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HUMAN RIGHTS COUNCIL

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-eighth session

SUMMARY RECORD OF THE 9th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 16 August 2006, at 10 a.m.

Chairperson: Mr. BOSSUYT

later: Ms. MOTOC
(Vice-Chairperson)

later: Mr. BOSSUYT
(Chairperson)

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The meeting was called to order at 10.10 a.m.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 4) (continued)
(E/CN.4/Sub.2/2006/12; A/HRC/Sub.1/58/16; A/HRC/Sub.1/58/CRP.8, 10 and 12; A/HRC/Sub.1/58/NGO/1 and 4)

1. Mr. DECAUX, referring to the report of the ad hoc group of experts on the implementation of existing human rights norms and standards in the context of the fight against extreme poverty (A/HRC/Sub.1/58/16), expressed his gratitude and admiration to Mr. Bengoa for his guidance and inspiration, which had resulted in a remarkable outcome based on an appreciation of real situations on the ground and centred around four main ideas. First was the effective enjoyment of human rights by all, which necessitated access to those rights for those who were excluded. In that context, questions had been raised concerning the concept of "citizenship" used in the report and the draft guiding principles. There was no question of granting the excluded more rights than other citizens; it was simply a matter of recognizing the dignity of all human beings, even those in situations of exclusion and discrimination.

2. Secondly, the report emphasized the indivisibility of human rights, for extreme poverty affected all rights.

3. Thirdly, while collective rights such as the right to development had to be a priority for the international community, the rights and situations of individuals must not be neglected. Efforts in both areas were complementary.

4. Lastly, the process must not be conducted in a paternalistic fashion. Those concerned must be genuinely involved and their demands and expectations acknowledged and met. It was such participation that would give the leverage required for development as opposed to a form of globalization that merely crushed individuals and peoples.

5. He said the text of the report still needed a certain amount of work and the question remained of how that should be done, given that the ad hoc group's mandate was at an end. He suggested that a final informal meeting could be held, after which Mr. Bengoa might be entrusted with the task of preparing a consolidated text for submission to the Human Rights Council.

6. Ms. Motoc, Vice-Chairperson, took the Chair.

7. Ms. CHUNG, referring to the draft guiding principles, said that the first mention of women came in paragraphs 16 and 17, alongside a number of other categories such as the homeless and the elderly. The feminization of poverty was widely recognized, and she suggested that the draft guiding principles should mainstream the gender perspective.

8. Paragraph 10 of the principles mentioned the discrimination and stigmatization resulting from poverty. Yet in many cases discrimination and stigmatization were the cause of poverty. In effect, there was a vicious circle at work, and she suggested that the ad hoc group of experts might discuss ways and means of breaking that vicious circle.

9. Mr. KARTASHKIN welcomed the report of the ad hoc group of experts, which gave a fairly comprehensive account of the rights of persons living in extreme poverty. There were, however, a number of legal points that the group would need to review.

10. Recalling the 2002 report to the Sub-Commission on the concept and practice of affirmative action (E/CN.4/Sub.2/2002/21), he said the question arose whether persons living in extreme poverty should have the same rights as others or more rights. Was it only persons living in extreme poverty, or all human beings, who had the rights referred to in the draft guiding principles?

11. Referring to paragraph 14 of the principles, he said he too wondered what "full citizenship" meant: people either were or were not citizens; if they were not, and lived in extreme poverty, did the State have to give them citizenship merely on the grounds that they were not citizens?

12. He noted that paragraph 27 recommended that certain crimes should be prosecuted before international courts as crimes against humanity. That prompted the question of who should punish such crimes and when.

13. The Rome Statute of the International Criminal Court contained a long list of crimes against humanity. The international community generally regarded that list as exhaustive. The list of crimes committed by States, in breach of both domestic and international law, could well lengthen, and a proposal for new crimes to be included in the Rome Statute list could be accepted at the Statute's seven-yearly review, but the authors should indicate whether they considered their proposal to be one for immediate adoption by the international community or one to be adopted at some future date.

14. Mr. YOKOTA said he wished to draw attention to the four underlying assumptions on which the report and the draft guiding principles were based. In the first place, a rights-based approach had been adopted rather than the more usual approach based on economics and development. The difference was that, under the first approach, extreme poverty was considered a violation of human rights and therefore an issue to be addressed immediately, whereas the second approach saw poverty as an economic issue to be solved over the longer term through development.

15. The group had found, through its direct contacts with people living in extreme poverty, that they were deprived of practically all basic human rights, fundamental freedoms and even human dignity. They were also politically and socially isolated. Thus extreme poverty was not simply a question of economic development but also an urgent human rights issue. It was for that reason that the draft guiding principles contained a number of expressions that went beyond current usage in international legal instruments and might even be considered extreme.

16. The second assumption was that any effort to address the issue of extreme poverty must reflect the views of those living in that situation. The success of poverty-eradication programmes depended upon poor people themselves participating fully in policy formulation and implementation.

17. The third assumption was that a holistic approach was essential in order to ensure the enjoyment of all basic rights and fundamental freedoms, which were inseparable and indivisible. A gradual or piecemeal approach, based on provision for the daily needs of those living in extreme poverty, would not do at all.

18. The fourth assumption was that adoption of the draft guiding principles by the United Nations would send the very important message to those living in extreme poverty that they were not alone. That would encourage and empower the poor to use the qualities they all possessed to solve their own problems and difficulties with self-confidence and dignity.

19. The relationship between extreme poverty and human rights was threefold: firstly, extreme poverty was itself a violation of human rights that could not wait until economic development was achieved but must be addressed immediately; secondly, extreme poverty led to other serious human rights violations such as child labour and trafficking, forced labour and slavery, and sexual exploitation and prostitution; thirdly, as Ms. Chung had mentioned, human rights violations drove people into poverty, which led in turn to discrimination and stigmatization.

20. Lastly, he thanked those members who had pointed out the lack of clarity surrounding the notion of "full citizenship". Unfortunately, the drafting had not captured the intention of the ad hoc group. What was meant was that, while those living in extreme poverty might be citizens in law and on paper, in many cases they were not registered and were therefore excluded from the benefits of full citizenship.

21. Ms. KOUFA said she appreciated Mr. Yokota's clarifications and largely agreed with other members' comments on the wording of the document and any future resolution and on the problem of how to proceed towards a proper legal framework for efforts to combat extreme poverty. She was also fully in agreement with paragraph 25 of the report and with the ad hoc group's conclusions concerning the rights-based approach. In general, the draft guiding principles were an example of the kind of contribution the Sub-Commission could make to human rights standards and thereby to increased understanding, promotion and protection of human rights.

22. Mr. GUISSÉ said that, in defining the concept of extreme poverty, the ad hoc group of experts had concluded that it denoted a situation in which an individual lacked a number of fundamental rights, including the rights to life, health, food, clean drinking water, health care and housing. Despite their fundamental nature, those rights were difficult, if not impossible, to enforce, and their enjoyment depended on the economic situation of Member States and the political will of their Governments. In order to combat poverty effectively, efforts to guarantee those fundamental rights needed to be continued.

23. Ms. MBONU said that there was a demonstrated link between corruption and extreme poverty, which should be reflected in the final report of the ad hoc group of experts. Considering the fact that large numbers of extremely poor persons lived in the countries of Africa, she asked why no seminars had been conducted there in connection with the report of the experts. She recalled that, to date, eight European Union member States had ratified the United Nations Convention against Corruption: Austria, Finland, France, Hungary, Latvia, Slovakia, Spain and the United Kingdom.

24. Mr. YOKOTA said that Africa was considered a priority region by the group of experts, but that seminars had been held in other regions owing to the timing and organization of events sponsored by NGOs with which the expert group had joined efforts. Once the Sub-Commission had received the approval of the Human Rights Council for the proposals contained in its final report, renewed efforts would be made to organize events in Africa relating to the alleviation of extreme poverty.

25. Mr. CHEN Shiqiu said that he agreed with the recommendations made by other members to review certain paragraphs of the report from the legal standpoint. In that connection, he believed that the effectiveness of the draft guiding principles would be enhanced by coordinating them more closely with the provisions of national and international law. For example, the special measures referred to in paragraph 18 were not sufficient to deal with the situation in which the guiding principles conflicted with national laws. The right of all persons living in extreme poverty to be recognized as full citizens of the State in which they lived, mentioned in paragraph 14, should be brought into conformity with the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as with other international conventions concerning the rights of non-citizens. Further study was needed in that area. He hoped that the Human Rights Council would approve and monitor the implementation of the draft guiding principles.

26. Mr. VERZAT (ATD Quart Monde) expressed thanks to the experts of the Sub-Commission, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Member States and the various NGOs, whose collective efforts had contributed to the preparation of the text under consideration. The final report of the ad hoc group of experts gave hope to those who lived in extreme poverty because of its right-based approach, which recommended giving priority to that most vulnerable group of human beings. Noting that a violation of human rights occurred when a right remained inaccessible, he commended the report for not limiting itself to the mere survival of poverty-stricken individuals, but emphasized other rights as well, including the right to education.

27. Ms. PONOLOVSKY (International Council of Women) underscored the long-standing participation of the International Council of Women (ICW) in the work of the ad hoc group of experts. The topic of extreme poverty had been a priority issue for ICW during the previous three-year period as it sought ways of reaching the Millennium Development Goal of halving poverty by the year 2015. It would follow the progress of the draft guiding principles with great interest, as they would be useful in its daily work throughout the world. She wondered how the future subsidiary body of the Human Rights Council might include the issue of extreme poverty in its work on a more permanent basis.

28. Mr. PARY (Indian Movement “Tupaj Amaru”) said that poverty was not an abstract concept but rather a global scourge that affected people in rich and poor countries alike. Its cause was an unequal distribution of wealth - a problem the United Nations, the international financial institutions and the international community, in general, had not been able to resolve. While extolling the virtues of globalization, privatization and the transition to capitalism, many Western nations had failed to acknowledge the negative aspects of those processes, which included corruption, greed and the unlawful appropriation of natural resources, particularly those belonging to indigenous peoples. Moreover, the structural adjustment programmes imposed on developing countries by the World Bank and the International Monetary Fund in recent decades

had failed to achieve their objectives, leading to greater inequalities in the distribution of wealth and ultimately to the extreme impoverishment of many. The interests of powerful multinational corporations now threatened to take control of those institutions, thereby undermining the international community. The economic sanctions imposed by Israel and the withdrawal of aid by Western countries following the democratic election to power of the Islamic Resistance Movement (Hamas), causing hunger and deprivation among the Palestinian people, was an immoral act that demonstrated the opposite of respect for human rights. Until there was sufficient political will in the wealthy countries of the North and the South to allow for a more equitable distribution of wealth and power, there would be no solution to the problem of extreme poverty.

29. Mr. BENGOA said he agreed with Mr. Decaux's proposal that the ad hoc group of experts should meet to review the text of the report and the draft guiding principles in the light of the views expressed in plenary; a consolidated text and a draft resolution might be submitted to the Sub-Commission later in the session. The study prepared by the ad hoc group, unlike some other studies undertaken by the Sub-Commission on its own initiative, had been requested by the Commission on Human Rights and should therefore be transmitted to the Council as the successor body.

30. An early draft of the guiding principles had contained a whole section on women and extreme poverty. The section had been deleted in a later version in order to shorten the text, but should perhaps now be restored. The link between poverty and corruption was mentioned several times in the draft. The question of citizenship had been discussed at length and he agreed that the text should be revised to reflect the comments on that subject by Sub-Commission members.

31. Mr. BÍRÓ, introducing his working paper entitled "The role of the State in the guarantee of human rights with reference to the activities of transnational corporations and other business entities" (A/HRC/Sub.1/58/CRP.12), said that the inspiration for the paper had come from a report by OHCHR on the responsibilities of transnational corporations and related business enterprises (E/CN.4/2005/91), which had identified the need for further research on the concepts of "spheres of influence" and "complicity" and questions relating to jurisdiction and protection of human rights in situations where a State was unwilling or unable to protect such rights. While the concept of corporate complicity could indeed be clarified, he had concluded that there was some uncertainty as to the usefulness of the concept of unwillingness in the framework of a human rights approach.

32. The Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises had issued an interim report in February 2006 (E/CN.4/2006/97), in which the Special Representative had undertaken to compile a list of best practices of States in the field of human rights with reference to transnational corporations and other business entities. Such a compilation would be extremely useful, and he planned to adopt a similar approach himself if he was asked to continue his study, compiling a list of documented cases involving either complicity or State unwillingness.

33. The Sub-Commission's sessional working group on the effects of the working methods and activities of transnational corporations on the enjoyment of human rights had discussed his paper the previous week and raised a number of questions such as the role of the "home States"

of transnational corporations and the effects of competition for foreign direct investment, an issue that was developed in the annex to the working paper prepared by the Europe-Third World Centre (CETIM). He thanked CETIM and Mr. Alejandro Teitelbaum of the Association of American Jurists for their contributions.

34. Mr. GUISSÉ said that, in his view, the working paper should have been introduced after the report of the sessional working group on the working methods and activities of transnational corporations on its eighth session (A/HRC/Sub.1/58/future 11). The working group, composed of Mr. Alfonso Martínez, Mr. Alfredsson, Mr. Bíró, Ms. Chung and himself, had met twice, on 8 and 10 August 2006. It recommended that the issue of transnational corporations should remain on the agenda of the Human Rights Council and on that of a future advisory body to the Council.

35. The working group had discussed, inter alia, the responsibility of States for guaranteeing the rights of individuals within their jurisdiction and protecting them from the impact of the activities of transnational corporations, especially in developing countries. States which, through inertia, neglect or dereliction, had permitted human rights violations by such corporations should be required to honour their obligations under domestic law and binding international instruments and bring the perpetrators, both natural and legal persons, to justice. One of the most effective ways of curtailing the detrimental activities of transnational organizations would be to launch vigorous campaigns against corruption, which a number of studies had identified as an impediment to progress.

36. There had been calls for the disbandment of the working group, including from Mr. Alfredsson, but he strongly believed that any such move would be premature.

37. The group recommended that the draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights (E/CN.4/Sub.2/2003/12/Rev.2) should remain on the agenda of the successor body to the Sub-Commission and that their content should be refined with a view to their ultimate adoption by the Human Rights Council.

38. Mr. Alfonso Martínez had drawn attention to the vulnerability of indigenous peoples whose ancestral lands were exploited by transnational corporations.

39. Ms. CHUNG, introducing the working paper that she had prepared jointly with Ms. O'Connor on "Bilateral and multilateral economic agreements and their impact on human rights of the beneficiaries" (A/HRC/Sub.1/58/CRP.8), said that the slow and complex trade negotiations in the World Trade Organization (WTO) had prompted many countries to opt for less time-consuming bilateral and regional economic agreements, which often escaped public scrutiny, especially from a human rights perspective.

40. Owing to the unequal nature of globalization, poorer States vied with each other to attract investment and refrained from involving all stakeholders in negotiations with investors. Investment agreements frequently included a set of investors' rights, such as protection against discrimination, market access, prohibition of some State actions, and protection against expropriation. Failure to honour those obligations entailed liability for the State concerned.

41. There were scarcely any mechanisms, on the other hand, for protecting the right to work, the right to a livelihood, the right to medical treatment and health, the right to preserve traditional knowledge, women's rights, and the right to housing and other basic needs such as water. Responsibility for protecting those rights and for ensuring that they were respected by transnational corporations lay primarily with States. However, corporations also had social and legal responsibilities.

42. With regard to State responsibility and the relationship between international trade law and international human rights law, the paper recommended invoking State responsibility under the Universal Declaration of Human Rights and as determined by the jurisprudence of United Nations human rights bodies. Extraterritorial application of national standards to transnational corporations raised legal difficulties and there was no provision for arbitration under existing treaties. The paper recommended highlighting the Calvo Doctrine.

43. With regard to the responsibilities of transnational corporations, it was still unclear whether such corporations were subjects of international law. The paper recommended highlighting the responsibilities of non-State actors under the Universal Declaration of Human Rights, the International Covenants on Human Rights and other human rights instruments. Their responsibilities should also be incorporated in international economic agreements. Moreover, the successor body to the Sub-Commission should elaborate norms and identify possible approaches to their implementation.

44. The United Nations human rights machinery should join NGOs in drafting model free trade agreements setting out principles and guidelines such as non-discrimination, transparency, accountability and participation. OHCHR should compile a list of case studies on free trade agreements and human rights.

45. Mr. Bossuyt, Chairperson, took the Chair.

46. Mr. BENGOA said that in the 1990s, especially at the time of the so-called Washington Consensus, the conventional wisdom had been that globalization required minimum regulation and hence a scaling-down of the State, in terms not just of size but also of powers and responsibilities. A fundamental change had occurred in recent years, and the Washington Consensus was now viewed as a serious misreading of the situation. A number of studies had shown that there was a direct relationship between a strong State and effective access to the benefits of globalization.

47. States had long vied with each other in demonstrating flexibility vis-à-vis transnational corporations in terms of environment, labour and other policies. The purported advantages of financial flexibility had led to volatility in financial markets, with extremely undesirable consequences. The international financial institutions now welcomed State action to prevent financial instability.

48. The question of the responsibility of non-State actors such as transnational corporations in the area of human rights was an emerging theme. The Commission on Human Rights had not, however, responded positively to the Sub-Commission's initiatives in that regard. It had complicated matters, for instance, by referring the draft norms on the responsibilities of

transnational corporations and other business enterprises to various bodies for comment. The Sub-Commission should adopt a strong resolution emphasizing that the responsibility of non-State actors was a theme that could not be ignored by the Council.

49. Ms. HAMPSON said that one of the important roles of the Sub-Commission was to serve as a market place for ideas, from which individuals could take examples of effective approaches and implement them in their own countries. Discussions in the working group on transnational corporations appeared to have focused on complaints about the lack of action at the national level and dreams of a far-distant future, rather than on an exchange of ideas that could make a real and immediate difference to victims of human rights violations. Although there was no basis in international law to suggest that transnational corporations or other business enterprises were a subject of public international law, they were subject to national law. The States in which such enterprises operated had obligations under international law, and particularly under human rights law, to protect people from harm. Although the responsibility of States was not simply law on paper, States did not provide the Sub-Commission with adequate information on specific case law. The solution to that problem was not to make non-State actors responsible under international law, since the only judicial institutions capable of acting coercively were at the State level. Strategies should therefore be identified to make States accountable when they failed to apply the appropriate standards to the activities of transnational corporations and other business enterprises. Case law already existed at the national, regional and international levels that explained how States could be called to account.

50. A State in which a transnational corporation operated must have law, regulations and practices, and must implement them, in order to protect persons from harm at the hands of third parties. If a company owned a factory that polluted the environment to an extent that it harmed the health of individuals, the State in which that company operated would be in breach of human rights law if it failed to take effective action against the company. At the same time, the State of incorporation of a transnational corporation must make its courts available to foreign plaintiffs, which would affect rules on jurisdiction, in particular forum non conveniens, and had implications on the need to lift the corporate veil in the event that a company alleged that it was a freestanding body in another territory that had engaged in the conduct in question. States that failed to allow foreign plaintiffs to bring suit against companies incorporated in their jurisdiction were in breach of human rights law. It was therefore possible to raise such issues immediately through the individual petitions system. In the event that a State had not accepted the right of individual petition, but had ratified a relevant human rights treaty, the issue could be raised during the periodic review. It would be useful to compile a detailed review of existing case law and lines of argument, in order for State delegations to transmit them to their own jurisdictions.

51. On the issue of conflicting standards in international law, she said that a good example of the collision of norms, which the Sub-Commission had already studied, was the relationship between intellectual property rights and human rights. Although in some exceptional cases it was possible to resolve a conflict of norms in international law by reliance on jus cogens, that was not a general solution, since in the majority of cases neither of the norms in conflict constituted jus cogens. Some norms at the international level should be considered the equivalent of public law at the national level, i.e. the rules necessary for society to function. She suggested that it would be worth exploring the idea that the Charter of the United Nations and Charter law could be considered to constitute international public law. There was a close

link between the delivery of human rights, to which reference was made in the Charter of the United Nations, and the decline in the incidence of conflicts and threats to international peace and security. Human rights law could be considered part of Charter law, since it was a necessary element to enable international society to function. Such a tool would offer greater flexibility than the jus cogens rule. The Sub-Commission or its successor body might consider the establishment of such a hierarchy of norms, since it would assist greatly in cases where there was a collision between provisions in international law.

52. Mr. Bossuyt (Chairperson) resumed the Chair.

53. Mr. DECAUX said that the draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights were one of the most important legacies of the Sub-Commission's work of the past few years. At the beginning of 2006, a seminar on the draft norms had been held by the Mouvement des Entreprises de France in cooperation with the Ministry of Foreign Affairs and the participation of French and European trade union representatives, and NGOs including Amnesty International and the International Federation of Human Rights Leagues (FIDH). The debate had been open, and had constituted an important development in the understanding and acceptance of the norms and the Sub-Commission's work in general. He expressed concern about the role of the working group, since it had completed its main task, and he wondered whether its activities, ideas and initiatives could be considered counterproductive at such a stage. Furthermore, since the working group seemed to work in isolation from the Sub-Commission and subjects that had been discussed in the group were then discussed in plenary, he wondered whether it would be preferable to simply have a clear item on the agenda for discussion in plenary, particularly in order to enable observers to comment on the issues at hand.

54. On the subject of the reform of the working group, the report contained the opinions of four members, but did not appear to reflect a consensus. He requested clarification on the working group's overall point of view on that issue. A dialogue should be conducted with the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to consider unacceptable practices and human rights violations, and to find a legal and human rights-based solution to problems.

55. Mr. SORABJEE said that further exploration should take place into the unwillingness of some States to fulfil their human rights obligations. Transnational corporations were obliged to comply with the laws in the countries in which they operated, particularly in respect of their activities that had an impact on human rights. States could not abdicate responsibility with regard to such activities. On the issue of non-State actors, he said that further consideration should be given to how that term should be defined. He agreed with Ms. Hampson that domestic public law should be applied in respect of non-State actors. That question should be further studied. The Supreme Court of India had developed a doctrine that an entity could be regarded as an instrumentality of the State. If its functions had wide repercussions on the human rights of the community, they would be regarded as public functions and would come within the discipline of human rights and fundamental freedoms under the Constitution. He hoped that such an approach would be more widely used as States became more aware of the serious consequences of the unregulated activities of transnational corporations. The solution was not

to make non-State actors liable under international law, but rather to use domestic public law. States had a fundamental responsibility to ensure the basic rights of their people. There was no right more basic than the right to life, which encompassed the right to live in dignity and have access to clean water and clean air.

56. Mr. SALAMA said that the issue of transnational corporations was a very important one, and a good example of an area where an entire legal policy had been called into question. He agreed with Ms. Chung on the need for human rights impact assessment of trade and development norms and policies. He agreed with Mr. Sorabjee and Ms. Hampson that the Sub-Commission should not attempt to anticipate a development in international public law that might not take place. The solution to the issue was not to make transnational corporations subjects of international law, but rather to empower States. The working group should try to analyse the cause of the imbalance of power, and how that could be addressed. The group should also examine the possibility of providing special support and capacity-building for NGOs in acquiring specialist knowledge of their national legislation so that they could raise public awareness and put pressure on States to hold transnational corporations accountable and encourage them to reconcile the differences between their practices and human rights norms.

57. The draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights had achieved an important objective, regardless of their legal status as non-adopted quasi-soft law. Transnational corporations should not be viewed only as violators of human rights, since they also created employment and transferred technology. The issue of invoking international public law and the human rights aspects of the Charter of the United Nations could be a long-term objective of the legal policy of a think tank like the Sub-Commission, but did not constitute an immediate measure, and would not have the same impact as working with NGOs on the ground to enter into dialogue with transnational corporations.

58. The issue of the future of the working group was a general matter. Working groups should exist to complete specific tasks in a specific time frame, after which follow-up would be required, and should be ensured through the establishment of a permanent agenda item and collegial input from all members of the Sub-Commission. The prolongation of working groups was not appropriate if specific studies were no longer required.

59. Mr. BENGOA said that although non-State actors were not subjects of international law in the same capacity as State actors were, they should nevertheless be bound by international law to assume responsibility and follow appropriate norms and standards. The issue of whether States should have exclusive responsibility was particularly complex. He wondered why States' standards in respect of environmental issues were not applied between affiliated States. In many instances, small countries were too weak politically to engage in disputes with transnational corporations. The subject required further discussion and should be brought to the attention of the Human Rights Council as a central issue on the human rights agenda.

60. Ms. MOTOC said that the draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights demonstrated a gap in understanding between the Commission on Human Rights and the Sub-Commission. She considered that the presentation of the draft norms had been a strategic error, since the text could have been improved through further, more in-depth dialogue between the two bodies, and the

current situation would not have arisen. Despite the fact that the draft norms were considered soft law, they did not have the same weight as norms that had been adopted. She was in favour of the adoption of an international instrument, and considered that domestic legal systems had the capacity to sanction transnational corporations, and that they had legal texts at their disposal for the purpose. Unfortunately, few legal systems were efficient and justice was weak. The problem was not simply that States' political systems were not strong enough to confront transnational corporations, but rather that there were gaps in national judicial systems. Effective judicial systems that had the capacity to address such issues were generally found in developed States where there were fewer human rights violations. There were other approaches to the issue of transnational corporations, aside from the draft norms, that had not been sufficiently developed. She agreed that cooperation with other mechanisms was important, in particular with the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.

61. On the hierarchy of norms in international law and in human rights law in particular, the main problem was that it was no longer clear which norms belonged to the category of general international law. Regarding the norms contained in the Charter of the United Nations, Article 103 of the Charter stated that in the event of a conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, their obligations under the Charter would prevail. Following the Lockerbie trials, legal experts had begun to look for instruments at the international level that could be considered as an international equivalent to a domestic constitution. The Charter of the United Nations had been suggested to fulfil the role of an international constitution. That approach was open to criticism however, since there were some gaps in the Charter in respect of economic rights, and also since the current practice was to accept the pluralism that existed in legal texts. Article 103 of the Charter of the United Nations should be the subject of further study.

The meeting rose at 1 p.m.