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ADOPTION OF THE REPORT ON THE FIFTY-EIGHTH SESSION TO THE HUMAN RIGHTS COUNCIL

**Draft report of the Sub-Commission on the Promotion
and Protection of Human Rights***

Rapporteur: Mr. Mohammed Habib CHERIF

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II. Resolutions and decisions adopted by the Sub-Commission at its fifty-eighth session

A. Resolutions

2006/22. Prevention of human rights violations committed with small arms and light weapons

The Sub-Commission on the Promotion and Protection of Human Rights,

Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Geneva Conventions of 12 August 1949 on the protection of war victims and the Additional Protocols thereto, and other relevant international instruments on human rights and international humanitarian law,

Reaffirming the importance of the right to life as a fundamental principle of international human rights law, as confirmed in article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights and in the jurisprudence of the Human Rights Committee,

Recalling its decision 2001/120 of 16 August 2001, in which it entrusted to Ms. Barbara Frey the task of drafting a working paper on the questions of (a) the trade and carrying of small arms and light weapons; and (b) the use of such weapons in the context of human rights and humanitarian norms, its resolution 2002/25 of 14 August 2002 recommending the appointment of Ms. Frey as Special Rapporteur to prepare a comprehensive study on the prevention of human rights violations caused by the availability and misuse of small arms and light weapons; as well as its decision 2003/105 of 13 August 2003, decision 2004/123 of 13 August 2004 and decision 2005/110 of 11 August 2005 on the prevention of human rights violations committed with small arms and light weapons,

Recalling also Commission on Human Rights decision 2003/112 of 25 April 2003 on prevention of human rights violations caused by the availability and misuse of small arms and light weapons and decision 2004/124 of 21 April 2004 on the transmittal of a questionnaire regarding availability and misuse of small arms and light weapons,

Convinced that the protection of human rights must be central to the development of further principles and norms regarding the availability, transfer and misuse of small arms and light weapons and that to maximize human rights protection for the greatest number of people, both in their own societies and in the international community, States must take steps not only to prevent violations of human rights by State officials with small arms, but also to reduce small arms violence by private actors,

1. *Urges* States to adopt laws and policies regarding the manufacture, possession, transfer and use of small arms and light weapons that comply with principles of international human rights and international humanitarian law;
2. *Also urges* States to provide training on the use of firearms by armed forces and law enforcement personnel consistent with basic principles of international human rights and humanitarian law with special attention to the promotion and protection of human rights as a primary duty of all State officials;
3. *Further urges* States to take effective measures to minimize violence carried out by armed private actors and individuals, including using due diligence to prevent small arms and light weapons from getting into the hands of those who are likely to misuse them;
4. *Requests*, as a means of preventing human rights violations committed with small arms and light weapons, that persons and groups who document human rights practices, including United Nations special procedures, United Nations human rights monitors in field operations and non-governmental organizations, seek out information and report specifically on human rights violations committed with small arms and light weapons;
5. *Welcomes* the final report of the Special Rapporteur, Barbara Frey, on the prevention of human rights violations committed with small arms and light weapons (A/HRC/Sub.1/58/27), containing the draft principles on the prevention of human rights violations committed with small arms and light weapons (A/HRC/Sub.1/58/27/Add.1);
6. *Endorses* the draft principles on the prevention of human rights violations committed with small arms and light weapons as amended by the Special Rapporteur to reflect

the discussion at the fifty-eighth session of the Sub-Commission, annexed to the present resolution and encourages their application and implementation by States, intergovernmental organizations and other relevant actors;

7. *Requests* Ms. Frey to compile and update the study on prevention of human rights violations committed with small arms and light weapons so that it can be published in one volume as part of the Human Rights Study Series, in all the official languages of the United Nations;

8. *Decides* to transmit to the Human Rights Council the draft principles on the prevention of human rights violations committed with small arms and light weapons for consideration and adoption by the Council;

9. *Decides* to request the Secretariat to transmit the draft principles on the prevention of human rights violations committed with small arms and light weapons to the Human Rights Committee and other United Nations human rights treaty monitoring bodies, to the Special Rapporteur on extrajudicial, summary or arbitrary executions, to the United Nations Commission on Crime Prevention and Criminal Justice and to regional human rights bodies, so as to assure their wide dissemination;

10. *Recommends* the following draft decision to the Human Rights Council for adoption:

“The Human Rights Council, recalling Commission on Human Rights decision 2003/112 on 25 April 2003 on prevention of human rights violations caused by the availability and misuse of small arms and light weapons and taking note of resolution 2006/22 of 24 August 2006 of the Sub-Commission on the Promotion and Protection of Human Rights, endorses the request by the Sub-Commission to Barbara Frey to compile and update her study on the prevention of human rights violations committed with small arms and light weapons and that the full study, entitled

‘The prevention of human rights violations committed with small arms and light weapons’, be published as part of the Human Rights Study Series, in all the official languages of the United Nations.”

21st meeting
24 August 2006
[Adopted without a vote. See chap. VIII.]

Annex

PRINCIPLES ON THE PREVENTION OF HUMAN RIGHTS VIOLATIONS COMMITTED WITH SMALL ARMS

Bearing in mind the primacy of international human rights law as codified in the International Bill of Human Rights,

Recognizing that the right to life, liberty and security of the person is guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Acknowledging that State agents, especially law enforcement officials, play a vital role in the protection of the right to life, liberty and security of person,

Recalling that article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required under the law for the performance of their duty,

Recalling also the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted in 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling further that the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 14, emphasized that the use of force and firearms by law enforcement agents should be commensurate with due respect for human rights,

Recalling that the Economic and Social Council, in its resolution 1986/10 of 21 May 1986, section IX, invited Member States to pay particular attention in the

implementation of the Code of Conduct for Law Enforcement Officials to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, welcomed the Council's recommendation,

Acknowledging that paragraph 2 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions requires the strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and small arms,

Noting the need to promote the human rights, safety and well-being of all persons by preventing foreseeable small arms violence through appropriate measures to regulate small arms possession and use by private actors, including those suggested in paragraph 5 of Economic and Social Council resolution 1997/28 of 21 July 1997 and in resolution 9 of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Emphasizing the need for States to promote and assist with the pursuit of negotiated solutions to conflicts, including by addressing their root causes as noted in the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, section III, paragraph 4,

Emphasizing also the responsibility of States to promote public education and awareness about the root causes of violence and to promote alternative forms of dispute resolution, as recognized by the Economic and Social Council in its resolution 1997/28 and the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, section II, paragraph 20,

Solemnly proclaims the human rights principles set forth below, formulated to assist Member States in their task of ensuring and promoting the proper action by State agents, especially law enforcement officials, with respect to their unequivocal role to protect the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights, and urges that every effort be made so that the principles become generally known and respected.

A. Obligations with regard to State agents

1. Governments and State agents, especially law enforcement officials, shall not use small arms to violate human rights. All State agents have the obligation to uphold and affirm human rights including the right to life, liberty and security of person, as guaranteed in the International Bill of Human Rights. A State agent includes any person or persons acting at the instigation of or with the consent or acquiescence of a public official.

2. Governments and State agencies shall adopt and implement rules and regulations on the use of force and small arms against persons by State agents, especially law enforcement officials.

3. In order to prevent the violation of human rights committed with small arms, Governments and State agents shall ensure strict enforcement of the rules and regulations they adopt, including a clear chain of command over all officials authorized by law to use force and, in particular, small arms. Governments shall ensure that arbitrary or abusive use of force carried out with small arms, including but not limited to force used by any State agent, is punished as a criminal offence.

4. In order to further prevent the violation of human rights committed with small arms, Governments and State agents shall establish and maintain adequate and detailed procedures for the proper storage and management of small arms, including ammunition. Governments shall actively pursue the collection, safe storage, destruction and responsible disposal of surplus small arms.

5. Governments and State agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training on the acceptable conditions for the use of force in conformity with these principles. Those State agents who are permitted to carry small arms shall be authorized to do so only upon completion of special training regarding the limitations on their use. The compliance of State agents with rules and regulations on the use of force and small arms shall be subject to regular review.

6. In the training (at national or international level) of State agents, especially law enforcement officials, Governments and State agencies shall give special attention to the promotion and protection of human rights as a primary duty of all State agents. Governments shall design training programmes to emphasize alternatives to the use of force and small arms, including the peaceful settlement of disputes, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, with a view to limiting the use of force and small arms.

7. In the planning of specific operations and tactical situations, Governments and State agents shall include alternative means of settlement without recourse to force and small arms.

8. In honouring the right to life, liberty and security of person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights, the intentional lethal use of small arms may only be made when strictly unavoidable in order to protect life. State agents, including law enforcement officials, shall not use small arms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.

9. Governments and State agencies shall establish effective reporting and investigative procedures to ensure that all incidents involving the misuse of small arms by State agents, including law enforcement officials, are reviewed and acted upon by independent and competent authorities. There shall be a thorough, prompt and impartial investigation, and appropriate corrective measures taken, in all cases of death, torture, other ill-treatment or injury involving the use of small arms by State agents. In addition to determining the cause, manner and time of death, torture or injury, and the persons responsible, all investigations should identify the type of weapon(s) used in the incident.

B. Due diligence to prevent human rights abuses by private actors

10. In order to ensure the protection of human rights by preventing small arms violence by private actors, Governments shall enact licensing requirements to prevent possession of arms by persons who are at risk of misusing them. Possession of small arms shall be authorized for specific purposes only; small arms shall be used strictly for the purpose for which they are authorized. Before issuing a licence Governments shall require training in proper use of small arms, and shall take into consideration, at a minimum, the following factors: age, mental fitness, requested purpose, prior criminal record or record of misuse, and prior acts of domestic violence. Governments shall require periodic renewal of licences.

11. Governments shall ensure that proper controls are exercised over the manufacturing of small arms through incorporation into national law and by other measures. For the purpose of identifying and tracing small arms, Governments shall require that at the time of manufacture, each small arm has a unique permanent mark providing, at a minimum, the name of the manufacturer, the country of manufacture and the serial number.

12. Governments shall ensure the investigation and prosecution of persons responsible for the illegal manufacture, possession, stockpiling or transfer of small arms. Governments shall impose penalties for crimes involving the misuse of small arms, including to commit domestic violence, and for the unlawful possession of small arms.

13. With the cooperation of the international community, Governments shall develop and implement effective disarmament, demobilization and reintegration programmes, including the effective collection, control, storage and destruction of small arms, particularly in post-conflict situations. Governments should take steps to encourage voluntary disarmament. Governments should implement public awareness and confidence-building programmes, in cooperation with civil society and non-governmental organizations, to prevent a return to armed violence and to encourage alternative forms of dispute resolution. Governments should incorporate a gender perspective in their peacekeeping and public awareness efforts to ensure that the special needs and human rights of women and children are met, especially in post-conflict situations.

14. Governments shall prohibit international transfers of small arms which would violate their obligations under international law, including in circumstances in which such arms are likely to be used to commit serious human rights violations.

15. In light of the obligation of a State, under international human rights law, to prevent human rights violations, States are required under international law to provide, upon request, assistance, for the purposes of judicial proceedings in other States, in the provision of information regarding the ownership or purchase of small arms and light weapons in the former State.

B. Decisions

2006/101. Three-week session of the Sub-Commission on the Promotion and Protection of Human Rights

At its 2nd meeting, on 7 August 2006, the Sub-Commission on the Promotion and Protection of Human Rights, taking note of Human Rights Council decision 1/102 of 30 June 2006, in which the Council decided, without a vote, that the final session of the Sub-Commission should be convened starting on 31 July for a period of up to four weeks, if so decided by the Sub-Commission, including its pre-sessional and in-sessional working groups, decided to utilize all three weeks of meeting time available to it in order to be able to carry out its programme of work, including the tasks requested by the Council.

[See chap. III.]

2006/102. Establishment of a sessional working group to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism under agenda item 6 (c)

At its 2nd meeting, on 7 August 2006, the Sub-Commission on the Promotion and Protection of Human Rights, recalling its resolution 2005/31 of 11 August 2005, decided, without a vote, to establish a sessional working group to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights

when combating terrorism under agenda item 6 (c), composed of the following members:

Mr. Bíró, Mr. Chen Shiqiu, Ms. Koufa, Mr. Salama and Ms. Sardenberg Zelner Gonçalves.

[See chap. III.]

**2006/103. Establishment of a sessional working group on the
administration of justice under agenda item 3**

At its 2nd meeting, on 7 August 2006, the Sub-Commission on the Promotion and Protection of Human Rights, recalling its resolution 2005/13 of 10 August 2005, decided, without a vote, to establish a sessional working group on the administration of justice under agenda item 3, composed of the following members: Ms. Hampson, Ms. Motoc, Ms. Rakotoarisoa, Mr. Tuñón-Veilles and Mr. Yokota.

[See chap. III.]

**2006/104. Establishment of a sessional working group on the effects of the
working methods and activities of transnational corporations
on the enjoyment of human rights under agenda item 4**

At its 2nd meeting, on 7 August 2006, the Sub-Commission on the Promotion and Protection of Human Rights, recalling its resolution 2005/6 of 8 August 2005, decided, without a vote, to establish a sessional working group on the effects of the working methods and activities of transnational corporations on the enjoyment of human rights under agenda item 4, composed of the following members: Mr. Alfonso Martínez, Mr. Alfredsson, Mr. Bíró, Ms. Chung and Mr. Guissé.

[See chap. III.]

**2006/105. Establishment of a drafting group on implementation of
Human Rights Council decision 1/102 of 30 June 2006
under agenda item 7**

At its 3rd meeting, on 9 August, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to establish a drafting group to prepare, for the consideration of the Sub-Commission, the documents requested by the Human Rights Council in

its decision 1/102 of 30 June 2006 under agenda item 7, composed of the following members: Mr. Alfonso Martínez, Mr. Bíró, Mr. Guissé, Ms. Hampson and Mr. Yokota, and chaired by the Chairperson of the fifty-eighth session of the Sub-Commission, Mr. Bossuyt.

[See chap. IX.]

2006/106. Human rights and State sovereignty

At its 21st meeting, on 24 August 2006, the Sub-Commission on the Promotion and Protection of Human Rights, welcoming with satisfaction the working paper prepared by Mr. Vladimir Kartashkin on human rights and State sovereignty (E/CN.4/Sub.2/2006/7), decided, without a vote, to request Mr. Kartashkin to prepare, without financial implications, an expanded working paper on human rights and State sovereignty that should address, among other things, such issues as State sovereignty and the relationship between international and domestic law in the field of human rights, and to submit it in 2007 to the Sub-Committee or to any future expert advice mechanism. The Sub-Commission also recommends that this topic be included in the agenda of the future expert advice mechanism as a matter of priority.

[See chap. V.]

2006/107. Transitional justice: investigation mechanisms for truth and reconciliation, with emphasis on Latin America

At its 21st meeting, on 24 August 2006, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to request Janio Iván Tuñón Veilles to prepare, without financial implications, a working paper on transitional justice and investigation mechanisms for truth and reconciliation, with emphasis on the experiences in Latin America, and to submit it to the working group on the administration of justice at its next session.

[See chap. V.]

2006/108. The right to development

At its 21st meeting, on 24 August 2006, the Sub-Commission on the Promotion and Protection of Human Rights, recalling the adoption of the Declaration on the Right to

Development by the General Assembly in its resolution 41/128 of 4 December 1986 and the request by the Commission on Human Rights in resolution 2003/83 of 25 April 2003, reiterated in resolution 2005/4 of 12 April 2005, for the Sub-Commission to submit to the Commission a concept document establishing options for the implementation of the right to development and their feasibility, inter alia, an international legal standard of a binding nature, guidelines on the implementation of the right to development and principles for development partnership, including issues which any such instrument might address, having received the working paper prepared by Florizelle O'Connor (E/CN.4/Sub.2/2005/23) and taking note of Ms. O'Connor's request for additional time to complete the requested document, decided, without a vote, to request Ms. O'Connor to submit the document to the Sub-Commission at its fifty-ninth session, or to the first session of any future expert advice mechanism.

[See chap. VI.]

2006/109. Human rights of elderly people

At its 21st meeting, on 24 August 2006, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to request Chin-Sung Chung to prepare, without financial implications, a working paper on the human rights of elderly people, and to submit it to the fifty-ninth session of the Sub-Commission or the first session of any successor body for expert advice.

[See chap. VIII.]

2006/110. Human rights and the human genome

At its 21st meeting, on 24 August 2006, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote:

(a) To request the Special Rapporteur, Antoanella-Iulia Motoc, to submit a final report on human rights and the human genome to the Sub-Commission or the future expert advice mechanism, or in the absence of either, to the Human Rights Council;

(b) To request the Secretary-General to provide the Special Rapporteur with all necessary assistance to enable her to carry out her mandate, inter alia by facilitating her contacts with States and intergovernmental and non-governmental organizations and by enabling her to send them a questionnaire at the appropriate time to help in the preparation on her final report.

[See chap. VIII.]

2006/111. Impact of debt on the enjoyment and exercise of human rights

At its 22nd meeting, on 24 August 2006, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to request the Human Rights Council to authorize it to appoint Mr. El Hadji Guissé as Special Rapporteur on the impact of debt on the enjoyment and exercise of human rights, and requests Mr. Guissé to submit his preliminary report on this study to the Sub-Commission at its fifty-ninth session, or to the first session on the future expert advice mechanism.

[See chap. VI.]
