical Report of the 44th Session of the Sub-Commission*, 17–18 Hum. Rts. Monitor 6 (1992). For analyses of previous sessions of the Sub-Commission, *see generally* Karen Reierson & David Weissbrodt, *The 43rd Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 14 Hum. Rts. Q. 232 (1992) and the articles cited *id.* at 232; Reed Brody, Maureen Convery, & David Weissbrodt, *The 42nd Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 13 Hum. Rts. Q. 260 (1991); Robin Maher & David Weissbrodt, *The 41st Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 12 Hum. Rts. Q. 290 (1990). For other articles on the Sub-Commission, *see* Robin Maher & David Weissbrodt, *supra*, at 290.

II. THE SPECIAL SESSION OF THE COMMISSION ON HUMAN RIGHTS ON THE SITUATION IN THE FORMER YUGOSLAVIA

The first special session of the Sub-Commission's parent body, the Commission on Human Rights, convened during the same period (13–15 August 1992) in Geneva to address the human rights crisis in the former Yugoslavia.[2] The resulting special session challenged both Commission and Sub-Commission members to search for new mechanisms and procedures by which both bodies could offer constructive solutions to emerging crises without interfering in each other's work or the work of other UN bodies (*e.g.*, the Security Council and the General Assembly), which were meeting or about to convene during this same period of time.

On 29 July 1992, the Permanent Representative of Bosnia and Herzegovina, in a letter to the President of the Security Council, requested Security Council intervention and attached a list of ninety-four concentration camps and prisons in Bosnia and Herzegovina, as well as eleven such camps in Serbia and Montenegro.[3] In a letter dated 5 August 1992, the Permanent Representative of the United States to the United Nations in Geneva, Ambassador Morris B. Abram, invoked ECOSOC resolution 1990/48[4] and requested the "convening of the Commission on Human Rights in an exceptional session at the earliest possible date, to discuss the dangerous situation in the former Yugoslavia."[5] Thirty-five members of the Commission reacted positively to Mr. Abram's request[6] and therefore, the special session of the

2. *See* Report of the Commission on Human Rights on its First Special Session, U.N. Docs. E/1992/22; E/CN.4/1992/84/Add.1 (1992).
3. Letter dated 29 July 1992, reproduced in U.N. Doc. S/24365 (31 July 1992). Muhammed Sacirbey, the Ambassador and Permanent Representative of Bosnia and Herzegovina, requested the United Nations Security Council to take steps to secure the safety of victims so that they can eventually return to their homes, as agreed in the London Agreement of 17 July 1992.
4. At the request of Non-Aligned countries during a September 1989 summit, there were negotiations at the United Nations on revising the geographical composition of the Commission and strengthening the role and efficiency of the United Nations. These negotiations led to the adoption of ECOSOC Resolution 1990/48 on 25 May 1990 which, among other things, authorized the Commission on Human Rights to hold special emergency meetings between its regular sessions, as long as the majority of the member states agree. In June 1992 the Arab member states requested the convening of an emergency session to examine the situation in the Israeli-occupied territories. The majority of the member states did not favor such a session, evidently because the situation had not significantly changed since the last Commission session.
5. *See* U.N. Doc. E/CN.4/1992/S-1/2 (1992).
6. The following members of the Commission agreed to the special session on the former Yugoslavia: Argentina, Australia, Austria, Bangladesh, Barbados, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Cyprus, Czech and Slovak Federal Republic, France, Gambia, Germany, Hungary, India, Italy, Japan, Kenya, Lesotho, Mauritania, Netherlands, Pakistan, Peru, Philippines, Portugal, Senegal, Sri Lanka, Tunisia, United Kingdom, United States, Uruguay, and Venezuela.

Commission convened quite promptly across the hall from the Sub-Commission.

The Sub-Commission responded by passing a unanimous resolution, which it hand-delivered to the Chair of the Commission, Mr. Pal Solt (Hungary), condemning "ethnic cleansing" policies, which in the former Yugoslavia have generated vast displacements of people and refugees, particularly of the Muslim populations in Bosnia and Herzegovina.[7] The Sub-Commission demanded that massive violations of the right to life and other human rights be stopped and called for full reparation to displaced persons and prosecution of those persons responsible for crimes.[8]

The United Nations High Commissioner for Refugees (UNHCR) told the Commission that rarely had human rights violations been so gross, systematic, and so clearly targeted at uprooting people from their homes and destroying communities, as in the the former Yugoslavia.[9] According to the UNHCR, more than half of Bosnia-Herzegovina functioned as a detention center to establish ethnically pure zones. The International Committee of the Red Cross (ICRC) had visited 20,000 prisoners, of which 8,300 had been seen in Bosnia-Herzegovina. The ICRC reported that no respect existed for civilian prisoners, medical services, and the emblems of the ICRC or the United Nations.[10]

Numerous speeches were heard by the Commission describing the atrocities in the former Yugoslavia and urging humanitarian intervention, war crimes prosecution of those responsible, and public condemnation of the government and military authorities who had failed to protect human rights. The Ambassador of Yugoslavia, Branko Brankovic, denied all allegations of the existence of concentration camps.[11] He stated that the real aggressors in the conflict were "states" which had prematurely recognized Bosnia-Herzegovina as a country and that they alone were responsible for the killing and destruction.[12] The President of the Republic of Bosnia and Herzegovina, Alija Izethegovic, in a letter dated 5 August 1992 to the Permanent Representative of the United States at Geneva, however, described in detail gruesome events and torture in Serbian controlled concentration camps, reminiscent to events during the Second World War.[13] Credible reports from

7. U.N. Doc. 1992/S-1/1 Annex (1992). *See also* Sub-Comm'n Dec. 1992/103, *1992 Report, supra* note 1, at 95.
8. Sub-Comm'n Dec. 1992/103, *1992 Report, supra* note 1, at 95.
9. U.N. Press Release HR/3139, at 4 (13 August 1992).
10. *Id.* at 5.
11. U.N. Press Release HR/3141, at 1–3 (13 August 1992).
12. *Id. See* Statement by the Prime Minister of the Federal Republic of Yugoslavia, Milan Panic, on the alleged existence of "concentration camps" on 6 August 1992 in Belgrade. U.N. Doc. E/CN.4/1992/S-1/3 Annex III.
13. U.N. Doc. E/CN.4/1992/S-1/4 (1992). President Izethegovic described the situation in the Prijedor area, where there are allegedly 13 camps and prisons holding 33,500 detainees.

the press and nongovernmental organizations also seemed to confirm these reports of abuses.

Unlike the circumstances which often prevailed after Cold War debates, the Commission was able to move toward an action-oriented program, deploying a special rapporteur and other fact-finding mechanisms to confirm the human rights situation in the former Yugoslav territory. The negotiations toward a draft resolution were a delicate affair.[14] A number of Middle East governments, including Egypt and Turkey, insisted that the draft resolution clearly identify the aggressor and the victims,[15] while other members of the Commission preferred to avoid naming the aggressor. The debate was further complicated by the issue of who represents the former Yugoslavia; the representative of the United Kingdom, speaking on behalf of the European Community and its member states, refused to recognize the newly constituted Yugoslav Federation as the successor to the former Federation of Yugoslavia.

After several modifications to the draft resolution (for example the inclusion of a reference to the Sub-Commission resolution which in turn referred to the Muslim population of Bosnia-Herzegovina as the principal victim of the crisis), the Commission on Human Rights adopted a resolution on the situation of human rights in the territory of the former Yugoslavia.[16] The resolution strongly condemned the practice of "ethnic cleansing." The resolution also reminded parties that those persons who commit or order grave breaches of the Geneva Conventions of 1949 and the Additional Protocols of 1977 are individually responsible in respect of such breaches. The Commission decided to appoint a Special Rapporteur, Mr. Tadeusz Mazowiecki, the previous Prime Minister of Poland, to investigate the human rights situation in the former Yugoslavia, in particular Bosnia-Herzegovina, and to provide a preliminary report to the Secretary-General no later than 28 August 1992. The Commission's Special Rapporteur on Summary and Arbitrary Executions, a member of the Sub-Commission (Louis Joinet), and several staff members of the UN Human Rights Centre, were also asked to join Mr. Mazowiecki in his fact-finding mission.[17]

The worst camp is reputedly Omarska camp where thousands of prisoners are tortured. According to testimony from survivors, many prisoners have been killed by having their heads beaten against walls and four "S" letters were carved on the chest of one victim.

14. Comm'n Draft Res., U.N. Doc. E/CN.4/S-1/L.2 (13 August 1992).
15. U.N. Press Release HR/3145, at 2, 6 (14 August 1992). The representative of Egypt stated that the text of the draft resolution was unsatisfactory as it failed to designate clearly the aggressor and the victims, namely the Muslim community. He also regretted that the right to self-determination of the people of Bosnia-Herzegovina was not affirmed in the resolution. U.N. Press Release DH/1209, at 3 (20 August 1992).
16. U.N. Doc. E/CN.4/1992/S-1/1 (1992).
17. The Commission's special rapporteurs and experts on torture and internally displaced persons and and the Working Group on Arbitrary Detention were also requested to specially apply their fields of expertise to an examination of the situation in the former Yugoslavia.

The Special Rapporteur, Mr. Tadeusz Mazowiecki, visited the former Yugoslavia, in particular Bosnia-Herzegovina, during the period 21–26 August. Mr. Mazowiecki was accompanied on his mission by Louis Joinet (France), the Chairman of the Working Group on Arbitrary Detention, and Bacre W. Ndiaye (Senegal), the Special Rapporteur on extrajudicial, summary, or arbitrary executions. The mission met with representatives of governments, local authorities, intergovernmental and nongovernmental organizations, and interviewed a number of victims and witnesses of human rights abuses.

Mr. Mazowiecki's first report on the situation of human rights in the former Yugoslavia[18] stated that most of the area, in particular Bosnia-Herzegovina, is the "scene of massive and systematic violations of human rights, as well as serious grave violations of humanitarian law."[19] The report noted that, although there were victims on all sides, the situation for Muslims is "particularly tragic" as they feel they are threatened with extermination.[20] The report revealed several examples of harassment, discrimination, torture, and violence against the Muslim population.[21] Mr. Mazowiecki's report provided several recommendations, including neutralizing heavy weaponry in Bosnia and Herzegovina, calling upon the competent authorities to abandon ethnic cleansing, increasing the size of the United Nations Protective Force (UNPROFOR) and extending its mandate, granting full access by the ICRC to all detention camps, establishing an investigative commission with the assistance of the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights, establishing an information agency to counteract the dissemination of hatred among the population, and prosecuting those people responsible for flagrant human rights violations and breaches of international humanitarian law.[22]

In summary, the circumstances of the rapidly unfurling crisis in the former Yugoslavia, the first special session of the Commission, and the simultaneous convening of other UN bodies to study the situation, made it difficult for the Commission and Sub-Commission to coordinate and implement their working mechanisms in an effective manner. It was nonetheless impressive to see the quick reaction by both organizations to the crisis, as well as their unique contribution to the overall debate process. These circumstances also revealed, however, that there is room for improvement in the mechanisms of the Commission and the Sub-Commission to respond better to similar events in the future.

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18. U.N. Doc. E/CN.4/1992/S-1/9 (1992).
19. *Id.* at 2.
20. *Id.* at 11.
21. There were several examples of the crisis situation in the former Yugoslavia. For example, one witness stated that every night during curfew, houses are burnt down and a large number of people are interrogated, beaten, and tortured by police or forced to beat each other. *Id.* at 2–3.
22. *Id.* at 11–13.

There were also concerns about the delay in releasing a final report of the special session (and the unusual decision that the report be released from New York, not Geneva); the lack of advanced logistical planning which led to a nearly week-long delay in sending Mr. Mazowiecki's team to Yugoslavia; the unfortunate decision to disseminate a press release on the Special Rapporteur's itinerary which could have placed him and his team in great personal danger from snipers and would-be assassins; the decision not to reconvene the special session once the Special Rapporteur's report was received;[23] the apparent lack of coordination between ongoing UN proceedings in New York and Geneva on the Yugoslav crisis;[24] and the ambiguity in the Special Rapporteur's mandate concerning whether he was only to visit the territory of the former Yugoslavia on one occasion.[25]

Finally, while the Yugoslav crisis was certainly important and deserving of special session consideration by the Commission in August 1992, two other serious human rights crises were also simultaneously unfolding in Somalia and Iraq, where there were credible reports of severe deprivations of humanitarian aid to civilian populations. It is regrettable that the Commission was unable to respond as effectively to these two crises as it did to the Yugoslav crisis.

III. COUNTRY SITUATIONS

Aside from its extraordinary cooperation with the Commission on Human Rights, the Sub-Commission employs two procedures, one public and the other confidential, to examine the human rights situation in specific countries. On the one hand, Economic and Social Council (ECOSOC) resolution 1235 authorizes the Sub-Commission to discuss violations of human rights in specific countries.[26] Nongovernmental organizations, observer governments, and Sub-Commission members may participate in the discussion; the Sub-Commission may then adopt resolutions on the human rights situations. On the other hand, ECOSOC resolution 1503[27] authorizes a confidential procedure whereby the Sub-Commission members meet in private

23. In November 1992, the United States and Turkey proposed that the Commission be convened to discuss Bosnia-Herzegovina; the Commission met for its second session in early December.
24. For example, the Security Council passed its two Bosnia and Herzegovina resolutions, resolutions 770 and 771, on 13 August 1992, but it appears that these actions were not reported to the Commission on the second and final day of the session, 14 August 1992.
25. The Special Rapporteur did in fact return to Bosnia-Herzegovina in October 1992 and prepared three further reports. *See* U.N. Docs. E/CN.4/1992/S-1/10 (1992); A/47/666 (1992). *See also* U.N. Docs. A/47/418-S/24516 (1992); A/47/635-S/24766 (1992); A/47/666-S/24809 (1992).
26. E.S.C. Res. 1235 (XLII), 42 U.N. ESCOR, Supp. No. 1, at 17, U.N. Doc. E/4393 (1967).
27. E.S.C. Res. 1503 (XLVIII), 48 U.N. ESCOR, Supp. No. 1A, at 8, U.N. Doc. E/4832/Add.1 (1970).

to consider communications alleging consistent patterns of gross violations of human rights in particular countries. The Sub-Commission then confidentially refers to the Commission the situations that merit further consideration.[28]

The Sub-Commission conducts its public examination of the human rights situation in specific countries under its agenda item on the "question of the violation of human rights and fundamental freedoms."[29] In 1992, the Sub-Commission, under that agenda item, adopted resolutions on the following twelve countries or territories: Bougainville (Papua New Guinea), Cambodia, East Timor, El Salvador, Guatemala, Haiti, Iran, Iraq, Israeli-occupied Arab territories, Peru, Somalia, and South Africa. In addition, the Sub-Commission adopted two related resolutions under different agenda items, regarding the relocation of Navajo and Hopi families in the United States and the monitoring of the transition to democracy in South Africa. A draft resolution on Colombia was withdrawn by the sponsor due to lack of support and in view of the assurances made by the observer government of Colombia to cooperate with the United Nations.

The voting on country-specific resolutions was held by the secret ballot procedure under Rule 57.[30] In 1991, the Sub-Commission formally approved the secret ballot procedure and suspended open voting for country-specific resolutions in order to increase the independence of the Sub-Commission members and insulate them from government pressure.[31]

A. Bougainville (Papua New Guinea)

The Sub-Commission adopted for the first time a resolution on Bougainville in light of reports of human rights violations by the government of Papua

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28. *See infra* notes 75–78 and accompanying text for a discussion of the countries considered under the 1503 procedure at the 1992 session.
29. The full name of agenda item 6 is "Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of *apartheid*, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII)."
30. Rule 57 reads as follows: "A proposal or motion before the Commission for decision shall be voted upon if any member so requests. When no member requests a vote, the commission may adopt proposals or motions without a vote." Rules of Procedure of the Functional Commission of the Economic and Social Council, at 14, U.N. Doc. E/5975/Rev.1 (1983).
31. C.H.R. Res. 1991/81, ESCOR, Supp. No.2, at 182, U.N. Doc. E/CN.4/1991/91 (1991); E.S.C. Res. 1991/31, at 67, U.N. Doc. E/1991/INF/5 (1991). For a discussion of open voting prior to 1991, see Rule 59, Rules of Procedure of the Functional Commission of the Economic and Social Council, at 14, U.N. Doc. E/5975/Rev.1 (1983). *See also* Brody, Convery, & Weissbrodt, *supra* note 1, at 265–67.

New Guinea.[32] The consensus resolution is unique in several ways and serves as evidence that concerted NGO efforts can produce support for new resolutions, even in situations where very few first-hand accounts are available to corroborate NGO reports. Several NGO interventions addressed the denial of freedom of movement within and outside of the country.[33] The resolution called upon the government to restore that freedom without delay.[34] The Sub-Commission also requested the Special Rapporteur, Miguel Alfonso Martínez (Cuba), to include a review of agreements between the indigenous peoples of Bougainville and the government of Papua New Guinea in his ongoing study of treaties with indigenous peoples.[35] Some Sub-Commission members expressed concern over the lack of concrete evidence of human rights violations in the region and the financial cost of accepting this resolution.[36] Claire Palley (United Kingdom), the chief sponsor of this resolution, responded that the reason for the lack of evidence was due in part to restrictions on travel.

B. Cambodia

The Sub-Commission's unanimous resolution on Cambodia welcomed recent efforts of the United Nations to protect human rights and underscored the importance of restructuring the country's legal systems to improve human rights protection.[37] The Sub-Commission also encouraged the Secretary-General to implement a long-term technical assistance and advisory services program for the enjoyment of human rights.[38]

During the discussion on this resolution, several members expressed concern that the Sub-Commission should not duplicate the efforts of the Security Council.[39] The resolution's chief sponsor, Asbjørn Eide (Norway),

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32. Sub-Comm'n Res. 1992/19, *1992 Report, supra* note 1, at 56.
33. Interventions were made by several NGOs, including the International Work Group for Indigenous Affairs, U.N. Press Release HR/3130, at 4 (7 August 1992); the Indigenous World Association, U.N. Press Release HR/3136, at 2 (11 August 1992); Habitat International Coalition, U.N. Press Release HR/3148, at 4 (17 August 1992); Pax Christi International, U.N. Press Release HR/3152, at 6 (19 August 1992).
34. Sub-Comm'n Res. 1992/19, *1992 Report, supra* note 1, at 56.
35. *Id.* at 57.
36. According to the UN Secretariat, the financial cost of travel and expenses for 1993 for this resolution would be $15,470. Statement of Mr. Moktar Cisse, 27 August 1992.
37. Sub-Comm'n Res. 1992/17, *1992 Report, supra* note 1, at 52.
38. *Id.* at 53.
39. Halima Warzazi (Morocco) stated that it was not in the interest of the Sub-Commission to duplicate work of the Security Council and she asked the co-sponsors to make changes in the draft resolution. Tian Jin (China) said that the draft resolution should be withdrawn because there was no need for it, and argued that operative paragraph 2 was politically motivated because it singled out the Khmer Rouge as not abiding by prior agreements. Stanislav Chernichenko (Russian Federation) also expressed skepticism about the need

urged that adoption of the resolution was necessary to keep the pressure on all sides to complete the Paris Peace Agreements. A modification of the resolution was accepted, striking reference to the Khmer Rouge's reluctance to comply with prior agreements; as modified, the resolution was adopted by consensus.

C. Colombia

A draft resolution on Colombia was withdrawn by its sponsor, apparently due in part to lack of support and in part to pledges made by the Colombian government in last minute lobbying efforts to Sub-Commission members.[40] The draft resolution had criticized widespread disappearances, summary executions, the weakened judicial system, and the failure to implement the new 1991 Constitution, including the new constitutional protections for human rights. Adoption of the resolution would have been very significant since, coupled with this year's resolution criticizing Peru, it would have meant that two new Latin American countries were the subject of Sub-Commission criticism.[41] In consideration of the withdrawal of the resolution, the representative of Colombia pledged his government's support for the human rights objectives cited in the resolution's text and promised that his government would cooperate with United Nations organs in the improvement of human rights protections in his country.[42]

D. East Timor

The Sub-Commission adopted a strong condemnatory resolution on East Timor by a vote of thirteen to six with four abstentions, and requested the Secretary-General to compile reports of human rights abuses in East Timor from NGOs and others, and to submit the information to the Commission on Human Rights and its Sub-Commission in 1993.[43]

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for the resolution, but disagreed with Tian Jin about the political nature of operative paragraph 2, stating that the Khmer Rouge had been guilty of human rights violations in the past.

40. Sub-Comm'n Res. 1992/L.44.
41. Normally, the Latin American region successfully opposes resolutions against its members except for those countries commonly receiving criticism, namely El Salvador, Guatemala, and Haiti. It became apparent this year that an initiative against Colombia did not have sufficient support and the resolution was therefore withdrawn by its co-sponsors.
42. Statement by the representative of Colombia on 27 August 1992. *See also* U.N. Press Release HR/3162, at 1 (27 August 1992).
43. Sub-Comm'n Res. 1992/20, *1992 Report*, *supra* note 1, at 57.

At last year's session, the Chair of the Sub-Commission read a compromise statement on East Timor in lieu of a formal resolution due to Indonesia's then expressed willingness to investigate and correct human rights violations in the country.[44] This year, however, conditions had worsened with the incident at Dili on 12 November 1991, in which the army killed civilians during a political demonstration at a cemetery, and the continuing reports of widespread human rights violations against East Timorese civilians.[45] The Sub-Commission, appalled at the massacre of East Timorese civilians and disturbed by the heavy sentences imposed on protesters under the "Anti-Subversion Law,"[46] urged Indonesia to provide the Working Group on Enforced and Involuntary Disappearances with information regarding missing persons during the Dili incident and to cooperate with the families of victims so that the dead could receive a proper burial.[47]

Despite strenuous lobbying by the observer government of Indonesia to defeat the resolution, many organizations and members of the Sub-Commission were steadfast in their criticisms of the violent incidents in Dili and elsewhere in the country. The observer government of Indonesia, however, reiterated that human rights violations in East Timor were unsubstantiated and it regretted that the resolution on East Timor was unbalanced, since Indonesia said it had made efforts to address the situation in Dili.[48]

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44. Sub-Comm'n Res. 1991/8, *1991 Report*, U.N. Doc. E/CN.4/Sub.2/1991/65 (1991). The statement conveyed optimism about the upcoming visits to East Timor by the Special Rapporteur on Torture and by a group of Portuguese parliamentarians. This decision was apparently a gesture to promote a spirit of openness and to facilitate the work of the Special Rapporteur on Torture. *See* Reierson & Weissbrodt, *The 43rd Sub-Commission*, *supra* note 1, at 239.
45. On 12 November 1991, Indonesian soldiers opened fire at a funeral procession on more than 1,000 civilians who were mourning the death of a man killed by Indonesian Security Forces on 28 October 1991. *Indonesian Troops Open Fire on Timor Mourners*, N.Y. Times, 13 November 1991, at A11. Although Indonesia, which invaded East Timor in 1975, stated that 50 people died during this incident, journalists and human right groups estimated the death toll as much higher. *See Massacre Anniversary*, The Washington Post, 13 November 1992, at A24.

    Ironically, there have been reports that Maj. Gen. Sintong Panjaitan, one of the military commanders responsible for the Dili massacre, was reportedly studying business administration at Boston University. Ann Treseder, *East Timor Alumni*, N.Y. Times, 25 September 1992, at A26. The Center for Constitutional Rights, on behalf of a mother whose son was killed in Dili, brought suit against Maj. Gen. Panjaitan in U.S. District Court in Boston. The summons, however, has been returned, and therefore the whereabouts of Maj. Gen. Panjaitan are not known, although he has an unlisted phone number in Boston. Harvard Business School also denied unconfirmed reports that he was enrolled or had applied to the school. *Indonesian General Sued Under New Law: Mother Accuses Him in Son's Slaying*, The Boston Globe, 25 September 1992, at 19.
46. Sub-Comm'n Res. 1992/20, *1992 Report*, *supra* note 1, at 57–58.
47. *Id.* at 58.
48. Oral statement by the representative of Indonesia on 27 August 1992. *See also* U.N. Press Release HR/3163, at 2 (27 August 1992).

E. El Salvador

Although the consensus resolution on El Salvador welcomed the signing of Peace Agreements between the government and the Frente Farabundo Martí para la Liberacion Nacional (FMLN) on 16 January 1992, it noted serious delays in implementing various provisions of the agreements.[49] The resolution also regretted the serious attack committed against a staff member of the new Office of the Attorney-General for the Protection of Human Rights, but noted that investigations were underway to apprehend the perpetrators.[50]

F. Guatemala

The resolution on Guatemala was adopted by a vote of thirteen to four with four abstentions and with one member not participating.[51] The resolution expressed concern over the persistence of serious human rights violations and urged the government to intensify investigations to identify violators of human rights, and to ensure that the judicial system can provide protection to the judiciary, witnesses, and victims.[52] In light of several statements by indigenous peoples of Guatemala, the resolution called upon the government to respond to their requests to improve economic, social, and cultural conditions, as well as to adopt measures to facilitate the return of refugees and displaced persons within the country.

Once again, some members expressed the view that if a parent body of the Sub-Commission is already addressing the situation in Guatemala, there was no need for the Sub-Commission to introduce the resolution, especially since there were arguably no new developments since the 1992

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49. Sub-Comm'n Res. 1992/13, *1992 Report, supra* note 1, at 46. The January 1992 Peace Accord between the government of El Salvador and the FMLN contains provisions for an end to armed conflict, as well as far reaching reforms. *See* Ingrid Kircher, *The Human Rights Work of the United Nations Observer Mission in El Salvador,* 10 Netherlands Q. Hum. Rts. 303 (1992). Kircher's article notes that the Peace Accord also includes economic, social, and judicial reforms. The article also describes the negotiation process and work of the United Nations Observer Mission in El Salvador (ONUSAL). ONUSAL, a human rights verification mission, was established by the San Jose Agreement on Human Rights signed by the government of El Salvador and the FMLN on 26 July 1990. On 20 May 1991, the UN Security Council unanimously adopted resolution 693 (1991) establishing ONUSAL to monitor all agreements between the government and the FMLN. The article concludes that "continued international support for the reforms and continued vigilance of the human rights situation by the U.N., in the form of ONUSAL's human rights mandate, will be a decisive factor in the success or failure of this transition towards lasting peace." *Id.* at 317. *See also* Cynthia Arnson & David Holiday, *El Salvador Peace and Human Rights: Successes and Shortcomings of the United Nations Observer Mission in El Salvador (ONUSAL),* 4 Human Rights Watch No. 8, 2 September 1992, at 1.
50. Sub-Comm'n Res. 1992/13, *1992 Report, supra* note 1, at 47–48.
51. Sub-Comm'n Res. 1992/18, *1992 Report, supra* note 1, at 54.
52. *Id.* at 55.

session of the Commission on Human Rights.[53] The majority of the Sub-Commission, however, believed that a Sub-Commission resolution was needed to maintain pressure on Guatemala.

G. Haiti

The resolution on Haiti, adopted without a vote, strongly condemned the overthrow of the constitutionally elected President, Mr. Jean-Bertrand Aristide, the use of violence, and the deterioration of human rights in the country.[54] The resolution drew attention to the Haitian nationals fleeing the country and requested support for the efforts undertaken to assist them. The Sub-Commission appealed to all parties to engage in dialogue necessary for the restoration of the lawful government and the re-establishment of democracy in Haiti.

H. Iran

The Sub-Commission adopted a resolution on the continuing human rights violations in Iran by a vote of eighteen to three with two abstentions and with three members not participating.[55] The efforts to achieve a consensus by modifying the text of the resolution failed because Iran objected to some supporting information from the Mujahidin opposition group.[56]

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53. On the one hand, statements by Linda Chavez (United States), Halima Warzazi (Morocco), and Stanislav Chernichenko (Russian Federation) on 27 August 1992 reflected the general concern that the Sub-Commission should not interfere with the work of the Commission on Human Rights, especially when there were no new developments. On the other hand, Judith Sefi Attah (Nigeria) pointed to the continuing human rights violations in Guatemala affecting indigenous peoples, and Claire Palley (United Kingdom) stated that since the Sub-Commission is not in continuous session throughout the year, it was important for the Sub-Commission to show continuing interest by adopting this resolution. Oral statements of members on 27 August 1992.
54. Sub-Comm'n Res. 1992/16, *1992 Report*, *supra* note 1, at 51–52.
55. Sub-Comm'n Res. 1992/15, *1992 Report*, *supra* note 1, at 49.
56. The chief sponsor of the resolution on Iran, Claire Palley (United Kingdom), mentioned the hard work that went into drafting this resolution. *See Summary Record of the 34th Meeting*, U.N. Doc. E/CN.4/Sub.2/1992/SR.34 (1992). She specifically stated that she did not consider any information from "terrorists," and that just because the resolution states similar concerns as those expressed by "terrorists" did not mean the Sub-Commission should not consider the resolution. In an oral statement, the Iranian government stated that the resolution contained unfounded allegations provided by "terrorist" groups who want to create a "Marxist-oriented society." The Iranian government further stated that a US government document on Iran indicated that the Mujahidin have used methods of terrorism, that Amnesty International also said that this group terrorizes the Kurds, and that they have joined forces with the government of Saddam Hussein. The representative further questioned how members from the United States and the United Kingdom could have co-sponsored this resolution and joined forces with the alleged "Iraqi terrorist group,"

The resolution deplored the expulsion in March 1992 of the delegation of the International Committee of the Red Cross and expressed grave concern at the rise of summary executions and arbitrary arrests of thousands of people following anti-government demonstrations, as well as political assassinations carried out abroad.[57] The Sub-Commission resolution did not, however, specifically address the assassination of exiled former Iranian Prime Minister Shahpur Bakhtiar in Paris or the murder of the Japanese translator of Salman Rushdie's novel *The Satanic Verses* and the attempted murder of the Italian translator of the same work.[58] Furthermore, the Sub-Commission condemned the torture and ill-treatment of political prisoners; the stoning of citizens (frequently women); and the persecution of religious minorities—particularly the Baha'is.[59] The resolution called on the Commission's Special Representative on Iran to include information on executions, arrests, formation of paramilitary units, and the assassination of Professor Kazem Rajavi, in his next report to the General Assembly and the Commission on Human Rights.

I. Iraq

The resolution on the situation in Iraq, adopted by consensus, focused on the serious consequences of the UN embargo on Iraq's civilian population, especially women, children, and the underprivileged sectors of the population.[60] It appealed to the international community, including the government of Iraq, not to obstruct the supply of food and medicines to civilians.

Pursuant to an amendment proposed by Halima Warzazi (Morocco), the Sub-Commission decided to change the title of the resolution from the Situation on Human Rights in Iraq to the Humanitarian Situation in Iraq.[61] Linda Chavez (United States), however, believed that the text of the draft

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and ended by saying that "The enemy of the enemy is a friend." Oral statement by the representative of Iran at the 44th session of the Sub-Commission, Geneva, on 27 August 1992. *See also* U.N. Press Release HR/3162, at 2–3 (27 August 1992).

57. In 1990, the Sub-Commission passed a separate resolution condemning the assassination of Professor Kazem Rajavi, a former Iranian diplomat living in exile in Switzerland. Sub-Comm'n Res. 1990/8, at 26, U.N. Doc. E/CN.4/Sub.2/1990/59 (1990).
58. Hitoshi Igarashi was found stabbed to death in his office at Tsukuba University in Tokyo, Japan, on 12 July 1991. Nine days earlier Ettore Capriolo had been attacked and wounded by an Iranian in Milan, Italy. Both men had translated the novel, *The Satanic Verses*, by Salman Rushdie. In 1989 Iranian leader Ayatollah Ruhollah Khomeini issued a death sentence against Rushdie, claiming that his novel blasphemed the Islamic faith. Rushdie has been in hiding since 1989.
59. Sub-Comm'n Res. 1992/15, *1992 Report, supra* note 1, at 50.
60. Sub-Comm'n Dec. 1992/106, *1992 Report, supra* note 1, at 96.
61. Halima Warzazi (Morocco) noted alarming reports by UNICEF and other agencies that approximately 400,000 children will die due to lack of medicine and food; she stressed the humanitarian nature of this resolution. Oral statement by Mrs. Warzazi on 27 August 1992.

resolution was "totally inadequate" as it implied that the international community was responsible for starving the children of Iraq.[62] Mrs. Chavez proposed several amendments, including adding a clause imploring the government of Iraq, along with the international community, not to obstruct the supply of food and medicine to the civilian population. The clause was added to the resolution despite certain members who supported the non-political humanitarian focus of the resolution; others believed that Mrs. Chavez's amendments strengthened the resolution.[63] The resolution, however, did not directly address the culpability of the government of Iraq.

J. Israeli-Occupied Territories

The Sub-Commission adopted a resolution on Palestine and other Arab territories occupied by Israel by a vote of eleven to six with six abstentions.[64] Several experts criticized the resolution for failing to reflect substantial changes in Middle East peace efforts in the past year and for not helping the peace process.[65] The resolution repeated concerns in past resolutions: it condemned Israel for gross violations of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, for continued occupation of the Palestinian and other Arab territories, for establishing Israeli settlements in the occupied territories, for its defiance of UN resolutions, and for the inhuman treatment as well as terrorist practices against Syrian Arab citizens. The resolution reiterated support for an international peace conference in the Middle East.[66]

K. Peru

The Sub-Commission adopted, for the first time, a consensus resolution on Peru, which reflected concerns about the ending of the peace dialogue

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62. Oral statement by Linda Chavez (United States) on 27 August 1992.
63. In response to a statement by Judith Sefi Attah (Nigeria) implying that Linda Chavez's (United States) amendments politicize the essentially humanitarian resolution and that the Sub-Commission should not use food and medicines as "war," Mrs. Chavez noted that it is more political intentionally to omit the Iraqi government from the resolution. It should be noted that it is rare for a resolution to be strengthened in the course of the debate as apparently occured in regard to the resolution on Iraq. Oral statement by experts on 27 August 1992.
64. Sub-Comm'n Res. 1992/10, *1992 Report, supra* note 1, at 40.
65. In a brief oral statement on 26 August 1992, Linda Chavez (United States) noted that the text did not reflect the fact that there have been human rights abuses on both sides. Asbjørn Eide (Norway) expressed his disappointment with the resolution, especially since it did not reflect the views of the Israeli government. For details, *see Summary Record of the 34th Meeting*, U.N. Doc. E/CN.4/Sub.2/1992/SR.34 (1992).
66. Sub-Comm'n Res. 1992/10, *1992 Report, supra* note 1, at 43.

between the government and the opposition, the dissolution of the National Congress, as well as growing criminal activities of terrorist groups.[67] While taking note of Peru's efforts to restore constitutional order and to hold general elections, the resolution urged the government to improve its cooperation with the Inter-American Commission on Human Rights and to guarantee full respect for freedoms of assembly, association, expression, and opinion. The resolution took note of the undertaking by Peruvian authorities to hold national elections on 22 November 1992 to be monitored by the Organization of American States. Further, the Sub-Commission urged the Peruvian authorities to resume a dialogue with the opposition. The September 1992 capture of Abimael Guzman Reynoso, founder and leader of the Sendero Luminoso (Shining Path), by the Peruvian authorities may foster a climate for positive changes for the country.[68]

L. Somalia

Humanitarian assistance was the focus of a consensus resolution on Somalia.[69] The Sub-Commission noted with concern the reports of massive violations of human rights, particularly extrajudicial executions and torture committed by armed gangs, as well as the alarming number of displaced persons and refugees who have left Somalia since January 1991.[70] It requested the UNHCR and the international community to provide needed humanitarian assistance to Somali citizens and refugees.

M. South Africa

The Sub-Commission passed two consensus resolutions under different agenda items on South Africa. The first resolution strongly condemned con-

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67. Sub-Comm'n Res. 1992/12, *1992 Report, supra* note 1, at 44.
68. The 57 year old Abimael Guzman Reynoso was captured by Peruvian authorities on 13 September 1992, after nearly a twelve year hunt. The capture was seen as a great victory for Peru and President Alberto Fujimori to end armed insurrection against the Peruvian government. Shining Path has approximately 5,000 fighters and thousands of supporters. *See Fugitive Leader Of Maoist Rebels is Captured by the Police in Peru*, N.Y. Times, 14 September 1992, at A1. In a military trial closed to the public, Guzman was convicted of treason, held responsible for more than 20,000 deaths and more than $20 billion in economic damages, and sentenced to life in prison. *See Peru Convicts Maoist Rebel Leader and Sentences Him to Life Imprisonment*, N.Y. Times, 8 October 1992, at A3.
69. Sub-Comm'n Res. 1992/11, *1992 Report, supra* note 1, at 43.
70. *Id.* at 44.

tinuing violence in South Africa and urged the international community to refrain from establishing official links with South Africa until there is an interim government for supervising the transition to democracy.[71] It called upon the South African government to release all political detainees and to refrain from executing persons convicted of security- related offenses.[72] The resolution vigorously condemned military collaboration with the South African government—particularly in the nuclear field.

The second resolution on South Africa, adopted under a different agenda item entitled "Review of Further Developments in Fields with which the Sub-Commission has been Concerned," focused on monitoring the transition to democracy.[73] The resolution recommended that Judith Sefi Attah (Nigeria) be appointed as special rapporteur to report annually on the transition to democracy in South Africa. This report will replace Ahmed Khalifa's (Egypt) annual report on companies investing in and offering economic assistance to South Africa, as it was felt that the latter study was no longer discouraging companies from such activities nor causing sufficient adverse publicity. The Sub-Commission noted, however, that Mr. Khalifa's annual report had appeared to increase the pressure on the government to revise its racist policies.

N. United States: Navajo and Hopi

The Sub-Commission adopted a resolution, by consensus, on the relocation of Navajo and Hopi families from northern Arizona and focused on court-ordered mediation to seek a peaceful settlement.[74] The resolution appealed

71. Sub-Comm'n Res. 1992/9, *1992 Report, supra* note 1, at 38–40.
72. *Id.* at 39.
73. Sub-Comm'n Res 1992/6, *1992 Report, supra* note 1, at 29.
74. Sub-Comm'n Res. 1992/36, *1992 Report, supra* note 1, at 87. In 1987 (*see* Sub-Comm'n Dec. 1987/110) the Sub-Commission had asked two of its members to attend US Congressional hearings on the Navajo-Hopi situation, but the scheduling of these hearings did not permit attendance. In 1988 (*see* Sub-Comm'n Dec. 1988/105) the Sub-Commission asked Erica-Irene Daes (Greece) and John Carey (alternate, United States) to investigate the Navajo-Hopi situation and report back jointly to the Sub-Commission. Reports were filed by both in the following year, taking different positions: Mr. Carey urged the Sub-Commission to refrain from taking sides in the dispute (*see* Draft Res. L.40, withdrawn, and Mr. Carey's report, U.N. Doc. E/CN.4/Sub.2/1989/35 (Part II)); Mrs. Daes recommended that the Sub-Commission support an 18-month moratorium on further resettlement and that UN advisory services be offered to assist dispute resolution efforts (*see* Mrs. Daes' report, U.N. Doc. E/CN.4/Sub.2/1989/35 (Part I)). The Sub-Commission that year adopted a resolution urging that no further involuntary resettlement take place and that the families and communities concerned be permitted to participate in the on-going negotiations. *See* Sub-Comm'n Res. 1989/37. The Sub-Commission passed a further resolution in 1990 in support of a constructive resolution to the dispute between the Navajo and Hopi communities. Sub-Comm'n Res. 1990/34.

to the United States government to ensure, through cooperation with a court-appointed mediator, that no further relocation of families takes place.

O. Confidential 1503 Procedure

The Sub-Commission employs a confidential procedure, authorized by ECOSOC Resolution 1503,[75] to examine communications alleging consistent patterns of gross violations of human rights in specific countries. The Sub-Commission's Working Group on Communications meets in private for up to two weeks prior to the Sub-Commission session to consider such communications. The working group forwards communications on specific country situations to the Sub-Commission, which then decides, in private session, which situations to refer to the attention of the Commission on Human Rights.

In 1992 the Sub-Commission reportedly decided to transmit to the Commission communications on the following six countries: Bahrain, Chad, Kenya, Rwanda, Sudan, and Zaire.[76] The Sub-Commission also decided to continue to review for another year communications concerning Germany, Syria, and Uganda for possible referral to the Commission's attention in 1993.[77] In addition, the Sub-Commission reportedly terminated its confidential examination of the human rights situation in the following six countries: Bhutan, Brazil, Djibouti, South Korea, Turkey, and the United States.[78]

IV. FINAL STUDIES AND REPORTS

The Sub-Commission received final reports on six studies: the right to freedom of opinion and expression; the realization of economic, social, and cultural rights; human rights violations against UN staff members; standards for detained individuals; human rights and youth; and investment in South Africa.

A. Freedom of Opinion and Expression

The Sub-Commission commended Danilo Türk (Slovenia) and Louis Joinet (France) for their final report on the right to freedom of opinion and ex-

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75. E.S.C. Res. 1503 (XLVIII), U.N. ESCOR, 48th Sess., Supp. No.1A, at 8, U.N. Doc. E/4832/Add.1 (1970).
76. *See* Zoller, *supra* note 1, at 18.
77. *Id.*
78. *Id.*

pression, but did not pass a resolution implementing any of their recommendations or proposals.[79] The authors recommended that standard-setting be studied, especially with a view to limiting the circumstances under which the media can legitimately be restricted from investigating and reporting. The study also identified the "core" elements of the freedoms of opinion, expression, and access to information which should never be restricted.[80] Mr. Türk further stated that restrictions should be permitted only if: (1) they have legitimate purposes; (2) their legality is strictly respected; (3) they are proportionate to the needs for which they are selected; and (4) they are imposed in a manner compatible with a democratic society.[81]

In a carefully prepared intervention, the United States criticized the Türk and Joinet study for focusing unduly on restrictions of the freedom of expression and opinion, rather than on the realization of these rights.[82] The US representative stated that these freedoms are given special protection by the First Amendment to the US Constitution, and therefore, the US government is "deeply skeptical of other international texts—including provisions in the Covenant on Civil and Political Rights—which may permit extensive controls on free expression and the press."[83] Most NGOs, however, welcomed the report as a means for highlighting the frequent abuse of writers and journalists, of whom more than 450 were imprisoned worldwide in 1991.[84] In light of serious persecutions of journalists, Mr. Türk and Mr. Joinet recommend that the Commission appoint a working group or rapporteur to address the protection of professionals in the field of information.[85] The Sub-Commission, however, did not consider any resolution on this report and

79. U.N. Doc. E/CN.4/Sub.2/1992/9 & Add.1 (1992). The conclusions and recommendations of the authors are contained in Addendum 1.
80. U.N. Doc. E/CN.4/Sub.2/1992/9/Add.1, at 3 (1992).
81. Statement by Danilo Türk (Slovenia) on 21 August 1992. *See Summary Record of the 27th Meeting*, at 3, U.N. Doc. E/CN.4/Sub.2/1992/SR.27 (1992).
82. Statement by John R. Crook. *See also* U.N. Press Release HR/3159, at 5 (25 August 1992).
83. Statement of John Crook on 25 August 1992: "Neither the work of the Sub-Commission nor of any other U.N. body should give sanction or credence for controls on freedom of expression and a free press. As we have noted several times while their study was underway, the authors start with the premise that controls on freedom of expression and the press are sometimes justified. They then posit and refine an intellectual framework for determining the extent for allowable controls. In our view, this is not how the problem should be approached. The Sub-Commission should denounce and combat State controls on expression and the press. It should not provide the blueprint for their enactment." *Id.* at 3.
84. A representative of PEN International noted that 462 writers and journalists who have been imprisoned in 1991. Many of them were imprisoned under laws which did not appear to relate specifically to their writing, such as national security laws. *See* U.N. Press Release HR/3158, at 2 (25 August 1992). In a statement for the NGO Article 19, Frank Newman spoke of the increasing attacks against journalists in Turkey during 1992, where at least eight journalists were killed this year. Mr. Newman also spoke about disappearances and killings of journalists in Iran and Sri Lanka. *Id.* at 3–4.
85. U.N. Doc. E/CN.4/Sub.2/1992/9/Add.1, at 3 (1992).

thus no action has been recommended to the Commission for the time being. No further follow-up appears to be contemplated at present, unless the Commission decides to initiate its own resolution.

B. Economic, Social, and Cultural Rights

The final report on the realization of economic, social, and cultural rights by Danilo Türk (Slovenia)[86] received much favorable commentary from Sub-Commission members, as well as NGOs. Mr. Türk introduced his report by stating that "human development could be described as one of the greatest dramas of contemporary mankind," and that the situation for the future is not promising.[87] He also pointed out that the current processes of change in various parts of the world confirmed that the "concept of interdependence and indivisibility of human rights, civil and political, economic, social and cultural" was vital to development and promotion of human rights.[88] Mr. Türk's final report concluded that due to a failure of governments and existing models of development, there is a necessity for new approaches for the enjoyment of economic, social, and cultural rights.[89] Mr. Türk's final report generated substantial discussion immediately after a statement by US Ambassador Morris Abram.[90] Ambassador Abram stated that if every "need" of a country, such as development, was transferred into a "right," there would be a proliferation of rights and a dilution of the very concept of rights.[91] He stressed that civil and political rights are a requirement for any "free" society and that there is a connection between liberty and economic progress. Several Sub-Commission members disagreed with Ambassador Abram's statement because economic, social, and cultural rights have always been a part of human rights and were not "new" rights.[92]

C. Human Rights Violations Against UN Staff

Although Mary Concepcion Bautista (Philippines) was not present at the 1992 session, the Sub-Commission complimented her on her final report

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86. U.N. Doc. E/CN.4/Sub.2/1992/16 (1992).
87. U.N. Press Release HR/3153, at 2 (20 August 1992).
88. *Id.* at 3.
89. U.N. Doc. E/CN.4/Sub.2/1992/16, at 45 (1992).
90. U.N. Press Release HR/3153, at 3 (20 August 1992).
91. *Id.* Ambassador Abram further stated that if rights were "particularized" and regionalized according to the traditions of different cultural, ethnic, or religious groups, the universality of human rights would be destroyed.
92. In response to Ambassador Abram's intervention, Asbjørn Eide (Norway) pointed out that in 1947, the Chairperson of the Commission on Human Rights, who was also the head of the US delegation, had declared, "A man in need is not a free man." Although he

concerning the protection of the human rights of UN staff members, experts, and their families.[93] The final report includes a list of sixty-two staff members who were victims of human rights violations as of 24 June 1992, plus the names of twenty-six UN employees who have been killed since 1973.[94] Mrs. Bautista recommended an information campaign to combat "this abhorrent practice."[95] The Sub-Commission resolution, adopted without a vote, expressed its appreciation to Mrs. Bautista on her work and requested the Commission on Human Rights to use existing human rights machinery to examine the cases involving violations of human rights of UN staff members, experts, consultants, and their families.[96]

D. Detained Juveniles

Mary Concepcion Bautista (Philippines) also prepared her final report on the application of international human rights standards to detained juveniles,[97] and was warmly congratulated by the Sub-Commission for her efforts.[98] Due in part to Mrs. Bautista's efforts, a special meeting will take place during Spring 1993 in Geneva among representatives of various UN bodies, specialized agencies, intergovernmental organizations, and NGOs, to investigate further whether the several different UN standards issued by various bodies concerning juvenile justice, juvenile delinquency, and juvenile detention can be harmonized. Mrs. Bautista's report recommends that international agencies coordinate their efforts to improve the conditions of detained individuals, that the feasibility of noncustodial measures be investigated wherever possible, that juvenile justice personnel be trained, and that penal institutions separate detained juveniles from detained adults.[99]

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agreed with Ambassador Abram that denials of freedom should not hide behind economic policy, it was equally important to realize that the free market alone does not solve all problems. Similarly, Gilberto Saboia (Brazil) agreed with Eide that these rights are not "new" rights, but also concurred with Ambassador Abram that particularism should not distract from universal recognition of human rights. Linda Chavez (United States) remarked on a study by the Urban Institute on revenue distribution in the United States to demonstrate the tremendous income mobility in her country. Mrs. Chavez agreed with Mr. Eide that a free market economy is not a panacea and noted, "Capitalism should be tempered with charity, especially for those who are unable to care for themselves." *See* U.N. Press Release HR/3153 (20 August 1992) for detailed discussions of Ambassador Abram's statement.

93. U.N. Doc. E/CN.4/Sub.2/1992/19 (1992). Mary Concepcion Bautista was unable to attend the Sub-Commission session. She passed away on 20 September 1992 in Manila.
94. *Id.* at 15–18.
95. *Id.* at 10.
96. Sub-Comm'n Res. 1992/24, *1992 Report, supra* note 1, at 64.
97. U.N. Doc. E/CN.4/Sub.2/1992/20 & Add. 1 (1992).
98. Sub-Comm'n Res. 1992/25, *1992 Report, supra* note 1, at 67.
99. U.N. Doc. E/CN.4/Sub.2/1992/20/Add. 1 (1992).

E. Human Rights and Youth

The Sub-Commission received a final report by Dumitru Mazilu (Romania) on human rights and youth.[100] The report concluded that millions of young people are exposed to great harm caused by the lack of resources needed for normal physical and intellectual development, and that positive changes in recent years have "rekindled the torch of freedom and dignity."[101] Mr. Mazilu recommended that effective national and international measures need to put an immediate end to flagrant violations of human rights of youth.[102] Mr. Mazilu's report, however, faced criticism from some members who believed that the report failed to provide an in-depth analysis on numerous important issues.[103] Mr. Mazilu had faced ill-treatment at the hands of Romanian authorities in prior years, including an extended detention, which may have accounted in part for the quality of his study.[104] The Sub-Commission took the unusual step of neither thanking him nor commenting on his final report by means of a formal adopted resolution.

F. Investment in South Africa

The Sub-Commission engaged in a substantial discussion on South Africa[105] and the changing situation in that country after the presentation of the 1992 annual report on South African investment by Ahmed Khalifa (Egypt).[106] Mr. Khalifa reminded the Sub-Commission that despite allegations to the contrary, apartheid is still very much alive in South Africa and that without constant pressure, the process of "de-apartheidization" will cease.[107] Mr. Khalifa expressed disappointment with states that continue to invest in South

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100. U.N. Doc. E/CN.4/Sub.2/1992/36 (1992).
101. *Id.* at 42.
102. *Id.* at 43.
103. Tian Jin (China) criticized the report for not focusing on employment and for not mentioning negative external causes, such as economic problems in developing countries. He also stated that the report contained incorrect and misleading information, resting sometimes on political rumors. El-Hadji Guissé (Senegal) said that Mr. Mazilu's report had omitted reference to regions of the world where young people had the most problems and that it had not sufficiently dealt with the problems of youth violence due to unemployment and lack of education. Judith Attah (Nigeria) stated that youth violence and military registration of youth should have been addressed in more detail. Other members also took the floor expressing the lack of in-depth analysis in Mr. Mazilu's report. *See* U.N. Press Release HR/3130 (7 August 1992).
104. *See* Brody, Convery, & Weissbrodt, *supra* note 1, at 280.
105. Under agenda item 5(b), the Sub-Commission has examined "adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the racist and colonialist regime of South Africa."
106. U.N. Doc. E/CN.4/Sub.2/1992/12 & Add.1 (1992).
107. *See* U.N. Press Release HR/3133, at 3 (10 August 1992).

Africa without waiting for an interim democratic government. Although Mr. Khalifa received much praise for his most recent report,[108] he informed the Sub-Commission that he believed the annual updates should cease, since publication of a current list of companies investing in South Africa no longer dissuaded such investment.[109] The Sub-Commission acceded to his request and recommended that a new annual report by Judith Sefi Attah (Nigeria) replace Mr. Khalifa's annual report.[110]

V. PROGRESS REPORTS AND STUDIES

Progress reports were received on seven studies: the right to a fair trial; restitutions for victims of human rights violations; human rights and the environment; discrimination against HIV-infected persons; peaceful solutions to problems of minorities; the independence of the judiciary; universal acceptance of human rights instruments; and treaties between states and indigenous populations.

A. The Right to a Fair Trial

The interim report on the right to a fair trial prepared by Stanislav Chernichenko (Russian Federation) and William Treat (United States) was well-received at the Sub-Commission.[111] The report is the third in a five-part study and focused on the interpretation of fair trial norms by the European Commission and Court of Human Rights, the Inter-American Commission on and Court of Human Rights, as well as on the right to *amparo*, habeas corpus, and similar procedures in various international and domestic fora.[112] In introducing the report, Mr. Treat spoke of the spirit of cooperation which had continued between Mr. Chernichenko and himself throughout their important work. The report also enumerated the sources of fair trial norms, and dealt with the question of nonderogability, aspects of arrest and detention, the right to be released pending trial, the right to counsel, rights of

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108. Sub-Commission members praised Mr. Khalifa on his annual reports. El-Hadji Guissé (Senegal) called Mr. Khalifa's report one of the "high points" of the meeting; Daode Zhan (alternate, China) said that he held Mr. Khalifa "in high esteem" in light of the personal risks taken by him; and Linda Chavez (United States) commented that Mr. Khalifa has "made a difference" for change in South Africa. *See* U.N. Press Release HR/3134, at 2–3 (10 August 1992).
109. U.N. Press Release HR/3133, at 3 (10 August 1992).
110. *See* Sub-Comm'n Res. 1992/6, *1992 Report, supra* note 1, at 29.
111. U.N. Doc. E/CN.4/Sub.2/1992/24 & Adds. 1–3 (1992).
112. *Id.*

appeal, and remedies. The addenda provide summaries of cases in which the right to a fair trial had been violated.

Members and participants engaged in a wide ranging discussion on the right to a fair trial throughout the world. One particularly compelling presentation was made by the representative of Human Rights Advocates on the treatment of African-Americans and other minority groups by the police and the criminal justice system in the United States, with particular reference to the Rodney King case in Los Angeles.[113] Finally, the Sub-Commission, in its resolution 1992/21, welcomed the future reports in 1993 and 1994, which will evaluate national practices and conclude with recommendations for strengthening the right to a fair trial. The resolution also asked Mr. Fisseha Yimer (Ethiopia) to serve as principal commentator to next year's fair trial report, a practice which will become common for all the reports of the Sub-Commission as the reform measures discussed later in this article become more widespread.

B. Restitutions for Victims of Human Rights Violations

The Sub-Commission considered a second report from Theo van Boven (the Netherlands) on the right to restitution, compensation, and rehabilitation for victims of gross violations of human rights and fundamental freedoms.[114] The report included sections on compensation to victims of the Iraqi invasion of Kuwait, reparation in the context of the complaints of employment discrimination in Romania, reparation under the European Convention for the Protection of Human Rights and Fundamental Freedoms, and impunity in relation to reparation for victims.[115] Mr. van Boven stated that in spite of the existence of relevant international standards, the victim is often overlooked;

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113. The statement of Human Rights Advocates (HRA) on 18 August 1992. *See also* U.N. Press Release HR/3150, at 3 (18 August 1992). HRA stated that the response to the verdict in the Los Angeles police brutality case had dramatically brought to the attention of the world the severity of the existing injustice and the frustration and anger of the minority community. On 3 March 1991, four white policemen beat an African-American man 56 times while at least a dozen or more officers watched. The trial was moved to a primarily white judicial district outside Los Angeles, in which, on 29 April 1992, a jury that included no African-Americans took less than one day to acquit three policemen. The jury failed to agree on the fourth officer's guilt. A federal civil rights prosecution is still pending against the officers. The verdict set off riots and a state of emergency was declared in Los Angeles. *See also The Police Verdict: Los Angeles Policemen Acquitted in Taped Beating*, N.Y. Times, 30 April 1992, at A1. Moreover, HRA pointed out that although African-Americans comprise 12 percent of the US population, 40 percent of those incarcerated in the United States are African-American. HRA also referred to South Africa, where 40 percent of inmates on death-row are black.
114. U.N. Doc. E/CN.4/Sub.2/1992/8 (1992).
115. *Id.* at 1.

he asked that more attention and action be directed to obtaining redress and reparation for victims of gross violations of human rights.[116]

Sub-Commission members congratulated Mr. van Boven for his report and made several suggestions. For instance, Christy Mbonu (alternate, Nigeria) suggested that Mr. van Boven include the issue of compensation and reparations to the people of Africa in his next report, and Fatma Ksentini (Algeria) suggested examining moral compensation for victims of slavery and trafficking in human beings. The Sub-Commission adopted a resolution requesting Mr. van Boven to submit his final report in 1993.[117]

C. Human Rights and the Environment

The Sub-Commission received a progress report on human rights and the environment from Fatma Zohra Ksentini (Algeria).[118] Mrs. Ksentini stated that the relationship between the environment and human rights implicated other rights, notably the rights to life, culture, health, peace, and development. She also noted the close relationship between poverty and environmental degradation. The report reviewed developments in the recognition of environmental rights as human rights, such as national and regional provisions, decisions, and comments of governments, regional human rights bodies, and the United Nations.[119] In addition, the report addressed the United Nations Conference on Environment and Development (UNCED) held in Brazil, 3–14 June 1992, and noted relevant principles in the Rio Declaration on Environment and Development.

Several NGOs, including the American Association of Jurists, Human Rights Advocates, Minnesota Advocates for Human Rights, Minority Rights Group, the Natural Heritage Institute, and the Sierra Club Legal Defense Fund welcomed the attention to the issue of human rights and the environment. NGOs also pointed out the increasing human rights abuses associated with environmental problems, such as deforestation, the toxic waste trade, and environmental refugees.[120] NGOs were also critical of the large mul-

116. *Id.* at 9.
117. Sub-Comm'n Res. 1992/32, *1992 Report, supra* note 1, at 78.
118. U.N. Doc. E/CN.4/Sub.2/1992/7 & Add. 1 (1992).
119. *Id.*
120. In a statement on 25 August 1992, Human Rights Advocates (HRA) estimated that by the end of this century, the number of environmental refugees will exceed 100 million worldwide. The most vulnerable areas are in Africa and Asia. "The environmental refugee problem has now reached crisis proportions and is only likely to deepen because these victims are not protected by international law and are ineligible to receive humanitarian assistance under traditional refugee programs." *Summary Record of the 31st Meeting*, at 9, U.N. Doc. E/CN.4/Sub.2/1992/SR.31 (1992).

tinational corporations and international banks that fund ventures harming the environment. Despite a concern among some members that the Sub-Commission should not dwell on subjects such as the environment when so many "mainstream" human rights issues do not receive enough attention, the Sub-Commission asked Mrs. Ksentini to prepare a further progress report in 1993 and a final report in 1994.[121]

D. Discrimination Against HIV-Infected Persons

The Sub-Commission received a progress report from Luis Varela Quiros on discrimination against HIV-infected people or people with AIDS.[122] Mr. Varela highlighted the current situation of AIDS, as well as the impact of the disease.[123] The report recommended that strategies to prevent AIDS-related discrimination combine education with legal protection against discrimination in the enjoyment of human rights.[124] NGOs and intergovernmental organizations also presented reports on the continuing discrimination against HIV-infected individuals or people with AIDS.[125] Mr. Varela Quiros was asked to present his final report on this study in 1993.

E. Minorities

In light of increasing ethnic and religious violence in the world today, including in the former Yugoslavia and the Balkan states of the former Soviet Union, Asbjørn Eide's (Norway) second progress report on the protection of minorities received much attention and praise from members and observ-

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121. Sub-Comm'n Res. 1992/31, *1992 Report, supra* note 1, at 77.
122. U.N. Doc. E/CN.4/Sub.2/1992/10 (1992). Mr. Varela explained that he was unable to present a final report before the Sub-Commission as he did not receive enough responses to his questionnaire to complete the study. *See also* U.N. Press Release HR/3156, at 3 (21 August 1992).
123. Mr. Varela cites the World Health Organization (WHO) in estimating that, as of early 1992, at least 10–12 million adults and children have been infected with HIV. WHO estimates that by the year 2000, there will be 30–40 million people infected with the HIV virus, and that 12–18 million people will develop AIDS. Nearly 90 percent of the projected HIV infections and AIDS cases will occur in developing countries. U.N. Doc. E/CN.4/Sub.2/1992/10, at 2–3 (1992).
124. *Id.* at 34.
125. *See* U.N. Press Release HR/3156, at 4 (21 August 1992). A representative of WHO and the Global Programme on AIDS noted that discrimination against people infected with HIV or who have AIDS might be due to the fact that AIDS is a fatal disease with no treatment, causing the noninfected person to be afraid, and because initially, in developed countries, HIV/AIDS occurred in groups traditionally discriminated against: gay men, prostitutes, and drug users. A representative from the ILO explained its collaboration with WHO on AIDS-related issues. The ILO intended to conduct more information activities on the social consequences of AIDS in the job market, and the cost of AIDS research and care in developing countries.

ers.[126] His report offered new insights into the complex relationship between self-determination of oppressed peoples, territorial integrity of states, and minority rights.[127] Mr. Eide's report also coined the phrase "ethno-nationalism," which is loosely defined as a pride or loyalty to one's own ethnic group to the exclusion of other ethnic groups.[128] This type of nationalism can be either benign or malignant, but its malignant forms can provoke racism, violence, and political instability, as well as the exclusion, segregation, and exploitation of peoples.[129]

Mr. Eide's report presented an analytical framework within which to evaluate and attempt to resolve the problems suffered and/or caused by minority groups, including the unique differences between: (1) settled groups and recent immigrants,[130] (2) groups living compactly together versus groups whose population is dispersed throughout the country,[131] and (3) groups for whom it is difficult to identify the definitional features that differentiate them from the population as a whole (for example, religion, language, ethnic or cultural identity, or national groups).[132] Mr. Eide's report also noted that three categories of "peoples" possess the right to "self-determination": (1) people who live in a colonial territory under European power, (2) people whose territories were annexed after 1945 against their will, and (3) people in consensual federations which have been formed through voluntary accession by member republics, where such republics have had the constitutional right to withdraw from the federation.[133] Beyond these cases, Mr. Eide argued that a unilateral right to "self-determination" is "extremely doubtful."[134]

Many members and NGOs commented on the relevance of Mr. Eide's report, which identified the dangers of carrying out the concept of self-determination, on the one hand, and sovereignty, on the other.[135] While some Western members believed that secession should not be considered as a solution,[136] Awn Shawket Al-Khasawneh (Jordan) assumed a distinctively

126. U.N. Doc. E/CN.4/Sub.2/1992/37 (1992). The report also includes responses from various governments to Mr. Eide's questionnaire in Addendum 1 and replies received from former Yugoslavia in Addendum 2.
127. *Id.*
128. U.N. Doc. E/CN.4/Sub.2/1992/37, at 3–4 (1992).
129. *Id.* at 4.
130. *Id.* at 13.
131. *Id.* at 14.
132. *Id.* at 15.
133. U.N. Doc. E/CN.4/Sub.2/1992/37, at 33–34 (1992).
134. *Id.* at 33.
135. *See* U.N. Press Release HR/3160 (26 August 1992) for additional comments.
136. *Id.* at 2. Claire Palley (United Kingdom) stated that secession should be ruled out as an unfriendly act contrary to international law. Linda Chavez (United States) complimented Mr. Eide on his "model report" and stated that in the United States, there is an increasing number of secessionist separatist groups, representing both the majority and minority, and that it was important to examine whether they have a legitimate claim.

different approach from that of the rest of the Sub-Commission. Mr. Al-Khasawneh stated that although there was no UN definition of "self-determination," the right should apply to all peoples, even if it threatened the territorial integrity of States.[137] He urged the Sub-Commission to find new and creative solutions and not to feel restricted by its prior resolutions. Mr. Al-Khasawneh quoted an Egyptian philosopher that "The wisest men are those who can best interpret their times."[138]

Many NGOs spoke of the human rights abuses against minority groups in many places, including Albania, the Balkan region, Myanmar, Rwanda, Turkey, and the former Yugoslavia.[139] Pax Christi International also drew attention to the "shocking ultimatum" issued by the Georgian authorities to Abkhazia on 25 August 1992 to use military means to crush the Abkhaz people, and appealed to the Sub-Commission to take up the matter urgently.[140] Mr. Eide's report on minorities also caused some concern from NGOs that undue criticism of the efforts of oppressed peoples to achieve self-determination may encourage governments to repress internal insurrections.[141]

The Sub-Commission, in resolution 1992/37, endorsed Mr. Eide's report and requested him to submit his final report in 1993.[142] The resolution also authorized Mr. Eide to continue his visits to countries at the invitation of governments. In 1992, Mr. Eide visited Armenia and Azerbaijan to discuss solutions to the Nagorno-Karabakh conflict, as well as Georgia, Estonia, and Latvia to discuss issues related to minorities and nationalities.[143]

F. Independence of the Judiciary

The Sub-Commission discussed the second report on the independence of the judiciary and the protection of practicing lawyers,[144] prepared by Louis Joinet (France) and proposed that he continue his study of measures to strengthen the safety and independence of judges and lawyers. The report provided detailed information on measures and practices adopted by various countries that are either aimed at strengthening the safeguards of independence or serve to weaken the safeguards.[145] In his conclusions and recommendations, Mr. Joinet stated that there is an obvious cause-and-effect re-

137. *Id.* at 4.
138. *Id.*
139. *See* U.N. Press Release HR/3161 (26 August 1992).
140. *Id.* at 5.
141. Statement of Pax Christi International on 26 August 1992. *See also* U.N. Press Release HR/3161, at 5 (26 August 1992).
142. Sub-Comm'n Res. 1992/37, *1992 Report, supra* note 1, at 88.
143. U.N. Doc. E/CN.4/Sub.2/1992/37, at 5–6 (1992).
144. U.N. Doc. E/CN.4/Sub.2/1992/25 & Add.1 (1992).
145. *Id.*

lationship between the extent of the shortcomings of the judiciary and the degree of human rights violations.[146] The report also recommended safeguards which would strengthen the independence of the judiciary and the legal profession. Interventions by NGOs drew attention to a report released by the Centre for the Independence of Judges and Lawyers entitled "Attacks on Justice," which catalogued 447 cases of jurists who had suffered reprisals for carrying out their professional functions.[147] Several NGOs, including the International Commission of Jurists spoke against escalating violence aimed at judges and lawyers.[148] Moreover, Mr. Joinet also expressed concern in his report for the essentially passive, information-receiving role he must perform. Since governments send him "positive" examples of the protection of judges and lawyers, Mr. Joinet must rely on NGOs to bring "negative" examples to his attention. As a result, he urged greater publicity of the applicable standards and mechanisms.

G. Monitoring Progress on the Ratification of Human Rights Instruments

The Sub-Commission received a note from the Secretary-General on the encouragement of universal acceptance of human rights instruments and included an updated report on the ratification of various treaties through 25 June 1992.[149] Amnesty International noted that no permanent member of the UN Security Council was a party to all five major human right instruments[150] (although France and the Russian Federation had ratified or acceded to all but the Second Optional Protocol), and that only four of the fifty-three current members of the Commission on Human Rights were parties to the five major human rights instruments.[151] Some Sub-Commission members suggested that the United Nations should publish the list of countries

146. U.N. Doc. E/CN.4/Sub.2/1992/25/Add.1, at 2 (1992).
147. *See* U.N. Press Release HR/3150, at 1 (18 August 1992).
148. *Id.* at 3.
149. U.N. Doc. E/CN.4/1992/27 & Corr.1 (1992).
150. The five major human rights instruments identified by Amnesty International were: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the First and Second Optional Protocols to the International Covenant on Civil and Political Rights. Statement of Amnesty International delivered on 4 August 1992.
151. The four members of the Commission on Human Rights who are parties to all of the five human rights instruments are: Australia, Finland, the Netherlands, and Portugal. *See* U.N. Press Release HR/3127, at 4 (4 August 1992).

    Amnesty International is also concerned by the unusually large number of limiting reservations, understandings, and declarations which accompany the ratification of the International Covenant on Civil and Political Rights by the United States, in particular Article 6 of the Covenant which guarantees the fundamental right to life and prohibits the execution of juvenile offenders, from which no derogation is permitted. *See Summary Record of the 3rd Meeting*, at 7, U.N. Doc. E/CN.4/Sub.2/1992/SR.3 (1992).

that have not ratified the many UN conventions, while other members pointed out that the mere ratification of such instruments did not mean that the country would necessarily comply with the conventions.[152] The Sub-Commission adopted a resolution requesting the Chair of the Sub-Commission to appoint, prior to its forty-sixth session, one of its members to report on the difficulties impeding ratification of, or accession to, the international human rights instruments and to assess the effectiveness of advisory services with a view to encouraging universal acceptance of human rights instruments.[153]

H. Treaties and Agreements Between States and Indigenous Populations

The Sub-Commission also considered a study on treaties, agreements, and other constructive arrangements between states and indigenous populations,[154] which ECOSOC entrusted to Miguel Alfonso Martínez (Cuba) in 1989.[155] Mr. Alfonso Martínez's first progress report was submitted this year and considered some of the research and other activities undertaken thus far as well as some relevant anthropological and historical considerations.[156] Once again, Mr. Alfonso Martínez stressed the need for more time, money, and information to complete his study.[157] He also expressed disappointment at receiving only 15 responses to his questionnaire submitted in 1990 to

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152. Ioan Maxim (Romania) insisted that the first step to ensure protection of human rights was to encourage states to ratify the conventions by having the Secretariat publish the names of states that had not yet ratified human rights conventions. Similarly, Fatma Ksentini (Algeria) stated that the encouragement of ratification is the first necessary step before engaging in application of the conventions; and further indicated that human rights treaties are enforced by, for example, periodic presentation of reports by states parties. Linda Chavez (United States) and El-Hadji Guissé (Senegal), however, pointed out that it would be a mistake to take the mere ratification of a convention as evidence of compliance with the spirit of the instrument and that many states which had ratified continued to violate norms. Mr. Guissé suggested that one of the most effective ways of protecting human rights was for states to incorporate universal norms into their domestic legislation. *See* U.N. Press Release HR/3127 (4 August 1992) for complete discussion.
153. Sub-Comm'n Res. 1992/1, *1992 Report, supra* note 1, at 19.
154. U.N. Doc. E/CN.4/Sub.2/1992/CRP.1 (19 August 1992).
155. E.S.C. Res. 1989/77, at 154, U.N. Doc. E/1989/INF/7 (1989).
156. Mr. Alfonso Martínez indicated that the purpose of the present progress report was: a) to inform the working group and the Sub-Commission about the research and other activities that have been undertaken; b) to establish some anthropological and historical premises which appear of importance to the Special Rapporteur; c) to elaborate on some juridical issues that he considers of prime importance; and d) to review and summarize a number of cases that have been considered useful to illustrate the vast diversity of juridical situations existing in the world. *See* U.N. Doc. E/CN.4/Sub.2/1992/CRP.1, at 2 (1992).
157. During the 1991 session of the working group, some indigenous representatives were critical of the delays and lack of progress on the study. Mr. Alfonso Martínez stressed the need for time and money at the 1991 session as well. *See* Reierson & Weissbrodt, *supra*

various governmental, nongovernmental, inter-governmental, and indigenous organizations, and appealed to all parties to cooperate in order to complete his final report by 1995.

VI. ANNUALLY UPDATED REPORTS

The Sub-Commission considered two annually updated reports in its 1992 session: reports on states of emergency and on investment in South Africa.

A. States of Emergency

The fifth annual report on states of emergency[158] took on special significance because of the continuing crisis in the former Yugoslavia. The report, prepared by Leandro Despouy (Argentina), identified eighty countries, nearly half of the entire membership of the United Nations, including nations with a long democratic tradition, which have declared states of emergency since 1 January 1985.[159] Mr. Despouy urged the close examination of and assistance to the countries comprising the former Soviet Union and noted that none of these newly independent states have yet adopted legislation governing rights and obligations during emergencies.[160] Mr. Despouy also noted recent events in Peru where the parliament has been dissolved and the Constitution was partially suspended on 5 April 1992, and appreciated the prompt notification of this development by the Peruvian Permanent Mission in Geneva, as well as the promise by Peru to call elections.[161] The Sub-Commission asked Mr. Despouy to continue updating his report and drafting guidelines for the protection of human rights during states of emergency, in particular the question of nonderogable rights.[162] It was also recommended that the subject of human rights and states of emergency be discussed at the 1993 World Conference on Human Rights.[163]

B. Apartheid and South Africa

The Sub-Commission adopted a resolution which would change the mandate of the special rapporteur on South Africa, in particular terminating the annual

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note 1, at 268. This year, the Sub-Comm'n Dec. 1992/110 regretted that Mr. Alfonso Martínez was not able to submit his report on time to the 10th session of the Working Group on Indigenous Populations.

158. U.N. Doc. E/CN.4/Sub.2/1992/23 (1992).
159. *Id.* at 3. In 1991, sixty-one countries reported states of emergency.
160. *Id.* at 28.
161. *Id.* at 32.
162. Sub-Comm'n Res. 1992/22, *1992 Report, supra* note 1, at 60.
163. *Id.* at 62.

list of companies investing in South Africa. Judith Attah (Nigeria) was selected to continue to monitor the transition to democracy in South Africa.[164]

VII. NEW INITIATIVES AND WORKING PAPERS

The Sub-Commission considered two new initiatives: (1) measures to combat racism and (2) human rights and scientific and technological developments. In addition, the Sub-Commission received working papers on the right to adequate housing, population transfers, impunity for human rights violations, the relationship between human rights and international peace, privatization of prisons, extreme poverty, human rights violations as international crime, and cultural and intellectual property of indigenous peoples.

A. Measures to Combat Racism

The Sub-Commission received a report from the Secretary-General on measures to combat racism and racial discrimination.[165] The report included an overview of current trends as to racism, racial discrimination, intolerance, and xenophobia, including organized racism, employment and housing discrimination, and the situation of indigenous peoples.[166] The report concluded that there was a resurgence of racism and xenophobia throughout the world, particularly in Europe, the United States, and Australia.[167]

In light of the resurgence of manifestations of racial discrimination around the world,[168] twenty-one members of the Sub-Commission co-sponsored a resolution on racism and racial discrimination recommending that the Commission on Human Rights appoint a thematic special rapporteur to address contemporary forms of racism, racial discrimination, and xenophobia.[169] The resolution also recommended that the General Assembly take steps to launch a third decade to combat racism and racial discrimination, to begin in 1993.[170]

B. Science and Technology

In a consensus decision, the Sub-Commission adopted a proposal by Stanislav Chernichenko (Russian Federation) to consider the possibility of elab-

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164. For a complete discussion *see supra* note 73 and accompanying text.
165. U.N. Doc. E/CN.4/Sub.2/1992/11 (1992).
166. *Id.*
167. *Id.* at 41.
168. *See, e.g.*, U.N.Doc. E/CN.4/Sub.2/1992/NGO/1 (1992).
169. Sub-Comm'n Res. 1992/5, *1992 Report, supra* note 1, at 28.
170. *Id.* at 29.

orating new human rights standards relating to scientific developments which can affect the genetic structure of human beings.[171] This issue will be discussed under the agenda item "Human rights and scientific and technological developments."

C. Working Paper on Housing

The Sub-Commission received a working paper on the right to adequate housing from Rajinder Sachar (India).[172] The working paper includes a discussion on the causes of the international housing crisis,[173] the substance and nature of the right to adequate housing,[174] the legal basis of housing rights,[175] and individual and group entitlement to housing.[176] The working paper also stated that housing is a "fundamental right related to a primary human need," and its lack "must be seen as an injustice."[177] Mr. Sachar concludes that there is a need of a long-term study on the right to adequate housing.[178] The Sub-Commission decided to appoint Mr. Sachar as Special Rapporteur to complete the two-year study.[179]

D. Working Paper on Population Transfers

Claire Palley (United Kingdom) presented a working paper on the human rights dimensions of population transfers.[180] Population transfers and their consequences are relevant to nearly all UN bodies, including the Security Council, as shown by its concern with recent events in the former Yugoslavia and the former USSR, and the UNHCR. Numerous NGOs addressed the serious consequences of population transfers.[181] The working paper proposed

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171. Sub-Comm'n Dec. 1992/104, *1992 Report, supra* note 1, at 95.
172. U.N. Doc. E/CN.4/Sub.2/1992/15 (1992).
173. *Id.* at 4–11. The causes stated in the working paper were failures of government and development policies; housing discrimination; environmental health; disasters; withholding of information critical to housing; exploitation in the housing sphere; speculation and the commoditization of housing; forced evictions; armed conflict; criminalization of housing; structural adjustment programs and debt; poverty; and homelessness.
174. *Id.* at 11.
175. *Id.* at 12.
176. *Id.* at 17.
177. *Id.* at 3.
178. *Id.* at 20.
179. Sub-Comm'n Res. 1992/26, *1992 Report, supra* note 1, at 67.
180. U.N. Doc. E/CN.4/Sub.2/1992/WP.1 (19 August 1992).
181. In a written statement, the International Human Rights Law Group noted forced population transfers in over twenty countries. For example, the Law Group discussed the increasing minority of Tibetans in their capital, Lhasa; the deportation of thousands of Balts to other Soviet territories; the additional housing units built by the Israeli government in the West

that a study be initiated to provide guidance to governments and international bodies as to the limits of lawful policies on population transfer, including the implantation of settlers and settlements.[182] The study would provide principles to govern measures for dealing with the consequences of past population transfers, standards of lawfulness, and mechanisms providing deterrence against improper population transfers.[183] The Sub-Commission, by consensus resolution, appointed Awn Shawkat Al-Khasawneh (Jordan) and Ribot Hatano (Japan) as co-rapporteurs to prepare a study on population transfers.[184]

E. Working Paper on Impunity

The Sub-Commission received a working paper on impunity prepared by El-Hadji Guissé (Senegal) and Louis Joinet (France).[185] The paper analyzed the legal mechanisms and the practices that facilitate impunity and thus result in human rights violations. The paper also discussed measures to avoid giving impunity to human rights violators. Moreover, the report proposed that anti-impunity measures be organized into the following four categories: (1) the establishment of specific standards; (2) the pursuit of effective investigations; (3) bringing the perpetrators to court; and (4) measures such as purges, exile, political asylum, and extradition.[186] Mr. Guissé and Mr. Joinet sought approval for a study to explore in greater depth the question of impunity as a violation of the right to justice recognized by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Sub-Commission agreed to appoint Mr. Guissé and Mr. Joinet as co-rapporteurs to prepare a study on impunity.[187]

Bank; Indonesia's massive transmigration program to resettle millions of people from Java to the outer islands; and the expulsion of the Greek Cypriots by the Turkish government in Cyprus. U.N. Doc. E/CN.4/Sub.2/1992/NGO/2, at 2 (1992).

In another NGO written statement, the International Federation for the Protection of Ethnic, Religious, Linguistic and other Minorities added many other examples of population transfer cases: the transfer of Russians into Abkhazia; the removal of aboriginal tribes from their traditional lands by the Australian government; the Serbian population transfer policy against the Albanian population in Kosovo; the mass displacement of Assyrians into Iraq during World War I and their subsequent threat of elimination by the Iraqi government; the transfer of Papuans into Bougainville; the settlement of Bengali people in the lands of the Jumma people in the Chittagong Hill Tracts of Bangladesh, and the depopulation of Kurds in the strategic border areas of Turkey and Iraq. *See generally* U.N. Doc. E/CN.4/Sub.2/1992/NGO/3 (1992).

182. U.N. Doc. E/CN.4/Sub.2/1992/WP.1, at 10 (1992).
183. *Id.* at 11.
184. Sub-Comm'n Res. 1992/28, *1992 Report*, *supra* note 1, at 70.
185. U.N. Doc. E/CN.4/Sub.2/1992/18 (1992).
186. *Id.*
187. Sub-Comm'n Res. 1992/23, *1992 Report*, *supra* note 1, at 63.

F. Other Working Papers

The Sub-Commission also received working papers on human rights and peace, privatization of prisons, extreme poverty, human rights violations as an international crime, and cultural and intellectual property of indigenous peoples.

The Sub-Commission received a working paper from Murlidhar Bhandare (India) on the interrelationship between international peace and human rights, particularly the right to life.[188] The paper stated that a mechanism must be established for securing fundamental rights without impinging on the sovereignty of states. The Sub-Commission requested Mr. Bhandare to submit a supplement to his working paper in 1994.[189]

The Sub-Commission also received a working paper from the Secretary-General on privatization of prisons.[190] The paper noted that although the Secretary-General had sent letters requesting states and intergovernmental and nongovernmental organizations to submit their views on the question of privatization, only four replies were received by the due date.[191] Taking into account the Secretary-General's working paper, as well as a working paper submitted by Miguel Alfonso Martínez (Cuba) in 1991,[192] the Sub-Commission requested Claire Palley (United Kingdom) to prepare a preliminary report for a special study which may be undertaken on privatization of prisons to be submitted to the Sub-Commission in 1993.[193]

The Secretary-General submitted a Note to the Sub-Commission which included a report prepared by the International Movement ATD Fourth World, a nongovernmental organization, on extreme poverty.[194] The report focused on the contributions of this NGO to the understanding of extreme poverty, as well as the contributions of Father Joseph Wresinski, founder of the NGO. The Sub-Commission decided to appoint Leandro Despouy (Argentina) as Special Rapporteur on the question of human rights and extreme poverty and requested him to submit a preliminary report in 1993.[195]

The Sub-Commission received a working paper from Stanislav Chernichenko (Russian Federation) on gross and large-scale human rights violations as international crime.[196] The working paper stated that criminal proceedings should be brought against persons who have used the state as an instrument

188. U.N. Doc. E/CN.4/Sub.2/1992/32 and Corr.1 (1992).
189. Sub-Comm'n Res. 1992/7, *1992 Report, supra* note 1, at 30.
190. U.N. Doc. E/CN.4/Sub.2/1992/21 (1992).
191. *Id.* at 2. The Secretary-General received replies from Cuba, Egypt, Turkey, and the Friends World Committee for Consultation (Quakers).
192. U.N. Doc. E/CN.4/Sub.2/1991/56 (1992).
193. Sub-Comm'n Dec. 1992/107, *1992 Report, supra* note 1, at 96.
194. U.N. Doc. E/CN.4/Sub.2/1992/50 (1992).
195. Sub-Comm'n Res. 1992/27, *1992 Report, supra* note 1, at 69.
196. U.N. Doc. E/CN.4/Sub.2/1992/51 (1992).

for committing an international crime, and that gross and large-scale human rights violations could be categorized as international crime in a declaration adopted by the General Assembly. Mr. Chernichenko suggested that a short draft declaration setting forth general principles could be drafted by the Sub-Commission.[197] The Sub-Commission, in a consensus decision, decided to authorize Mr. Chernichenko to submit a detailed working paper on the subject in 1993.[198]

The Secretary-General submitted a report on the protection of the intellectual property of indigenous peoples.[199] The report concludes that the protection of intellectual property of indigenous peoples is complex and unresearched, and that a greater understanding of the concerns of indigenous peoples on this issue may be needed before specific legal remedies are determined.[200]

VIII. WORKING GROUPS OF THE SUB-COMMISSION

The Sub-Commission has three working groups that meet prior to the start of every session. In 1992, the Working Group on Indigenous Populations met for two weeks immediately preceding the session. The Working Group on Contemporary Forms of Slavery held its seventeenth session from 4 to 13 May 1992. The Working Group on Communications meets in private session for up to two weeks prior to the Sub-Commission. It considers information about gross violations of human rights in specific countries and confidentially refers communications to the Sub-Commission as a whole.[201] The Sub-Commission also has a sessional working group on detention.

A. WORKING GROUP ON INDIGENOUS POPULATIONS

The Working Group on Indigenous Populations met for its tenth annual session during the two weeks preceding the start of the Sub-Commission session.[202] The Working Group's mandates are: (1) to review developments

197. *Id.* at 2.
198. Sub-Comm'n Dec. 1992/109, *1992 Report, supra* note 1, at 97.
199. U.N. Doc. E/CN.4/Sub.2/1992/30 (1992).
200. *Id.* at 7.
201. The confidential, country-specific communications process is discussed *supra*, notes 76–79 and accompanying text.
202. Members of the 1992 working group were Miguel Alfonso Martínez (Cuba), Judith Attah (Nigeria), Erica Irene-Daes (Greece), Ribot Hatano (Japan), and Danilo Türk (Slovenia) who was replaced by Stanislav Chernichenko (Russian Federation) at the session. At its first meeting on 20 July 1992, the Working Group re-elected by acclamation Erica-Irene Daes as Chairperson/Rapporteur for the eighth time. *See* U.N. Doc. E/CN.4/Sub.2/1992/33, at 5 (1992).

pertaining to the human rights of indigenous peoples, and (2) to undertake standard-setting. The session is an open forum; observer governments and NGOs in consultative status at the United Nations attended the session, as well as interested persons and representatives of indigenous peoples. A voluntary fund established in 1985 pays travel and living expenses for many representatives of indigenous peoples and organizations, so they can attend the Working Group. This year, the Voluntary Fund enabled forty-one indigenous peoples from nineteen countries to attend the session.[203] In all, approximately 615 people attended, including 126 representatives of indigenous peoples, nations, and organizations, as well as 250 individual participants. The chairperson of the Working Group, Erica Irene Daes (Greece), described her successful visit to New Zealand, in particular her meeting with the Queen of the Maori people. Mrs. Daes also attended the First World Indigenous Youth Conference held in Quebec, Canada, in July 1992.

A major project of the Working Group for the past several years has been the drafting of a Universal Declaration on the Rights of Indigenous Peoples.[204] The Working Group made significant progress by completing the first reading of the draft declaration and progressing substantially in the second reading. The draft declaration deals with the rights of indigenous peoples to self-determination; to the collective right to exist in peace and security and to be protected against genocide; to maintain and develop their distinct ethnic and cultural characteristics; to revive and practice their cultural identity; to teach their own spiritual and religious traditions; to use their own language; to benefit from all levels of education, including access to education in their own language; to use and access mass media in their own language; to be granted adequate financial and technical assistance through states; to own, control, and use the lands and territories they have traditionally occupied; to be granted restitution or just and fair compensation for lands confiscated or occupied without their consent; to enjoy protection and rehabilitation of the environment; to enjoy protection of their intellectual property; to maintain and develop their traditional economic structures within their territories; to receive humanitarian assistance from states; to implement all health, housing, and other social programs affecting them; to participate fully at the state level in national and international matters; to enjoy autonomy in their internal affairs; to determine the responsibilities of individuals to their own communities consistent with human rights norms; to maintain and develop contacts with other indigenous communities; to have treaties and other agreements respected; and to utilize mutually acceptable dispute resolution procedures. Mrs. Daes stated that the Working

203. U.N. Doc. E/CN.4/Sub.2/1992/33, at 35 (1992).
204. U.N. Doc. E/CN.4/Sub.2/1992/28 (1992).

Group had a moral obligation to finalize the draft declaration for the International Year for the World's Indigenous People in 1993.

During the discussion on the Declaration, certain issues were regarded as particularly important. Many observer governments put forward strong reservations to the inclusion of references to "self-determination."[205] In particular, Canada stated that it would favor "self-determination" only within the framework of existing nation-states.[206] Similarly, the representative from the United States stated that the scope of the right to "self-determination" needs to be carefully defined since it might be construed as a right to full independence as a separate group, and that his government would not be able to accept this interpretation.[207] Representatives from some Scandinavian countries stressed that great caution was needed and urged that the term "self-determination" be qualified carefully.[208] In general, observer governments suggested that "self-determination" should include a wide range of autonomous decision-making, short of full independence as a separate state. Representatives of indigenous peoples, however, maintained that the right to self-determination was an inherent and inalienable right of all nations and peoples.[209] The Chair of the Working Group expressed her view that the principle of self-determination was used in the draft Declaration in its internal character, that is, short of encouraging the formation of independent states.[210] Another controversial issue included the reservations expressed by observer governments to the term "peoples."[211] The representative of the United States stated that a definition of "indigenous peoples" is desirable and that if the term remained in the declaration, it should be defined in a manner equivalent to that contained in Article 1 of the International Labor Organization's Convention No. 169, which makes clear that "peoples" does

205. The term "self-determination" is included in operative paragraph 1 of the draft declaration. A similar concept of "autonomy" appears in draft operative paragraph 25.
206. Oral statement of the representative of Canada on 21 July 1992.
207. Statement of the representative of the United States on 21 July 1992.
208. The representative of Norway, speaking on behalf of Denmark, Finland, and Sweden, stressed that great caution was necessary in relation to the term "self-determination." *See* U.N. Doc. E/CN.4/Sub.2/1992/33, at 17 (1992).
209. Statement of Mr. Lazaro Pary of Movement Tupay Katari (Bolivia) on 22 July 1992. A representative from Amazonia stated that self-determination had no meaning if indigenous people are not able to control their lands. There was a general discussion about whether the draft declaration should include a "shopping list" of rights or whether it should take a more general approach. For example, in a statement on 22 July 1992, Mick Dodson of the Northern Land Council thought that there should be both a general statement and a "shopping list"; he proposed that "Indigenous Peoples have the right to self-government. Accordingly, indigenous peoples shall have control over, among other things . . . (the shopping list to include right to self-government, environment, tax, employment, criminal justice system, and so on)."
210. U.N. Doc. E/CN.4/Sub.2/1992/33, at 17 (1992).
211. *Id.* at 19.

not imply the right of self-determination.[212] Other disputed issues included the proper scope of "lands," "territories," "compensation," and "autonomy."

The Working Group also considered a study on treaties, agreements, and other constructive arrangements between states and indigenous peoples.[213] The Working Group also had before it a report from the UN Technical Conference on Practical Experience in the Realization of Sustainable and Environmentally Sound Self-Development of Indigenous Peoples, held in May 1992 in Santiago, Chile.[214] In addition, the study of the ownership and control of the cultural and intellectual property of indigenous people will be prepared by Mrs. Daes and submitted to the Sub-Commission at its 1993 session.[215]

The year 1993 has been designated by General Assembly Resolution 46/128 as the "International Year for the World's Indigenous Peoples." The Working Group stressed the importance of meaningful participation in the activities of the International Year, which has as its theme "Indigenous Peoples - A New Partnership."[216] The Working Group called for generous contributions to the voluntary fund established to support UN activities during the International Year.

In a statement on 31 July 1992, the representative of Australia, Robert Tickner, critically analyzed the future role of the Working Group.[217] The Australian government recognized that the existence of a forum for indigenous peoples is a "continuing reminder to the international community of the collective, social, economic, cultural and political concerns of indigenous peoples."[218] The government proposed that the working group: enhance its review of developments; broaden its approach to standard-setting to include analytical commentary and ongoing suggestions; review other international standard-setting activity; continue to prepare appropriate and well-targeted studies; and promote human rights by making recommendations of technical assistance from other UN human rights programs to national institutions and organizations.[219] In addition, the Australian government rec-

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212. *See id.* and oral statement of US representative on 21 July 1992. *See also* Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, 27 June 1989, *reprinted in* 15 Okla. City U. L. Rev. 237 (1990).
213. *See supra* notes 154–157 and accompanying text.
214. U.N. Doc. E/CN.4/Sub.2/1992/31 & Add.1 (1992).
215. Sub-Comm'n Res. 1992/35, *1992 Report, supra* note 1, at 85.
216. U.N. Doc. E/CN.4/1992/33, at 41 (1992). A working paper by Asbjørn Eide (Norway) and Christy Mbonu (alternate, Nigeria) in 1991 outlined suggestions for activities during the International Year. *See* U.N. Doc. E/CN.4/Sub.2/1991/39 (1991).
217. Statement by Robert Tickner, Minister for Aboriginal and Torres Strait Islander Affairs, Australia, at the 10th session of the Working Group on Indigenous Populations, at Geneva on 31 July 1992.
218. *Id.*
219. *Id.*

ommended that, once the Declaration of the Rights of Indigenous Peoples is adopted, the Working Group should encourage governments to report on their effort to give effect to its provisions. Finally, the Australian government stated that the Draft Declaration should be provisionally adopted by the Working Group in 1993 as a major contribution to the International Year, after which it should be submitted to the 1994 session of the Commission on Human Rights.

B. Working Group on Contemporary Forms of Slavery

The Working Group on Contemporary Forms of Slavery held its seventeenth session 4–13 May 1992.[220] Unlike its last few sessions, this year there was no central theme for its deliberations, instead choosing to devote its session to an overall evaluation of its activities. Participants discussed a broad range of issues, including the prevention of the sale of children, child prostitution, and child pornography; the exploitation of child labor and eradication of debt bondage, slavery, and the slave trade; the elimination of the slavery-like practices of *apartheid* and colonialism; child soldiers; and investigation of the continuing reports of commercial practices of removing organs from children for black-market transplant purposes. The Working Group also decided to begin to draft at its next session principles to combat sex tourism, as well as to examine new topics such as sexual harassment and institutionalized sexual violence.[221]

Two topics were stressed during the Sub-Commission's general debate under this agenda item. Widespread concern was expressed over the reports of the abduction of over 200,000 Korean women ("comfort women") by the Japanese Imperial forces during World War II to be used as sex slaves, as well as the abduction of 1.5 million men to work in hard labor.[222] NGO observers sought restitution, compensation, and rehabilitation for these vic-

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220. U.N. Doc. E/CN.4/Sub.2/1992/34 (1992). The composition of the 1992 Working Group was as follows: Shawket Al-Khasawneh (Jordan), Marianela Ferriol Echevarria (alternate, Cuba), Fatma Zohra Ksentini (Algeria), Ioan Maxim (Romania), and Claire Palley (United Kingdom).
221. Sub-Comm'n Res. 1992/3, *1992 Report, supra* note 1, at 26.
222. *See* U.N. Press Release HR/3131, at 3–5 (7 August 1992). NGOs dominated the discussion during this session on the issue of "Comfort Women." The Commission of the Churches on International Affairs made a statement on Korean comfort women who had been used as sex slaves for the Japanese Army during 1932–1945, together with women from other Asian countries. In addition to the sexual enslavement, an uncountable number of comfort women were killed, or simply abandoned by the Japanese Army. A representative of the Democratic People's Republic of Korea also brought attention to the plight of Korean women who had been abducted during World War II "to serve as sexual slaves and on whom the Japanese government had been unable to provide information despite repeated appeals." *Id.*

tims. Although the Japanese government has officially recognized its involvement in this affair,[223] the government claimed that by virtue of a 1965 Agreement between Japan and the Republic of Korea, the latter had abandoned all claims, including those of individual Koreans. Accordingly, no individual Korean had any legal right to claim compensation from Japan.[224] NGOs also addressed the 15 to 21 million inmates reportedly held in labor reform camps in China and the importance of the Sub-Commission's continued review of this situation.[225]

The Working Group reviewed the Secretary-General's updated report on the recruitment of children into governmental and nongovernmental armed forces.[226] In compliance with Sub-Commission resolution 1991/34, governments, UN bodies, specialized agencies, intergovernmental agencies, and nongovernmental organizations were requested to provide information on the recruitment of children into the armed forces, and the Working Group had received 22 replies as of its 1992 session. According to one NGO, there are tens of thousands of children under 18 years of age fighting alongside adult soldiers.[227] While most of these situations occur in developing countries, several European and North American countries also engage in similar practices.[228]

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223. On 6 July 1992, the Japanese government officially acknowledged that its military had recruited and organized tens of thousands of women in a vast network of government-run brothels for Japanese soldiers during World War II, after repeated denials by Prime Minister Kiichi Miyazawa and his officials that these brothels existed. "Japanese officials said they were searching for a way to provide financial aid for the Korean women, but they declined to use the term compensation. But details were vague, and it was unclear what the Government would do about women in the Philippines, Indonesia, China and other nations who were also forced into brothels." *Japan Admits It Ran Army Brothels During War*, N.Y. Times, July 7, 1992, at A1. In a right of reply statement, the representative of Japan, Tetsuo Ito, expressed the government's sincere apology and remorse to all those who had undergone pain and suffering. Mr. Ito said that as a result of a study conducted by his government since December 1991, it had been confirmed that there had been some government involvement "in some areas." *See* U.N. Press Release HR/3133, at 6 (10 August 1992).
224. *Summary Record of the 7th Meeting*, at 7, U.N. Doc. E/CN.4/Sub.2/1992/SR.7 (1992).
225. A Chinese student who was present near Tiananmen Square in Beijing on the evening of 4 June 1989, spoke compellingly about those in detention in China. He cited a book by Harry Wu entitled "Lao Gai - The Chinese Gulag" (published by Westview Press, 1992) which set the total number of inmates at "labor reform camps" in China between 15 to 21 million. There were apparently three categories of persons in these camps: convicted criminals sentenced by courts, persons subject to re-education through administrative processes, and forced job placement. *See* U.N. Press Release HR/3131, at 4 (7 August 1992). *See also Summary Record of the 7th Meeting*, at 7, U.N. Doc. E/CN.4/Sub.2/1992/SR.7 (1992).
226. U.N. Doc. E/CN.4/Sub.2/1992/35 & Add.1 (1992).
227. Statement of the Friends World Committee for Consultation (Quakers), U.N. Doc. E/CN.4/Sub.2/1992/35, at 8 (1992).
228. *Id.* Several governments in Europe and North America subsidize military training for persons under the age of 18 years and allow boys, and sometimes girls, of 16 and 17 years to enlist voluntarily in the armed forces. The United Kingdom continues to recruit

The Sub-Commission adopted two resolutions on contemporary forms of slavery. The first resolution welcomed the parent body's decision to extend the mandate of the Special Rapporteur on the sale of children (Vitit Muntarbhorn) to three years, and suggested that he be asked to pay special attention to the problems of: trafficking in children; organ transplantation; use of child labor; disappearances, purchase, and sale of children; adoptions for commercial and exploitative purposes; child prostitution; and children in armed conflicts.[229] The resolution also asked the Commission to consider appointing a new special rapporteur to permit the Sub-Commission to update its 1981 study on the exploitation of child labor, and in particular to extend the study to the problem of debt bondage.[230] The second resolution sought legal clarification of the validity and effect of treaty reservations, in light of the fact that over twenty of the 107 states parties to the Convention on the Elimination of All Forms of Discrimination Against Women have asserted more than eighty reservations.[231] The Sub-Commission requested the Secretary-General to seek the views of the Committee on the Elimination of Discrimination against Women (CEDAW) and the Commission on the Status of Women concerning the desirability of obtaining an advisory opinion from the International Court of Justice on extensive treaty reservations. Overall, the Sub-Commission praised the report of the Working Group and commended Interpol's offer to assist the Working Group by monitoring relevant violations.

C. Working Group on Detention

The Working Group on Detention convened on 5–6 August 1992.[232] The report of the Working Group included an annual review of developments concerning human rights of persons subjected to detention or imprisonment, habeas corpus, the death penalty, juvenile justice, and privatization of prisons. The Working Group also considered a working paper on habeas corpus and *amparo* in the United States and discussed the death penalty, particularly as imposed on persons less than eighteen years of age. In 1991, Amnesty International informed the working group that it would no longer provide information for the Secretary-General's annual reports on detention because

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persons under 18 years in the armed forces. While the United Kingdom refrains from sending children on active duty to Northern Ireland, it did send young recruits to participate in the Falklands/Malvinas conflict and in the recent Persian Gulf War, where soldiers under 18 were killed. *Id.*

229. Sub-Comm'n Res. 1992/2, *1992 Report, supra* note 1, at 20.
230. *Id.* at 22.
231. Sub-Comm'n Res. 1992/3, *1992 Report, supra* note 1, at 26.
232. *See* Report of the Working Group on Detention, U.N. Doc. E/CN.4/Sub.2/1992/22 (1992).

the report omits the names of specific countries.[233] As a result of Amnesty International's action, the annual report on detention was quite short and uninformative. The issue of whether the annual report on detention should be revised or discontinued has not yet been resolved.

IX. REFORM OF THE SUB-COMMISSION'S WORK

Once again the Sub-Commission, during its forty-fourth session, engaged in intense discussions on how to reform its methods of work. The self-examination was prompted in large part by increased criticism from some members of the Commission on Human Rights.[234] One indicator of the importance of the reform issue was the comment made by Morris Abram, the US ambassador to the United Nations in Geneva, during the 1991 Sub-Commission session.[235] An independent newsletter[236] distributed at the United Nations reported that Ambassador Abram had suggested in a recent law review article and during a 17 July 1991 press conference that the Sub-Commission be abolished.[237] Later, however, the next issue of the newsletter briefly noted that Ambassador Abram was not actually proposing the complete abolition of the Sub-Commission.[238] Another example of concern regarding the work of the Sub-Commission is illustrated by the statement of Ronald Walker (Australia), who spoke to the Sub-Commission in his capacity as the 1992 Vice-Chair of the Commission on Human Rights.[239] In a statement on 18 August 1992, Mr. Walker remarked that the Commission was concerned over the duplication of work between the two bodies and that more coordination was needed. He noted that the Commission, through its resolutions and debates, had offered several suggestions to streamline the work of the Sub-Commission, and had reiterated the importance of preserving the impartiality and independence of its members. He also stressed the importance of completing authorized studies before embarking on new ones, as well as

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233. Reierson & Weissbrodt, *supra* note 1, at 260 (1991).
234. *See id.* at 270. A common criticism was that the Sub-Commission duplicated the work of the Commission and spent too much time discussing human rights violations in specific countries. *See also* Penny Parker & David Weissbrodt, *Major Developments at the UN Commission on Human Rights in 1991*, 13 Hum. Rts. Q. 573, 607 (1991).
235. Reierson & Weissbrodt, *supra* note 1, at 271.
236. *Sub-Commission Must Go, Says US Ambassador*, 1 On The Record 1 (23 July 1991).
237. In the article, Ambassador Abram charged that the Sub-Commission "spends most of its time examining country-specific human rights situations and generating studies and resolutions of marginal utility . . . many of them reaching far beyond its mandate." Morris Abram, *Human Rights and the United Nations: Past as Prologue*, 4 Harv. Hum. Rts. J. 70, 80 (1991). *See also* Reierson & Weissbrodt, *supra* note 1, at 272.
238. Palais Pulse, 2 On The Record 12 (26 July 1991).
239. U.N. Press Release HR/3149, at 2–3 (18 August 1992).

reducing the number of Sub-Commission decisions and resolutions.[240]

In light of these past and present criticisms, the Sub-Commission redoubled its efforts in 1992 to reform its methods of work. Louis Joinet (France) introduced the report of the inter-sessional working group which was specially formed to study this problem and had met before the Sub-Commission convened in 1992.[241] The working group recommended improving coordination with other UN organs, including the Commission on Human Rights; restructuring the agenda to improve its working methods; the elaboration of a procedure to monitor the implementation of recommendations in the Sub-Commission's reports and studies; and strengthening the independence of the experts of the Sub-Commission.[242]

Immediately after Mr. Joinet's presentation early in the Sub-Commission's 1992 session, the Sub-Commission plunged into a debate regarding whether a sessional working group should be established to discuss further the methods of work, or whether to consider the subject only in plenary.[243] After a discussion on procedure which appeared to result in much confusion among Sub-Commission members, the Sub-Commission decided to establish a sessional working group, but it postponed its plenary discussion until the last week of the session. Then, in a late-night session during the last week of the Sub-Commission, Claire Palley (United Kingdom) proposed and the Sub-Commission agreed to resume its discussion on reform in closed session (under Rule 39).[244] Therefore, the discussions and negotiations leading to the final draft resolution on reform were largely confidential and members did not comment publicly on the proposed draft resolution during the brief general discussion which was reconvened in plenary. As a result, there was little opportunity for NGO participation or public scrutiny in the Sub-Commission's discussion of the reform of its methods of work.

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240. *Id.* Mr. Walker further stated that there was no need for the "proliferation of studies" from the Sub-Commission in fields in which the Commission was active and that the Sub-Commission should focus on specific human rights issues. In regards to its methods of work, Mr. Walker stated that the Commission supported the work of the inter-sessional Working Group on Methods of Work (discussed *infra* notes 241–242 and accompanying text) and looked forward to their proposals.

241. U.N. Doc. E/CN.4/Sub.2/1992/3 (1992). The inter-sessional working group consisted of Stanislav Chernichenko (Russian Federation), Leandro Despouy (Argentina), Ribot Hatano (Japan), Louis Joinet (France), and Fisseha Yimer (Ethiopia). Mr. Joinet was the Chair of the Working Group and Mr. Yimer was the Rapporteur. The Working Group held a session of nine meetings at Geneva from 11–15 May 1992. *Id.* at 3.

242. *Id.*

243. *See Summary Record of the 2nd and 3rd Meetings*, U.N. Docs. E/CN.4/Sub.2/1992/SR.2 & SR.3 (1992), for a complete discussion. For example, the Chair of the Sub-Commission, Mr. Alfonso Martínez (Cuba), having stepped down from his chair to voice his views on the issue, said that Commission Resolution 1992/66 "contained nothing that prevented the Sub-Commission from creating an open-ended working group to consider the report of the inter-sessional Working Group and to make its findings known to the plenary." SR.3 at 2–3.

244. Statement of Claire Palley on 25 August 1992.

The inter-sessional Working Group on the Methods of Work had prepared a draft resolution, which it invited the Sub-Commission to adopt.[245] The resolution proposed new rules for the preparation of studies, the submission and adoption of resolutions and decisions, the scheduling of meetings, the allocation of speaking time, and certain transitional arrangements.[246] Stanislav Chernichenko (Russian Federation) submitted an addendum to the above report which proposed that the Sub-Commission refrain from discussing specific country situations, except for illustrative purposes, and that no resolutions be adopted on specific countries if already being considered under the 1503 confidential procedure, or if such countries are already being studied by a special rapporteur of the Commission on Human Rights.[247]

In its closed session, the Sub-Commission reviewed the reform resolution, and then, in a public session, it adopted the resolution, to take effect at the forty-fifth session in 1993.[248] The resolution implements several significant changes in the Sub-Commission's current procedures. Principal reforms include limiting the number of studies to thirteen; requiring that a "preparatory document" be submitted before any new study is undertaken; requiring that the preparatory document include a discussion of the relevance and timeliness of the study; limiting the period of time to complete a study to three years, absent special circumstances; limiting most studies to one principal author; directing the appointment of commentators to analyze each study; coordinating resolutions and decisions by monitoring their numbers with historical patterns, and by substituting resolutions where appropriate with declarations from the Chair; urging the withdrawal of any draft resolution or decision which does not have at least four co-sponsor signatures; asking the Secretariat to inform the Sub-Commission on any actions taken on studies and recommendations from the prior year; allocating speaking time among Sub-Commission members, governments, and NGOs; beginning all meetings on time unless postponement is requested due to a lack of a quorum; and affording the Chair more flexibility in opening or holding open agenda items. It should be noted that a portion of the Working Group report which defined more particularly the role of alternate members of the Sub-

245. Sub-Comm'n Res. 1992/8, *1992 Report, supra* note 1, at 31.
246. *Id.*
247. U.N. Doc. E/CN.4/Sub.2/1992/3/Add.1 (1992). For example, in 1992, this proposal might have meant that the resolutions on Guatemala, Haiti, Iran, Iraq, and South Africa would not have been permitted.
248. Sub-Comm'n Res. 1992/8, *1992 Report, supra* note 1, at 37. It is unclear whether the Sub-Commission adopted the Guidelines on its method of work, or whether it adopted the resolution only. Sub-Commission Resolution 1992/8, in paragraph two, states:

> 2. *Also Decides* to annex to the present resolution the document entitled "Guidelines which the Sub-Commission adopted at its forty-fourth session concerning its methods of work, pursuant to paragraphs 6 and 7 of the Commission on Human Rights resolution 1992."

See Sub-Comm'n Res. 1992/8, *1992 Report, supra* note 1, at 31.

Commission[249] was not included in the final resolution, therefore, the role and participation of alternate members has been left unclear at the Sub-Commission.[250] The resolution was also amended to reflect a commitment to discuss dropped items next year, such as Mr. Chernichenko's proposals.

In summary, there was general agreement among members and participants that the Sub-Commission was in need of significant reform, that the Sub-Commission's resolution had achieved considerable progress, and that the structural problems should be addressed. Some of the experts were particularly concerned that studies be more evenly distributed among experts, that the work of the Sub-Commission had grown so large that its members could no longer read and evaluate all the material disseminated during the session or to deliberate with one another regarding the material, and that NGO interventions were becoming increasingly time-consuming and disruptive to effective Sub-Commission deliberations.[251] In the end, however, the Sub-Commission members praised Chairman Miguel Alfonso Martínez (Cuba) on his effective management of this year's session, which had fewer extended sessions than prior years and no speakers who exceeded the applicable time limits. It remains to be seen how the implementation of the new reforms will improve the work of the Sub-Commission in the future.

In the midst of this debate, the Sub-Commission also discussed diplomatic immunity for its members, following an unpleasant incident experienced by Fatma Zohra Ksentini (Algeria).[252] Mrs. Ksentini was stopped at the France-Switzerland border by Swiss authorities while on her way to the Sub-Commission, even though she informed the border police that she had valid papers and displayed her UN identification badge. Other experts also mentioned that they had experienced similar difficulties with the Swiss authorities.[253] After a heated discussion on discrimination against foreigners

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249. *Appointment of Rapporteurs and Role of Alternates*, U.N. Doc. E/CN.4/Sub.2/1992/3, at 9 (1992).

250. Although the role of alternates is unclear, it should be noted that alternates perform varying roles at the Sub-Commission. This year, all members were assigned alternates, except for Rajinder Sachar (India) and Fisseha Yimer (Ethiopia). Several alternates were also selected to serve on Working Groups in 1993.

251. In an oral statement on 26 August 1992, Marc Bossuyt (Belgium) stated that the work of the Sub-Commission had taken on such scope that members had no time to speak to each other and read the material. He also stated that NGOs have taken the floor to denounce the same government repeatedly and that this practice should stop. Other experts renewed their objections to the frequency and number of NGO interventions, especially where such interventions do not substantively comment upon the materials before the Sub-Commission or are repetitive of one another.

252. U.N. Doc. Press Release HR/3140, at 1a & Corr.1 (13 August 1992).

253. Ioan Maxim (Romania) recalled that he had to wait hours to get into Switzerland, and was only allowed to enter after he showed the border police a list of Sub-Commission members with his name on it. Judith Attah (Nigeria) also recalled numerous problems when crossing the border from France into Switzerland, even with a diplomatic passport. Rajinder Sachar (India) commented that if it were not for the UN and the international

from the developing world and the importance of diplomatic immunity for Sub-Commission members, the Secretariat was instructed to issue each member the same type of official UN certificate that had recently been issued to members of other UN organs. After members made threats not to leave the Sub-Commission without credentials, the UN Secretariat distributed diplomatic credentials to all Sub-Commission members on the last day of the session. Moreover, Mrs. Ksentini reported that she received a satisfactory letter of apology from the Swiss authorities.

X. FINAL OBSERVATIONS AND CONCLUSION

For the first time at the Sub-Commission, a homosexual speaker addressed the Sub-Commission on lesbian and gay rights, amidst some open hostility to his remarks.[254] He pointed out that an organization of lesbians and gays has sought consultative status with ECOSOC. The speaker suggested the appointment of a special rapporteur to study discrimination against lesbian and gay people; he asked the Sub-Commission to encourage ECOSOC to regard favorably the applications of lesbian and gay organizations for consultative status.[255]

The Sub-Commission also adopted resolutions on arms production and trade in relation to human rights[256] and discrimination against women.[257]

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community, Switzerland would resemble a minuscule part of India and that Geneva had no monopoly on international conferences. Halima Warzazi stated, however, that the UN should issue documents to all members and that the Sub-Commission should "go on a public strike" the next time such an incident occurred. U.N. Press Release HR/3140, at 1a–2 (13 August 1992).

254. The speaker, Professor Douglas Sanders, represented both the Human Rights Advocates and the International Lesbian and Gay Association in a statement on 7 August 1992 during the discussion on the item of "Promotion, Protection, and Restoration of Human Rights at National, Regional, and International Levels". *See* U.N. Press Release HR/3130, at 5 (7 August 1992), and *Summary Record of the 6th Meeting*, at 10, U.N. Doc. E/CN.4/Sub.2/1992/SR.6 (1992).

255. U.N. Press Release HR/3130, at 5 (7 August 1992). In his statement, the speaker also gave some of the following examples of positive developments at the national and regional levels: the renewed commitment of Canada in June 1992 to introduce national legislation prohibiting gay and lesbian discrimination; Denmark's 1989 Registered Partnership Law; Australia's 1991 immigration law recognizing all relationships of "emotional interdependency"; and the adoption of Resolution 756 in 1981 by the Council of Europe condemning discrimination against homosexuals. Nonetheless, lesbian and gay people continue to face discrimination in laws dealing with inheritance, social and medical insurance, housing, immigration, and, in certain cases, even extrajudicial killing. Statement of Human Rights Advocates and the International Lesbian and Gay Association, 7 August 1992.

256. Sub-Comm'n Res. 1992/39, *1992 Report, supra* note 1, at 91. During the discussion prior to its adoption, certain members voiced the opinion that this resolution went beyond the field of human rights, and that it is utopian to think that there will be disarmament.

257. Sub-Comm'n Res. 1992/4, *1992 Report, supra* note 1, at 27.

Due to the recurring problems of voluntary and involuntary migration and displaced persons, the Sub-Commission also decided to consider freedom of movement, including refugees, during its next session.

Once again, the Sub-Commission was faced with an overcrowded agenda with little time to give serious consideration to the multitude of studies and reports presented. There was a general view among the Sub-Commission members that the interventions by NGOs, as well replies by observer governments, were partially to blame for the lack of time. The Sub-Commission, however, adopted significant reforms of its methods of work and agreed to consider further improvements at its next session.

While the Sub-Commission continued its important work and adopted path-breaking resolutions on human rights violations in Bosnia-Herzegovina (the former Yugoslavia), East Timor, Bougainville (Papua New Guinea), Haiti, and Peru, it remains to be seen whether the guidelines on its methods of work will resolve the problems challenging its existence. Nonetheless, in spite of all the adversities, the Sub-Commission remains an accessible United Nations forum to voice human rights violations all over the world.