



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/SR.59
3 May 2005

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sixty-first session

SUMMARY RECORD OF THE 59th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 20 April 2005, at 3 p.m.

Chairperson: Mr. WIBISONO (Indonesia)

CONTENTS

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF
DISCRIMINATION:

- (a) COMPREHENSIVE IMPLEMENTATION OF AND FOLLOW-UP TO THE
DURBAN DECLARATION AND PROGRAMME OF ACTION (continued)

Consideration of draft resolutions (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.05-14030 (E) 220405 030505

CONTENTS (continued)

SPECIFIC GROUPS AND INDIVIDUALS:

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

Consideration of draft resolutions (continued)

PROMOTION AND PROTECTION OF HUMAN RIGHTS:

- (a) STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS
- (b) HUMAN RIGHTS DEFENDERS
- (c) INFORMATION AND EDUCATION
- (d) SCIENCE AND ENVIRONMENT (continued)

Consideration of draft resolutions and decisions (continued)

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS:

- (a) TREATY BODIES
- (b) NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS
- (c) ADAPTATION AND STRENGTHENING OF THE UNITED NATIONS MACHINERY FOR HUMAN RIGHTS (continued)

Consideration of draft resolutions (continued)

ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS (continued)

Consideration of draft resolutions (continued)

The meeting was called to order at 3 p.m.

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION:

(a) COMPREHENSIVE IMPLEMENTATION OF AND FOLLOW-UP TO THE DURBAN DECLARATION AND PROGRAMME OF ACTION

(agenda item 6) (continued) (E/CN.4/2005/L.13/Rev.1)

Draft resolution on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action (E/CN.4/2005/L.13/Rev.1)

1. Mr. YIMER (Ethiopia), introducing the draft resolution on behalf of the African Group and other sponsors, said that all States had a responsibility to protect victims of racism and racial discrimination. Consistent with the Durban Programme of Action, the draft highlighted the need for complementary standards to strengthen and update the existing ones. Preparation of the draft had involved extensive consultations, and efforts had been made to incorporate to the largest extent possible proposed amendments submitted by interested countries. However, no account had been taken of proposals that risked undermining the core provisions of the Durban Declaration and Programme of Action. Decisions concerning the substance of the text had been informed by the conclusions of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action and the findings of the Working Group of Experts on People of African Descent, the meetings of eminent experts on follow-up to the Durban Conference, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the resolutions of the General Assembly. Contrary to claims that the consensus of the Intergovernmental Working Group was not accurately reflected in the relevant paragraphs of the draft, the language concerning the elaboration of complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was consistent with its conclusions. The issues of contention between the African Union and the European Union, namely the complementary standards to the ICERD, the racial equality index and the five-year review of implementation of the Durban Declaration and Programme of Action, had not emanated from the Working Group. Those issues were crucial to the effective implementation of the Programme of Action and could not be abandoned merely for the sake of consensus.

2. In recognition of the sharp increase in racism in sport, the draft resolution called on the International Federation of Association Football (FIFA) to introduce visible measures to promote a world of sport free from racism as part of the preparations for the 2006 World Cup to be held in Germany.

3. Racism was incompatible with democracy and must be condemned. All States were called upon to adopt effective measures to promote racial equality and human dignity, and the sponsors hoped that the draft would command the broadest possible support.

4. Mr. DE JONG (Netherlands), speaking on behalf of the European Union member States that were members of the Commission and the acceding country Romania, said that the EU was

committed to a consensual approach to international follow-up to the World Conference against Racism. The rejection of the majority of its proposed amendments during the consultations was therefore regrettable.

5. The proposed amendments to paragraph 16 (b) and to paragraphs 29 and 30 were of particular significance. Accordingly, paragraph 16 (b) should be amended to read: “The last three days of the Seminar focusing on the Intergovernmental Working Group’s efforts on strengthening the implementation of existing instruments by identifying gaps in international human rights law with a view to preparing complementary standards to address them, recognizing that any complementary standards should strengthen the existing norms and bring added value.” The amended text faithfully reflected the conclusions of the Working Group, which had been adopted by consensus.

6. The second part of paragraph 28, starting with the words “and the appeal of the experts ...”, should be deleted. Follow-up to the Durban Conference was ensured by a number of mechanisms, and the value of a five-year review was questionable. Any need for additional follow-up should be addressed within the framework of the integrated follow-up of United Nations conferences. Also, the second part of paragraph 29, starting with the words: “and requests the High Commissioner ...”, should be deleted. The text as it stood failed to take account of the High Commissioner’s remarks concerning the complexity of the issue of establishing a racial equality index and the need for further consultations. In case of a vote, the two proposals should be considered separately.

7. Mr. YIMER (Ethiopia) said that the African Group was deeply concerned over the tendency to use the sessions of the Intergovernmental Working Group as a forum to renegotiate the outcome of the Durban Conference. That tendency was clearly manifest in the proposed amendments. The proposed wording for paragraph 16 (b) contained no direct reference to ICERD, thus disregarding its crucial role as the only relevant instrument within the human rights framework to date. Such proposals intentionally undermined the commitments undertaken in Durban and must be rejected. The consultations with the EU had been conducted in good faith, but all possibilities for further negotiation had now been exhausted. Should the EU fail to withdraw its proposed amendments voluntarily, the African Group would be compelled to move that no action be taken on those amendments.

8. Mr. REYES RODRÍGUEZ (Cuba) said that the consultations on the draft resolution had been conducted in a spirit of openness and participation. The text, of which his delegation wished to become a sponsor, accurately reflected the language and spirit of the Durban Declaration and Programme of Action and was an important instrument for the implementation of the commitments made. Cuba firmly rejected the amendments proposed by the EU and would support a no-action motion.

9. Mr. DE JONG (Netherlands), speaking on a point of order, requested that separate action be taken on the proposed amendments. Also, pursuant to rule 64 of the Commission’s rules of procedure, when an amendment was moved to a proposal, the amendment should be voted on first. The request for a no-action motion on the amendments appeared to contradict that rule.

10. The CHAIRPERSON said that the no-action motion took precedence over the amendment proposal, and a recorded vote would be taken on the motion.

11. Mr. DE JONG (Netherlands), speaking in explanation of vote before the vote, said that the African Union's decision to request that no action should be taken on the EU's proposals was regrettable. The amendment to paragraph 16 (b) reflected a consensus reached within the Working Group. He also failed to understand why the amendment proposals were rejected as a whole, since they addressed separate issues.

12. No-action motions prevented the Commission from addressing substantive issues, and he urged all members to reject the motion in order to facilitate such debate.

13. Mr. CHIPAZIWA (Zimbabwe) said that his delegation supported the motion and firmly rejected the amendments proposed by the European Union, which diluted the spirit of the Durban Conference.

14. Mr. CAMPUZANO (Mexico), speaking on behalf of the Latin American and the Caribbean Group (GRULAC), said that GRULAC recognized the value of consensus on an issue as important and relevant as the elimination of racism. Regrettably, the extensive consultations conducted in an attempt to reach such a consensus and reconcile the spirit of the draft resolution with the position of the EU had not borne fruit. In recognition of the efforts made, his delegation would abstain from voting.

15. Mr. REYES RODRÍGUEZ (Cuba) said that Cuba, as a Latin American country, dissociated itself from the statement made by the representative of Mexico and would vote in favour of a no-action motion on the European Union amendment proposals.

16. Mr. COSTEA (Romania) said that his delegation would vote against the motion and was of the view that the proposed amendments should be considered separately.

17. Mr. ENDO (Japan) said that, in recognition of the unfortunately unsuccessful efforts made to reach consensus, his delegation would vote against the motion.

18. At the request of the representative of Ethiopia, a recorded vote was taken on the no-action motion on the amendments proposed by the European Union.

In favour: Bhutan, Burkina Faso, China, Congo, Cuba, Egypt, Eritrea, Ethiopia, Gabon, Guinea, India, Indonesia, Kenya, Malaysia, Mauritania, Nepal, Nigeria, Pakistan, Qatar, Russian Federation, Saudi Arabia, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Zimbabwe.

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

Abstaining: Brazil, Ecuador, Mexico.

19. The motion was carried by 27 votes to 23, with 3 abstentions.

20. Ms. TAMLYN (United States of America) requested a recorded vote on draft resolution E/CN.4/2005/L.13/Rev.1.

21. Mr. DE JONG (Netherlands), speaking on behalf of the European Union member States that were members of the Commission and the acceding country Romania in explanation of vote before the vote, said that the EU's participation in the consultations on the draft resolution and the deliberations of the Intergovernmental Working Group had always been guided by the conviction that international follow-up to the Durban Conference should be based on consensus. The Union therefore deeply regretted the absence of a constructive atmosphere during the current session of the Commission and the rejection of most of its amendment proposals, which aimed at realigning the draft with the conclusions of the Working Group. Any feasible progress with regard to the issue of complementary standards required a consensual approach.

22. The main obstacles to combating contemporary forms of racism were not gaps in international human rights instruments, but rather a lack of political will, weak legislation and a lack of domestic implementation strategies. The formulation of national action plans was thus crucial.

23. The Intergovernmental Working Group had acknowledged that any complementary standards should strengthen existing norms and bring added value. That conclusion provided a good basis for further debate and it was regrettable that it was not reflected in the draft resolution.

24. While recognizing the need to assess inequalities resulting from discrimination, the EU could not accept the use of a "racial equality index" as proposed. The High Commissioner for Human Rights had highlighted the complexity of the issue and the need for thorough consultations prior to the formulation of a project proposal, and it was unfortunate that the draft resolution did not follow that path. The EU did not subscribe to the idea of a five-year review as an additional follow-up mechanism to the Durban Conference.

25. While not in a position to support the draft resolution, the EU, in recognition of the importance of the issue, would abstain from voting and continue to work towards restoration of consensus.

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

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, Kenya, Malaysia, Mauritania, Mexico, Nepal, Nigeria, Pakistan, Paraguay, Peru, Qatar, Russian Federation, Saudi Arabia, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Zimbabwe.

Against: United States of America.

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

27. Draft resolution E/CN.4/2005/L.13/Rev.1 was adopted by 38 votes to 1, with 14 abstentions.

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.65)

Draft resolution on the human rights of persons with disabilities (E/CN.4/2005/L.65)

28. Ms. SUNBERG (Observer for Sweden), introducing the draft resolution on behalf of the sponsors, said that, despite the fact that the United Nations had proclaimed that everyone was entitled to enjoy all human rights and fundamental freedoms without distinction of any kind, many persons with disabilities still faced serious barriers to their participation in society as equal members thereof, and their rights were also violated. The draft resolution therefore urged Governments to take active measures to remedy that situation and stressed that United Nations bodies, specialized agencies and intergovernmental institutions for development cooperation must fully integrate a human rights and disability perspective in their work. Furthermore, it recognized the contribution that a comprehensive, integral international convention would make to the promotion and protection of the rights and dignity of persons with disabilities.

29. Paragraph 7 should be revised to read: “Requests the Office of the High Commissioner to prepare an expert paper focusing on the lessons learned from existing monitoring mechanisms and on possible relevant improvements and possible innovations in monitoring mechanisms ...”.

30. Mr. SHA Zukang (China) thanked the sponsors for the amendment to the text and said that his Government had always supported the cause of disabled persons. The supervisory mechanism of a convention on the protection and promotion of the rights and dignity of persons with disabilities should be established through consultations among Member States. OHCHR could play a positive role in that process by reviewing existing mechanisms.

31. Since the text, as revised, was balanced, his delegation would withdraw its amendment to paragraph 7 in a spirit of consensus.

32. The CHAIRPERSON announced that the draft resolution had programme budget implications which had been set out in a paper that had been circulated to members.

33. Draft resolution E/CN.4/2005/L.65, as revised, was adopted without a vote.

PROMOTION AND PROTECTION OF HUMAN RIGHTS:

- (a) STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS
- (b) HUMAN RIGHTS DEFENDERS
- (c) INFORMATION AND EDUCATION
- (d) SCIENCE AND ENVIRONMENT

(agenda item 17) (continued) (E/CN.4/2005/L.84-87, 91 and 99; E/CN.4/2005/2-E/CN.4/Sub.2/2004/48 (chap. I, draft decision 5))

Draft resolution on the right to the truth (E/CN.4/2005/L.84)

34. Mr. DUMONT (Argentina), introducing the draft resolution on behalf of the sponsors, said that it took account of legal theory, case law and State practice throughout the world. The right to truth was an important issue which merited debate. Commissions of truth and reconciliation had proved to be of fundamental importance in assisting victims and their families to obtain justice. The right to truth should be seen as a complement to the judiciary and a means of fighting impunity.

35. The CHAIRPERSON announced that the draft resolution had programme budget implications which had been set out in a paper that had been circulated to members.

36. Ms. BARTON (United States of America) said that the right to the truth might be characterized differently in various legal systems. It could be termed the “right to be informed”, “freedom of information” or the “right to know”. With regard to the right to know, her Government’s position had not changed since the Conference of the International Committee of the Red Cross on the Missing or the 28th International Conference of the Red Cross and Red Crescent. In other words, it was committed to advancing the cause of families of missing persons. It did not, however, acknowledge any new international right or obligation in that regard. A right to know was referred to in article 32 of the 1977 Protocol Additional to the Geneva Conventions (Protocol 1). Since her country was not a party to that instrument, it was only in the spirit of that article rather than out of legal obligation that families were informed of the fate of missing family members.

37. Draft resolution E/CN.4/2005/L.84 was adopted without a vote.

Draft resolution on human rights defenders (E/CN.4/2005/L.85)

38. Mr. LIED (Observer for Norway), introducing the draft resolution on behalf of the sponsors, said it emphasized the important role that individuals and Governments played in promoting and protecting human rights and fundamental freedoms. It acknowledged the significance of the work done by the Special Representative of the Secretary-General on human rights defenders, given the worrying increase in grave violations of their rights. States were urged to ensure that any measures to combat terrorism complied with their obligations under international law and to cooperate with the Special Representative.

39. The CHAIRPERSON noted that Cuba had tabled an amendment to the draft resolution in document E/CN.4/2005/L.99.

40. Mr. REYES RODRÍGUEZ (Cuba) said that it was important to adopt the draft resolution. Human rights defenders also included people who demonstrated in public against the unjust neo-liberal order and in favour of peace. It included those who condemned imperialist aggressors who killed and tortured in order to grab the resources of the Third World. His Government would have liked the sponsors to include a paragraph reproducing article 3 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. His delegation's amendment was designed to remedy that omission. His Government had been forced to table the amendment because of the inflexibility shown by others.

41. Mr. DE JONG (Netherlands), speaking on behalf of the European Union member States which were members of the Commission and the acceding country Romania, said that the amendment proposed by Cuba would seriously undermine the draft resolution and the work of the Special Representative of the Secretary-General on human rights defenders. It would send the signal that the Commission's principal concern was not to protect human rights defenders from arbitrary acts, but to ensure that States had maximum room for manoeuvre to restrict the freedom of human rights defenders.

42. It was dismaying that Cuba no longer adhered to the informal agreement to refrain from quoting selectively from the Declaration on Human Rights Defenders, since that would upset the careful balance of the Declaration. He therefore requested a recorded vote on the amendment.

43. At the request of the representative of the Netherlands, a recorded vote was taken on the amendment proposed by Cuba in document E/CN.4/2005/L.99.

In favour: Bhutan, China, Congo, Cuba, Egypt, Eritrea, Ethiopia, India, Indonesia, Kenya, Malaysia, Mauritania, Nepal, Pakistan, Qatar, Russian Federation, Saudi Arabia, Sri Lanka, Sudan, Zimbabwe.

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

Abstaining: Burkina Faso, Gabon, Guinea, Nigeria, Swaziland, Togo.

44. The amendment proposed by Cuba was rejected by 27 votes to 20, with 6 abstentions.

45. Mr. REYES RODRÍGUEZ (Cuba) said that his country was not alone in feeling that draft resolution E/CN.4/2005/L.85 lacked balance. Out of its profound respect for the work of the Special Representative of the Secretary-General on human rights defenders, his delegation would

not insist on a vote, but it dissociated itself from the consensus and would call for a vote in the Third Committee during the sixtieth session of the General Assembly if there was a continuing refusal to include the paragraph in question in the draft resolution.

46. Mr. SOEMARNO (Indonesia) said that the promotion and protection of human rights defenders was an issue of significance and, for that reason, his delegation supported the spirit and substance of the draft resolution. His country had a flourishing civil society which strove to protect human rights. His Government respected the work of human rights defenders, who played an active part in propagating democratic values at all levels of society, and it therefore created an environment enabling them to engage in their activities without restrictions. Human rights defenders should play a constructive role in promoting dialogue with Governments in order to strengthen national capacities. States had a duty to protect all citizens without exception within their jurisdiction.

47. Draft resolution E/CN.4/2005/L.85 was adopted without a vote.

Draft resolution on the role of good governance in the promotion and protection of human rights (E/CN.4/2005/L.86)

48. Mr. GORELY (Australia), introducing the draft resolution on behalf of the sponsors, said that the text reflected the widespread appreciation of the fundamental importance of transparent, accountable, responsible and participatory government, since it enabled people to realize their human rights in a way that changed their lives for the better. The draft resolution contained a number of new elements in that it sought to build on the results of the seminar organized in Seoul by OHCHR and the United Nations Development Programme (UNDP) on good governance practices for the promotion of human rights. It also recognized the important role played by civil society and human rights institutions.

49. Mr. FERNÁNDEZ PALACIOS (Cuba) requested a separate vote on the penultimate preambular paragraph and the deletion of the words “and the Community of Democracies”. Moreover, he announced that his delegation would always call for a vote on any reference in any draft resolution to the “Community of Democracies” which was, in fact, a community of anti-democracy and exclusion.

50. Ms. GORELY (Australia) urged the retention of the reference to the “Community of Democracies” in the draft resolution, since it should be acceptable in the context of the paragraph in question. She called for a vote on the amendment proposed by Cuba.

51. Mr. PARK In-kook (Republic of Korea) said it was regrettable that the reference to the “Community of Democracies” had been challenged, as that institution had substantial support in his region. The role of good governance in the promotion and protection of human rights and the linkage between human rights, good governance and democracy was undisputed. The paragraph in question merely reaffirmed the leading role of the United Nations in developing democracy and human rights and, in that context, it recognized the contribution made by other processes, including the International Conference of New or Restored Democracies and the Community of Democracies.

52. At the request of the representative of Australia, a recorded vote was taken on the amendment proposed by Cuba.

In favour: China, Congo, Cuba, Guinea, Pakistan, Swaziland, Zimbabwe.

Against: Argentina, Armenia, Australia, Canada, Costa Rica, Dominican Republic, Ecuador, Finland, France, Germany, Guatemala, Honduras, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Malaysia, Mauritania, Mexico, Nepal, Netherlands, Nigeria, Paraguay, Peru, Republic of Korea, Romania, Russian Federation, South Africa, Sri Lanka, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Bhutan, Brazil, Burkina Faso, Egypt, Eritrea, Ethiopia, Gabon, Qatar, Saudi Arabia, Sudan, Togo.

53. The amendment proposed by Cuba was rejected by 35 votes to 7, with 11 abstentions.

54. Mr. FERNÁNDEZ PALACIOS (Cuba) said that his delegation would not call for a vote on the draft resolution and would allow it to be adopted by consensus, but time would demonstrate the truth of his assertion that the so-called “Community of Democracies” was anti-democratic, exclusive and not a community.

55. The CHAIRPERSON announced that the draft resolution had programme budget implications which had been set out in a paper that had been circulated to members.

56. Draft resolution E/CN.4/2005/L.86 was adopted without a vote.

Draft resolution on human rights and transnational corporations and other business enterprises (E/CN.4/2005/L.87)

57. Mr. CERDA (Argentina), introducing the draft resolution on behalf of the sponsors, said that its purpose was to achieve further progress in securing human rights in the business world by obtaining a broad consensus in the matter. The two main elements of the text were the request that the Secretary-General should appoint a Special Representative on the issue of human rights and transnational corporations and other business enterprises and that the High Commissioner should convene an annual meeting with senior company executives to consider specific human rights issues.

58. The CHAIRPERSON announced that, the draft resolution had programme budget implications which had been set out in a paper that had been circulated to members.

59. Mr. LEO (United States of America) said that his country has the strongest business regulatory environment in the world. Businesses were creating a global environment ensuring the strongest possible promotion of human rights. The private sector’s valuable contribution to development was an acknowledged fact, yet the draft resolution reflected a negative attitude

towards national and international businesses and treated them as a problem rather than as a positive force for economic development and human rights. The anti-business agenda pursued by many at the United Nations had held back the economic and social advancement of developing countries.

60. His Government had asked the sponsors of the draft resolution to remove any negative allusions to the impact of normal business on human rights and to make it clear that the presentation of the draft text was not intended as an attempt to impose norms or codes of conduct on transnational corporations. It was incumbent on States, not non-State actors, to secure the observance of human rights and to adopt the requisite laws laying down the obligations of the private sector. Since the sponsors had declined to make the simple textual amendments that would have accommodated those concerns, his delegation regretfully asked for a recorded vote and would vote against the draft text as it stood.

61. Mr. OULD MOHAMED LEMINE (Mauritania) said his delegation regretted that the draft did not mention the work carried out by the Sub-Commission on the Promotion and Protection of Human Rights on the effects of the activities of transnational corporations on the enjoyment of human rights.

62. Ms. MABANDLA (South Africa) said that, since there did not appear to be full agreement on the text, her delegation wished to submit an amendment to paragraph 2.

63. Mr. CERDA (Argentina), speaking on a point of order, said that amendments to the text could no longer be submitted, since the Commission had already moved to the voting procedure.

64. Ms. MABANDLA (South Africa) said, if that was the case, her delegation would vote against the draft resolution.

65. 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, Bhutan, Brazil, 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, Sri Lanka, Sudan, Swaziland, Togo, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zimbabwe.

Against: Australia, South Africa, United States of America.

Abstaining: Burkina Faso.

66. Draft resolution E/CN.4.2005/L.87 was adopted by 49 votes to 3, with 1 abstention.

Draft resolution on human rights and transitional justice (E/CN.4/2005/L.91)

67. Mr. GODET (Observer for Switzerland), introducing draft resolution E/CN.4/2005/L.91 on behalf of the sponsors, said that the draft addressed long-term institutional capacity-building by United Nations staff in the field and at Headquarters in human rights and transitional justice. It aimed to enhance the role of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and to reinforce OHCHR assistance activities in respect of civil, political, economic, social and cultural rights. The United Nations needed political support in order to continue its work and define necessary future activities, and the sponsors had therefore brought the issue before the Commission, with a view to emphasizing the recommendations contained in the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616). The draft resolution encouraged a coherent and coordinated approach to the rule of law and transitional justice activities from a human rights perspective, and requested an OHCHR study on the Office's activities for the promotion and protection of human rights in that context. The text had been negotiated in a series of open-ended meetings and consultations with interested States and partners, in a transparent manner.

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

69. Mr. MULAWARMAN (Indonesia) said that justice and the rule of law were vital elements for the functioning of States, since they were necessary for the establishment of stability, peace and democracy in every society. Regarding conflict and post-conflict situations, efforts to establish transitional justice must recognize the national context, and take into account the full range of civil, cultural, economic, political and social rights. Care must be taken to avoid importing foreign models that might not be to the benefit of the local situation. Any United Nations initiatives in that regard must therefore be calculated to strengthen, rather than to undermine, the national legal system. Only through such an approach could a holistic transnational justice strategy be created, which would lead to reconciliation and the promotion of respect for human rights. On that understanding, his delegation joined the consensus on the draft resolution.

70. Draft resolution E/CN.4/2005/L.91 was adopted without a vote.

Draft decision on the legal implications of disappearance of States and other territories for environmental reasons, including the implications for the human rights of their residents, with particular reference to the rights of indigenous peoples, recommended to the Commission on Human Rights for adoption by the Sub-Committee on the Promotion and Protection of Human Rights (E/CN.4/2005/2-E/CN.4/Sub.2/2004/48 (chap. I, draft decision 5))

71. The CHAIRPERSON said that the draft decision had no programme budget implications.

72. Ms. BARRIOS (United States of America) said that her delegation was concerned about the methods used in drafting the working paper on the subject, particularly in respect of the scientific theories on which the study was based. The United States could therefore not welcome the working paper, or endorse the request of the Sub-Commission to update and expand it. Her delegation requested that a vote be taken, and would vote against the draft decision.

73. Mr. SMITH (Australia), speaking in explanation of vote before the vote, said that his delegation questioned whether the Commission was an appropriate forum for addressing the issues dealt with by the draft decision. Australia considered that the working paper was unbalanced in its substance, and contained unsupported claims. His delegation could not accept the draft decision.

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

In favour: Argentina, Armenia, 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: Australia, United States of America.

75. Draft decision 5 was adopted by 51 votes to 2.

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS:

- (a) TREATY BODIES
- (b) NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS
- (c) ADAPTATION AND STRENGTHENING OF THE UNITED NATIONS MACHINERY FOR HUMAN RIGHTS

(agenda item 18) (continued) (E/CN.4/2005/L.68, 70, 76 and 92/Rev.1)

Draft resolution on regional cooperation for the promotion and protection of human rights in the Asian and Pacific region (E/CN.4/2005/L.68)

76. Mr. SHA Zhukang (China), introducing draft resolution E/CN.4/2005/L.68, said that a revised version of the text, containing a new third preambular paragraph and a new operative paragraph 4, had been distributed to all members of the Commission. Regional cooperation played a significant role in promoting universal respect for and observance of human rights and fundamental freedoms, and the annual Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asian and Pacific Region had proved to be a successful model in that regard. China attached great importance to international cooperation in the promotion and protection of human rights, and would be hosting the forthcoming annual Workshop, which had been postponed at the request of OHCHR. The postponement of the Workshop meant that the draft resolution was purely procedural. It stressed the importance of

regional cooperation and the mutually reinforcing aspects of the four areas of the framework of regional technical cooperation programme in the Asian and Pacific region that had been adopted at the sixth Workshop. The revised draft resolution welcomed recent activities and developments in respect of the promotion and protection of human rights in the region. It requested the Secretary-General to submit a report containing the conclusions of the forthcoming Workshop to the next session of the Commission. The text had been drafted following open-ended informal consultations, and all comments made during those consultations had been taken into account.

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

78. Draft resolution E/CN.4/2005/L.68, as revised, was adopted without a vote.

Draft resolution on the composition of the staff of the Office of the United Nations High Commissioner for Human Rights (E/CN.4/2005/L.70)

79. Mr. FERRER RODRÍGUEZ (Cuba), introducing the draft resolution on behalf of the sponsors, said that four out of the five regional groups of the United Nations were represented among the sponsors of the draft resolution. Equitable geographical representation of staff was of particular importance in respect of OHCHR, since it was a principle that was directly related to the consensus-based principles of the Vienna Conference on Human Rights, which had emphasized the need to take all cultures, heritages, and economic, legal and political systems into account, and stipulated the universal nature of human rights. The draft resolution was also based on the principles set forth by the United Nations General Assembly. Summarizing the operative part of the draft, he expressed his delegation's hope that the draft resolution would receive the broadest possible support.

80. The CHAIRPERSON said that there were 13 additional sponsors to the draft resolution.

81. Mr. SHA Zhukang (China) said that China was sorely underrepresented among the staff of OHCHR, considering that it had a population of 1.6 billion. The geographical composition of the current staff was unacceptable and the balance must be redressed.

82. Mr. SINGH PURI (India) said that, although the Commission adopted a resolution on OHCHR staff on an annual basis, the text seemed to have very little effect, which brought the credibility of the Commission into question. India had a very large population, and was a growing and dynamic country, but, like China, was severely underrepresented on the staff of OHCHR. The situation must be addressed.

83. Ms. ARBOUR (United Nations High Commissioner for Human Rights) said she firmly believed that her Office should be representative and have the input of all voices. Efforts were being made to strike a gender balance and a culture balance across the staff. She had taken note of the concerns expressed by members of the Commission, and would do everything she could to address the issue.

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

85. Mr. DE JONG (Netherlands), speaking on behalf of the European Union countries members of the Commission and the acceding country Romania, said that the EU could not support the draft resolution. According to Chapter IV of the Charter of the United Nations, and as stipulated by the Fifth Committee of the General Assembly, the General Assembly was the only competent body for addressing issues of administration, budget and human resources.

86. The EU fully supported and respected the prerogatives and responsibilities vested in the Secretary-General by the Charter of the United Nations, particularly Articles 100 and 101; paragraph 3 of the latter stipulated that the paramount condition in the employment of the staff and in the determination of the conditions of service should be the necessity of securing the highest standards of efficiency, competence and integrity, due regard being paid to the importance of recruiting the staff on as wide a geographical basis as possible. The report of the United Nations High Commissioner for Human Rights on the issue (E/CN.4/2005/109) recalled that it was not always possible to ensure equitable geographical distribution of staff, since appropriately qualified candidates for posts did not always come from the ideal geographical region. The EU supported the Secretary-General's efforts to improve the composition of the staff of the Secretariat in order to ensure more equitable geographical and gender distribution.

87. The EU also wished to recall that the Fifth Committee had exclusive competence for carrying out in-depth analysis of budgetary requirements, creating necessary posts for performing mandated activities and adopting rules on the geographical distribution of posts financed by the regular budget. It therefore requested a vote on the draft resolution and would vote against it.

88. Mr. LUKIYANTSEV (Russian Federation), speaking in explanation of vote before the vote, thanked the High Commissioner for acknowledging the problem of geographical representation of the staff of her Office, and for expressing her readiness to address the issue. The Russian Federation supported the draft, and would vote in favour of it. The text indicated the clear problem of the geographical representation of OHCHR staff, which was currently to the advantage of one particular regional group. Equitable geographical representation should be unconditional in the principal offices of the Secretariat of the United Nations, and human rights issues and legal provisions must be integrated into every aspect of working life at the United Nations. His delegation hoped that, in time, the issue would be resolved.

89. At the request of the representative of the Netherlands, a recorded vote was taken on the draft resolution.

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

Against: Australia, Canada, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Netherlands, Republic of Korea, Romania, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Guatemala, Peru.

90. Draft resolution E/CN.4/2005/L.70 was adopted by 36 votes to 15, with 2 abstentions.

Draft resolution on regional arrangements for the promotion and protection of human rights (E/CN.4/2005/L.76)

91. Mr. OUVRY (Belgium), introducing the draft resolution on behalf of the sponsors, said that its purpose was to ensure renewed Commission support for a variety of regional human rights arrangements, which played a dynamic role in developing a normative human rights framework and implementing human rights throughout the world. The draft resolution mentioned a number of initiatives in that regard and encouraged the High Commissioner for Human Rights to continue and step up action to support regional arrangements and to provide them with technical cooperation. He trusted that it would be adopted by consensus.

92. The CHAIRPERSON informed the Commission that there were 10 additional sponsors and that the draft resolution had programme budget implications, details of which had been circulated.

93. Draft resolution E/CN.4/2005/L.76 was adopted without a vote.

Draft resolution on national institutions for the promotion and protection of human rights (E/CN.4/2005/L.92/Rev.1)

94. Ms. FEENEY (Australia), introducing the draft resolution on behalf of the sponsors, said that national institutions made an important contribution to promoting human rights on the ground and to enhancing public awareness of those rights. The draft resolution welcomed the establishment of national institutions and the strengthening of cooperation among them in all regions. Moreover, in the light of the recommendations contained in the report of the Secretary-General on enhancing the participation of national institutions in the Commission's work (E/CN.4/2005/107), it decided to implement measures to develop national institutions' capacity to engage effectively in the Commission's deliberations. She hoped that the draft resolution would be adopted by consensus.

95. The CHAIRPERSON informed the Commission that there were 10 additional sponsors and that the draft resolution had programme budget implications, details of which had been circulated.

96. Draft resolution E/CN.4/2005/L.92/Rev.1 was adopted without a vote.

ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS (agenda item 19) (continued) (E/CN.4/2005/L.37/Rev.1, 78/Rev.1, 83 and 90)

Draft resolution on advisory services and technical assistance for Burundi
(E/CN.4/2005/L.37/Rev.1)

97. Mr. YIMER (Ethiopia), introducing the draft resolution on behalf of the African Group, said that the content was broadly the same, except for some updating, as that of the resolution on the same subject adopted at the previous session. He therefore hoped that the draft resolution would again be adopted by consensus.

98. Mr. GAHUTU (Observer for Burundi) said that his Government was continuing to act on its commitments under the Arusha Peace and Reconciliation Agreement for Burundi and other subsequent agreements and protocols. Significant progress had been made in the demobilization and reintegration programme for former combatants and government soldiers. The Transitional Government had ratified the Rome Statute of the International Criminal Court in September 2004 and a new Constitution had been promulgated in March 2005. Laws concerning the establishment, organization, mandate and functioning of the National Defence Force and the National Police had also been enacted. Furthermore, Agathon Rwasa's FNL movement had recently declared an end to the armed struggle and a return to the negotiating table with a view to concluding a peace agreement with the Government.

99. Draft resolution E/CN.4/2005/L.37/Rev.1 was adopted without a vote.

Draft resolution on assistance to Sierra Leone in the field of human rights
(E/CN.4/2005/L.78/Rev.1)

100. Mr. YIMER (Ethiopia), introducing the draft resolution on behalf of the African Group, said that the content was broadly the same, except for some updating, as that of the resolution on the same subject adopted at the previous session. It welcomed the progress achieved and urged all States to consider making pledges or to pay funds already pledged to the budget of the Special Court for Sierra Leone. It further emphasized the need for enhanced support for that budget from the regular budget of the United Nations. He hoped that the draft resolution would be adopted by consensus.

101. Mr. PEMAGBI (Observer for Sierra Leone) said that major progress had been made in human rights in Sierra Leone since the previous session of the Commission, including action to promote the rights of women and to establish a National Human Rights Commission. He urged the Commission to adopt the draft resolution by consensus.

102. Draft resolution E/CN.4/2005/L.78/Rev.1 was adopted without a vote.

Draft resolution on technical cooperation and advisory services in Cambodia
(E/CN.4/2005/L.83)

103. Mr. ENDO (Japan), introducing the draft resolution on behalf of the sponsors, said that Cambodia's efforts to overcome its past and build a democratic country, based on elections and improvements in the human rights situation, were reflected in the draft resolution. Japan's

approach was based on the principles of tolerance, dialogue and mutual respect. The draft resolution encouraged the Cambodian Government to build on the country's human rights achievements of the past decade and its cooperation with the United Nations. An attempt was made to identify areas for technical cooperation. He hoped that the draft resolution would be adopted without a vote.

104. The CHAIRPERSON informed the Commission that there were 29 additional sponsors and that the draft resolution had no programme budget implications.

105. Mr. DE JONG (Netherlands) speaking on behalf of the member States of the European Union that were members of the Commission, said that the EU supported the thrust of the draft resolution. A constructive spirit had prevailed and made it possible to link the human rights issues on which further improvement was needed with the provision of technical assistance. Welcoming the ratification of the agreement to establish Extraordinary Chambers in the courts of Cambodia, he expressed the hope that they would soon be established and would be given adequate support. The Government had taken positive steps in the areas of freedom of religion, support for democratic institutions and eradication of child labour. Further improvements were expected in the areas of freedom of association and assembly and in ensuring that the democratic opposition could play a parliamentary role. The EU did not share the view that models of democracy differed according to national circumstances. The foundations of democracy had common grounds, including separation of powers.

106. He encouraged the Government to improve the human rights situation, especially that of women, children, juvenile prisoners and other vulnerable groups. Poverty-related issues needed to be addressed with the same urgency. The 2001 Land Law should be enforced and the outstanding sub-decrees necessary for its full implementation should be adopted so as to provide for equitable and expeditious land use and ownership.

107. The effectiveness of international assistance depended, inter alia, on the balanced protection and technical assistance mandate of OHCHR.

108. Ms. LEE (United States of America) said that, with the signing of the Agreement on the Comprehensive Political Settlement of the Cambodia Conflict in 1991, the United Nations had taken the lead in providing the Cambodian Government and people with assistance in human rights. By any measure, Cambodia had undergone a dramatic transformation and the draft resolution rightly recognized both positive developments and areas in which more needed to be done.

109. The United States had become increasingly concerned about developments in Cambodia in recent months. It strongly condemned the suspension by the National Assembly of the parliamentary immunity of opposition parliamentarians Sam Rainsy, Chea Poch and Cheam Channy on 3 February 2005 and had called on the Cambodian leadership to restore their immunity. The Assembly's action had been a serious setback for democracy and cast doubt on the integrity of Cambodia's democratic institutions. The United States had also expressed deep concern at the growing intimidation of opposition voices and called on the political leadership to allow all citizens to express their political views without fear of retribution or intimidation.

110. Mr. CHHEANG (Observer for Cambodia) said that Cambodia had made considerable progress towards democracy and in the area of human rights, and was continuing to demonstrate its resolve to enhance its image as a stable democracy.

111. He regretted to note that the United States, in its comment on the suspension of the immunity of Sam Rainsy, had confused a judicial issue with issues of human rights and democracy. Under the Cambodian Constitution and regulations, the case, which was one of defamation, was a matter to be dealt with by the courts.

112. The draft resolution adopted a realistic approach based on cooperation, tolerance, dialogue and mutual respect, encouraging the Cambodian Government to continue honouring its commitments to its people and to partner and donor countries. He thanked the international community for its support and reaffirmed Cambodia's intention to continue cooperating with the United Nations.

113. Draft resolution E/CN.4/2005/L.83 was adopted without a vote.

Draft resolution on technical cooperation and advisory services in Nepal (E/CN.4/2005/L.90)

114. Mr. GODET (Observer for Switzerland), introducing the draft resolution on behalf of its sponsors, said that the Nepalese authorities recognized the need for international cooperation to improve the very serious human rights situation created by years of internal armed conflict and the imposition of a state of emergency by King Gyanendra on 1 February 2005. He appealed to the Government to restore multiparty democracy, as enshrined in the Constitution; to respect the rule of law; and to begin a national dialogue with political parties to safeguard democracy, to restore peace and stability, and to promote and protect human rights through a list of benchmarks.

115. The draft resolution urged both sides to the conflict to comply with the Geneva Conventions. It strongly condemned acts of violence by the Communist Party and urged the Maoists to cease all violence, to comply with international humanitarian law and to enter into negotiations with a view to rejoining the political process, so that the people of Nepal were free to choose their own Government.

116. He commended OHCHR on the signing of an agreement to establish an office in Nepal to assist the Nepalese authorities in developing policies and programmes for the promotion and protection of human rights; to monitor the human rights situation and observance of international humanitarian law nationwide through human rights officers and field-based offices; and to report on the human rights situation and technical cooperation to the General Assembly at its sixtieth session and to the Commission at its sixty-second session.

117. Switzerland appealed to the international community to support OHCHR and the Nepalese Government financially and with human resources in implementing the draft resolution.

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

119. Mr. SINGH PURI (India) welcomed the fact that the draft resolution had been negotiated by the sponsors and the country concerned. India had a long-standing and unique relationship with Nepal, with which it shared cultural and spiritual values as well as wide-ranging economic and commercial ties. It would continue to support the restoration of political stability and economic prosperity, a process that required reliance on the forces of democracy and the support of the people.

120. The measures taken on 1 February 2005 constituted a serious setback to democracy and were a matter of grave concern. India had consistently supported multiparty democracy and constitutional monarchy as the twin pillars of political stability in Nepal. It was imperative to develop a broad national consensus, particularly between the monarchy and the political parties, to deal with the political and economic challenges facing the country. India attached particular importance to paragraphs 1, 3, 4, 5 and 6 of the draft resolution and had taken note of the agreement reached between the Nepalese Government and OHCHR on the establishment of an office in Nepal.

121. Mr. ENDO (Japan) said that the Japanese Government had been carefully watching developments in Nepal since the dismissal of the Prime Minister and the dissolution of the Council of Ministers in February 2005. It had also urged the Maoists to seek peace through dialogue. He welcomed the fact that the draft resolution, which Japan would support, was the result of intensive consultations with the delegation of Nepal. He hoped that peace and stability would be restored as soon as possible on the basis of democracy and constitutional monarchy and that the draft resolution and the proposed establishment of an OHCHR office would serve to protect and promote human rights in Nepal.

122. Mr. ACARYA (Nepal) said that Nepal was going through a difficult period owing to the virulent campaign of the insurgents. The country's fight against terrorism was directed towards safeguarding life and national integrity and security. Both the people and Government of Nepal fervently desired the restoration of peace, stability and democracy. The State was fully committed to its human rights obligations as a party to various international human rights instruments, since respect for and promotion of human rights would also promote security in the long run.

123. The situation in Nepal was complex and should be seen in its proper perspective. The insurgents staged frontal assaults against heavily populated district headquarters, and were responsible for targeted killings and brutal acts of torture. They had no qualms about abducting schoolchildren. The High Commissioner for Human Rights had condemned their brutality and unscrupulous methods during her visit to Nepal in January 2005.

124. Nepal firmly believed in constructive dialogue and engagement with the international community in promoting human rights. It was in that spirit that it had signed a Memorandum of Understanding on the establishment of an OHCHR office in Kathmandu to assist the Government in protecting and promoting human rights and in monitoring the situation.

125. There were varying perceptions of developments in Nepal over the years and of the allegations of human rights violations against the security forces. The rebels had attacked the very integrity of the nation. Resolution of the problem of insurgency and the restoration of peace and stability and a fully functioning multiparty democracy were fundamental concerns. While certain violations, reflecting individual aberrations, had occurred during the fight against the insurgency, the Government had taken action against proven abuses. The reference in the draft resolution to allegations against the security forces should not be confused with a policy or pattern of human rights violations. Moreover, the text could have better reflected the Government's efforts over the years to strengthen human rights mechanisms in the country. However, it was in the larger interest of promoting human rights through international cooperation and constructive engagement that Nepal understood the spirit of the draft resolution.

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

The meeting rose at 6 p.m.