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COMMISSION ON HUMAN RIGHTS

Sixty-first session

SUMMARY RECORD OF THE 57th MEETING

Held at the Palais des Nations, Geneva,  
on Tuesday, 19 April 2005, at 3 p.m.

Chairperson: Mr. WIBISONO (Indonesia)

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Consideration of draft resolutions and decisions

The meeting was called to order at 2.55 p.m.

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:

- (a) TORTURE AND DETENTION
- (b) DISAPPEARANCES AND SUMMARY EXECUTIONS
- (c) FREEDOM OF EXPRESSION
- (d) INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY
- (e) RELIGIOUS INTOLERANCE
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(agenda item 11) (continued) (E/CN.4/2005/L.40, 48, 52, 54, 55, 97; E/CN.4/2005/2-E/CN.4/Sub.2/2004/48 (chapter I, draft decision 9))

Draft resolution on promoting the rights to peaceful assembly and association  
(E/CN.4/2005/L.50 and L.97)

1. Mr. LEO (United States of America), introducing draft resolution E/CN.4/2005/L.50 on behalf of the sponsors, said that one of the most basic expressions of human dignity was the act of joining with others to exchange ideas and to translate those ideas into action. History demonstrated the critical role that the exercise of freedom to assemble and associate had played in advancing peace, prosperity and security. The draft resolution reaffirmed and sought to strengthen commitment to those foundation stones of human rights and democracy.
2. To accommodate the observations of some delegations, the order of the phrases “form and join trade unions” and “engage in religious observances” in the fourth preambular paragraph had been reversed.
3. Mr. LUKIYANTSEV (Russian Federation), introducing document E/CN.4/2005/L.97, which contained proposed amendments to the draft resolution, said he agreed that freedom of assembly and association were among the most important rights to be safeguarded in any democratic society. It was also generally accepted that citizens assumed certain obligations in exercising those freedoms and that States were entitled to impose certain restrictions on their exercise. Unfortunately the sponsors of the draft resolution had ignored that aspect of the matter. The proposed amendment to the fifth preambular paragraph and the proposed additional operative paragraph were designed to repair that omission. The first proposed amendment reproduced the wording of articles 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) and the second reproduced the wording of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Any vote against the proposed amendments or any abstention would cast doubt on the wording of those two instruments. He requested a separate vote on each amendment.

4. Mr. LEO (United States of America) said that the draft resolution made it clear that restrictions could be imposed on the exercise of freedom of assembly and association within the framework of international law, including through a reference to ICCPR. The proposed new operative paragraph was seriously flawed. In stating that the exercise of “the rights to freedom of peaceful assembly and of association presupposes certain responsibilities for individuals and groups”, it radically altered the fundamental definition of a right, treating it as something that must be earned. Rights were not subject to prior approval. The new paragraph would shift the emphasis of the draft resolution to restrictions on rights, whereas the intent was to reaffirm them.

5. With regard to the proposed amendment to the fifth preambular paragraph, he offered to compromise by inserting the desired reference to other international human rights instruments, including ICERD. However, he was unwilling to include the lengthy quotation from ICCPR, since it would upset the balance of the resolution.

6. Mr. REYES RODRÍGUEZ (Cuba) said that while he agreed that the promotion of freedom of peaceful assembly and association was of great importance, he considered that it should also be made clear that the exercise of such rights should comply with the restrictive provisions set forth in international human rights instruments. For instance, freedom of association could not be extended to terrorist organizations such as Al-Qaida or racist organizations such as the Ku Klux Klan. He therefore supported the amendments proposed by the Russian Federation.

7. Mr. DE JONG (Netherlands) said he was speaking on both proposed amendments on behalf of the States members of the European Union (EU) that were members of the Commission and the acceding country Romania, all of which had sponsored draft resolution E/CN.4/2005/L.50 because it struck a fine balance between protection of the rights to freedom of peaceful assembly and of association and the legitimate restrictions that States could place on the exercise of such rights. The amendment proposed to the fifth preambular paragraph upset that balance and weakened the scope of the draft resolution. The proposed new operative paragraph was unacceptable because international human rights treaties did not make the exercise of the rights to freedom of peaceful assembly and of association dependent on the performance by individuals and groups of certain responsibilities. The EU would therefore vote against both proposed amendments.

8. Mr. SHA Zukang (China) expressed support for the two proposed amendments. Although the rights to freedom of peaceful assembly and of association were universally recognized, legitimate and necessary limits had been placed on their exercise. As the draft resolution deliberately played down those restrictions, the two proposed amendments were necessary to restore balance.

9. At the request of the representative of the Russian Federation, a recorded vote was taken on the proposed amendment to the fifth preambular paragraph of the draft resolution, as contained in document E/CN.4/2005/L.97.

In favour: Armenia, Bhutan, China, Cuba, Ecuador, Egypt, Eritrea, Ethiopia, India, Malaysia, Mauritania, Nepal, Nigeria, Pakistan, Qatar, Russian Federation, Saudi Arabia, Sri Lanka, Sudan, Togo, Zimbabwe.

Against: Argentina, Australia, Brazil, Canada, Costa Rica, Dominican Republic, Finland, France, Germany, Guatemala, Honduras, Hungary, Indonesia, Ireland, Italy, Japan, Mexico, Netherlands, Paraguay, Peru, Republic of Korea, Romania, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Burkina Faso, Congo, Gabon, Guinea, Kenya, South Africa, Swaziland.

10. The proposed amendment to the fifth preambular paragraph was rejected by 25 votes to 21, with 7 abstentions.

11. Mr. SAHA (India), speaking in explanation of vote before the vote on the proposed addition of an operative paragraph to the draft resolution, said that while he could agree with the content of the proposed new paragraph, he considered that its inclusion would blur the focus of the draft resolution and would therefore abstain.

12. At the request of the representative of the Russian Federation, a recorded vote was taken on the proposed insertion in the draft resolution of a new operative paragraph, as contained in document E/CN.4/2005/L.97.

In favour: Bhutan, China, Cuba, Ecuador, Eritrea, Ethiopia, Malaysia, Mauritania, Nepal, Russian Federation, Saudi Arabia, Sudan, Zimbabwe.

Against: Argentina, Armenia, Australia, Brazil, Canada, Costa Rica, Dominican Republic, Finland, France, Germany, Guatemala, Honduras, Hungary, Indonesia, Ireland, Italy, Japan, Mexico, Netherlands, Paraguay, Peru, Republic of Korea, Romania, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Burkina Faso, Congo, Egypt, Gabon, Guinea, India, Kenya, Nigeria, Pakistan, Qatar, South Africa, Sri Lanka, Swaziland, Togo.

13. The proposed addition of a new operative paragraph was rejected by 26 votes to 13, with 14 abstentions.

14. At the request of the representative of Cuba, a recorded vote was taken on the draft resolution, as orally revised.

In favour: Argentina, Armenia, Australia, Brazil, Burkina Faso, Canada, Congo, Costa Rica, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Gabon, Germany, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Malaysia, Mauritania, Mexico, Nepal, Netherlands, Nigeria, Pakistan, Paraguay, Peru, Republic of Korea, Romania, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Bhutan, China, Cuba, Eritrea, Qatar, Russian Federation, Saudi Arabia, Zimbabwe.

15. Draft resolution E/CN.4/2005/L.50, as orally revised, was adopted by 45 votes to none, with 8 abstentions.

Draft resolution on the right to freedom of opinion and expression (E/CN.4/2005/L.52)

16. Ms. NGUYEN (Canada), introducing the draft resolution on behalf of its sponsors, said that the wording had been updated in the light of the report of the Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/64 and Add.1-5), especially his comments on media concentration, the security of media professionals and the importance of access to the media. The draft resolution also called for a three-year extension of the Special Rapporteur's mandate and requested the Special Rapporteur to submit a report to the Commission at each session. However, the sponsors had decided, following consultations, to leave open the question of whether a resolution should be adopted on a biennial basis and had therefore deleted the phrase "and decides to continue its consideration of this question at its sixty-third session" from paragraph 14.

17. The CHAIRPERSON informed the Commission that there were 24 additional sponsors.

18. Mr. REYES RODRÍGUEZ (Cuba), expressing appreciation of the revision by the sponsors, said that Cuba would join the consensus on the draft resolution.

19. Draft resolution E/CN.4/2005/L.52, as orally revised, was adopted without a vote.

Draft resolution on torture and other cruel, inhuman or degrading treatment or punishment (E/CN.4/2005/L.54)

20. Mr. IVERSEN (Observer for Denmark), introducing the draft resolution on behalf of the sponsors, said that it condemned all forms of torture under any circumstances and called on States to consider ratifying the Convention against Torture and to consider favourably requests for country visits by the Special Rapporteur on torture. It further urged States not to expel, return, extradite or in any other way transfer a person to another State where there were substantial grounds for believing that the person would be in danger of being subjected to torture. It stressed that statements made as a result of torture might not be invoked in any proceedings. He trusted that the draft resolution would be adopted by consensus.

21. The CHAIRPERSON informed the Commission that there were nine additional sponsors and that the draft resolution had programme budget implications, details of which had been circulated to members.

22. Draft resolution E/CN.4/2005/L.54 was adopted without a vote.

Draft resolution on the elimination of all forms of intolerance and of discrimination based on religion or belief (E/CN.4/2005/L.55)

23. Mr. ALEX (Observer for Luxembourg), introducing the draft resolution on behalf of the European Union and all other sponsors, said the findings of the Special Rapporteur on freedom

of religion or belief had been incorporated into the draft resolution to ensure that it was topical and up-to-date. The document called on all States to respect the rights and freedoms of adherents of religions or beliefs; to enhance dialogue at all levels to address problems related to religious extremism and gender-based discrimination or violence resulting from religion or belief; and to take measures to eliminate intolerance, inter alia, by promoting tolerance and understanding as part of their educational policies. Intra- and inter-religious dialogue promoted by religious and other organizations was also crucial in that regard. The sponsors hoped that the Commission would adopt the draft resolution by consensus, thus signalling its support to the Special Rapporteur and showing unity when it came to addressing major contemporary challenges.

24. The CHAIRPERSON informed the Commission that there were 27 additional sponsors, who would be listed in the report.

25. Mr. SARAN (India) said that intolerance affected all religions, which deserved to be treated on an equal footing. His delegation had therefore repeatedly objected to the wording of paragraph 6, which had regrettably been retained. Given the importance of the subject addressed, his delegation did not wish to block consensus, but was unable to sponsor the draft resolution as it had done in previous years.

26. Ms. JANJUA (Pakistan), speaking on behalf of the States members of the Organization of the Islamic Conference (OIC), said that respect for the fundamental human right to freedom of religion or belief contributed to peace and harmony, while growing religious intolerance and discrimination in many parts of the world, in particular against Muslims, constituted a threat to global peace and security. The OIC therefore supported the draft resolution as part of the global effort to eliminate such practices.

27. However, OIC member States reiterated their concern over the reference to anti-Semitism as a form of religious intolerance. The term “Semite” described speakers of Semitic languages whose ancestry could be traced back to Shem, Noah’s eldest son, and included Jews, Muslims or Christians. Anti-Semitism was thus a form of ethnic, not religious, discrimination and did not fall within the ambit of the draft resolution.

28. The CHAIRPERSON said that the draft resolution had financial implications, details of which had been circulated to the members of the Commission.

29. Draft resolution E/CN.4/2005/L.55 was adopted without a vote.

Draft decision 9 on terrorism and human rights, recommended to the Commission on Human Rights for adoption by the Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/2005/2-E/CN.4/Sub.2/2004/48, chapter I, draft decision 9)

30. Ms. BARRIOS (United States of America) said that the scarce resources of the Sub-Commission should not be spent on the publication of the report in document E/CN.4/Sub.2/2004/40. Her delegation called for a vote on draft decision 9 and would vote against it.

31. The CHAIRPERSON drew attention to a note concerning the financial implications of the draft resolution, which had been circulated to the members of the Commission.

32. Ms. JANJUA (Pakistan), speaking in explanation of vote before the vote, said that the excellent report of the Special Rapporteur of the Sub-Commission entitled "Terrorism and human rights" (E/CN.4/Sub.2/2004/40) represented a major contribution to the debate on terrorism and its implications for human rights, and should therefore be disseminated. Her delegation strongly supported the adoption of the draft decision.

33. Mr. LUKIYANTSEV (Russian Federation), speaking in explanation of vote before the vote, said that the Special Rapporteur's report was indicative of the professionalism and competence of the members of the Sub-Commission and their vital contribution to the fulfilment of the Commission's mandate. Therefore, his delegation would support the draft decision.

34. Mr. REYES RODRÍGUEZ (Cuba), speaking in explanation of vote before the vote, said that his delegation associated itself with the statements made by the representatives of Pakistan and the Russian Federation and called on members of the Commission to vote in favour of the draft decision.

35. Mr. OULD MOHAMED LEMINE (Mauritania), speaking in explanation of vote before the vote, said that his delegation associated itself with the statement made by the representative of Pakistan and would vote in favour of the draft decision.

36. At the request of the representative of the United States of America, a recorded vote was taken on draft decision 9.

In favour: Argentina, Armenia, Bhutan, Brazil, Burkina Faso, China, Congo, Costa Rica, Cuba, Dominican Republic, Ecuador, Egypt, Eritrea, Ethiopia, Gabon, Guatemala, Guinea, Honduras, India, Indonesia, Japan, Kenya, Malaysia, Mauritania, Mexico, Nepal, Nigeria, Pakistan, Paraguay, Peru, Qatar, Russian Federation, Saudi Arabia, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Ukraine, Zimbabwe.

Against: Australia, United States of America.

Abstaining: Canada, Finland, France, Germany, Hungary, Ireland, Italy, Netherlands, Republic of Korea, Romania, United Kingdom of Great Britain and Northern Ireland.

37. Draft decision 9 was adopted by 40 votes to 2, with 11 abstentions.

38. Mr. KOENIGS (Germany), speaking in reference to resolution E/CN.4/2005/L.48, said that his Government recognized the need for effective remedy and reparation for victims of gross human rights violations and their families and had participated actively in the drafting of the "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law". The extent of reparations awarded by Germany to victims of Nazi persecution was without precedent, and the issue of reparations remained high on his Government's political agenda.



39. His delegation therefore deeply regretted having been unable to support the “Basic principles and guidelines” as included in the annex to resolution E/CN.4/2005/L.48. The text was an inaccurate reflection of customary international law. It erroneously sought to apply the principles of State responsibility to relationships between States and individuals and failed to differentiate adequately between human rights law and international humanitarian law. While certain instruments provided for the presentation of individual claims for the violation of human rights, such provisions did not exist for violations of international humanitarian law. The claim that such a right existed under the Hague Convention No. IV of 1907 or Protocol I Additional to the 1949 Geneva Conventions was entirely unsubstantiated. While the absence of a legal basis for individual reparation claims for violations of international humanitarian law might be regrettable, it must be taken into account. His delegation had repeatedly raised those concerns, which had compelled it to abstain from voting.

40. Ms. BARTON (United States of America), speaking in reference to resolution E/CN.4/2005/L.40, said that her delegation supported negotiations on the drafting of an international instrument on enforced disappearances if conducted during one annual two-week formal session. The objective should be to produce a well-drafted and well-vetted instrument that reflected a consensus without deadlines for completion of negotiations. Resolution E/CN.4/2005/L.40 should not be interpreted as an attempt to restate or affect provisions of legislation governing detention.

The meeting was suspended at 3.50 p.m. and resumed at 4 p.m.

#### INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE:

##### (a) VIOLENCE AGAINST WOMEN

(agenda item 12) (continued) (E/CN.4/2005/L.51 and 53; E/CN.4/2005/2-E/CN.4/Sub.2/2004/48 (chapter I, draft decision 10))

#### Draft resolution on elimination of violence against women (E/CN.4/2005/L.51)

41. Ms. WALKER (Canada), introducing the draft resolution on behalf of the sponsors, said that the text highlighted elements of the relationship between violence against women and HIV/AIDS and identified the promotion and protection of sexual and reproductive rights of women and girls as an effective and necessary response to HIV/AIDS. The draft resolution also reaffirmed States’ obligation to promote and protect the human rights of women and to exercise due diligence to prevent and punish all forms of gender-based violence.

42. By agreement among the sponsors, paragraph 11 had been amended to read: “*Also urges Governments to effectively promote and protect women’s and girls’ human rights, including reproductive rights and sexual health, in the context of HIV/AIDS to lessen their vulnerability to HIV infection and to the impact of AIDS, as included in the summary of the Guidelines on HIV/AIDS and Human Rights in paragraph 12 of document E/CN.4/1997/37, and to cooperate*

with United Nations bodies, programmes and specialized agencies, and international and non-governmental organizations in this regard.” Her delegation hoped that the revised draft resolution would be adopted by consensus.

43. Ms. JANJUA (Pakistan), speaking on behalf of the countries members of the OIC, thanked the sponsors of the draft resolution for taking into account OIC concerns regarding paragraph 11 and the reference to the Guidelines on HIV/AIDS and Human Rights. While supporting those Guidelines as referred to in that paragraph, OIC member States firmly rejected the principles contained in the elaborated version of the document.

44. Regrettably, the sponsors had not acceded to the OIC’s request to replace the term “marital rape” in paragraph 17 (h) of the draft resolution by the term “domestic sexual violence”. Domestic sexual violence was a broad concept that encompassed marital rape, incest and other forms of sexual violence not amounting to rape, and her delegation proposed that the paragraph in question should be amended to that effect.

45. Ms. WALKER (Canada), speaking on behalf of the sponsors, said that the amendment proposed by the representative of Pakistan was unacceptable. The lack of legal prohibition of or redress for marital rape perpetuated the existence of that phenomenon across cultures. Married women must not be denied the right to decide on matters related to their sexuality, and their increased vulnerability to HIV infection, including by their husbands, provided an additional rationale for criminalizing marital rape. The term “domestic sexual violence” was intentionally broad and missed the intended target of the paragraph, which focused on acts of sexual violence perpetrated by husbands against their wives. Human rights were universal and applied to both married and unmarried women. She therefore called for a vote on the amendment proposed and would vote against it.

46. Ms. TAMLYN (United States of America) said that her delegation did not support calls on States to ratify or accede to the Rome Statute of the International Criminal Court and therefore proposed deletion of paragraph 20 of the draft resolution.

47. Ms. WALKER (Canada), on behalf of the sponsors, requested a vote on the amendment proposed by the representative of the United States.

48. Mr. VARELA QUIROS (Costa Rica) said that his Government was firmly committed to eliminating all forms of violence against women and had taken a series of legislative and other measures to that effect. He thanked the sponsors of the draft resolution for their willingness to work towards a consensus on the language used in paragraphs 7, 8 and 11. However, his delegation wished to place on record that paragraphs 7 and 8 should under no circumstances be interpreted as endorsing abortion rights. In Costa Rica, the right to life from the moment of conception was enshrined in legislation, and his delegation would reject any language that limited that right. Nevertheless, it did not wish to block a consensus on the draft resolution.

49. Mr. PIRA (Guatemala) said that his Government recognized the need to step up efforts to prevent and combat all forms of violence against women and girls; reduce their vulnerability to HIV/AIDS; and promote and protect their rights. However, protecting the right to life from the moment of conception was equally important, and was enshrined in his country’s Constitution.

50. Ms. BAQUERIZO GUZMAN (Ecuador) said that her Government had adopted legislation aimed at combating all forms of violence against women; implementation of those norms was ongoing. Her delegation attached great importance to the draft resolution under discussion and had repeatedly requested the inclusion of a reference to relevant international instruments, in particular the Beijing Declaration, to avoid misinterpretations of the new language introduced. Regrettably, that request had not been granted and her delegation therefore wished to place on record that the draft resolution should under no circumstances be construed as endorsing abortion rights. In Ecuador, the right to life from the moment of conception was a constitutional right, and her delegation therefore opposed all language that could be interpreted as limiting that right.

51. Ms. JANJUA (Pakistan) said that paragraph 17 (h) contained no reference to HIV/AIDS, and the claim that the term “marital rape” had been chosen in response to the Special Rapporteur’s finding that marital rape had served as an instrument for transmitting HIV/AIDS was therefore surprising. She failed to understand the sponsors’ persistent refusal to accept the all-encompassing concept of domestic sexual violence as a replacement for the term “marital rape” and urged all members of the Commission to adopt the amendment proposed by the OIC.

52. Mr. ZAPATA (Honduras) said that his country’s determination to end violence against women and children had led it initially to sponsor the draft resolution. Nevertheless, it had hoped that appropriate language would be found to solve the problems posed by paragraphs 8 and 11. As that had not happened, his Government had withdrawn from the list of sponsors and it would vote against the draft resolution.

53. Mr. DE JONG (Netherlands), speaking in explanation of the vote before the vote, on behalf of the European Union member States that were members of the Commission, said that, regrettably, the amendment tabled to paragraph 17 (h) changed its meaning.

54. The Declaration on the Elimination of Violence against Women had clearly defined marital rape as a form of violence against women and it had subsequently been agreed that all forms of violence against women should be treated as a criminal offence punishable by law. Marital rape therefore clearly needed to be criminalized. Paragraph 17 (h), as it stood, was entirely in line with that position. His Government would therefore vote against the amendment to that paragraph.

55. At the request of the representative of Canada, a recorded vote was taken on the amendment to paragraph 17 (h) of the draft resolution proposed by Pakistan.

In favour: China, Egypt, Eritrea, Ethiopia, Guinea, Indonesia, Malaysia, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Sudan, Zimbabwe.

Against: Argentina, Armenia, Australia, Brazil, Canada, Costa Rica, Dominican Republic, Finland, France, Germany, Guatemala, Honduras, Hungary, Ireland, Italy, Mexico, Netherlands, Paraguay, Peru, Republic of Korea, Romania, South Africa, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Bhutan, Burkina Faso, Congo, Ecuador, Gabon, India, Japan, Kenya, Nepal, Russian Federation, Sri Lanka, Swaziland, Togo.

56. The amendment proposed by Pakistan was rejected by 25 votes to 14, with 13 abstentions.

57. At the request of the representative of Canada, a recorded vote was taken on the amendment to paragraph 20 of the draft resolution proposed by the United States of America.

In favour: India, Indonesia, Nepal, Saudi Arabia, United States of America.

Against: Argentina, Armenia, Australia, Brazil, Canada, Congo, Costa Rica, Dominican Republic, Ecuador, Egypt, Eritrea, Finland, France, Gabon, Germany, Guatemala, Guinea, Honduras, Hungary, Ireland, Italy, Japan, Kenya, Malaysia, Mexico, Netherlands, Nigeria, Paraguay, Peru, Republic of Korea, Romania, Russian Federation, South Africa, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zimbabwe.

Abstaining: Bhutan, Burkina Faso, China, Ethiopia, Pakistan, Qatar, Sri Lanka, Sudan, Swaziland, Togo.

58. The amendment proposed by the United States of America was rejected by 36 votes to 5, with 10 abstentions.

59. Ms. TAMLYN (United States of America) said that her Government was firmly committed to the empowerment of women and the promotion of women's fullest enjoyment of universal human rights and fundamental freedoms. While the goals and commitments of the Beijing Declaration and Platform for Action provided an important policy framework, they did not create international legal rights or legally binding obligations on States under international law. The Beijing and Beijing Plus Five outcome documents did not support, endorse or promote abortion. Her Government's reaffirmation of the goals, objectives and commitments in those documents did not constitute a change in its position with respect to treaties it had not ratified.

60. While fully concurring with the principle of voluntary choice regarding maternal and child health and family planning, her country did not recognize abortion as a method of family planning and it did not support abortion in its reproductive health assistance.

61. Paragraph 11 was not the first instance in which reference had been made to the Guidelines on HIV/AIDS and Human Rights, but the attempt to bolster acceptance of the principles they contained appeared to have intensified. Her Government did not accept the very strong endorsement of the Guidelines implied in paragraph 11 since, in a number of respects, they were fundamentally at odds with United States law. For instance, the exhortation to give legal recognition to same-sex marriage and to decriminalize prostitution was unacceptable. The call to provide sterile injecting equipment failed to acknowledge that in many countries drug use was illegal. Moreover, because of the nature of her country's federal system, those issues were a matter of state and local law. Hence it would be inappropriate for her Government to ignore the

principle of federalism by imposing such obligations. Lastly, it was her delegation's understanding that the summary of the Guidelines pertained only to women's and girls' issues in relation to the prevention and treatment of AIDS.

62. Draft resolution E/CN.4/2005/L.51, as orally revised, was adopted without a vote.

63. Ms. GABR (Egypt) said that her Government was determined to eliminate all forms of discrimination against women. Egypt had been one of the first States to ratify the Convention on the Elimination of All Forms of Discrimination against Women and it had set up a number of bodies to protect women's rights. It had also established a Complaints Bureau to deal with complaints of violence against women and was enacting legislation to counter such violence. The problem of violence against women should be addressed in an integrated way and the root causes of the phenomenon ought to be investigated.

Draft resolution on integrating the human rights of women throughout the United Nations system (E/CN.4/2005/L.53)

64. Mr. CHIHUAILAF (Observer for Chile), introducing the draft resolution on behalf of the sponsors, said that the text, which updated that submitted the previous year, endeavoured to lend added momentum to advances in the field in question. It focused mainly on the United Nations system and it reflected the sponsors' commitment to integrating women's human rights in that system. Given the importance of the subject, he hoped the draft resolution would be adopted by consensus.

65. Draft resolution E/CN.4/2005/L.53 was adopted without a vote.

66. Ms. TAMLYN (United States of America) reiterated her Government's position, as already enunciated with respect to draft resolution E/CN.4/2005/L.51.

Draft decision on the difficulty of establishing guilt and/or responsibility with regard to crimes of sexual violence, recommended to the Commission for adoption by the Sub-Commission (E/CN.4/2005/2-E/CN.4/Sub.2/2004/48, chapter I, draft decision 10)

67. The CHAIRPERSON said that a paper setting out the programme budget implications of the draft decision had been circulated to all the members.

68. Draft decision 10 was adopted without a vote.

69. The CHAIRPERSON announced that the Commission had completed its consideration of agenda item 12.

RIGHTS OF THE CHILD (agenda item 13) (continued) (E/CN.4/2005/L.35/Rev.1 and L.96)

Draft resolution on abduction of children in Africa (E/CN.4/2005/L.35/Rev.1)

70. Mr. YIMER (Ethiopia), introducing the draft resolution on behalf of the African Group, said that poverty and the lack of development, which triggered conflicts and massive displacements, had been the main causes of the unimaginable misery suffered by children in

Africa, who were shouldering enormous responsibilities for themselves and their families. Insecurity and abductions were key concerns of African children. The African Group therefore condemned all abductions of children carried out by anyone whomsoever and called upon all parties to conflicts to ameliorate the plight of children in Africa. The draft resolution also underscored the important role that the international community could play in ending poverty and underdevelopment.

71. The draft resolution contained some new elements that strengthened the text in comparison to that presented the previous year. Paragraph 3 should be revised by the addition of the phrase “in contravention of international law” at the end of the paragraph.

72. The CHAIRPERSON said that the draft resolution had programme budget implications, which had been explained in a paper circulated to members.

73. Draft resolution, E/CN.4/2005/L.35/Rev.1, as orally revised, was adopted without a vote.

Draft resolution on the rights of the child (E/CN.4/2005/L.96)

74. Mr. ALEX (Observer for Luxembourg), also speaking on behalf of the European Union and the Latin American and Caribbean Group (GRULAC) and other sponsors, said that the draft resolution came in an omnibus format in order to provide comprehensive coverage of all issues relating to the rights of the child. Although the almost universal ratification of the Convention on the Rights of the Child had resulted in significant progress in a number of areas, the situation of children in many parts of the world was still critical. The draft resolution therefore called on all States to adopt the requisite national and international measures to ensure the full and equal enjoyment of human rights and fundamental freedoms by children and also to prevent all forms of violence against children. It also requested all relevant human rights mechanisms to pay attention to that matter and asked the Secretary-General to submit a report on violence against children to the Commission.

75. Mr. NORMANDIN (Canada), also speaking on behalf of New Zealand, Norway and Switzerland, said that the commitment of the countries concerned to the protection and promotion of the rights of the child meant that they strongly supported both the Convention and the Committee on the Rights of the Child, as well as the work of the United Nations Children’s Fund (UNICEF) and other United Nations actors. They supported the draft resolution, but were concerned about its length. Its repetition of language from the Convention was not conducive to advancing the rights of the child, since the opportunity to consider new and critical issues was thereby lost. The sponsors had circulated the text too late for others to provide constructive input. It was to be hoped that, in the future, the main sponsors would change their approach and shift the focus of the resolution to urgent, new issues. There was a need for transparency and consultation on all resolutions, especially the draft resolution under consideration, because it attracted so much support.

76. Ms. MEHRA (United States of America) said that her Government welcomed the interest of the United Nations in children’s issues. Her country was constructively and generously engaged in a wide variety of multilateral and bilateral activities of benefit to children all over the world and it appreciated the contributions made by other nations and organizations to the enhancement of the quality of children’s lives.

77. Although her Government was committed to ensuring that the protection of children's rights was fully integrated into United States foreign policy, the Convention on the Rights of the Child raised a number of concerns. In particular, it conflicted with parental authority and with legal provisions in the United States, where many of the activities covered by the Convention were primarily the responsibility of state and local governments. In addition, some of the clauses of the Convention dealing with children's participation in decisions affecting them gave rise to tension between the rights of children and parental authority. The laws of her country generally placed greater emphasis on the duties of parents to protect and care for children and apportioned rights between adults and children in a manner different to that laid down in the Convention.

78. Her Government's adherence to the Convention's many positive standards was greater than that of many States parties. It felt, however, that the draft resolution placed too much emphasis on the Convention, since other international instruments addressed particular problems in a far more effective manner. The sponsors' refusal to list those instruments was therefore unacceptable.

79. The text was an improvement on its predecessors, but a more transparent drafting process was needed to produce a shorter, more targeted text. If the amendments that her delegation was circulating in writing were rejected, it would call for a vote and vote against the draft resolution, because it contained unacceptable language.

80. Ms. SOSA (Mexico), also speaking on behalf of GRULAC, said that the draft resolution was most important. The Convention on the Rights of the Child was crucial to the promotion of children's rights. It was almost universal in scope and set standards on which there was wide consensus. The draft resolution was a gem, as it encapsulated all the various commitments which had been entered into over the years. Given the importance of the Convention, the United States amendments were inappropriate. If they were adopted, her delegation would vote against the amended draft resolution.

81. Mr. DE JONG (Netherlands), speaking on behalf of the European Union countries members of the Commission, said that the EU regretted the amendments proposed by the United States, and was particularly disappointed that those amendments had not been put forward during the informal consultations. The EU was concerned that the proposed amendments could undermine the Convention on the Rights of the Child and its Optional Protocols, which had been widely ratified and provided for a comprehensive normative framework for the protection of children's rights. It hoped that the original language of the draft would be retained.

82. Mr. CHUMAREV (Russian Federation) said that his delegation would vote against the amendments proposed by the United States.

83. A recorded vote was taken on the amendments proposed by the United States of America.

In favour: United States of America.

Against: Argentina, Armenia, Australia, Bhutan, Brazil, Burkina Faso, Canada, China, Congo, Costa Rica, Cuba, Dominican Republic, Ecuador, Egypt, Eritrea, Ethiopia, Finland, France, Gabon, Germany, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Malaysia, Mauritania, Mexico, Nepal, Netherlands, Nigeria, Paraguay, Peru, Qatar, Republic of Korea, Romania, Russian Federation, Saudi Arabia, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zimbabwe.

Abstaining: Pakistan.

84. The proposed amendments were rejected by 51 votes to 1, with 1 abstention.

85. At the request of the representative of the United States of America, a recorded vote was taken on the draft resolution.

In favour: Argentina, Armenia, Australia, Bhutan, Brazil, Burkina Faso, Canada, China, Congo, Costa Rica, Cuba, Dominican Republic, Ecuador, Egypt, Eritrea, Ethiopia, Finland, France, Gabon, Germany, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Malaysia, Mauritania, Mexico, Nepal, Netherlands, Nigeria, Pakistan, Paraguay, Peru, Qatar, Republic of Korea, Romania, Russian Federation, Saudi Arabia, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zimbabwe.

Against: United States of America.

86. Draft resolution E/CN.4/2005/L.96 was adopted by 52 votes to 1.

#### SPECIFIC GROUPS AND INDIVIDUALS:

- (a) MIGRANT WORKERS
- (b) MINORITIES
- (c) MASS EXODUSES AND DISPLACED PERSONS
- (d) OTHER VULNERABLE GROUPS AND INDIVIDUALS

(agenda item 14) (continued) (E/CN.4/2005/L.58, L.60, L.63 and L.64; E/CN.4/2005/2-E/CN.4/Sub.2/2004/48 (chapter I, draft decision 8))

#### Draft resolution on human rights and arbitrary deprivation of nationality (E/CN.4/2005/L.58)

87. Mr. CHUMAREV (Russian Federation), introducing draft resolution E/CN.4/2005/L.58 on behalf of the sponsors, said that during its fifty-fifth session the Commission had adopted a similar resolution by consensus. The current text was the result of several rounds of consultations, in which interested States members of the Commission and observers, and



representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) had participated actively. The draft took account of the policies of various States and some of the results of the work of the Sub-Commission and UNHCR. The text reflected the changes that had taken place in the legal aspects of the issue, particularly in respect of soft law.

88. The text had been drafted in accordance with international human rights law and laws on reducing non-citizenship. The sponsors had attempted to bring the key areas of those two issues together in one document. Many of the suggestions that had been made during the consultation process had allowed the sponsors to develop and enrich the resolution with new ideas. The operative part of the draft contained a number of provisions that facilitated active cooperation between the Commission's special procedures and the human rights treaty bodies, and the UNHCR legal service, with a view to collecting and analysing information on the problems of arbitrary deprivation of nationality and implementing measures for reducing non-citizenship.

89. The CHAIRPERSON said that the draft resolution had no programme budget implications.

90. Draft resolution E/CN.4/2005/L.58 was adopted without a vote.

Draft resolution on internally displaced persons (E/CN.4/2005/L.60)

91. Mr. LUTTEROTTI (Observer for Austria), introducing the draft resolution on behalf of the sponsors, said that internal displacement constituted a global crisis, affecting approximately 25 million people worldwide. The draft resolution welcomed the appointment of the Representative of the Secretary-General on the human rights of internally displaced persons (IDPs). It expressed appreciation for the Guiding Principles on Internal Displacement as an important tool for addressing situations of internal displacement and welcomed the fact that an increasing number of States, United Nations agencies and regional organizations applied those principles as a standard. He wished to revise operative paragraph 11 to bring it into line with previous texts, by deleting the words "and the Additional Protocols of 1977 thereto".

92. The CHAIRPERSON said that there were six additional sponsors of the draft resolution.

93. Mr. SARAN (India) said that his delegation was conscious of the need to effectively address the issue of IDPs. The primary responsibility for protecting and assisting IDPs lay with the States concerned. International action should stay within the boundaries of sovereignty, and should only be carried out at the request, or with the consent, of the countries concerned. IDPs who suffered from an absence of legal or institutional protection were rarely found, and only in countries where the State had collapsed. Situations in which IDPs were unprotected owing to a lack of will on the part of the Government were fewer still. On that understanding, the Indian delegation would support the draft resolution.

94. The CHAIRPERSON said that the draft resolution had programme budget implications, details of which had been circulated to the members of the Commission.

95. Ms. AMERI (United States) said that failed States, conflict and despotism were still all too common across the world. People who were forced to leave their homes could be unable or unwilling to cross international borders and could often be left trapped in no-man's land. IDPs

of that kind did not receive international protection, and were too frequently left unaided by their own Governments. Although paragraph 11 did not create any new international legal obligations, it reaffirmed the existing obligation of all parties involved in armed conflict to comply fully with the rules and principles of international law applicable to them during such a conflict. Both the Hague Regulations and the Geneva Conventions recognized that, during a period of armed conflict, the extent to which a concerned party was able to allow access by, make facilities available to or promote the security of humanitarian personnel might be limited to measures that were practicable and consistent with the security and operating environment.

96. Draft resolution E/CN.4/2005/L.60, as orally revised, was adopted without a vote.

Draft resolution on the human rights of migrants (E/CN.4/2005/L.63)

97. Ms. ESTRADA (Mexico), introducing the draft resolution on behalf of the sponsors, said that the text updated earlier versions. Both the preambular and operative paragraphs had been rearranged in a more logical order. All aspects of the promotion of the rights of migrants, who were often an extremely vulnerable group, had been considered during consultations on the draft text. Paragraphs 6, 8, 11 and 16 reflected topical concerns about the treatment of migrants and addressed challenges to the protection of their rights. Lastly, she drew attention to a minor editorial correction in paragraphs 5 and 7.

98. The CHAIRPERSON said that there were two additional sponsors of the draft resolution.

99. Ms. MEHRA (United States of America) said that legal migration benefited not only the individual concerned, but also the sending State and the receiving State. Sending and receiving States alike were responsible for ensuring the protection of the human rights of migrants and encouraging the use of legal channels as they travelled. The United States recognized the importance of securing its borders and enforcing its immigration laws.

100. Her delegation wished to express its continued concern regarding the language of the sixth and seventh preambular paragraphs, which took note of advisory opinions of a regional court and a recent judgement of the International Court of Justice. Her delegation maintained that the documents referred to in those paragraphs were not relevant to the work of the Commission. The International Court of Justice's conclusions in the Avena judgment were substantively different from the conclusions of the Inter-American Court of Human Rights in its Advisory Opinion 66-16/99, and they therefore did not add any value to the resolution. Her delegation was disappointed to note that its request to delete those references had not been accommodated. While her delegation was aware of the obligations of States parties to the Vienna Convention on Consular Relations with regard to foreign nationals, it wished to emphasize that the sixth and seventh preambular paragraphs and operative paragraph 7 addressed treaty rights, rather than human rights.

101. The CHAIRPERSON said that the draft resolution had programme budget implications, details of which had been circulated to the members of the Commission.

102. Draft resolution E/CN.4/2005/L.63 was adopted without a vote.

Draft resolution on human rights and mass exoduses (E/CN.4/2005/L.64)

103. Ms. VERRIER-FRECHETTE (Canada), introducing the draft resolution on behalf of the sponsors, said the draft reaffirmed that States bore the primary responsibility for the protection of refugees and displaced persons on their territory. It aimed to ensure respect for international humanitarian law, human rights and other norms regarding human rights and the rights of refugees, with a view to avoiding mass exoduses and large-scale displacements, and protecting refugees and displaced persons at all stages of the displacement cycle. The draft resolution welcomed the report of the United Nations High Commissioner for Human Rights on human rights and mass exoduses (E/CN.4/2005/80) and the addendum thereto (E/CN.4/2005/80/Add.1), which was an important reference tool and reflected the key issues that States must address in situations of mass exoduses.

104. The draft resolution called on all States to combat impunity in cases of violations of human rights, since that was a crucial factor in preventing mass exoduses and creating favourable conditions for the return of refugees and displaced persons. It welcomed the fact that the Guiding Principles on Internal Displacement had served as a basis for new laws and policies in several countries. The text contained references to the protection of displaced persons, including the civil and humanitarian nature of asylum, and sexual violence and exploitation. It called on the High Commissioner for Human Rights to include an update of her thematic compilation in her next report, as well as relevant material from treaty bodies and regional human rights organs.

105. The CHAIRPERSON said that there were 10 additional sponsors of the draft resolution, which had no programme budget implications.

106. Draft resolution E/CN.4/2005/L.64 was adopted without a vote.

Draft decision 8 on discrimination based on work and descent, recommended to the Commission for adoption by the Sub-Commission (E/CN.4/2005/2-E/CN.4/Sub.2/2004/48 (chapter I, draft decision 8))

107. The CHAIRPERSON said that draft decision 8 had programme budget implications, details of which had been circulated to the members of the Commission.

108. Draft decision 8 was adopted without a vote.

The meeting rose at 5.35 p.m.