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Fifty-seventh session
Agenda item 7

DRAFT PROVISIONAL AGENDA AND ADOPTION OF THE REPORT

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

Rapporteur: Yozo YOKOTA

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

A. Resolutions

2005/1. Absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment

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

Bearing in mind article 5 of the Universal Declaration of Human Rights, which states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Recalling the provisions of article 7 of the International Covenant on Civil and Political Rights as well as other relevant international instruments, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol adopted by the General Assembly in its resolution 57/199 of 18 December 2002,

Recalling also its resolution 2004/1 of 9 August 2004 and taking note of General Assembly resolution 59/182 of 20 December 2004 and Commission on Human Rights resolution 2005/39 of 19 April 2005,

Stressing that the prohibition of torture and cruel, inhuman or degrading treatment is absolute and is applicable in all circumstances, in time of war and in time of peace,

Alarmed at the many acts of torture that have recently been disclosed and the attempts to make such practices commonplace or to justify such practices, including in situations of armed conflict, against persons protected by the principles of international humanitarian law,

Referring to the relevant international instruments on medical ethics and the responsibility of health personnel, in particular the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 37/194 of 18 December 1982,

1. *Recalls* that all forms of torture and other cruel, inhuman or degrading treatment or punishment constitute violations of the peremptory norms of international law;
2. *Encourages* the entry into force, in the near future, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was opened for signature on 4 February 2003;
3. *Urges* all States to ratify, as soon as possible, the Convention and its Optional Protocol;
4. *Commends* the activities of the Special Rapporteur of the Commission on Human Rights on the question of torture and invites all States to issue an open invitation to him to visit their country;
5. *Deplores* acts of torture and ill-treatment involving the complicity of medical personnel, and recommends that the Secretary-General disseminate widely the Principles of Medical Ethics adopted by the General Assembly and that he inform the Sub-Commission to this effect in a note to its fifty-eighth session;
6. *Recommends* that all States develop independent and effective domestic mechanisms as concrete means of combating torture and other cruel, inhuman or degrading treatment or punishment;
7. *Hopes* that independent and effective investigations and judicial proceedings will make it possible to establish the facts, ensure reparation for damages suffered by the victims and punish all persons responsible, at whatever level, and that measures will be taken to put an end to such acts;
8. *Decides* to continue consideration of this question at its fifty-eighth session.

*15th meeting
8 August 2005*

[Adopted without a vote. See chap. IV.]

2005/2. Prohibition of military operations directed against medical facilities, transport and personnel entitled to protection during armed conflict

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

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the Geneva Conventions, of 12 August 1949, the Additional Protocols thereto of 1977 and all other relevant instruments and principles of human rights and humanitarian law,

Bearing in mind that the purpose of the Geneva Conventions is to protect, inter alia, medical facilities, transport and personnel during armed conflict,

Alarmed by direct and overt attacks on medical facilities, transport and personnel in a number of current armed conflicts,

Acutely aware that such attacks threaten the very viability of the Geneva Conventions themselves,

Recalling its resolution 2004/1 of 9 August 2004,

1. *Expresses concern* about military operations directed at medical facilities, transport and personnel;
2. *Invites* the Special Rapporteur of the Commission on Human Rights on the right of everyone to the highest attainable standard of physical and mental health to address the issue of the protection of medical facilities, transport and personnel in situations of both international and internal armed conflicts as one of great urgency;
3. *Decides* to continue consideration of this question at its fifty-eighth session.

*15th meeting
8 August 2005*

[Adopted without a vote. See chap. IV.]

**2005/3. The difficulty of establishing responsibility or guilt
with regard to sexual violence**

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

Recalling its resolution 2004/29 of 12 August 2004,

Taking note of Commission on Human Rights decision 2005/108 of 19 April 2005,
by which the Commission approved the decision of the Sub-Commission to appoint
Ms. Lalaina Rakotoarisoa as Special Rapporteur entrusted with preparing a detailed study
on the difficulties of establishing guilt or responsibility with regard to crimes of sexual
violence,

Taking note also of the oral presentation made by Ms. Rakotoarisoa at the
fifty-seventh session of the Sub-Commission and of the comments of its members,

1. *Requests* the Secretary-General to provide the Special Rapporteur with any
assistance she may require to carry out her mandate, in particular in her contacts with member
States, national institutions for the promotion and protection of human rights, and international
governmental and non-governmental organizations;
2. *Requests* the Special Rapporteur to submit a preliminary report to the
Sub-Commission at its fifty-eighth session.

*15th meeting
8 August 2005*

[Adopted without a vote. See chap. V.]

2005/4. The universal implementation of international human rights treaties

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

Recalling its resolution 2004/26 of 12 August 2004,

Taking note of Commission on Human Rights decision 2004/123 of 21 April 2004,
by which the Commission approved the decision of the Sub-Commission to appoint

Mr. Emmanuel Decaux special rapporteur to conduct a detailed study of the universal implementation of international human rights treaties based on his working paper (E/CN.4/Sub.2/2003/37),

Taking note also of the preliminary report (E/CN.4/Sub.2/2004/8) and the interim report (E/CN.4/Sub.2/2005/8) submitted by Mr. Decaux,

1. *Thanks* the Special Rapporteur, Mr. Emmanuel Decaux, for his interim report;
2. *Requests* the Secretary-General to provide the Special Rapporteur with the necessary assistance to enable him to carry out his mandate, particularly in his contacts with States, national institutions for the protection and promotion of human rights and international governmental and non-governmental organizations, by enabling him to send them a questionnaire at the appropriate time to help in the preparation of his final report;
3. *Requests* the Special Rapporteur to submit a final report to the Sub-Commission at its fifty-eighth session.

15th meeting
8 August 2005
[Adopted without a vote. See chap. V.]

2005/5. Discrimination in the criminal justice system

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

Recalling its resolution 2002/3 of 12 August 2002,

Also recalling Commission on Human Rights decision 2003/108 of 23 April 2003 by which the Commission approved the decision of the Sub-Commission to appoint Ms. Leïla Zerrougui as Special Rapporteur to conduct a detailed study of discrimination in the criminal justice system with a view to determining the most effective means of ensuring equal treatment in the criminal justice system for all persons without discrimination, particularly vulnerable persons,

Bearing in mind its resolution 2004/24 of 12 August 2004,

1. *Thanks* the Special Rapporteur on discrimination in the criminal justice system, Ms. Leila Zerrougui, for her preliminary report (E/CN.4/Sub.2/2003/3) and her interim report (E/CN.4/Sub.2/2005/7) and welcomes the interactive debate that took place at its fifty-seventh session;

2. *Requests* the Secretary-General to provide the Special Rapporteur with the assistance necessary to enable her to submit her final report at the fifty-eighth session of the Sub-Commission.

*15th meeting
8 August 2005*

[Adopted without a vote. See chap. V.]

2005/6. The effects of the working methods and activities of transnational corporations on the enjoyment of human rights

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

Recalling that, under the Charter of the United Nations, one of the purposes of the United Nations is to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights for all,

Reaffirming the Declaration on Social Progress and Development adopted by the General Assembly in its resolution 2542 (XXIV) of 11 December 1969, the Declaration and Programme of Action on the Establishment of a New International Economic Order adopted by the General Assembly in its resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, the Charter of Economic Rights and Duties of States proclaimed by the General Assembly in its resolution 3281 (XXIX) of 12 December 1974, the Declaration of the Principles of International Cultural Cooperation adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization in 1966, General Assembly resolution 1803 (XVII) of 14 December 1962, entitled “Permanent sovereignty over natural resources”, and General Assembly resolution 2625 (XXV) of 24 October 1970, entitled “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations”,

Mindful that, in the Vienna Declaration and Programme of Action, the World Conference on Human Rights reaffirmed the right to development as a universal and inalienable right and an integral part of all fundamental human rights, reaffirmed that the human person was the central subject of development and underlined the need for a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels,

Noting that lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level,

Deeply concerned at the preponderance of transnational corporations in all spheres of life and at the impact of their activities and working methods on human rights,

Bearing in mind the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the International Labour Organization in November 1977,

Recognizing that the activities of the various United Nations organizations should be closely interrelated and that it is necessary to draw on all the efforts made in the various disciplines relating to the human person in order to promote all human rights effectively,

Recalling in particular its previous resolutions on the subject, the most recent being resolution 2004/16 of 12 August 2004,

Recalling the relevant resolutions of the Commission on Human Rights concerning the right to development and economic, social and cultural rights, the most recent being resolution 2005/4 of 12 April 2005 and resolution 2005/22 of 15 April 2005,

Recognizing the work done by the sessional working group on the effects of the working methods and activities of transnational corporations on the enjoyment of human rights and by the Sub-Commission, including its draft "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights" (E/CN.4/Sub.2/2003/12/Rev.2),

Taking note of Commission resolution 2005/69 of 20 April 2005 on human rights and transnational corporations and other business enterprises,

Taking note also of the report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights (E/CN.4/2005/91),

Noting with appreciation the appointment by the Secretary-General of John Ruggie as his Special Representative on the issue of human rights and transnational corporations and other business enterprises,

Taking into account the background document prepared by the Secretary-General (E/CN.4/Sub.2/1995/11), the report of the Secretary-General (E/CN.4/Sub.2/1996/12 and Corr.1) and the background document prepared by El Hadji Guissé (E/CN.4/Sub.2/1998/6) concerning transnational corporations and the draft “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights”,

1. *Thanks* the Chairperson of the seventh session of the sessional working group on the working methods and activities of transnational corporations, Halima Embarek Warzazi;

2. *Invites* members of the working group and of the Sub-Commission to prepare working papers for submission to the Sub-Commission at its fifty-eighth session and to the working group at its eighth session, as follows:

(a) Gáspár Bíró: a working paper on the role of States in the guarantee of human rights with reference to the activities of transnational corporations and other business enterprises;

(b) Chin-Sung Chung and Florizelle O'Connor: a working paper on bilateral and multilateral economic agreements and their impact on the human rights of the beneficiaries;

3. *Decides*, in view of the discussions that will take place at the first meeting of the working group during the fifty-eighth session of the Sub-Commission to invite the International Monetary Fund, the World Bank, the World Trade Organization, the United Nations Conference on Trade and Development, the United Nations Development Programme, the International Labour Organization, the United Nations Research Institute for Social Development and other relevant agencies to participate;

4. *Decides* that the agenda of the eighth session of the working group will be the following:

(a) Review of developments related to the responsibilities of business with regard to human rights;

(b) Consideration of possible situations where business may facilitate or generate human rights violations in different kinds of societies;

(c) Consideration of possible ways and means of protecting individuals or groups from harm caused by business activities; and

(d) Identification of appropriate responses in the case of specific violations of human rights;

5. *Requests* the working group to submit the report on its eighth session to the Sub-Commission at its fifty-eighth session.

15th meeting
8 August 2005
[Adopted without a vote. See chap. VI.]

2005/7. Study on non-discrimination as enshrined in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights

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

Recalling its resolution 2004/5 of 9 August 2004,

Taking note of Commission on Human Rights decision 2005/105 of 15 April 2005, in which the Commission decided to approve the decision of the Sub-Commission to appoint Marc Bossuyt as Special Rapporteur to undertake a study on non-discrimination as enshrined in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights,

Taking note also of the preliminary report (E/CN.4/Sub.2/2005/19) submitted by Mr. Bossuyt,

1. *Expresses its appreciation* to the Special Rapporteur for his preliminary report;
2. *Requests* the Special Rapporteur to submit to the Sub-Commission an interim report at its fifty-eighth session and a final report at its fifty-ninth session, taking into account the comments received and the discussions held at the fifty-seventh session of the Sub-Commission, and in close cooperation with the Committee on Economic, Social and Cultural Rights;
3. *Requests* the Secretary-General to provide the Special Rapporteur with all the necessary assistance to enable him to carry out his mandate.

*15th meeting
8 August 2005*

[Adopted without a vote. See chap. VI.]

2005/8. The Social Forum

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

Recalling the Universal Declaration of Human Rights and the indivisibility, interdependence and interrelated nature of economic, social and cultural rights and civil and political rights,

Recalling also the reports and studies on the realization of economic, social and cultural rights submitted by several special rapporteurs to the Sub-Commission and the Commission on Human Rights, in particular those submitted by Mr. Danilo Türk, Mr. Asbjørn Eide, Mr. Mustapha Mehedi, Mr. Leandro Despouy, Mr. El-Hadji Guissé, Mr. Joseph Oloka-Onyango, Ms. Deepika Udagama, Mr. David Weissbrodt and Mr. José Bengoa,

Recalling further Commission on Human Rights decision 2001/103 of 25 April 2001 authorizing the Sub-Commission to hold the Social Forum and decision 2003/107 of 22 April 2003 recommending to the Economic and Social Council that it authorize the Sub-Commission to convene in Geneva an annual intersessional forum on economic, social and cultural rights, to be known as the “Social Forum”, and Economic and Social Council decision 2003/264 of 23 July 2003,

Aware of the increasing feminization of poverty and the fact that women are the main actors in organizations combating poverty and social exclusion,

Bearing in mind that the reduction of poverty and the elimination of extreme poverty remain an ethical and moral imperative of humankind, based on respect for human dignity, and noting the report of the Chairman-Rapporteur of the third Social Forum, held on 21 and 22 July 2005, which focused on “Poverty and economic growth: challenges to human rights”,

1. *Expresses its satisfaction* at the holding of the third Social Forum on 21 and 22 July 2005 and welcomes the report of its Chairman-Rapporteur (E/CN.4/Sub.2/2005/21);
2. *Draws special attention* to the significant contribution made to the debate by individuals with experience of extreme poverty and individuals who live and work alongside them on a daily basis;
3. *Takes note with satisfaction* of the conclusions and recommendations of the 2005 Social Forum and of the innovative nature of many of them, and calls upon States, international organizations - in particular those with a mandate for poverty eradication - non-governmental organizations, civil society organizations, trade unions and other relevant actors, to take them into account when designing and implementing poverty-eradication programmes and strategies;
4. *Reaffirms* the unique nature within the United Nations of the Social Forum, which makes possible a dialogue and an exchange between the representatives of people living in

poverty, States Members, civil society and intergovernmental organizations, and stresses that the current reform of the United Nations should take into account the contribution of the Social Forum as a space for dialogue that can be found nowhere else in the United Nations human rights system;

5. *Reaffirms also* its decision that the Social Forum shall meet every year, with the mandate laid down in previous Sub-Commission resolutions, and decides that the next meeting of the Social Forum will be held during 2006 in Geneva on dates suitable for the participation of Sub-Commission members and of the broadest possible range of other stakeholders, and decides that the theme for the Social Forum in 2006 will be “The fight against poverty and the right to participation: the role of women” and that it will be addressed within the context of the preparation of the review of the first United Nations Decade for the Eradication of Poverty (1997-2006);

6. *Reiterates* its invitation to participate in and contribute to the Social Forum to non-governmental organizations in consultative status with the Economic and Social Council and other non-governmental organizations outside Geneva, and in particular newly emerging actors, such as small groups and rural and urban associations from the North and the South, anti-poverty groups, peasants’ and farmers’ organizations and their national and international associations, voluntary organizations, youth associations, community organizations, trade unions and associations of workers, representatives of the private sector, United Nations organizations and specialized agencies, the regional economic commissions, intergovernmental organizations - in particular the World Bank, the International Monetary Fund and the World Trade Organization - regional banks, financial institutions and international development agencies;

7. *Requests* the Office of the United Nations High Commissioner for Human Rights to seek effective means of ensuring consultation and the broadest possible participation in the Social Forum, including by establishing partnerships with non-governmental organizations, the private sector and international organizations;

8. *Requests* Ms. Chin-sung Chung to prepare a working paper on “The challenges of women’s participation in policies and strategies to combat poverty and extreme poverty”, and to submit it for consideration at the 2006 Social Forum;

9. *Invites* the Chairperson of the Committee on the Elimination of Discrimination against Women to take part in the next session of the Social Forum and make a presentation on the theme chosen for the 2006 session;

10. *Invites* the Social Forum to submit to the Sub-Commission at its fifty-eighth session a separate report containing a comprehensive and detailed summary of the discussions, including recommendations and draft resolutions;

11. *Requests* the Secretary-General to adopt the appropriate measures to disseminate information about the Social Forum, invite the relevant individuals and organizations to the Social Forum and take all practical measures required for the success of this initiative.

*15th meeting
8 August 2005*

[Adopted without a vote. See chap. VI.]

**2005/9. Implementation of existing human rights norms and standards
in the context of the fight against extreme poverty**

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

Recalling that the General Assembly, in its resolution 59/186 of 20 December 2004, reaffirmed (a) that extreme poverty and exclusion from society constitute a violation of human dignity and that urgent national and international action is therefore required to eliminate them; (b) that it is essential for States to foster participation by the poorest people in the decision-making process in the societies in which they live, in the promotion of human rights and in efforts to combat extreme poverty; and (c) that it is necessary to continue to give appropriate attention to the links between human rights and extreme poverty,

Recalling also that, in its resolution 2002/30 of 22 April 2002, the Commission on Human Rights emphasized that a better understanding is needed of what is endured by people living in poverty, including women and children, and that thought must be given to the subject, drawing on the experience and ideas communicated by the poorest themselves and by those committed to working alongside them,

Recalling further that the Sub-Commission, in its resolution 2001/8 of 15 August 2001, requested an ad hoc expert group (a) to prepare a joint working paper on the need to develop guiding principles on the implementation of existing human rights norms and standards in the context of the fight against extreme poverty and (b) to submit recommendations to contribute to the formulation of a draft declaration on extreme poverty and human rights,

Taking into account, on the one hand, the report submitted by the ad hoc group of experts (E/CN.4/Sub.2/2005/20 and Add.1) on consultations with persons living in extreme poverty conducted at regional seminars organized at Bangkok and São Paulo, and, on the other hand, the report of the independent expert on the question of human rights and extreme poverty, Arjun Sengupta (E/CN.4/2005/49), which draws attention to the exclusion from society experienced in every country by persons in situations of extreme poverty,

Aware of the need to apply human rights norms and standards in the context of the fight against extreme poverty,

1. *Reaffirms* that extreme poverty places men, women, children and entire population groups in a situation involving violation of their fundamental rights and freedoms in both industrialized and developing countries, that it might, in some situations, constitute a threat to the right to life, and that its immediate alleviation and eventual eradication must remain a high priority for the international community;

2. *Requests* the ad hoc group of experts to prepare, without financial implications, a final report containing an assessment of the activities carried out during its work, to be submitted to the Sub-Commission at its fifty-eighth session;

3. *Also requests* the ad hoc group to continue extensive consultations with regional and international intergovernmental organizations, non-governmental organizations, local associations, academics and other competent persons, and - through regional seminars - to ensure in particular the involvement of persons living in extreme poverty;

4. *Calls upon* the Commission on Human Rights to replace the ad hoc group by a new ad hoc group of the Sub-Commission comprising five of its members, with a specific mandate to continue consideration of the subject, taking into account the results already attained.

*15th meeting
8 August 2005*

[Adopted without a vote. See chap. VI.]
