UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/2004/SR.14
11 August 2004

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-sixth session

SUMMARY RECORD OF THE 14th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 5 August 2004, at 3 p.m.

Chairperson: Mr. SORABJEE

later: Ms. RAKOTOARISOA
(Vice-Chairperson)

later: Mr. SORABJEE

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The meeting was called to order at 3.05 p.m.

SPECIFIC HUMAN RIGHTS ISSUES:

(a) WOMEN AND HUMAN RIGHTS

(b) CONTEMPORARY FORMS OF SLAVERY

(c) NEW PRIORITIES, IN PARTICULAR, TERRORISM AND COUNTER-TERRORISM

(agenda item 6) (continued) (E/CN.4/Sub.2/2004/33-35, 36 and Corr.1, 37 and Add.1, 38-43 and 45; E/CN.4/Sub.2/2004/CRP.3; E/CN.4/Sub.2/2004/NGO/7, 15, 19, 21, 22, 25 and 27; E/CN.4/Sub.2/2003/101)

1. The CHAIRPERSON informed the Sub-Commission that several members of the International Law Commission had agreed to attend the meeting to share their views and expertise on the topic of reservations to human rights treaties. He welcomed the opportunity for dialogue between the two bodies on a matter of such importance and mutual interest.

2. Ms. HAMPSON, introducing her final working paper on reservations to human rights treaties (E/CN.4/Sub.2/2004/42), said she hoped that meetings between members of the Sub-Commission and members of the International Law Commission could be arranged in the future whenever the two bodies had coinciding interests.

3. The 1969 Vienna Convention on the Law of Treaties was the only regime in international law that addressed the question of reservations to treaties. There was no special regime for human rights treaties. However, the application of the usual regime to human rights treaties gave rise to certain questions that were particular to human rights law. Although the question of reservations did not generally affect the day-to-day work of the treaty bodies, whose main task involved monitoring implementation, the question took on greater significance with regard to individual complaints.

4. Under the international treaty regime regarding reservations, if a treaty itself did not exclude general or particular reservations, States were free to submit reservations, provided that they were not incompatible with the object and purpose of the treaty. Difficulties arose when the legal character of a statement was incompatible with such object and purpose. Whether or not such a statement qualified as a reservation, albeit an invalid or ineffective one, would affect whether the provisions of the Vienna Convention applied. The Vienna Convention made no specific reference to monitoring bodies and incompatible reservations. The International Convention on the Elimination of All Forms of Racial Discrimination had an express provision on reservations, but the other human rights treaties were silent on that issue.

5. It was unclear whether a monitoring mechanism had the competence to determine the compatibility of a reservation with the object and purpose of a treaty. She was of the view that, as quasi-judicial bodies, at least those mechanisms with the competence to receive individual petitions had an inherent competence to determine what questions did and did not fall within their jurisdiction. In order to know the scope of their competence, those bodies had to determine whether or not the reservation was to be given effect.

6. It was also unclear how a reservation should be interpreted in order to determine whether or not it was incompatible and what were the consequences of finding a reservation incompatible. In its General Comment 24, the Human Rights Committee suggested that an incompatible reservation could be severed. The principle of severance had, to date, been tolerated at the European level. However, the human rights treaties varied as to whether denunciation by States was possible.

7. The working paper did not provide answers to all the above questions, not least because the International Law Commission had, to date, not addressed them. She hoped that, when it did so, the International Law Commission would take into account the particular problems that arose in the case of the human rights treaties monitoring bodies.

8. Mr. MELESCANU (International Law Commission) said that there were many parallels between Ms. Hampson's approach to the question of reservations to human rights treaties and the approach taken by the International Law Commission to reservations to treaties in general. The International Law Commission was particularly interested in the Sub-Commission's approach to what the International Law Commission called the "reservation dialogue", in other words the dialogue between a treaty body and a State that had either formulated a reservation or objected to a reservation by another State. The International Law Commission was also interested in the Sub-Commission's views on the legal effect of reservations and objections to reservations by the international human rights bodies.

9. Mr. PELLET (International Law Commission), speaking in his capacity as Special Rapporteur on the topic of reservations to treaties, said that he welcomed the cooperation between the Sub-Commission and the International Law Commission with regard to the issue of reservations and hoped that similar levels of cooperation could be achieved on other issues of mutual interest. While he did not share all of the ideas set out by Ms. Hampson in her final working paper, he agreed with the main thrust of the document.

10. Paragraph 34 of the working paper wrongly indicated that he as Special Rapporteur had suggested that, in the specific context of severance of an invalid reservation, the case law of the European Court of Human Rights should be viewed as a form of regional customary law, not having an impact on the customary law on reservations generally. That position had been adopted by the International Law Commission, and not by the Special Rapporteur. In his view, there was no reason whatsoever to consider that different principles should apply to regional treaties. The views expressed in paragraph 44 of the final working paper were also wrongly attributed to the Special Rapporteur, when in fact they were those of the International Law Commission.

11. He agreed with Ms. Hampson that the fundamental difference between the questions of reservations to human rights treaties and reservations in general was the existence of the monitoring mechanisms. He also agreed that a treaty monitoring body had the jurisdiction to determine the validity of a reservation. However, he did not share her views with regard to the consequences of that jurisdiction. In his opinion, monitoring bodies could make observations and States parties were obliged to give serious consideration to those observations. The working

paper did not address the unresolved question of what happened when the monitoring body had a decision-making authority. In his view, a monitoring body should not be allowed to decide on behalf of a State the boundaries of what that State considered acceptable. However, it should try to determine what the State's intention had been in formulating its reservation.

12. Ms. Hampson had not made her position clear with regard to whether a statement that was contrary to the object and purpose of the treaty in question qualified as a reservation. In his view, such a statement should qualify as a reservation, albeit an illicit one. After all, a reservation had to be accepted as such before a decision could be made regarding its validity.

13. Mr. GAJA (International Law Commission) observed that, although the Vienna Convention did not address the role of the human rights treaty bodies, not only with regard to reservations but also with regard to interpretation, the living meaning of the human rights treaties was affected by the interpretations given by the treaty bodies. Furthermore, when a body considered a reservation to be incompatible with the object and purpose of a treaty and decided that the reserving State was bound, notwithstanding the reservation, the reservation would not be severed, but cancelled. The alternative would be to consider that the State was not bound by the relevant provision.

14. Mr. BOSSUYT said that he had a number of reservations with regard to Ms. Hampson's working paper. Although the human rights treaties had certain characteristics distinguishing them from other treaties, a number of positions were adopted in the working paper that went beyond the limits of international law. The Vienna Convention was the only common regime applicable to reservations and States that formulated reservations were entitled to expect their reservations to be addressed in accordance with that clear regime, regardless of its shortcomings.

15. Under no circumstances could a State be bound against its will by a treaty provision it had explicitly refused to accept. As Ms. Hampson had remarked, making the reservation might have been the prerequisite for the State's ratification.

16. Many human rights treaties contained declaratory provisions on pre-existing rights that were guaranteed under other conventions or customary rules of international law. By formulating a reservation to such a provision, a State would not be permitting itself to violate that right, but would be prohibiting the monitoring body from monitoring its implementation of that provision. Acceding to declaratory human rights treaties involved the recognition by a State of a new monitoring system, rather than the recognition of a new standard. An opinion issued by a monitoring body could increase neither that body's competence nor the reserving State's burden of obligation beyond the obligations it had freely subscribed to. He agreed with Ms. Hampson that a State party should not be able to base itself on a reservation made by another State party for the purpose of limiting its own obligations. After all, the human rights treaties were not founded on the principle of reciprocity. Furthermore, article 60 (5) of the Vienna Convention explicitly provided that the principle of exceptio non adimpleti contractus did not apply in such cases. Despite his reservations, he fully supported the recommendations contained in paragraphs 72 and 73 of the working document.

17. Mr. ALFONSO MARTÍNEZ said that he broadly agreed with the comments made by the Special Rapporteur of the International Law Commission and by Mr. Bossuyt. The Sub-Commission should seriously consider whether it wished to proceed down a path that could

potentially lead to a further reduction in the sovereign capacity of States. Furthermore, increasing the decision-making power of the treaty bodies with regard to reservations could increase the reluctance of States to become parties to a treaty.

18. Mr. KARTASHKIN said that he supported many of the points made by Ms. Hampson but would mention only two or three others on which he had doubts. Firstly, the development of international law inevitably led to restrictions on the sovereign rights of States. Reservations which would have been acceptable in 1949 were not acceptable today. He could not therefore agree with the position of Mr. Alfonso Martínez on that subject. States often entered reservations which clashed with generally recognized principles and rules of international law and cast doubt on international agreements.

19. Secondly, in her final working paper Ms. Hampson said nothing about the precedence of international law over domestic law, but States often declared that in the event of conflict domestic legislation would prevail. Such reservations were unjustified. In 1991, for example, the United States had ratified the International Covenant on Civil and Political Rights but stated that articles 6 to 27 were not self-executing and could not therefore be accepted until the corresponding domestic laws had been adopted. What, then, was the point of the ratification?

20. Thirdly, Ms. Hampson, and indeed the Vienna Convention, did not say whether there could be a legitimate reservation to a convention containing no clauses on reservations. For example, reservations to the Genocide Convention would be illegitimate because it declared genocide to be an international crime. Furthermore, although the Genocide Convention did have provisions on denunciation, no denunciation could have legal force because acceptance of the principle of the prohibition of genocide was mandatory.

21. In its further discussion of the topic, the Sub-Commission might consider whether the Vienna Convention now needed to be supplemented by measures declaring certain reservations illegitimate and banned by international law.

22. Ms. MOTOC said that the two theoretically divided approaches to international justice mentioned by Mr. Pellet - the communitarian versus the consent of the State - had been in opposition for centuries, and it was doubtful whether the Sub-Commission would be able to settle the issue, for its members were divided between the two approaches. It was not clear how to proceed: the Sub-Commission was about to adopt Ms. Hampson's report, but the International Law Commission, as a whole, would not take the same approach. That was yet another example of the fragmentation of the treatment of the question of the relationship between human rights and general international law. She preferred the approach taken by Ms. Hampson.

23. Mr. DECAUX said that the 1969 Vienna Convention had been based on a compromise which had left several issues open. He agreed with Mr. Kartashkin that what had been possible in 1949 was no longer possible today. As to the point made by Mr. Alfonso Martínez, it would have been impossible for the 1969 Convention to take into account treaties not yet in existence, including the many specific human rights instruments. The Sub-Commission and indeed all human rights bodies had their own perspective, well illustrated in the 1963 Declaration on the Elimination of All Forms of Racial Discrimination, in which States had adopted precise human rights objectives concerning universal ratification and removal of reservations. That had marked a shift from a system in which States could proceed as they wished to a system based on an ideal.

The debate on reservations was helping to persuade States to try to achieve the objectives which they themselves had voluntarily set for the international community. In his capacity as Special Rapporteur on the universal implementation of international human rights treaties, he hoped that over the next three years there would be a fruitful discussion of the many issues raised.

24. Mr. GUISSÉ said that the law of treaties was inter-State law under which States entered into commitments on the basis of their sovereignty. If such law was to evolve and remain viable, States must retain the possibility of freely committing their sovereignty. Acceptance of reservations to human rights treaties constituted a step backwards in terms of the evolution of human rights as a means of protection. He preferred the European practice of specifying a body of core provisions of a treaty which must be accepted for accession to the treaty or membership of the body concerned.

25. Illegitimate reservations were necessarily at variance with international standards and commitments. The important point was to know what the legal consequences of such reservations were: what were the possibilities of persuading a State to comply with the instrument to which it had entered a reservation and what were the possibilities for the international community to impose observance of the instrument on that State. Illegitimate reservations had consequences in the law of treaties and must be dealt with unambiguously. Like Mr. Bossuyt, he would like to know how a State could be compelled to comply with a treaty provision that it did not accept.

26. Mr. YOKOTA said that the reservations issue should be resolved within the framework of general international law, particularly the law of treaties, and that full consideration should be given to the erga omnes nature of human rights treaties. States had the sovereign power to enter reservations to any treaty in the light of the principle of pacta sunt servanda and to interpret their own reservations. The human rights treaty monitoring bodies were entitled to determine whether a reservation was compatible with the object and purpose of the treaty in question, but such determinations were not binding. However, States parties could not ignore them and must give them sincere consideration and state their reasons for any disagreement. Clearly, rulings of the International Court of Justice prevailed over the interpretations of States parties or human rights bodies as to the object and purpose of a human rights treaty.

27. Mr. SALAMA said he shared the view that, where reservations were concerned, the Sub-Commission should not try to establish a special regime for human rights treaties or to enhance the role of the treaty bodies. Many States would find it difficult to accept such an approach, which would not serve the cause of the universality of human rights. It was not the role of the treaty bodies to judge but rather to evaluate situations, engage in a dialogue with States parties, and in particular ascertain their motivations. Such an approach could help States parties to see that there was no need for their reservations and was much more conducive to attainment of human rights objectives.

28. Mr. Sreenivasa RAO (International Law Commission) said that the question of the competence of treaty bodies to judge reservations had been engaging the International Law Commission's attention for a long time. As international law experts committed to the rule of law, the members of the Commission had a duty to enhance the role of law in international relations, while the treaty bodies also had responsibilities for promoting the objectives of general and particular human rights. The problem was to determine the correct method of implementing

treaty law itself. It was no longer appropriate to talk of the total autonomy of States in the contemporary interrelated world order; the question was how best to further the objectives of the human rights treaties within the framework of the law of treaties. Declaring a reservation which was not per se contrary to such objectives to be invalid would only lead to the problem of obliging the State in question to do something which it did not wish to do. It was preferable to use other means such as recommendations, identification of practical difficulties for attainment of the objectives, and efforts to change the attitude of the State.

29. Mr. PELLET (International Law Commission) said that he did not agree with Mr. Guissé that acceptance of reservations to human rights treaties constituted a step backwards. Greater caution was required: reservations were a necessary evil and, in the conflict between integrity and universality, giving precedence to integrity risked diminishing universality and vice versa. It was all a question of degree. The Vienna system was reasonably balanced: it authorized reservations but not all reservations. A State could enter a reservation on a troubling point but could not void the treaty of its substance or undermine its object and purpose.

30. The approach to the question must be a pragmatic one. He had noted a gradual change in the treaty monitoring bodies: initially they had taken very dogmatic positions but were now being much more pragmatic. There had been much talk of a dialogue on reservations, and in his next report he would try to give formal expression to that notion. The aim was to persuade States to observe human rights treaties to the fullest extent possible. The question of the legitimacy of reservations was basically less important than the need to soften their effects.

31. He disagreed with Ms. Motoc that human rights law was a lex specialis. Human rights had nothing to gain by being cut off from public international law. Human rights were a branch of international law and human rights treaties were legal instruments creating rights and obligations because States consented to be bound. Both the Sub-Commission and the International Law Commission had to approach them as specifically human rights instruments forming a subcategory of the broader category of standard-setting but not synallagmatic instruments.

32. The distinguishing feature of the human rights treaties was that they created monitoring bodies, and the big problem was to know what to expect or allow such bodies to do. They could certainly do more than merely accept the wishes of States: they could analyse those wishes and declare them contrary to the object and purpose of the treaty in question. The fundamental problem of the human rights treaties lay in the position of the monitoring bodies on reservations. That problem had been almost solved in the case of bodies lacking binding authority. In other cases, it was much more complicated.

33. He did not agree with Mr. Bossuyt that the reservations regime of the Vienna Convention was clear: it was in fact particularly unclear as to the effects of reservations. The Commission's aim and indeed his purpose as Special Rapporteur was to bring clarity to the situation. The lack of clarity in the Vienna Convention justified the present dialogue between the Sub-Commission and the Commission, which was designed to establish interpretations which were both compatible with the Vienna regime and viable in practice.

34. Ms. MOTOC said she was not suggesting that human rights law and international law were separate but that they had differences. For example, human rights treaties did not impose reciprocal obligations. The two subjects therefore required different approaches.

35. Mr. BOSSUYT said that he was still troubled by the fundamental question of how and on what basis a State could be bound by a treaty obligation which it had explicitly refused to accept. It was impossible to interpret the Vienna Convention in that way.

36. Ms. HAMPSON apologized for attributing to Mr. Pellet what were views of his colleagues.

37. The problem of inter-temporality raised by Mr. Decaux was in fact a triple problem: the dates of the conclusion and entry into force of a treaty; the separate issue of what other developments were taking place at the time; and the question of fashion. The fashion was perhaps now swinging away from the right of States to enter reservations towards maintaining the integrity of treaties.

38. It would be interesting to see whether the dialogue on reservations would leak from the human rights debate into other areas. Such a dialogue depended on States having the resources to respond to reservations. That was also the difficulty in the argument voiced by Mr. Alfonso Martínez: small States were not in a position to check every new ratification and every reservation.

39. She agreed with Mr. Bossuyt on the relationship between treaty law and customary law. A State could not be bound by a provision which it had not accepted, but that did not mean that a State was free to commit genocide because it had not ratified the Genocide Convention; it remained bound by customary law. That point was particularly telling in the area of human rights law. If a State ratified, for example, the International Covenant on Civil and Political Rights, it thereby accepted monitoring by the Human Rights Committee. If it had not ratified, it was still bound by the customary prohibition of torture, for example, but the Human Rights Committee would have no competence in the matter. There was a danger of assuming that because a principle was a principle of customary international law the Human Rights Committee was competent to scrutinize the conduct of States which had not ratified the corresponding human rights instrument.

40. She had dealt with the point raised by Mr. Kartashkin concerning domestic legislation in paragraph 56 of her report. She doubted in fact whether the United States could be regarded as a party to the International Covenant on Civil and Political Rights.

41. On the issue of incompatibility, she failed to see how a State could be legally bound by a provision to which it had formulated a specific exception. Treaty monitoring bodies could either: not give effect to the article to which the reservation related or, if they regarded the issue as fundamental, decide not to treat the State as a party to the treaty. If a treaty monitoring body deemed a reservation to be incompatible with the object and purpose of the treaty, it should take that matter as the starting point of its dealings with the State. Consequently, other States would be alerted to the problem with that particular kind of reservation. However, if a group of States objected to a reservation on grounds of incompatibility, the situation became more complicated. States could decide to maintain relations on a purely bilateral basis, pursuant to the

Vienna Convention, but that failed to resolve the issue of whether or not the reservation was compatible. Monitoring bodies could not simply decide to apply the provision, regardless of the reservation. The Human Rights Committee would need to show flexibility on that and other issues. It was unclear on what basis a decision on the compatibility of a reservation could be made.

42. The CHAIRPERSON thanked the members of the International Law Commission for their contribution to a lively and enriching debate.

43. Mr. PINHEIRO, introducing the report of the Working Group on Contemporary Forms of Slavery on its twenty-ninth session (E/CN.4/Sub.2/2004/36), said that the work of the session had been reorganized on a trial basis. In the light of its thirtieth anniversary in 2005, an informal exchange with participants had taken place concerning the activities and working methods of the Working Group. Mr. Martins, representing the Board of Trustees of the Voluntary Trust Fund on Contemporary Forms of Slavery, had expressed concern over the lack of awareness about the persistence of slavery and similar practices. In conjunction with the International Labour Organization (ILO) Special Action Programme to Combat Forced Labour, a meeting had been held to address various aspects of forced labour in the context of globalization and technological change. The ILO experts had highlighted the need to reconsider the definition of forced labour, and for programmes to address the structures within which forced labour was embedded.

44. Mr. Decaux had submitted a note on the state of ratification of slavery conventions, linking it to the study on the universal application of human rights treaties requested by the Commission on Human Rights. A systematic review of international commitments, based on national responses and working papers submitted in good time, was scheduled for the thirtieth session. He invited States and non-governmental organizations (NGOs) to play an active role in the work of the thirtieth session.

45. Ms. Rakotoarisoa (Vice-Chairperson) took the Chair.

46. Mr. DECAUX said that some of the early slavery conventions from the League of Nations could be considered as “orphan” conventions under the United Nations human rights machinery. Some States had threatened to withdraw from treaties, in the light of more recent obligations. However, he urged States to ratify new conventions, such as the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, without going back on previous commitments.

47. The flexible working methods of the Working Group were the key to its success. Thanks to the Voluntary Fund, victims of trafficking and forced labour had been able to attend meetings, and to provide moving and inspirational testimonies. A frank dialogue with States, such as Mauritania and Nigeria, had also taken place. He looked forward to stepping up collaboration with other international organizations, such as ILO and the United Nations Educational, Scientific and Cultural Organization (UNESCO), at future sessions.

48. Ms. WARZAZI, introducing her eighth report on the situation regarding the elimination of traditional practices affecting the health of women and the girl child (E/CN.4/Sub.2/2004/41), said that significant progress had been made since the Sub-Commission had first drawn attention to the issue of harmful traditional practices in 1982. African Governments had begun to take

steps to address the problem of female genital mutilation. The African Union had established a legal framework to combat the practice, and was working to convince Governments to sign the relevant instruments. On the first anniversary of the International Day of Zero Tolerance of Female Genital Mutilation, a number of Governments had made presentations concerning their national campaigns. The Inter-African Committee on Traditional Practices had continued to organize other similar activities.

49. It was encouraging to see European countries taking steps to combat harmful traditional practices, with a view to protecting their immigrant communities. The Governments of Denmark, Italy, Serbia and Montenegro, Spain and Sweden, to name but a few, had responded to her request for information. International meetings had also been held in Stockholm and Canada, bringing together government representatives and a wide range of NGOs. An increasing number of new actors, such as doctors' associations and universities, were joining the international campaign to combat female genital mutilation. Regrettably, the report contained relatively little information concerning other harmful traditional practices, such as honour crimes.

50. Ms. CHUNG said it was vital that the global campaign to combat harmful traditional practices continued to include diaspora communities, as well as African countries. She welcomed the balanced approach taken by the Special Rapporteur, recognizing that harmful traditional practices were often carried out in the belief that they were beneficial for the individual and the community. The main challenge was how to raise awareness without disregarding the culture and traditions of the communities concerned. Future reports should continue to address the balance between universal human rights norms and respect for cultural values.

51. Mr. CHEN said that Asian countries had lagged behind in the organization of activities designed to combat harmful traditional practices. While female genital mutilation was not a problem in Asia, there were other serious manifestations of discrimination against women. A number of initiatives to combat such problems were planned for 2005, in the context of Beijing Plus Ten, the tenth anniversary of the Beijing Declaration and Programme of Action.

52. Ms. HAYASHI said that Ms. Warzazi's tireless commitment to eliminating harmful traditional practices was characterized by a commendably sensitive approach. Her latest report should be seen in the context of similar agendas discussed during the current session, such as the expanded working paper by Ms. Rakotoarisoa on the difficulties of establishing guilt and/or responsibilities with regard to crimes of sexual violence (E/CN.4/Sub.2/2004/11), which examined extraterritorial jurisdiction in relation to sex tourism. Women's lack of effective participation at the decision-making level was partly responsible for the persistence of harmful practices. Strengthening women's participation during peacetime would also contribute to the prevention of armed conflict.

53. Ms. MBONU said that Ms. Warzazi's achievements constituted one of the great successes of the Sub-Commission. Awareness campaigns were making a difference, both in Africa and elsewhere, because they had engaged the participation of grass-roots communities. Given that economic factors had helped to sustain harmful traditional practices, it was vital to

provide former circumcisors with alternative sources of revenue. She urged European countries to invite the Special Rapporteur to take part in the activities being organized there to raise awareness about female genital mutilation.

54. Lastly, she drew the attention of the Special Rapporteur to the problems of harmful traditional practices linked to widowhood and to inheritance in relation to women and girl children.

55. Mr. ALFREDSSON, referring to the last paragraph of Ms. Warzazi's report which quoted Montesquieu as saying that when manners and customs were to be changed, it ought not to be done by laws but rather by introducing other manners and other customs, commented that, notwithstanding that opinion, laws sometimes had a role to play in social change.

56. Mr. BOSSUYT said that great progress had recently been achieved in the matter of female genital mutilation, owing specifically to the efforts of the Special Rapporteur. Work on the issue must continue, because it concerned a problem that affected numerous women in many countries.

57. Ms. PARKER (Minnesota Advocates for Human Rights) said that the Special Rapporteur's work had effected a quiet revolution by helping to change deeply embedded cultural attitudes. In future reports, it would be useful if she could list best programmes and practices, as reference tools for those trying to effect positive change in their communities.

58. Ms. RAS-LOORK (Inter-African Committee on Traditional Practices Affecting the Health of Women and Children), speaking also on behalf of the International Movement for Fraternal Union among Races and Peoples, said that, as an internationally recognized human rights expert, the Special Rapporteur had given the issue of harmful traditional practices global visibility. However, considering the magnitude of the harm that such practices inflicted on the lives of millions of young girls and women worldwide, it was regrettable that the Special Rapporteur had not received the support needed to accomplish her mandate fully by undertaking missions to evaluate the situation in the field and conducting a comparative study on the extent of the problem worldwide.

59. It was difficult to modify attitudes and stamp out harmful traditional practices; nevertheless, with perseverance changes could be brought about. Following the International Conference on Zero Tolerance of Female Genital Mutilation, held in Addis Ababa in February 2003, 6 February had been celebrated worldwide as the International Day of Zero Tolerance. Her organization continued to implement programmes in Africa to keep up the momentum. It had developed indicators to measure their impact and produced a documentary film showing the extent of the problem and best practices. It had also collaborated with the International Council of Women to produce a glossary of violence against women. In February 2005, it was to hold an international conference on harmful traditional practices in Bamako, Mali, and she invited the Special Rapporteur and members of the Sub-Commission to attend.

60. Mr. Sorabjee resumed the Chair.

61. Ms. AULA (Franciscans International and Dominicans for Justice and Peace), referring to the latest report of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/2004/36), said she welcomed the Group's decision to focus on a review of the status of ratification of the relevant treaties, as well as identification of crucial gaps and challenges in areas covered by its mandate. The issue should be examined from the perspective of the most recent legal instruments, including the Palermo Protocol, and the review should consider indicators concerning socio-economic, political, administrative and legal obstacles to the full enjoyment of the rights established in the existing provisions.

62. Countries were urged to work towards universal ratification and full implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It was unfortunate that the Protocol only established that States had to "consider" implementing provisions on protection and support, because evidence had shown that implementation of such measures was a prerequisite for any successful anti-trafficking strategy.

63. The Sub-Commission should call upon Governments to criminalize all forms of trafficking in persons; to devise, enforce and strengthen effective measures to prevent, combat and eliminate all forms of trafficking; to ensure that the protection of trafficked persons was built into anti-trafficking policy, including protection from return; and to develop national plans of action to end trafficking.

64. Ms. POLONOSKI (International Council of Women) speaking also on behalf of the Coalition against Trafficking in Women and the International Council of Jewish Women, paid tribute to the Special Rapporteur's contribution to the Working Group on Contemporary Forms of Slavery and said that trafficking in persons was a major component of the sexual exploitation industry. It was estimated that, each year, 500,000 persons were trafficked into the countries of the European Union, 90 per cent of them for sexual exploitation, which effectively condemned them to slavery, and often had devastating consequences for their physical and mental health. Trafficking had increased exponentially over the last 20 years owing to the increased demand for prostitutes in wealthy countries; organized crime had earned enormous profits from trafficking in women and young girls from poor countries. However, government response in several countries had been to legalize and regulate the situation, which had converted a criminal activity into a flourishing part of the official economy.

65. The situation was critical because unemployment was rampant in countries such as Hungary and the Czech Republic, where families were urging their daughters to work as prostitutes owing to the high rate of unemployment. If prostitution were to be legalized, women's organizations would be unable to help the victims through the criminal justice system. In addition, legalization had proved to be an effective means for organized crime to obtain increased earnings and legitimacy, thereby corrupting the political mechanisms of democratic countries. The legalization of prostitution in Hungary and the Czech Republic would cast doubt on their ratification of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and would be contrary to their treaty obligations. Moreover, it would constitute a dangerous precedent, because it would send the message that the lure of earnings from taxes imposed on the sex industry could deflect a Government from its

commitment to human rights. The Sub-Commission should try and convince those Governments to confirm the commitments assumed under the Convention and renounce legalization of prostitution.

66. Mr. TROCMÉ (International Organization for the Development of Freedom of Education) speaking also on behalf of Soka Gakkai International, the International Movement against All Forms of Discrimination and Racism, the World Federation of United Nations Associations and the World Federation of Methodist and Uniting Church Women, said that the Commission on Human Rights had adopted resolution 2004/71 recommending that the General Assembly should proclaim a World Programme for Human Rights Education, the first phase of which, from 2005-2007, would focus on promoting such education in primary and secondary schools. Compared to the United Nations Decade for Human Rights Education, 1995-2004, the World Programme provided a more structured approach and included guidelines to help Governments achieve tangible progress in predefined sectors.

67. The resolution recommended that an adequate component of United Nations assistance to develop national systems of promotion and protection of human rights should support human rights education. The training of officials and staff was a prerequisite for the successful mainstreaming of human rights in government and, as the importance of human rights was increasingly recognized, human rights education was required by all ministries.

68. Some NGOs active in the informal sector were concerned about the continuation of human rights education programmes aimed at promoting social change and human development. Human rights education should be viewed as central with regard to the universal nature of the right to education; yet, defining human rights education solely in relation to efforts to promote the right to education could undermine efforts to make it a key element of a more comprehensive agenda. Human rights education was intended to be a lifelong process aimed at all groups in society, particularly vulnerable groups.

69. The resolution said little about future phases of the World Programme, and the financing of activities carried out within its framework was also a major cause for concern. At the insistence of most developed countries, the resolution stated that it should be funded by voluntary contributions only, which left few options for allocating additional resources to help support NGOs in the developing world or to finance international monitoring activities.

70. The General Assembly would be reviewing the achievements of the Decade for Human Rights Education and discussing future activities on 10 December 2004, Human Rights Day. It might consider that, to focus attention on human rights, Human Rights Day should be commemorated every year in primary and secondary schools worldwide.

71. Mr. WILKES (Consultative Council of Jewish Organizations), speaking also on behalf of the International Council of Jewish Women, said that new priority should be accorded to non-discrimination in humanitarian affairs. The meaning given to the term non-discrimination in the relevant conventions should be analysed and the implications of human rights considerations for the strengthening of humanitarian activities should be examined.

72. Crisis followed crisis and it was natural that both States and the public should focus on some atrocities more than others. The efforts made by United Nations agencies were also constrained by public attention and State support. However, discrimination remained a human rights problem if choices were made which condemned some groups to continued suffering or death while favoured groups took a disproportionate amount of the available relief. Considering that such discrimination was a human rights violation meant examining how the fair treatment of people outside State borders lay within the responsibility of States.

73. The right to solidarity could also be invoked to underline the rights of victims and the responsibility of those with the resources to help. The decision to discriminate between victims became a matter of human rights as soon as one group suffered unjustly because of how it was treated. United Nations agencies had to be diplomatic in their treatment of the issue. They preferred to encourage States that were beginning to contribute to new causes rather than criticize them for an imbalance in their support and attention to different populations. The Sub-Commission was the appropriate body to begin working towards the relevant guidelines and standards by preparing a working paper. Such guidelines would spur public debate on the need for humanitarian affairs to be conducted on a just and inclusive basis.

The meeting rose at 6 p.m.