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The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities convened its 49th Session from August 4 through August 29, 1997, in Geneva, Switzerland.1 Under the authority of the U.N. Charter, the Economic and Social Council (ECOSOC) established the Sub-Commission in 1947 as a subsidiary body of the Commission on Human Rights.2 ECOSOC also created two other sub-commissions at the same time, one to focus on women's rights3 and the other to deal with freedom of information and freedom of the press.4 The original mandate of the Sub-Commission was to recommend standards in pursuit of the prevention of discrimination...
and protection of minorities. To this end, the Sub-Commission helped to draft the early human rights instruments and undertook major comparative human rights studies. The original mandate also recognized that the Sub-Commission should "perform any other functions which may be entrusted to it by the Economic and Social Council or the Commission on Human Rights." Pursuant to this provision, the Sub-Commission has gradually assumed broader responsibility to undertake a wider range of studies, monitor developments in the field, particularly through its working groups, and pursue other tasks "far beyond its original terms of reference." In particular, the Sub-Commission's functions have expanded substantially—and not always without criticism—to include action on gross violations of human rights.

The Sub-Commission has played an important role in drafting various human rights standards, including notably the Declaration and Convention on the Elimination of All Forms of Racial Discrimination, the UNESCO Convention Against Discrimination in Education, and the ILO Convention and Recommendation on Discrimination in Employment. The Sub-Commission has also been successful in laying the foundation for non-binding standards dealing with religious discrimination, administration of justice, human rights of non-citizens, and human rights in states of emergency. Partially due to the efforts of the Sub-Commission, international human rights has become the most thoroughly codified area of international law.

In response to the proliferation of treaties and other human rights instruments, the Sub-Commission has begun to de-emphasize its standard-setting function and has devoted greater attention to problem-
solving and to the promotion and implementation of human rights.\textsuperscript{16} Today, the Sub-Commission frequently drafts resolutions that are presented to and often adopted by the Commission on Human Rights.\textsuperscript{17} Members of the Sub-Commission also prepare working papers and studies, on human rights problems.\textsuperscript{18} Through these papers and studies, as well as through the activities of its working groups, the Sub-Commission has come to serve as a “think-tank” for the international human rights community.

The Sub-Commission is composed of twenty-six individuals who are elected by its parent body, the U.N. Commission on Human Rights: seven from Africa, five from Latin America, five from Asia, three from Eastern Europe, and six from the “Western Europe and Other” region, which includes the United States.\textsuperscript{19} Members are nominated by, but do not represent, their governments. They are predominantly diplomats, retired diplomats, scholars, and judges. Some, but not all, of the Sub-Commission members have experience in the protection of human rights in their own countries.\textsuperscript{20}

The Commission has repeatedly stressed the importance of Sub-Commission members’ independence from the influence of their home states.\textsuperscript{21} While it is difficult for members to be completely independent because they do not have the same protections enjoyed by many judges, such as freedom from ex parte communications, lengthy terms of office,\textsuperscript{22} and adequate salaries,\textsuperscript{23} members are not supposed to, and generally do not, consult the governments of their states of origin regarding the positions they take in the Sub-Commission. Indeed, from the perspective of their governments, members of the Sub-Commission exhibit considerable independence.

The Sub-Commission has led a rocky and sometimes controversial existence. During its early years, the Sub-Commission was temporarily

\begin{itemize}
  \item \textsuperscript{16} The Sub-Commission does this, in part, through the use of public pressure on governments to improve their human rights records. In general, states are eager to avoid the international spotlight in human rights matters, as evidenced by the extensive lobbying campaigns governments wage to block adoption of resolutions criticizing or even mentioning their countries. See infra sections I.B and I.D for examples of such lobbying.
  \item \textsuperscript{17} FRANK NEWMAN & DAVID WEISSBRDY, INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS 11 (2d ed. 1996).
  \item \textsuperscript{18} Id.
  \item \textsuperscript{19} See Appendix B.
  \item \textsuperscript{22} Sub-Commission members are elected for brief four-year terms by the Commission.
  \item \textsuperscript{23} Members cannot survive on their Sub-Commission income alone because they receive only travel expenses and per diem stipends for the four weeks of the session.
\end{itemize}
disbanded by an angry Commission for its ambitious and ultimately unsuccessful attempt to define the term "minorities." Then, in 1986, the Sub-Commission was unable to meet on account of the United Nations' financial crisis. Since the early 1990s, the Commission has called for reform in the Sub-Commission, and its concerns have been echoed in the academic community. In 1991, U.S. Ambassador to the United Nations Morris Abram, a member of the Sub-Commission during the early years, called the Sub-Commission a "runaway train" and predicted its abolition if it did not reform. During the 1995 meeting of the Economic and Social Council, the U.S. Government tried unsuccessfully to limit the Sub-Commission's meetings to once every other year, a measure that would have rendered the body ineffective and probably would have led to its demise.

Despite continued criticism and occasional calls for its abolition, the Sub-Commission can and does still play an important and unique function in the international human rights community. This Article discusses this role and the Sub-Commission's efforts at reform in the context of its 49th session, held in August 1997. The 49th session was marked by a major shift in the way the Sub-Commission deals with human rights violations in particular countries. Part I of this Article describes the Sub-Commission's efforts to avoid duplication of the Commission's country work and evaluates its success in this respect. Parts II and III describe the continued significant contributions of the Sub-Commission's working groups and studies. Part IV discusses and evaluates the Sub-Commission's efforts at procedural reform. The Article concludes that despite residual difficulties, the substantive contributions and reform efforts made by the Sub-Commission at its 49th session demonstrate that body's commitment to remaining an important force in the changing field of international human rights.

I. PUBLIC REVIEW OF COUNTRY SITUATIONS

Twenty-five years ago, it was generally considered inappropriate for governments or nongovernmental organizations (NGOs) to mention a specific country in debate, much less to adopt a resolution expressing

24. It was later reinstated at the insistence of the General Assembly. For an elaboration of the problems of the Sub-Commission in its early years, see Eide, supra note 3, at 220.
25. Weissbrodt & Samuel, supra note 1, at 117.
27. Weissbrodt & Samuel, supra note 1, at 116.
concern about human rights violations in a particular country. At that time, only two countries received regular U.N. attention: South Africa and Israel. The Sub-Commission was instrumental in expanding the number of countries about which the U.N. could voice grave concern, encouraging open debate for the purpose of identifying alleged violator countries in public sessions, and adopting resolutions condemning specific violations. Gradually, the Commission began to assume the role of the Sub-Commission in taking action on country situations. As a result, the Sub-Commission has recently turned its attention to redefining its role in country matters.

A. Avoiding Duplication of the Work of the Commission on Human Rights

The discussions at the Sub-Commission's 49th session under agenda item 2, entitled "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)," took place in a changed environment. During the previous five years, the Sub-Commission had been increasingly criticized for needlessly repeating the Commission's actions on country situations. Such duplication was not only inefficient, but also potentially damaging, because the Sub-Commission's often weak resolutions tended to dilute the Commission's stronger message. Despite these criticisms, the majority of the country resolutions adopted by the Sub-Commission as recently as 1996 were still repetitions of actions taken by the Commission and were often weakened by drafting and procedural problems.

On August 29, 1996, the Sub-Commission responded to these criticisms by deciding to take no action at its 49th session with respect to country-specific situations that the Commission on Human Rights was
considering under public procedures for dealing with human rights violations. The Commission commended and sought to reinforce this proposal the following year, asking the Sub-Commission “to refrain henceforth from duplicating action by the Commission on Human Rights with regard to country situations under consideration in the public procedures of the Commission and, furthermore, to limit action to exceptional cases in which new and particularly grave circumstances arise.” It was recognized by both bodies that the shift in the Commission's focus would leave the Sub-Commission with the responsibility of identifying and addressing grave human rights situations that had arisen only recently or that existed in countries that had evaded previous U.N. scrutiny.

The country work of the Sub-Commission during its 49th session strongly reflected this new approach. The Sub-Commission considered draft resolutions on situations in Algeria, Bahrain, Congo, Democratic People's Republic of Korea, India, Pakistan, the Palestinian and other Arab territories occupied by Israel, and Turkey, of which only the Middle East situation had been the subject of Commission action in March-April 1997. Some experts believed that the situation in the Middle East warranted adoption of a resolution despite the presence of other, concurrent U.N. action. The process by which the Sub-Commission's principled commitment to avoid duplication of the

Commission's work prevailed over this pressure, however, illustrates the sincerity of the body's dedication to reform.

During its 1997 session, the Commission on Human Rights adopted four resolutions under the public procedure referring to the human rights situation in Israel and the occupied Arab territories, including Palestine, the occupied Syrian Golan, southern Lebanon and West Bekaa, and one resolution on Palestine under the agenda item “The right to self-determination and its application to peoples under colonial or alien domination or foreign occupation.” When Osman El Hajjé (Lebanon) presented the Sub-Commission with a draft resolution on the situation in the Palestinian and other Arab territories occupied by Israel, therefore, the Sub-Commission was forced to decide whether it would adhere to its decision not to duplicate the Commission's country work. The sponsors of the resolution (principally El Hajjé and Miguel Alfonso Martinez (Cuba)) argued that Commission resolution 1997/22 provided an exception from the rule on non-duplication “in exceptional cases in which new and particularly grave circumstances arise,” and that their resolution on the Middle East situation was therefore admissible. Mark Bossuyt (Belgium), however, rectified this misinterpretation of the Commission's resolution. Bossuyt pointed out that because the relevant text was prefaced with “... and, furthermore, ...” it was clear that the language on new and grave circumstances constituted an additional condition for, rather than an exception to, the passing of country resolutions by the Sub-Commission. Bossuyt's interpretation was further supported by the drafting history of the Commission resolution; in previous versions of the resolution the word “except” had occupied the place of the word “furthermore” that appears in the final version. After several other members (particularly José Lindgren (Brazil) and Stanislav Chernichenko (Russia)) reiterated the need to avoid duplicating the Commission's actions, the Sub-Commission decided by a vote of eighteen in favor, five against, and two abstaining not to render a decision on the draft resolution on the situation in the Palestinian and other Arab territories occupied by Israel. Having thus achieved its goal of non-duplication, the Sub-Commission decided by consensus on August 27, 1997, to continue

45. See Appendix A.
48. U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities,
the approach of non-duplication of the Commission's work under the public procedures in future sessions.\textsuperscript{49}

B. Resolutions Adopted on Previously Unaddressed Country Situations

With respect to resolutions on country situations not addressed by the Commission, the Sub-Commission decided to follow its standard practice of voting on all country resolutions by secret ballot. Ultimately, it adopted resolutions on three countries: Bahrain, the Congo, and the Democratic People's Republic of Korea.\textsuperscript{50} In its resolution on Bahrain, the Sub-Commission expressed deep concern about alleged gross and systematic violations of human rights in that country. In particular, it urged the government to comply with applicable international human rights standards and to ratify the International Covenants on Human Rights and the Convention against Torture, and it requested the Commission on Human Rights to consider the situation of human rights in Bahrain at its next session.\textsuperscript{51} The government of Bahrain lobbied against the resolution.\textsuperscript{52} Its representative declared to the Sub-Commission that the resolution contained "baseless allegations" and "propaganda efforts" and stressed that the government was struggling against a terrorist threat. During the debate, however, Claire Palley (United Kingdom), the principal author of the resolution, expressed particular concern about the fact that Bahrain dissolved its elected National Assembly in 1975 and for twenty-two years has had

\textsuperscript{49} 49th Sess., at 118, U.N. Doc. E/CN.4/Sub.2/1997/50 (1997). While the Sub-Commission decided not to adopt a resolution on the issue of the Israeli occupation—due to its new non-duplication policy—the Sub-Commission's Chairman, José Bengoa (Chile), did read a consensus statement on behalf of the members of the Sub-Commission concerning their humanitarian concern for the Palestinian people. In a very balanced and moderate tone he expressed the Sub-Commission's concern for their suffering caused by the severe restriction of movement and condemned at the same time all acts of terrorism and violence, including the double suicide attack in Jerusalem that had prompted the blockade imposed for nearly four weeks. In the name of the Sub-Commission, the Chairman called upon the Government of Israel to put an end to the blockade and other measures. Bengoa further called on all parties to make every effort so that a positive dialogue could take place once again and a just and lasting peace in that region could be achieved. U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 49th Sess., at 131–32, U.N. Doc. E/CN.4/Sub.2/1997/50 (1997).


\textsuperscript{50} 50. Perhaps the only truly common characteristic of the three countries on which the Sub-Commission acted was that they did not mount adequate lobbying efforts to avoid criticism. For further discussion of this issue, see infra note 90 and accompanying text.


\textsuperscript{52} 52. The resolution alleges "a serious deterioration of the human rights situation in Bahrain, including discrimination against the indigenous Shi'a population, extrajudicial killings, persistent use of torture in Bahraini prisons on a large scale as well as the abuse of women and children who are detained, and arbitrary detention without trial or access by detainees to legal advice." Id.
no elected legislature. In the end, the Sub-Commission resolution on Bahrain was adopted by the closest possible margin of twelve in favor, eleven opposed, one abstaining,\textsuperscript{53} and one Sub-Commission member not voting because he arrived a few minutes too late.

The resolution on the Congo (Brazzaville) was adopted by a vote of thirteen in favor and ten opposed, with two abstaining.\textsuperscript{54} The resolution was proposed by Asbjørn Eide (Norway) on the basis of presentations by David Weissbrodt (United States) and Bossuyt concerning the situation in the Congo. The representative of the Congo did not attend the Sub-Commission session and thus was not available to comment on the draft resolution when the vote was taken. During the debate, some members of the Sub-Commission expressed opposition to the draft resolution, arguing that it would not have any practical effect in a country as strife-torn as the Congo. It was pointed out, however, that draft resolutions are not intended as attacks on countries but rather aim to help them. In the final, adopted version of the resolution, the Sub-Commission expressed concern over reports of hundreds of deaths, including those of children and other civilians, in the inter-communal strife that had occurred since early June 1997, and the continuing loss of life in the city of Brazzaville, as well as allegations of torture by parties to the conflict. It called upon the government of the Congo and all parties to the conflict to abide by their obligations under international human rights and humanitarian law; to select an independent, respected, and impartial elections commission to arrange for elections; to allow free and fair elections; and to agree to abide by the results of these elections. The Sub-Commission decided to recommend that the Commission on Human Rights consider the situation of human rights in the Congo at its next session and, if the Commission is unable to take action on the situation of human rights in the Congo, to continue consideration of the matter at the Sub-Commission's 50th session.\textsuperscript{55}

The third country resolution adopted by the Sub-Commission dealt with human rights violations in the Democratic People's Republic of Korea (DPRK).\textsuperscript{56} The resolution, proposed by Louis Joinet (France), was adopted by a vote of thirteen in favor and nine opposed, with three abstaining.\textsuperscript{57} The resolution followed statements by Joinet and Weiss-
brodt about human rights violations in the DPRK. In the resolution, the Sub-Commission expressed its concern about the persistent and concordant allegations that grave violations of human rights were being committed in the DPRK. Moreover, it expressed frustration at the virtual impossibility of visiting that country to ascertain whether there are grounds for these allegations and of obtaining information about the legislation in force and the manner in which it is implemented. The Sub-Commission urgently called on the government of the DPRK to ensure full respect for the right of everyone to leave any country, including his/her own, and to return to his/her country, and requested that the government, inter alia, extend its cooperation with the procedures and services established by the United Nations to ensure promotion and protection of human rights. The Sub-Commission also invited the international community to devote greater attention and resources to the situation in the DPRK and thus assist its population in emerging from isolation and overcoming the current food shortage. The resolution represented the first action by the United Nations on human rights in the DPRK after decades of neglect.

C. Response to a Controversial Resolution

The DPRK has long evaded U.N. scrutiny despite the widely held belief that it is a consistent and pervasive violator of human rights. The Sub-Commission's action on the DPRK is therefore groundbreaking and likely will attract greater attention to the situation at the Sub-Commission and elsewhere in the U.N. human rights system. This bold move was not, however, without consequences.

Upon hearing of the draft resolution on human rights violations in its country, the government of the DPRK began to lobby the Sub-Commission in an attempt to prevent adoption of a final resolution. During the debates over the proposed draft resolution, one DPRK representative "charged that the accusations against his country had been fabricated 'by trickery' behind the scenes and that the authors of the resolution were so intent on achieving their own political aims 'that they ha[d] turned their eyes from reality and bogged down to making fabulous claims.'" He also warned that adoption of the resolution would force the DPRK to take strong counter-measures.

58. Id.
59. The end of the Cold War has decreased tensions at the United Nations such that a resolution could be proposed without being viewed in light of East-West competition. The 1997 session was thus the first in which a resolution on the DPRK was proposed. Moreover, the Sub-Commission's new non-duplication policy led it to seek new countries for attention in this session.
One week following the adoption of the resolution, the government of the DPRK followed through on its warning. On August 28, the DPRK delegation informed the Sub-Commission of its government's purported withdrawal from the International Covenant on Civil and Political Rights (Civil and Political Covenant, or ICCPR), since it was "now clear that the status of their country as a party to the ICCPR was abused by the hostile forces for their sinister political purposes." In addition, according to the DPRK delegation, the sponsors had drafted the resolution in extreme secrecy and had submitted it without a single word of prior notice to or consultation with the DPRK delegation.

As an additional measure it considered necessary to defend the sovereignty and dignity of the country, the DPRK also decided to postpone, for the time being, the consideration of its report on implementation of the Convention on the Rights of the Child, which was due at the September 30, 1997, session of the Committee on the Rights of the Child. In that regard, the DPRK decided not to send its delegation to the session. The DPRK further indicated that it would not tolerate any future attempt to impair its sovereignty and dignity or to stifle its socialist system under the pretext of the protection of human rights and would take additional resolute counter-measures to frustrate any such attempt.

The DPRK's reaction might raise the question of whether the resolution should have been passed. The reaction of governments, however, is out of the hands of the Sub-Commission. Members must act within their competence, assess available facts, and determine whether they find sufficient basis for expressing concern regarding reports of human rights violations. As has been outlined on several occasions by some Sub-Commission members, the Sub-Commission can only hope that the targeted government will view a resolution as a call for action within its society and as an attempt to help the government resolve its human rights problems.

Moreover, while the Sub-Commission's resolution may have triggered—or provided the excuse for—an extreme reaction by the DPRK, it was by no means the sole cause of that response. In May 1997, three


64. See DPRK statement, supra note 62.
months prior to the Sub-Commission's resolution, the DPRK had inquired of the Legal Adviser of the United Nations whether withdrawal from its obligations under the Civil and Political Covenant would be possible. The DPRK had also failed to cooperate with U.N. human rights bodies in other areas for over ten years, refusing to submit its second report to the Human Rights Committee, to meet with the Chair of the Committee, and to cooperate effectively with the Committee in any way.

It is also doubtful whether the DPRK, from a legal point of view, can withdraw from the Civil and Political Covenant. The Covenant does not contain any provision for withdrawal. Pursuant to Article 56 of the Vienna Convention on the Law of Treaties, a treaty that does not provide for withdrawal is not subject to withdrawal unless (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal, or (b) such a right may be inferred from the nature of the treaty. The travaux préparatoires of the Civil and Political Covenant do not provide any indication that the States Parties sought to permit withdrawal. On the contrary, the fact that the General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination in 1965 and the first Optional Protocol to the Covenant in 1966 with denunciation clauses and the two Covenants in 1966 without denunciation clauses and without any discussion on this issue suggests that the possibility of withdrawal was not intended by the States Parties. Nor may one deduce any right to withdrawal from the nature of the Covenant. As a consequence, states may neither denounce nor withdraw from the Covenant.

There is an increasing tendency to consider human rights law as "specific" in nature, and hence not governed per se by the Vienna Convention. Rather, human rights law creates specific obligations for States Parties. Elaborating on this point, the Human Rights Committee, which monitors the Civil and Political Covenant, indicated that a specific regime governs reservations under the Covenant. The notion

70. See General Comment on Issues Relating to Reservations Made upon Ratification or Accession to the
of the general impermissibility of withdrawing from the Covenant was reinforced when, in 1988, the Dutch government considered withdrawing from the Civil and Political Covenant in response to the Committee's jurisprudence on Article 26 relating to discrimination. Facing strong criticism by a number of distinguished human rights experts who considered a withdrawal from the Civil and Political Covenant as impermissible, the Dutch government finally decided to abandon its proposed action.\footnote{See Vienna Convention on the Law of Treaties, supra note 65.}

In its concluding comments on state succession in regard to the various countries that were part of the former Yugoslavia and the former Soviet Union, as well as on the responsibility of China to continue reporting about the human rights situation in Hong Kong,\footnote{General Comment on Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relation to Declarations under Article 41 of the Covenant, H.R.C. General Comment 24 (52), U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994). But see Vienna Convention on the Law of Treaties, supra note 65.} the Human Rights Committee has made it clear that once individuals in a territory are protected by the Covenant, the protection cannot be withdrawn.\footnote{71. NOWAK, supra note 68, at xxvii.} Moreover, international law mandates that a country may only submit a reservation to a particular provision of a treaty at the time of signature, ratification, or accession, and not after the State has become party to the instrument.\footnote{72. With regard to Hong Kong, the Human Rights Committee concluded in its consideration of reports submitted by States Parties under Article 40 of the Covenant that, The Human Rights Committee—dealing with cases of dismemberment of States parties to the International Covenant on Civil and Political Rights—has taken the view that human rights treaties devolve with territory, and that States continue to be bound by the obligations under the Covenant entered by the predecessor State. Once the people living in a territory find themselves under the protection of the International Covenant on Civil and Political Rights, such protection cannot be denied to them by virtue of the mere dismemberment of that territory or its coming within the jurisdiction of another State or of more than one State. Comments on United Kingdom of Great Britain and Northern Ireland (Hong Kong), U.N. Hum. Rts. Comm., 1451st–1453d mtgs., at 26, U.N. Doc. CCPR/C/79/Add.57 (1995). See also Summary records of the 1178th, 2000th, 2001st, and 2002d meetings, U.N. Hum. Rts. Comm., 46th Sess., U.N. Doc. CCPR/C/SR.1178/Add.1 (1992), U.N. Doc. CCPR/C/SR.1200 (1993), U.N. Doc. CCPR/C/SR.1201 (1993), and U.N. Doc. CCPR/C/SR.1202 (1993). \footnote{73. See also H.R.C. General Comment 26, supra note 69, which states in relevant part: The rights enshrined in the Covenant belong to the people living in the territory of the State party. The Human Rights Committee has consistently taken the view, as evidenced by its long-standing practice, that once the people are accorded the protection of the rights under the Covenant, such protection devolves with the territory and continues to belong to them, notwithstanding change in Government of the State party.} Under international human rights law, a denunciation can be viewed as a series of reservations on all provisions of the treaty. Consequently, the same requirement of timing applies to a denunciation.
In October 1997, the Human Rights Committee issued a General Comment indicating even more clearly that States Parties may not withdraw from the Civil and Political Covenant. In addition to pointing out that the Covenant does not expressly provide for denunciation, while the contemporaneous Optional Protocol does, the Human Rights Committee clarified the nature of the Covenant as one that does not imply a right of denunciation. Because the Civil and Political Covenant is part of the International Bill of Human Rights, it does not have a "temporary character typical of treaties where a right of denunciation is deemed to be admitted, notwithstanding the absence of a specific provision to that effect." The Committee concluded by declaring unequivocally that international law does not allow a State Party to denounce or withdraw from the International Covenant on Civil and Political Rights.

It is clear from this analysis that the DPRK’s decision to withdraw from the Civil and Political Covenant in response to the Sub-Commission’s resolution should not call into question the appropriateness of the Sub-Commission’s action on the DPRK. First, while the resolution may have triggered the DPRK’s threats, it was not the sole or most important cause of this reaction. Second, the DPRK’s illegal abdication of its international legal responsibilities sheds a negative light not on the Sub-Commission but on the violator country itself. Finally, the DPRK’s extreme behavior demonstrates how seriously governments take actions by the Sub-Commission and illustrates an important function of that body: the initiation of international dialogue about human rights violations in countries that may have failed to draw attention in other fora.

D. Rejected Proposals

At its 49th session, the Sub-Commission rejected proposals on Algeria, India, Pakistan, and Turkey. The draft resolution on the situation of human rights in Algeria, as amended, was rejected by a vote of nine in favor, fifteen opposed, and one abstaining. Submitted by Joinet, the draft resolution, condemned with the utmost severity the odious crimes committed in a paroxysm of barbarity by terrorist groups who
call themselves "Islamists"; requested that international cooperation against the terrorists' accomplices abroad be intensified; called "urgently" on the Algerian government to take action in the battle against terrorism in conformity with the Covenant on Civil and Political Rights; called "insistently" on the international community to break the wall of silence surrounding the tragedy being experienced by the Algerian people and to express its solidarity with them; and recommended to the Commission on Human Rights that it consider the Algerian human rights situation at its 54th session.\textsuperscript{81} During the discussion several Sub-Commission members argued that the draft was too harsh and would not promote human rights but instead would only complicate the political negotiations under way between the various parties involved. They further suggested that the human rights violations occurring in Algeria were largely being committed by terrorists, and that the resolution, while condemning the terrorists, seemed to deflect the blame to the government. Moreover, some Sub-Commission members held the view that the draft constituted a comment on political events in Algeria rather than being directly concerned with the question of human rights and, thus, was beyond the Sub-Commission's mandate.

The Sub-Commission also decided not to take action on two draft resolutions related to the human rights situations in India\textsuperscript{82} and Pakistan.\textsuperscript{83} The drafts, proposed only by Palley, expressed particular concern about bonded labor, child labor, forms of contemporary slavery, sexual exploitation of girl children, killings by security forces, and the virtual impunity of perpetrators in those two countries. Following the presentation of the two draft resolutions, several Sub-Commission members appealed to Palley to withdraw these drafts in view of the absence of support from other members. Sub-Commission members opposing the drafts argued, in particular, that the resolutions would not be helpful because the two governments concerned were already involved in a real dialogue with human rights treaty bodies and because the Sub-Commission had reached or even exceeded its capacity to handle country resolutions at the 49th session. One Sub-Commission member further considered the drafts an inappropriate birthday present for the two countries, who were celebrating their fiftieth anniversaries the very same year. Palley refused to withdraw her resolutions and insisted that something needed to be put on the record. After a somewhat prolonged debate, which was complicated by the desire of both governments that separate votes be avoided, the Sub-Commission decided not to take

\textsuperscript{81} See id. at 2–3.
\textsuperscript{82} See S.C. Res. 1997/L.21, supra note 39.
\textsuperscript{83} See S.C. Res. 1997/L.22, supra note 40.
action on either draft by a vote of twenty in favor, three against, and two abstentions.\textsuperscript{84}

Finally, the Sub-Commission rejected a draft resolution on the situation of human rights in Turkey, as amended, by a vote of eight in favor, fourteen opposed, with three abstaining.\textsuperscript{85} The draft, proposed by Weissbrodt on behalf of all the Sub-Commission members from the Western Europe and Other Group, was carefully balanced, in contrast to the resolution on Turkey defeated at the Sub-Commission's 48th session.\textsuperscript{86} On a positive note, it welcomed recent efforts by the Turkish government to improve its human rights situation, including amendments to the Turkish Constitution and to the Anti-Terror Law of 1991, as well as the adoption in 1997 of new provisions by which the Turkish government sought to reduce periods of pre-trial detention, ensure the right of detainees to legal assistance during pre-trial questioning, limit the competence of the State Security Courts, and establish the Human Rights Coordinating Committee. The draft also condemned human rights abuses and violations of humanitarian law by the armed opposition group, known as the PKK, but stated that such terrorist acts should not provide occasion or excuse for the Turkish government to violate non-derogable human rights and international humanitarian law. It expressed concern, in particular, about governmental actions such as systematic torture and ill-treatment in certain regions, extrajudicial executions, forced evictions, destruction of villages, and arbitrary arrest and imprisonment of individuals exercising their right to freedom of expression.\textsuperscript{87}

During the debate on country situations, more nongovernmental organizations (NGOs) expressed concern about Turkey than about any other country. Taking the floor in connection with the introduction of the draft, the Turkish representative referred to these NGO statements as unfounded allegations and stated that the draft text had little to do with the human rights situation in Turkey but rather represented opinions of the PKK terrorist group. According to the representative, the draft resolution would reward terrorism, thus setting a very dangerous precedent.\textsuperscript{88}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{87} S.C. Res. 1997/L.2, \textit{supra} note 42, at 3-4.
\end{enumerate}
\end{footnotesize}
During the weeks preceding the vote, the Turkish government lobbied strongly against adoption of the resolution. In particular, the Turkish Ambassador to the U.N. asked the Sub-Commission to give the new government a chance to improve the situation.\textsuperscript{89} Such promises, and sometimes purported concessions, are often made by governments wishing to avoid adoption of a resolution on their countries. The Turkish Ambassador's plea was arguably accepted by a majority of the Sub-Commission, given that the balanced draft was rejected, with slightly less support than the draft of the previous year.\textsuperscript{90}

The rejection of the draft resolutions on Algeria and Turkey raises concerns about the Sub-Commission's ability to take on human rights problems in countries that are represented by governments with active and effective lobbying representatives in Geneva. While other factors, such as the Sub-Commission's limited capacity to handle country-specific matters, contributed to the rejection of these proposals, the Algerian and Turkish governments' vigorous and successful lobbying efforts appear to have played a major role in the Sub-Commission's decision-making. This concern is heightened by the fact that the only common thread linking the countries about whom resolutions were adopted—Bahrain, the Congo (Brazzaville), and the DPRK—is their failure to mount adequate lobbying campaigns. This may be an area in which reform of Sub-Commission practices will be required in the future.

\textbf{E. The Future of Country Considerations at the Sub-Commission}

During the country situation debates, there was extensive discussion not only on the draft resolutions themselves, but also on whether country-specific resolutions should continue to be part of the Sub-Commission's work.\textsuperscript{91} Some Sub-Commission members seemed to oppose country-specific resolutions in principle. More extensive controversy, however, surrounded the allegation that resolutions are invariably aimed at developing countries. This contention raised concern among several Sub-Commission members despite the fact, mentioned by Eide, that the majority of experts on the Sub-Commission are not from developed countries and that there is nothing stopping them from adopting justified resolutions about human rights violations in devel-
oped countries. This discussion reached a climax following the sweeping defeat of the draft resolutions on Turkey and Algeria. In response to the controversy, Eide threatened to withdraw his draft resolution on the Congo and urge cancellation of the Sub-Commission's country resolutions mandate. Bossuyt, however, insisted on a vote on the Congo resolution, and the measure was narrowly adopted. Sponsors of other resolutions were thereby given renewed confidence, and the resolutions on Bahrain and the DPRK were soon adopted as well. The successful passage of these three resolutions on countries that had not previously been on the United Nations agenda indicates that, for the time being, the Sub-Commission is devoted to its new role of drawing attention to countries in which gross human rights violations are occurring and to laying a basis for further efforts to identify new countries in future years.

II. WORKING GROUPS

The Sub-Commission's five working groups facilitate the body's role as a think tank and as a mechanism for implementation of human rights. The working groups meet either between or during Sub-Commission sessions in order to permit members to focus on particular issues, relieve time pressures from the plenary sessions, and facilitate flexible participation of members, NGOs, and other experts. The four inter-sessional working groups deal with minorities, indigenous populations, contemporary forms of slavery, and communications, while the single intra-sessional working group deals with the administration of justice. The working groups have made a unique contribution to setting human rights standards. For example, nowhere in the United Nations are minorities' issues being addressed as intensively as in the Working Group on Minorities. The Working Group on Indigenous Populations has also made important strides by drafting a proposed declaration on indigenous rights and continuing to hear the concerns of indigenous communities throughout the world.

Each working group is composed of five experts, one from each of the five regions of the Sub-Commission. All of the working groups—except Communications—are open to participation by observers. Consequently, they have become important fora for specialized agencies and organizations to participate in discussions on subjects of interest to them. In addition, the opportunity for participation as experts in working groups enables Sub-Commission members to focus on their specialties or particular areas of interest. Finally, working groups allow

92. Eide, supra note 3, at 230.
93. Weissbrodt & Samuel, supra note 1, at 110.
human rights victims and NGOs to report on violations and give governments the chance to respond to any allegations against them.

The working groups influence the agenda and performance of the Sub-Commission by submitting reports of their respective sessions to the Sub-Commission plenary session and by proposing courses of action that the Sub-Commission might take with respect to particular issues.

A. Working Group on Minorities

The Working Group on Minorities, which convened its third session in May 1997, was initiated by an ECOSOC resolution authorizing the Sub-Commission to establish, for an initial three-year period, an inter-sessional working group to promote the rights of persons belonging to national, ethnic, religious, and linguistic minorities.

The newest of the working groups, the Working Group on Minorities is one of very few bodies of the U.N. system that addresses issues of minority rights. It stresses dialogue, understanding, tolerance, and peace among minorities and between minorities and governments.

1. New Issues

During its 1997 session, the Working Group focused on a number of major issues, including national constitutions, laws, and practices that protect minorities and their implementation at the local, regional, and national levels; multicultural and intercultural education; the role of the media; national recourse and conciliation machinery for resolution of problems involving minorities; bilateral, regional, and global mechanisms; and definitions and classifications relating to minorities.

2. Defining “Minorities”

With respect to the definition of minorities, the views of the Working Group members differed. Some members conceded that it would be difficult to define "minorities" in a way that would be mutually acceptable. However, the Working Group eventually agreed on a definition that included a combination of "numerical minority" and "non-dominant" social position. The resolution adopted by the Working Group was forwarded to the Sub-Commission for its consideration.

96. It is interesting to note that the problem of defining “minorities” has persisted since the inception of the Sub-Commission. The Commission and ECOSOC had consistently ignored or rejected repeated proposals for definitions by the Sub-Commission in the 1950s. Eide, supra note 3, at 221. The politics surrounding the definition of “minorities” were so contentious as to prevent consensus. In 1984, the Commission again requested that the Sub-Commission define “minority.” Id. The ensuing debate proved fruitless. Members disagreed on whether the definition should be limited to citizens, whether indigenous peoples should be treated separately, whether there should be a combination of “numerical minority” and “non-dominant” social position, and so forth. Id. at 222. The resolution sent to the Commission made clear that there was no general approval of the proposed definition. Id. at 223.
might be impossible to adopt a strict judicial definition but favored
guidance in the form of a working definition. Others believed that
resolution on this issue was unnecessary to protect minority rights
adequately and that minorities' own right of self-definition should be
emphasized.

In order to expand, refine, and give further meaning to the rights
contained in the Declaration on the Rights of Persons Belonging to
National or Ethnic, Religious and Linguistic Minorities, the Working
Group closely examined several aspects of minority rights. In particu-
lar, it considered the rights of minorities, either as individuals or as a
community, to enjoy their own culture, to profess and practice their
own religion, and to use their own language, in public and private;
the right of effective participation in cultural, religious, social, eco-
nomic, and public life; the importance of minority involvement in
decision-making at the national and regional levels, especially concern-
ing questions of minority identity or where a minority would live; and
the value and content of education aimed at protecting the cultural
identity of persons belonging to minorities, including the right to
learn and receive instruction in one's mother tongue.

3. Threats to Minorities

The Chairman of the Working Group, Asbjørn Eide, informed the
Sub-Commission that the worst threats to the rights of minority
groups sometimes come from persons within their own ranks who,
being even less willing to accept cultural diversity than the govern-
ments that they attack, reject peaceful processes of group accommoda-
tion. Instead, these factions may resort to terrorism, killing moderate
elements within their own group. He drew attention to the Working
Group's recommendation that the High Commissioner for Human
Rights further develop and implement conflict prevention procedures
that would enable members of minorities as well as majorities to
participate in dialogue from the earliest possible moment, and ensure
that minorities as well as majorities are included in peace-keeping and
post-conflict peace-building.

(1993).
4. Education

In view of the extensive debates on the issue of education and minorities at its first two sessions, the Working Group had recommended in 1996 that a seminar on multicultural and intercultural education be arranged prior to its 1997 session. This proposal was subsequently endorsed by the Sub-Commission in its resolution 1996/17. During the seminar, participants repeatedly emphasized the need for a clear distinction between multicultural and intercultural education. They also identified the dual goals of preserving the identity of diverse groups and fostering their integration into society as a whole.

5. Mandate

The Working Group was established with an initial mandate of only three years. At its 49th session, the Sub-Commission initially considered a draft resolution that included a recommendation to extend the mandate of the Working Group for an additional three years, and one Sub-Commission member suggested recommending that the Working Group be established permanently. Ultimately the Sub-Commission decided to leave the further concretization of the mandate up to the Commission on Human Rights, opting not to make any specific reference to the length of the Working Group's future mandate. Instead, the Sub-Commission recommended that the Commission on Human Rights request ECOSOC to authorize the extension of the mandate of the Working Group "with a view to its holding one session annually." Further, the Sub-Commission invited the Working Group to increase its cooperation with the United Nations High Commissioner for Human Rights. The phrase "with a view to strengthening her preventive activities and enhancing her responses to minority situations warranting urgent action," contained in the draft resolution, was deleted as too ambitious or potentially supportive of an armed intervention.

The first three sessions of the Working Group have already significantly contributed useful knowledge about minorities, have clarified

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100. The seminar, which was organized jointly by the United Nations High Commissioner/Centre for Human Rights and the International Service for Human Rights, was held on May 23 and 24, 1997, in Geneva.


104. See id.

some issues of concern through public debate, and have shed light on principles contained in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities. These results provide a promising basis for the future efforts of the Working Group. Accordingly, the Commission on Human Rights should follow the recommendation of the Sub-Commission and extend this Working Group's mandate.

B. Working Group on Indigenous Populations

Established in 1982, the Working Group on Indigenous Populations was the first international forum that allowed world-wide participation by representatives of indigenous communities. The Working Group has two principal functions: to monitor the development of international standards relating to indigenous issues and to provide an international forum to review developments relating to the protection of indigenous rights.

The Working Group on Indigenous Populations has encouraged participation by indigenous organizations and communities, including those lacking consultative status with ECOSOC, thereby greatly strengthening the international activities of indigenous organizations. This working group is one of the accomplishments of the Sub-Commission, one that continues to provide an invaluable service to indigenous peoples.

In 1997, the Sub-Commission's Working Group on Indigenous Populations convened its 15th session with a record attendance of 887 persons, including forty observer governments; thirteen United Nations and inter-governmental organizations; and 281 indigenous nations, organizations, and communities. The Chairperson of the Working Group, Erica-Irene Daes (Greece) noted that this strong participation demonstrates that the Working Group will continue to be an important meeting place for the discussion of indigenous issues in the future.

1. Proposal for a Permanent Forum

The establishment of a "permanent forum" was one of the key issues at the Working Group session, with many indigenous communities pressing for greater representation through such a medium. Although indigenous peoples consider the Working Group to be an improvement to the international system, it falls short of providing a permanent standing international body for the representation of indigenous peoples. Since the Working Group members agreed that a permanent

106. Eide, supra note 3, at 235.
107. The session convened July 28–August 1.
forum would promote an essential, substantive dialogue between indigenous peoples and governments, it proposed establishment of the forum to the Sub-Commission. At the last moment, Alfonso-Martínez suggested that the Working Group take another year to consider how the permanent forum might be established within the U.N. system, including its concrete mandate, membership, and financing. The Sub-Commission decided to accept this suggestion.

2. Defining "Indigenous Rights"

The Working Group and the Sub-Commission reviewed Daes' impressive preliminary working paper on indigenous land rights and encouraged Daes to continue her research. The Working Group also discussed the definition of "indigenous peoples." While it ultimately decided that a global definition was not possible at the time, the group was willing to continue to discuss the matter. A related issue arose in regard to the difference between indigenous peoples and minorities, each of which is the focus of a separate working group. The members of the Working Group on Indigenous Populations announced that to prevent overlap and redundancy, they would apply stricter standards for acceptance of minority participants at the Working Group's next session.

Many participants of the Working Group called for a quick approval of the draft Declaration on the Rights of Indigenous Peoples, which had been prepared by the Working Group and the Sub-Commission and is presently under consideration at the Commission level. The participants stressed that the language of the draft should not be subjected to any further changes that would weaken the document, which they believe already constitutes a minimum standard with respect to the protection of indigenous rights.

3. Future Agenda

The Working Group decided to pay particular attention to the theme of "indigenous peoples, education, and language" at next year's session. The Chairperson of the Working Group also informed the Sub-Commission that, at the request of indigenous participants, the Working Group would consider possible guidelines or codes of conduct for private-sector mining and energy concerns that carry out activities on indigenous lands.

C. Working Group on Contemporary Forms of Slavery

Originally established in 1975 as the Working Group on Slavery,\(^{109}\) this Working Group was created to address the long-standing commitment of international organizations to the abolition of all forms of slavery. The abolition of slavery is perhaps the oldest international human rights movement.\(^{110}\) As a result, numerous international anti-slavery conventions have been established. One such agreement, the Supplementary Convention,\(^{111}\) which forbids a broad range of abuses including ill-treatment of women and children and extreme exploitation, did not have an implementation mechanism. In response to this need, the Sub-Commission proposed the establishment of a working group to review developments in the field of slavery and recommend appropriate action.\(^{112}\) The Economic and Social Council approved the proposal, and since 1975, the Working Group has met on a regular basis.\(^{113}\)

The 22d session of the Working Group on Contemporary Forms of Slavery took place pursuant to the authority granted by the Economic and Social Council in decisions 16 (LVI) and 17 (LVI) of 1974.\(^{114}\) The Working Group's mandate covers developments in the field of slavery; the slave trade; the slavery-like practices of colonialism and apartheid; and the traffic in persons and prostitution of others as defined in the Slavery Convention of 1926,\(^{115}\) the Supplementary Convention of 1956 on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery,\(^{116}\) and the Convention of 1949 for the

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110. The slave trade was first condemned by treaty in the Additional Articles to the Paris Peace Treaty of 1814 between France and Britain. Newman and Weissbrodt, supra note 17, at 3. The General Act of the Berlin Conference on Central Africa affirmed in 1885 that "trading in slaves is forbidden in conformity with the principles of international law." Id.


115. Slavery Convention, 60 L.N.T.S. 253, entered into force March 9, 1927.

1. The "Comfort Women" Issue

During its eight-day session, the Working Group on Contemporary Forms of Slavery discussed the issue of "comfort women," who were kept to provide sexual services to the Japanese Army in Korea and other parts of Southeast Asia during World War II. The surviving women have been seeking compensation for the sexual abuse and forced labor they suffered. The Japanese government has apologized, but has refused to provide compensation. Instead, an Asian Women's Fund has been established by Japanese private individuals to offer payments to the comfort women. The countries from which victims originated and most of the concerned NGOs voiced their opposition to the Fund; because fifty percent of the Fund comes from private sources, the international community's acceptance of the Fund might enable the Japanese government to avoid legal obligations and thus deny its culpability. In response, the Japanese delegation argued that the private contributions to the Asian Women's Fund are simply a way for the Japanese people to express their remorse to all victims, and not an attempt by the government to evade international responsibility or legal obligations. To buttress this contention, the delegate pointed out various legislative initiatives taken by the Japanese Parliament, as well as several instances of public apology by government officials. Further, the Japanese representative recalled the positive results achieved by the Fund, namely the establishment of the Centre for Historical Documents on Asia and the payment of compensation to twenty-seven victims of Philippine origin. Indeed, the observer for the Philippines confirmed the compensation to victims from her country and voiced her support for the initiative.

After an extensive discussion, the Working Group recommended that the Sub-Commission adopt a resolution recognizing the "positive steps made so far towards the solution to this issue." The Republic of Korea indicated that it considered the Asian Women's Fund insufficient and inappropriate because it undermines victims' efforts to heal; it does not follow the recommendation of the Special Rapporteur.

118. The Working Group has discussed the issue for the past five years.
for violence against women that the government of Japan make a public apology and take legal responsibility for the problem; it may prejudice the work of the Special Rapporteur on the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict; and it seems to be a simplification of the issue in monetary terms, ignoring the victims' desire for honor and dignity.\textsuperscript{120} The delegations of the Democratic People's Republic of Korea and the People's Republic of China, joined by several NGOs, echoed this concern and proposed that the phrase be eliminated entirely or, at a minimum, that the word "positive" be removed from the resolution. When it was time for the Working Group members to vote, however, all five decided to keep the text without changes. As Bossuyt noted, "any development [with regard to this issue] is positive, and we mustn't be hostage to governments' pressures."\textsuperscript{121}

2. Shortcomings of the Working Group

The Working Group on Contemporary Forms of Slavery added the issue of pedophilia to its provisional agenda for the 23d session.\textsuperscript{122} Despite some question as to whether this issue falls within the Working Group's mandate, Chairperson Halima Warzazi (Morocco) stated that pedophilia is an acceptable agenda item since the mandate includes exploring new forms of slavery. Bossuyt added that the item was included in the provisional agenda because of the consent issue inherent in pedophilia. While there is an arguably valid reason for adding pedophilia to the agenda, this debate illustrates the lack of focus of this Working Group. Indeed, some of the agenda items have only a tenuous link to the slavery issue.\textsuperscript{123} Further, the array of agenda items handled by the Working Group only serves to diffuse its attention. One possible approach would be for the Working Group to address methods to unify and implement the various treaty obligations relating to slavery and related practices. The experience of other Working Groups suggests that maintaining a better focus on the issues within its mandate would elicit more observer participation in its sessions and facilitate effective action.

The long duration of the session of the Working Group on Contemporary Forms of Slavery is another matter of possible concern, especially

\begin{itemize}
\item \textsuperscript{120} See Human Rights Sub-Committee Begins Debate, supra note 98, at 1.
\item \textsuperscript{121} Marc Bossuyt, Remarks at the 22d Sess. of the Working Group on Contemporary Forms of Slavery (July 11, 1997) (on file with the Harvard Human Rights Journal).
\item \textsuperscript{123} One such example is the item "Illegal practices of certain religious and other sects." Id.
\end{itemize}
in light of U.N. budget constraints and the Commission's recent criticism of the Sub-Commission. The session of the Working Group on Indigenous Populations, which gathers together over 800 participants, lasts only five days. In contrast, the Working Group on Contemporary Forms of Slavery meets for eight days but never has more than fifty people in the room. The Working Group on Contemporary Forms of Slavery may therefore want to reevaluate the need for such a protracted session.

Despite these shortcomings, the Working Group on Contemporary Forms of Slavery this year adopted the very positive practice of encouraging individuals and domestic NGOs to exchange ideas and concerns with their respective governments under the auspices of the Working Group. The other working groups should be encouraged to adopt this policy.

D. Working Group on Communications

Each year, the Sub-Commission receives a confidential report from its Working Group on Communications. In 1970, the Council authorized the Sub-Commission to create a working group to consider communications about human rights violations. The resulting Working Group is the first stage in a lengthy confidential procedure relating to allegations of consistent patterns of gross violations.

Given the confidential nature of its work, only the Working Group's five members and the necessary Secretariat personnel are allowed in its meetings. The Working Group must often sift through thousands of communications—sometimes as many as 250,000. Each member can recommend the forwarding of a particular communication to the Sub-Commission. If recommended, the other members can review the communication and agree or disagree with the first member's recommendation. Before a communication is forwarded to the Sub-Commission, a majority of the Working Group, three members, must agree that it contains a reliable attestation of a consistent pattern of gross violations.

The Working Group reports its conclusions to the Sub-Commission through a list of situations that seem to reveal a consistent pattern of gross violations. The Sub-Commission also receives the full text of forwarded communications and governmental replies. The Sub-Com-


125. Eide, supra note 3, at 231.
mission then examines the communications in closed meetings, and
decides which to send to the Commission, either by vote or by consen-
sus.\textsuperscript{126} The Commission ordinarily makes the final decision on whether
to act on the communications. The confidential recommendations of
the Sub-Commission do not become public until the Chairperson of
the Commission on Human Rights announces in April of the following
year which countries have been the subject of consideration.

In April 1997, the Chairman of the Commission announced that the
Commission had maintained consideration of four countries (Chad, Saudi
Arabia, Sierra Leone, and Uzbekistan) and discontinued consid-
eration of a large number of countries evidently recommended by the
Sub-Commission, namely Antigua & Barbuda, Botswana, Czech Rep-
public, Estonia, Gambia, Kyrgyzstan, Latvia, Lebanon, Lithuania, Syr-
ian Arab Republic, United Republic of Tanzania, and United States of
America. It was evident that the Commission believed the Sub-Com-
mission had recommended too many countries under the confidential
procedure.

Although this confidential procedure is an available tool, the Sub-
Commission may wish to be somewhat more careful in recommending
countries to the Commission.\textsuperscript{127} It may also want to consider explain-
ing the reasons for its decision to submit a case or to hold it at the
Sub-Commission level. Both governments and the Commission would
benefit from these explanations, and the Sub-Commission might im-
prove understanding of its recommendations.

E. Working Group on Administration of Justice

Since 1974, the Sub-Commission has annually established the intra-
sessional Working Group on Detention, which was recently renamed
the Working Group on Administration of Justice.\textsuperscript{128} In its latest
session, the Working Group received a working paper on \textit{habeas corpus}
bym Weissbrodt and Hector Fix-Zamudio (Mexico, alternate). As a result
of their work, the Sub-Commission, acting upon the Working Group’s
recommendation, adopted a decision requesting the Human Rights
Committee to “consider preparing a new general comment on article
4 of the International Covenant on Civil and Political Rights re-
affirming the developing consensus that \textit{habeas corpus} and the related
aspects of \textit{amparo}, as well as cognate rights, should be considered to be

\textsuperscript{126} The Sub-Commission ordinarily makes decisions by consensus unless a member asks for
a vote, for example to find out how other members stand on a particular issue.

\textsuperscript{127} The International Service for Human Rights reported that in 1997 the Sub-Commission
was more prudent in referring countries to the Commission under the 1503 procedure. While
the Sub-Commission referred sixteen countries in 1996, it reportedly transmitted only five in
1997—Chad, Japan, Paraguay, Peru, and Yemen. See Zoller, supra note 1, at 52.
non-derogable in all circumstances." This decision begins the impor-
tant process of increased interconnection of the Sub-Commission
with treaty bodies and other relevant U.N. bodies, pursuant to the
request of the Commission on Human Rights. Similarly, the working
paper prepared by Stanislav Chernichenko on the recognition of gross
and massive violations of human rights perpetrated on the orders of
governments or sanctioned by them as an international crime will
be transmitted through the Secretary-General to the International Law
Commission for its comments.

In other work, Judge Lucy Gwanmesia (Cameroon) submitted a
working paper on juvenile justice that the Working Group suggested
be substantially revised. Finally, the Working Group was unable to
make any progress in drafting a convention on enforced disappearances
because NGOs upon whom the drafting depended failed to meet with
each other to discuss the draft convention.

F. Concluding Remarks on Working Groups

The working groups of the Sub-Commission are effective means for
addressing human rights violations in a flexible and specialized manner.
With less severe time constraints than the plenary sessions of the
Sub-Commission, the working groups are able to consider difficult
issues in greater detail than the Sub-Commission. Nevertheless,
reform is needed to address the problems of definition and restraint
that prevent the working groups from achieving their full
potential as forums for the study and promotion of international
human rights.

128. The Working Group on Administration of Justice met on August 6 and 15, 1997. For
discussion of the name change, see Kathryn Burke, New United Nations Procedure to Protect Prisoners
and Other Detainees, 64 CAL. L. REV. 201 (1976); David Weissbrodt & Sonia Rosen, The 39th Session of the U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities, 10
130. Recognition of Gross and Massive Violations of Human Rights Perpetrated on the Orders of
Governments or Sanctioned by Them as an International Crime, U.N. ESCOR Sub-Comm. on Prevention
131. This decision was made without a vote on August 27, 1997, S.C. Dec. 1997/116, U.N.
ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 49th Sess., at 9,
132. The meeting had been recommended by the Working Group in 1996.
III. STUDIES

The basic guidelines governing the preparation of studies were established by the Sub-Commission in 1954. In response to the concern expressed by several governments that studies could be used to criticize a particular state, the Sub-Commission decided to focus its studies on general occurrences and the successful eradication of discrimination. Pursuant to the guidelines, studies should be factual and objective and they should deal with de facto and de jure instances of discrimination. Not only should studies lead to recommendations, but they should also educate public opinion.

Originally, the Centre for Human Rights provided the Sub-Commission studies with significant logistical and staff support. Of late, however, due to budget constraints, studies have received less support and in some cases have decreased in quality. At the 1997 session, the Sub-Commission recommended new criteria for choosing studies. First, priority should be given to subjects proposed by the working groups of the Sub-Commission. Second, economic, social, and cultural rights should be given priority. Third, proposals for studies without sufficient background and the necessary framework should be discouraged. Fourth, the Sub-Commission should give priority to the recommendations of the Commission on Human Rights. These proposed criteria, if followed, could help improve the quality of the studies.

In the past, the Sub-Commission contributed to the field of international human rights principally through its studies. It can continue to serve this function, but it must take care to propose studies only for subjects within its area of expertise, and that truly serve the needs of the Commission on Human Rights, treaty bodies, and the international human rights community. Recently, the Commission has been more selective in approving the Sub-Commission's proposals for new studies. Consequently, the Sub-Commission should only submit

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133. The guidelines provided that sources of information for studies should include governments, the Secretary-General, the specialized U.N. agencies, NGOs, and "recognized scholars." Eide, supra note 3, at 226.
134. Id. at 226–27.
135. Id. at 227.
136. Weissbrodt & Samuel, supra note 1, at 111.
138. Probably the best studies of the past are those examining religious intolerance (a study that ultimately resulted in the Declaration on Elimination of All Forms of Religious Intolerance and of Discrimination Based on Religion or Belief), the right to leave and return, and arbitrary detention and exile. In addition, the study on minorities' rights resulted in the establishment of the Working Group on Minorities, and the fair trial study compiled the totality of the jurisprudence on the topic for lawyers and judges. See Weissbrodt & Samuel, supra note 1, at 111.
carefully prepared proposals. In addition, the Sub-Commission can better promote human rights by focusing its studies on implementation of existing human rights norms, rather than engaging in new standard-setting.

A. Terrorism and Human Rights

In 1996, the Sub-Commission resolved to initiate a working paper on the question of terrorism and human rights.\(^{139}\) Mindful that one of the most essential human rights is the right to be free from arbitrary killing, the Sub-Commission was particularly concerned about the persistent serious abuses perpetrated by terrorist groups.

The insightful and careful working paper on terrorism and human rights, submitted by Kalliopi K. Koufa (Greece, alternate)\(^ {140}\) pursuant to Sub-Commission resolution 1996/20, was very well-received by Sub-Commission members and engendered a lively and thoughtful discussion. Members appreciated the modest scope of Koufa's analysis. She recognized the increasing dangerousness of terrorism as a result of the "confluence of new political circumstances and modern technological advances"\(^ {141}\) as well as the internationalization of this phenomenon. Koufa identified the principal international instruments relating to terrorism but, due to the constraints of the working paper, she was not able to analyze these instruments in depth. She also addressed the difficult issue of defining terrorism but decided to wait for the Sub-Commission to decide which particular aspects of terrorism it wants addressed before attempting a definition for the term. She recognized the difficulties inherent in the persistent controversy over wars for national liberation and justifications of violence. Furthermore, she noted the current movement away from the traditional parameters of international human rights law—that only states can violate human rights—to the newer notion that non-state actors are also responsible for human rights abuses.

Because of her comprehensive and in-depth working paper, the Sub-Commission recommended to the Commission that Koufa be authorized to prepare a full study on the issue of terrorism and human rights.\(^ {142}\) The issue of terrorism and human rights has only recently been a focus of attention in the United Nations; hence, Koufa's study

141. See id.
142. Although some members are generally reluctant to permit alternates to prepare studies, no one raised any objections to the selection of Koufa, an alternate from Greece, as a Special Rapporteur in this case.
will contribute significantly to international legal understanding of this very difficult topic.

B. Privatization of Prisons

In recent years, the practice of privatizing penal facilities has been observed in an increasing number of countries, raising a variety of issues relating to the pros and cons of such privatization. Taking notice of this development, the Sub-Commission resolved without a vote to recommend that the Commission on Human Rights appoint Ali Khan (India) as special rapporteur to undertake an in-depth study on all issues relating to the privatization of prisons.\(^ {143} \) According to the resolution, the study should refer, in particular, to all governments' obligation to respect and implement the legislation in force in their countries and the possible civil responsibility of enterprises managing private prisons and their employees.\(^ {144} \)

Such a study could contribute to the current debate in Australia, South Africa, the United Kingdom, the United States, and other countries, by offering insights, comparative information, and possible guidelines. In the past, working papers on privatization of prisons have been prepared by Alfonso-Martinez and Palley, but the Sub-Commission recommended that a full study now be undertaken.\(^ {145} \) Although privatization of prisons is a current concern, the Commission's past reaction to a similar Sub-Commission proposal may indicate its reluctance to delve into the issue.\(^ {146} \) If the Commission does authorize a study on this occasion, it is expected to be completed in time for consideration by the Sub-Commission at its 52nd session.

C. Freedom of Movement

At this year's session, Volodymyr Boutkevitch (Ukraine) presented a working paper on the right to freedom of movement and related issues.\(^ {147} \) Convinced that this important and complex subject deserves and requires further careful and comprehensive inquiry, the Sub-Commission recommended to the Commission on Human Rights that it endorse and recommend to the Economic and Social Council the deci-

\(^ {144} \) See id.
sion of the Sub-Commission to appoint Boutkevitch as Special Rap-
porteur with the task of preparing an analysis of current trends and
developments in respect of the right of everyone to leave any country,
including his/her own, and to return to his/her country, to have the
possibility to enter other countries without discrimination, and to seek
and enjoy asylum. According to the resolution, the study should
examine restrictions on these rights in light of Article 12, paragraph
3, of the International Covenant on Civil and Political Rights, which
limits permissible restrictions to “those which are provided by law, are
necessary to protect national security, public order (ordre public), pub-
lic health or morals or the rights and freedoms of others, and are
consistent with the other rights recognized in the present Covenant.”
A preliminary report should be submitted to the Sub-Commission at
its 51st session. The working paper indicated that Boutkevitch may
focus principally on issues of greatest concern to Eastern and Central
Europe, such as loss of nationality due to the breakdown of the former
Soviet Union. It is therefore unclear whether the study would improve
global understanding of the freedom of movement in general.

D. Science and Technology

The 1993 World Conference on Human Rights acknowledged that
advances in biomedical and life sciences and information technology
might negatively affect the integrity, dignity, and human rights of the
individual. In response, the Sub-Commission adopted decision 1996/110
proposing a working paper on the potentially adverse consequences of
scientific progress and the implications for human rights. The deci-
sion also recognized that everyone has the right to enjoy the benefits
of scientific and technological advancements.

During its 49th session, the Sub-Commission considered a working
paper prepared by El-Hajjé and entitled “Potentially adverse conse-
quences of scientific progress and its applications for the integrity,
dignity and human rights of the individual.” On the basis of this
paper, the Sub-Commission recommended that the Commission on
Human Rights approve the appointment of El-Hajjé as Special Rap-
porteur to conduct a detailed study of the potentially adverse and
positive consequences of scientific progress and its applications for the

149. International Covenant on Civil and Political Rights, supra note 61, art. 12, para 3.
151. U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities,
integrity, dignity and human rights of the individual. According to the resolution, this study should, inter alia, provide a detailed and updated account of the situation and a catalogue of existing national laws, policies, and procedures concerning the prevention of the potentially adverse consequences of scientific and technological progress and its application for the integrity, dignity, and human rights of the individual, as well as propose solutions to problems associated with the existing shortcomings. The Special Rapporteur should be requested to submit a preliminary report to the 50th session of the Sub-Commission. Although resolution 1997/42 was finally adopted without a vote, several members of the Sub-Commission expressed their doubts about whether the working paper prepared by El-Hajjé constituted an adequate basis for formal study. It was objected that the paper did not show the amount of research necessary for such a project and was lacking reference to important recent developments in the field. Moreover, the paper lacked the appropriate balance, failing to address the positive impacts of scientific developments on the protection of human rights. For instance, Eide questioned the suitability of the topic itself for treatment in a study because the topic was far too broad.

E. Indigenous Land Rights

Because the Working Group on Indigenous Populations has been so successful in drawing international attention to indigenous rights, more study is needed on particular issues, such as indigenous land rights. Indeed, this issue is probably one of the most visible concerns of indigenous peoples around the world.

At this year’s session, Daes introduced her preliminary working paper on indigenous land rights. Like the participants of the meeting of the Working Group on Indigenous Populations, the Sub-Commission appreciated her serious, systematic, and comprehensive paper. The paper highlighted the profound relationship between indigenous peoples and their lands, territories, and resources and its social, cultural, spiritual, economic, and political dimensions and responsibilities; the significance of the collective dimension of this relationship; and the fact that indigenous peoples’ identity, survival, and cultural viability depend on the respect for the inter-generational character of the relationship. While recognizing that there are quite a few positive developments in this field, the paper nonetheless makes clear that responses by governments have been far from satisfactory and that the problem

153. Indigenous People and Their Relationship to Land, supra note 108.
remains basically unsolved. In this light, the Sub-Commission requested the Secretary-General to transmit the working paper to governments, as well as NGOs and intergovernmental organizations, for their comments.\textsuperscript{155}

In addition to expanding the ideas of her preliminary working paper, Daes will demonstrate that the unique relationship between indigenous peoples and their land is reflected by the fact that the continuing dispossession of their lands goes hand-in-hand with an alarming decline in population. The study will further discuss the suffering of indigenous peoples who have been victims of dispossession of land and forced expropriation—a serious human rights problem that finds its origin in the first encounter of colonial settlers with the native tribes and has unfortunately continued to the present, even multiplying due to steadily advancing technology and economic globalization.

\textbf{F. Indigenous Treaties}

The final report on “Treaties, agreements and other constructive arrangements between States and indigenous populations” was to be submitted at the 49th session. In decision 1997/110, the Sub-Commission determined, without a vote, to take note of the Special Rapporteur's explanation for his failure to submit the final report at the 49th session.\textsuperscript{156}

In his third progress report on the study on treaties, agreements and other constructive arrangements between States and indigenous populations, Special Rapporteur Alfonso-Martínez analyzed diverse cases in a number of countries, providing a useful guide to understanding some of the issues in this complex field.\textsuperscript{157} The report, issued in 1996, concentrates on the regions of North America, Central/South America and Northern Europe. Since Alfonso-Martínez has been very selective as to the states he has examined thus far, one member suggested that the final report include a larger and more diverse group of states. Together with the update concerning the evolution of the situation in recent years as well as the recommendations and conclusions relevant


\textsuperscript{156}. S.C. Decision 1997/110, U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities, 49th Sess., at 93, U.N. Doc. E/CN.4/Sub.2/1997/50 (1997). It further urged the Rapporteur, Miguel Alfonso Martínez, to submit his final report in due time—preferably before the end of 1997—in order to enable discussion of the report by the Working Group on Indigenous Populations at its 16th session and by the Sub-Commission at its 50th session, and requested the Secretary-General to give the Special Rapporteur all the assistance necessary to enable him to conclude his study. Id. The study has continued for nine years.

to the study as a whole, the member concluded, the report would then become a real contribution to the international discussion on treaties, agreements and other constructive arrangements between States and indigenous populations.

G. Sexual Slavery in Armed Conflict

Serious human rights violations against women occur in times of war. Most recently, the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia reported and the Special Rapporteur on the situation of human rights in Rwanda reported about systematic rape and other violence against women. These recent situations, as well as continued concern about the treatment of "comfort women" by the Japanese army during World War II, led the Sub-Commission to authorize a study on sexual slavery during armed conflict.

The Special Rapporteur on the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict, Linda Chavez (former member from the United States), informed the High Commissioner and Centre for Human Rights that she was not able to submit her final report as requested in Sub-Commission resolution 1996/11. She further informed the Secretariat of her resignation and asked that the study be continued by Gay McDougall (United States, alternate). Because of her expressed interest and expertise in the area, McDougall was named as the replacement Special Rapporteur.

McDougall’s expertise will undoubtedly contribute to an effective study that can educate the public, promote human rights, and encourage parties engaged in armed conflict to guarantee women's rights.

H. States of Emergency

Leandro Despouy (former member from Argentina) submitted his tenth annual report and a list of states that, since January 1, 1985, have proclaimed, extended, or terminated a state of emergency pursuant to Economic and Social Council Resolution 1985/37. In a posi-

162. U.N. ESCOR Sub-Comm. on Prevention of Discrimination and Protection of Minorities,
tive development, Despouy divided the list of countries into two parts: emergency regimes that are presently in force, and those countries that have terminated their states of emergency. By dividing these lists, Despouy effectively focuses attention on current states of emergency, while acknowledging countries that have succeeded in ending their states of emergency. On August 28, 1997, the Sub-Commission adopted, without a vote, resolution 1997/27, which requests the Commission on Human Rights to accept Ioan Maxim (Romania) as the new Special Rapporteur on the question of human rights and states of emergency. Taking note of the importance of distinguishing between existing and terminated states of emergency, this resolution further requests that the new Special Rapporteur submit the list of terminated states of emergency only once every five years.163

I. Other Proposed Studies

Several new working papers were proposed and assigned at the 49th session of the Sub-Commission. In particular, Bossuyt will undertake a working paper on affirmative action, as proposed by the Committee on the Elimination of Racial Discrimination. In addition, Judge El-Hadje Guissé (Senegal) has been entrusted with working papers on transnational corporations and on water as a human right. Eide will work on food as a human right, and Clemencia Forero Úcros (Colombia) will analyze the impact of arms on human rights. Mustapha Mehedi (Algeria) will produce a paper on human rights education, and Gwanmesia will continue working on her paper dealing with juvenile justice.

J. Concluding Remarks on Studies

The Sub-Commission utilizes expert studies to perform its specialized, think-tank function. With the aid of these studies, the Sub-Commission can focus on specific areas of concern, recommend possible solutions to a problem, and educate the public. While the Sub-Commission has recently had some excellent studies, others have been less worthwhile. The less successful efforts may have suffered from decreasing staff support from the Secretariat, lack of time, or lack of knowledge and expertise of the authors. Whatever the reason, the Sub-Commission must attempt to set and meet higher standards for this very important role. In order to ensure higher quality, for example, the


Sub-Commission should take care to propose studies only for subjects within its area of expertise. Moreover, the Sub-Commission should try to be very particular in choosing studies that truly serve the needs of the Commission on Human Rights and treaty bodies, and that address the core issues facing the international human rights community. In accordance with the trend towards implementation rather than new standard setting, the Sub-Commission can further the human rights field by focusing its studies on implementation of existing human rights.

IV. EFFORTS AT PROCEDURAL REFORM

In addition to its continued efforts in analyzing country situations, conducting studies, and monitoring human rights through its working groups, the Sub-Commission has also taken steps to respond to the demands of its parent body, the Commission on Human Rights, for improvements in working methods.

A. Enhanced Dialogue

The Sub-Commission has been able to implement certain reforms that contribute to its effectiveness and efficiency. In particular, the Sub-Commission has recognized the need for greater dialogue among members—that is, a need to move away from speech-giving.

The purpose of the Sub-Commission is to provide a forum in which experts, NGOs, intergovernmental organizations, and government delegates can meet to discuss human rights issues. Its characteristic openness, though, has led to meetings that are increasingly dominated by NGO statements. This trend has restricted the time available for substantive discussion among experts.

In order to facilitate a return to more substantive discourse, the Sub-Commission held several closed meetings during the 1997 session. These meetings allowed members to discuss more freely the issues at hand without having to allow for government or NGO interventions. While this was a positive first step toward encouraging discussion among members, more private meetings would be advisable in the future. In addition, although consultation among Sub-Commission members outside the meeting room appeared to increase, more opportunities for such interaction are needed.

One concrete, albeit quite ambitious, proposal to foster greater dialogue was resolution 1997/17, which proposed a five-week session for a trial period of three years during which the Sub-Commission

would be reduced from forty to only thirty sessions. The five-week session should give Sub-Commission members more time to consult with one another and prepare their work for the formal sessions. This proposal, however, was adopted by a divided vote (twelve for the resolution, seven against, and five abstaining). In light of the Commission’s recent criticism of the Sub-Commission and questions about its overall utility, it will be interesting to see how the Commission reacts to this proposal. Sub-Commission members who opposed this resolution expressed concern that since 1997/17 calls for one week of two daily meetings and four weeks of only one meeting per day, with a total of 30 meetings per session, little more—and possibly less—will be achieved. Indeed, several observers were skeptical about whether Sub-Commission experts would use the extra free time to read documents or consult with one another.

Recognizing the need for enhanced dialogue between experts and NGOs, Louis Joiner met with observers in his capacity as Special Rapporteur for Impunity. This development proved to be very effective and useful. Every Special Rapporteur and Working Group Chairperson should be encouraged to incorporate ongoing and informal consultations with interested government and nongovernmental observers into their standard operating procedures.

Despite these initial reforms, there is still room for improvement. In particular, more can be done with respect to the contributions of nongovernmental and governmental observers. For example, the Sub-Commission adopted a new rule that no individual observer may take the floor more than once on a single agenda item. This change encourages the individual who represents multiple organizations to make joint statements instead of speaking more than once on a given issue. Another suggested change would be to limit observer individuals to three or four interventions per Sub-Commission session (aside from rights of reply). This proposal could streamline the session by focusing observers’ interventions on their areas of expertise.

**B. Methods of Work**

Many Sub-Commission members are not intimately familiar with the body’s procedural rules or methods of work. Accordingly, Ribot Hatano (Japan) prepared and submitted a working paper on the rules and practices of the Sub-Commission based upon the Economic and Social Council Rules of Procedure.\(^{165}\) While this ambitious working paper will aid Sub-Commission members by providing an accessible

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source of practices and relevant provisions, it may have the tendency to rigidify practice into rule. For example, Hatano's working paper would have created rules of procedure with such negative effects as precluding many efficient and knowledgeable alternates from contributing to the Sub-Commission as Special Rapporteurs. In preparing his study, Hatano did not take into account Commission resolution 1996/17 authorizing alternates to do studies, nor did he account for the Sub-Commission's 1997 decisions indicating that alternates would be permitted to undertake studies at a minimum when no titular member wished to prepare them. Several old rules and decisions that would be helpful to the Sub-Commission were similarly not included in Hatano's work. In particular, the paper should have included discussion of the rule advising governments not to accuse other governments of violations.

In conclusion, although the review of existing procedures is an ambitious and necessary effort, the Sub-Commission should avoid any recommendations that rigidify practice into inflexible regulations and should ensure that future studies look more comprehensively at past practices and procedures.

C. Relations with Treaty Bodies

Historically, there has been little coordination between the Sub-Commission and the treaty bodies, which provide another important U.N. venue for addressing human rights issues. The other human rights bodies tend to lack full understanding of the studies and principles developed by the Sub-Commission, even when these studies could directly affect their work. Likewise, the Sub-Commission is often unaware of, or at least inadequately informed about, the jurisprudence of the treaty bodies. This lack of interaction renders the efforts of all the United Nations human rights organs less effective, uncoordinated, and sometimes unnecessarily duplicative. Accordingly, in resolution 1997/22, the Commission on Human Rights urged the Sub-Com-

166. See, e.g., supra notes 142 and 161 and accompanying text.
168. There are six expert committees created by specific human rights treaties, and hence are also referred to as "treaty bodies." The treaty bodies are: Committee Against Torture, Committee on Economic, Social, and Cultural Rights, Committee on the Elimination of Discrimination Against Women, Committee on the Elimination of Racial Discrimination, Committee on the Rights of the Child, and Human Rights Committee.
169. Historically, the International Labour Organization has been the only specialized agency to attend Sub-Commission sessions on a regular basis. UNESCO sent representatives during the early years, but its participation has declined as of late. Other U.N. agencies and bodies make token appearances at times, but usually only when issues of specific relevance to them arise. See Eide, supra note 3, at 261.
mission to cooperate more effectively with the human rights treaty bodies and with other relevant U.N. institutions. The Sub-Commission took several actions in response to this Commission request. For example, as indicated above, the Sub-Commission decided to encourage the Human Rights Committee to develop a revised General Comment on Article 4 of the Civil and Political Covenant to reaffirm the non-derogable right to habeas corpus and cognate rights. In another area, the Sub-Commission prepared material for use by the Committee on the Rights of the Child in issuing general comments on discrimination and juvenile justice. Those materials were officially submitted to the Committee on the Rights of the Child together with a recommendation that general comments be prepared.

The Sub-Commission has also been responsive to the requests of the Committee on the Elimination of Racial Discrimination (CERD) by continuing to pursue a joint study on education relating to racism, and appointing Bossuyt to undertake a working paper on affirmative action as suggested by CERD. Finally, the Sub-Commission decided to encourage a joint seminar with CERD on the issues CERD has identified for further study.

D. Agenda

The new and substantially streamlined agenda adopted provisionally during the Sub-Commission’s 1996 session was used for the first time at the 1997 session. In general, the new agenda significantly increased the opportunity for substantive discussion among Sub-Commission members. The new agenda also rationalized the work of the Sub-Commission so that the body could proceed logically from the first item to the last, reducing the skipping and jumping that had been the practice in the past.

173. See Appendix B.
174. Statistical information of the Bureau with respect to the distribution of time among the participants for the entire 49th session indicated: experts (48 hours), nongovernmental organizations (24 hours), and governments (10 hours). In comparison, an informal analysis of speaking time for the 48th session showed that NGO interventions took about 18 hours. The governmental interventions required about 6 hours, not including the 31 rights of reply.
175. The Sub-Commission did still subject the provisional agenda for the 49th session to several changes, adding a new item on the promotion and protection of human rights of children and youth and sub-items on the right to education, including education in human rights, under the general item relating to the realization of economic, social and cultural rights; gross and massive violations of human rights as an international crime; the implications of humanitarian activities for the enjoyment of human rights; the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights; adverse consequences of transfer of arms and illicit trafficking in arms on the enjoyment of human rights; and arbitrary deprivation of nationality.
The streamlined agenda generally worked well and helped to avoid some of the duplication that had occurred during previous sessions. In concluding his comments on the 49th session of the Sub-Commission, however, Chairman José Bengoa expressed concern about the repetitive interventions under agenda item 9 (administration of justice and human rights) on issues that had already been raised under agenda item 2 (question of the violation of human rights). These two items may need to be grouped together in the future so as to avoid such repetition.

E. Corruption

The discussion on the draft resolution on the situation of human rights in Bahrain was marked by an unsavory event. The Sub-Commission was informed that one member of the Sub-Commission had encouraged the government of Bahrain to donate $100,000 to the Voluntary Fund on Contemporary Forms of Slavery and had promised, in exchange, to oppose the adoption of the resolution. Palley criticized such practice as a form of corruption. The event raises serious questions about the ethical standards of the Sub-Commission members.

CONCLUSION

Since its inception, the Sub-Commission has made many important contributions in drafting human rights standards; recommending new procedures for implementing human rights; identifying countries that need particular attention; supporting its own working groups in addressing human rights issues related to minorities, indigenous peoples, slavery-like practices, and the administration of justice; and undertaking path-breaking studies. Like the United Nations itself, the Sub-Commission has been the subject of criticism, particularly by governments that find the body to be somewhat undisciplined and sometimes too independent.\textsuperscript{176} The Sub-Commission’s discussions during the 49th session were, indeed, occasionally rather unruly because the members did not have enough time for consultation before issues were raised in public meetings. However, on balance, the Sub-Commission’s 49th session was a success.

The 49th session represented an effort by the Sub-Commission to justify its role in the international human rights arena through stream-

\textsuperscript{176} See also Appendix A.

This criticism persists despite the stated goal of independence for Sub-Commission members.
lining its procedures and making efforts at reform. To this end, the Sub-Commission has demonstrated that it can follow through on its commitment to non-duplication of the Commission's country work. Moreover, it has carved out a niche for itself by putting on the U.N. agenda three countries that had not previously been discussed in a human rights context: Bahrain, the Congo (Brazzaville), and the Democratic People's Republic of Korea.

The Sub-Commission continued to provide an important venue for minorities and indigenous peoples through its working groups. This Article has illustrated the essential role working groups have played in the promotion and implementation of human rights. Improvements do need to be made in the functioning of some working groups, but, overall, the working groups make an important contribution to the field of human rights.

As an advisory and educative body, the Sub-Commission initiated and continued several significant studies on such pressing issues as terrorism and human rights and rape during periods of armed conflict. Well-developed, thoughtful studies focusing on significant issues and facilitating coordination among human rights bodies are another unique contribution of the Sub-Commission.

In addition to its modest accomplishments with respect to addressing violations by particular governments, conducting studies of important issues, and monitoring human rights through its working groups, the Sub-Commission must take further steps to enhance the quality of the dialogue among its members; develop a guide to its practices and procedures; find additional ways to assist the human rights treaty bodies; consolidate its new, streamlined agenda; and maintain high ethical standards in its work.
APPENDIX A

Agenda

1. Organization of work:
   (a) Election of officers;
   (b) Adoption of the agenda;
   (c) Methods of work of the Sub-Commission.

2. 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).

3. Comprehensive examination of thematic issues relating to the elimination of racial discrimination:
   (a) Situation of migrant workers and members of their families;
   (b) Xenophobia.

4. The realization of economic, social and cultural rights:
   (a) The international economic order and the promotion of human rights;
   (b) The realization of the right to development;
   (c) The question of transnational corporations;
   (d) The realization of the right to education, including education in human rights.

5. The implementation of the human rights of women:
   (a) Traditional practices affecting the health of women and the girl child;
   (b) The role and equal participation of women in development.

6. Contemporary forms of slavery.

7. Human rights of indigenous peoples:
   (a) Indigenous peoples and their relationship to land.

8. Prevention of discrimination against and protection of minorities.

9. The administration of justice and human rights:
   (a) Question of human rights and states of emergency;
   (b) Application of international standards concerning the human rights of detained juveniles and the judicial protection of children;
   (c) Gross and massive violations of human rights as an international crime;
   (d) Juvenile justice.

10. Freedom of movement:
    (a) The right to leave any country, including one's own, and to return to one's own country, and the right to seek asylum from
persecution;
(b) Human rights and population displacements.

10. bis Promotion and protection of human rights of children and youth.

11. Review of further developments in fields with which the Sub-Commission has been or may be concerned:
(a) The fiftieth anniversary of the adoption of the Universal Declaration of Human Rights;
(b) Review of developments concerning recommendations and decisions relating, inter alia, to:
   (i) Promotion, protection and restoration of human rights at national, regional and international levels;
   (ii) Elimination of all forms of intolerance and of discrimination based on religion or belief;
   (iii) Encouragement of universal acceptance of human rights instruments;
(c) Review of issues not previously the subject of studies but which the Sub-Commission had decided to examine:
   (i) Implications of humanitarian activities for the enjoyment of human rights;
   (ii) Terrorism and human rights;
   (iii) International peace and security as an essential condition for the enjoyment of human rights, above all the right to life;
(d) Other new developments:
   (i) Adverse consequences of the transfer of arms and illicit trafficking in arms on the enjoyment of human rights;
   (ii) Arbitrary deprivation of nationality.

12. Communications concerning human rights; report of the Working Group established under Sub-Commission resolution 2 (XXIV) in accordance with Economic and Social Council resolution 1503 (XLVIII).

13. Concluding items:
(a) Consideration of the future work of the Sub-Commission;
(b) Draft provisional agenda for the fiftieth session of the Sub-Commission;
(c) Adoption of the report of the forty-ninth session.
APPENDIX B

Attendance

Members and alternates

<table>
<thead>
<tr>
<th>Name</th>
<th>Country of nationality</th>
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<tbody>
<tr>
<td>Mr. Miguel Alfonso Martínez</td>
<td>(Cuba)</td>
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<td>Mr. Mohamed Sardar Ali Khan</td>
<td>(India)</td>
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<td>Ms. Judith Sefi Attah</td>
<td>(Nigeria)</td>
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<tr>
<td>Mr. Christy Ezim Mbonu*</td>
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<td>Mr. José Bengoa</td>
<td>(Chile)</td>
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<td>Mr. Mario Ibarra*</td>
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<td>Mr. Marc Bossuyt</td>
<td>(Belgium)</td>
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<td>Mr. Guy Genot*</td>
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<td>Mr. Volodymyr Boutkevitch</td>
<td>(Ukraine)</td>
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<tr>
<td>Mr. Stanislav V. Chernichenko</td>
<td>(Russian Federation)</td>
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<td>Ms. Erica-Irene A. Daes</td>
<td>(Greece)</td>
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<td>Ms. K. Koufa*</td>
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<td>Mrs. Clemencia Forero Ucros</td>
<td>(Colombia)</td>
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<td>Mr. Alberto Diaz Uribe*</td>
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<td>Mr. Asbjørn Eide</td>
<td>(Norway)</td>
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<td>Mr. Jan Helgesen*</td>
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<td>Mr. Osman El-Hajjé</td>
<td>(Lebanon)</td>
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<td>Mr. Fan Guoxiang</td>
<td>(China)</td>
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<td>Mr. Zhong Shukong*</td>
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<td>Mr. Héctor Fix Zamudio*</td>
<td>(Mexico)</td>
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<td>Mr. El-Hadji Guissé</td>
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<td>Ms. Lucy Gwanmesia</td>
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<td>Mr. Ribot Hatano</td>
<td>(Japan)</td>
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<td>Mr. Yozo Yokota*</td>
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<td>Mr. Louis Joiner</td>
<td>(France)</td>
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<td>Mr. Emmanuel Decaux*</td>
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<td>Mr. Ahmed Khalil*</td>
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<td>Mr. José Augusto Lindgren Alves</td>
<td>(Brazil)</td>
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<td>Mr. Ioan Maxim</td>
<td>(Romania)</td>
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Mr. Mustapha Mehedi (Algeria)
Ms. Claire Palley (United Kingdom of Great Britain and Northern Ireland)
Mr. Sang Yong Park (Republic of Korea)
Ms. Halima Embarek Warzazi (Morocco)
Mr. David Weissbrodt (United States of America)
Mr. Gay J. McDougall*
Mr. Fisseha Yimer (Ethiopia)

* Alternate

States Members of the United Nations represented by observers
Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Bhutan, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Germany, Georgia, Greece, Guatemala, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Jordan, Kenya, Kuwait, Latvia, Lebanon, Libyan Arab Jamahiriya, Malaysia, Mauritania, Mexico, Morocco, Myanmar, Nepal, Netherlands, Nicaragua, Nigeria, Norway, Oman, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Rwanda, Saudi Arabia, Senegal, Slovakia, Slovenia, Somalia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Syrian Arab Republic, Thailand, the former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yemen, Zambia.

Non-member States represented by observers
Holy See, Switzerland