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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion and
Protection of Human Rights
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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* Documents E/CN.4/Sub.2/2005/L.10 and addenda will contain the chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Sub-Commission, as well as draft resolutions and decisions for action by, and other matters of concern to, the Commission on Human Rights, will be contained in documents E/CN.4/Sub.2/2005/L.11 and addenda.

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

A. Resolutions

2005/10. Attacks on persons entitled to protection as civilians

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

Guided by the Charter of the United Nations and the Universal Declaration of Human Rights,

Mindful of the International Covenant on Civil and Political Rights, the Geneva Conventions, of 12 August 1949, and the Additional Protocols thereto of 8 June 1977,

Mindful also of the Rome Statute of the International Criminal Court,

Noting Commission on Human Rights resolution 2005/63 of 20 April 2005 on protection of the human rights of civilians in armed conflicts,

Reaffirming that the intentional killing of persons entitled to protection as civilians is prohibited by customary international criminal law,

Stressing the importance of combating impunity for perpetrators of international crimes,

1. *Strongly emphasizes* that no alleged ground, political, philosophical, religious or military, justifies attacks against persons entitled to protection as civilians;

2. *Confirms* that anyone, including members of the police or security forces of a State, who participates in an intentional attack against persons entitled to protection as civilians, which is prohibited by customary international criminal law, is guilty of an international crime;

3. *Confirms also* that anyone who attempts intentionally to attack persons entitled to protection as civilians, which is prohibited by customary international criminal law, is guilty of an international crime;

4. *Confirms further* that anyone who incites intentional attacks against persons entitled to protection as civilians, which is prohibited by customary international criminal law, is guilty of an international crime;

5. *Confirms* that anyone who knowingly finances an intentional attack or an attempted intentional attack on persons entitled to protection as civilians, which is prohibited by customary international criminal law, is guilty of an international crime;

6. *Decides* to consider this issue at its fifty-eighth session under the same agenda item.

*19th meeting
10 August 2005*

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

2005/11. Issuance of standing invitations to special procedures

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

Recalling the recommendations concerning special procedures contained in the Vienna Declaration and Programme of Action,

Recalling also resolutions of the Commission on Human Rights, in particular, resolutions 2002/20 of 22 April 2002, 2002/84 of 26 April 2002, 2002/68 of 25 April 2002, 2003/77 of 25 April 2003 and 2004/76 of 21 April 2004, which recommend the issuance of standing invitations,

Noting with satisfaction that a growing number of Governments have announced that they will always accept requests to visits from special procedures of the Commission on Human Rights,

Emphasizing that special procedures serve as an early-warning mechanism for the rest of the international system and that they also help to prevent recurrent patterns of human rights violations, rather than reacting to them after they occur,

Recalling that thematic special procedures should have a right to visit any Member State,

Requests the Commission on Human Rights that in cases where the termination of a mandate of a country-specific special procedure is thought to be justified, it should consider making that termination conditional, inter alia, upon the issuance of standing invitations to thematic special procedures by the countries concerned.

*19th meeting
10 August 2005*

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

2005/12. Transfer of persons

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

Guided by articles 5, 6, 7, 8, 9 and 10 of the Universal Declaration of Human Rights,

Guided also by the non-derogable prohibition of torture in international law,

Recalling in particular article 7 of the International Covenant on Civil and Political Rights, article 3 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Geneva Conventions of 12 August 1949, and the Additional Protocols thereto of 1977,

Recalling also the principle of non-refoulement as enshrined in the 1951 Convention Relating to the Status of Refugees, its 1967 Protocol and customary international refugee law,

Referring to general comment No. 1 (1996) of the Committee against Torture and the jurisprudence of the Committee against Torture, general comment No. 20 (1992), general comment No. 31 (2004) and the concluding observations of the Human Rights Committee and general comment No. 6 (2005) of the Committee on the Rights of the Child,

Referring also to the recommendations of the Special Rapporteur on the question of torture as well as his interim report to the General Assembly (A/59/324) and the joint statement of special rapporteurs of 27 June 2003 (E/CN.4/2004/4, annex I),

Mindful that in both General Assembly resolution 57/219 of 18 December 2002 and Commission on Human Rights resolution 2003/68 of 25 April 2003 the United Nations High Commissioner on Human Rights is requested to make general recommendations concerning the obligation of States to promote and protect human rights and fundamental freedoms while taking action to counter-terrorism,

1. *Declares* that the present resolution refers to any involuntary transfer from the territory of one State to that of another, or from the authorities of one State to those of another, whether effected through extradition, other forms of judicially sanctioned transfer or through non-judicial means;

2. *Emphasizes* that States must respect and ensure the human rights of everyone within the power or effective control of that State even if he or she is not situated within the territory of that State and notes that this entails the obligation not to extradite, deport, expel or otherwise remove a person from their territory or their control, where there are substantial grounds for believing that there is a real risk of irreparable harm, either in the country to which removal is to be effected or in any country to which the person may be subsequently removed;

3. *Concludes* therefore that the transfer of a person to a State where that person faces a real risk of being subjected to torture, cruel, inhuman or degrading treatment or extrajudicial killing would be a breach of customary international law;

4. *Confirms* that where torture or cruel, inhuman or degrading treatment is widespread or systematic in a particular State, especially where such practice has been determined to exist by a human rights treaty body or a special procedure of the Commission on Human Rights, there is presumption that any person subject to transfer would face a real risk of being subjected to such treatment and recommends that, in such circumstances, the presumption shall not be displaced by any assurance, undertaking or other commitment made by the authorities of the State to which the individual is to be transferred;

5. *Also confirms* that in other cases, where a real risk of torture is determined to exist in a particular case, in no circumstances shall a transfer of the individual be effected;

6. *Strongly recommends* that, in situations where there is a real risk of torture or cruel, inhuman or degrading treatment in a particular case, no transfer shall be carried out unless:

(a) The State authorities effecting the transfer seek and receive credible and effective assurances, undertakings or other binding commitments from the State to which the person is to be transferred that he or she will not be subjected to torture or cruel, inhuman or degrading treatment;

(b) Provision is made, in writing, for the authorities of the transferring State to be able to make regular visits to the person transferred in his/her normal place of detention, with the possibility of medical examination, and for the visits to include interviews in private during which the transferring authorities shall ascertain how the person who has been transferred is being treated;

(c) The authorities of the transferring State undertake, in writing, to make the regular visits referred to;

7. *Calls upon* any State that has abolished the death penalty or suspended its operation in practice not to transfer an individual suspected of having committed a crime to a State that continues to use the death penalty unless it has previously received assurances, in writing, from the competent authorities that the death penalty will be neither sought nor applied; in order to constitute competent authorities, the authorities in question must themselves be capable of guaranteeing that the assurances will be respected;

8. *Recommends* that no person should be transferred to a State where there is a real risk of indefinite detention without trial or of any proceedings which may be brought against the person transferred being conducted in flagrant violation of international due process standards;

9. *Emphasizes* that such measures of protection against transfer of persons should not lead to impunity, and therefore recommends that whenever the transfer to another State of a person suspected of having committed a serious crime is precluded, that State shall provide all necessary judicial cooperation to enable the prosecution of the person to take place in the State in which that person is present, and that the latter State shall ensure that its domestic law allows for

the prosecution of nationals and foreigners for serious crimes committed abroad; serious crimes, for these purposes, means genocide, war crimes, crimes against humanity and acts which, if they had been committed as part of a widespread or systematic attack against the civilian population, would have constituted a crime against humanity;

10. *Considers* that the relevant judicial and administrative authorities involved in any manner in the transfer of persons should be made aware of the need to ensure compliance with international human rights and refugee law and that a potential transferee should be given the possibility to raise human rights concerns and to challenge effectively the legality of transfer measures.

*19th meeting
10 August 2005*
[Adopted by a roll-call vote of 21 to 1,
with 2 abstentions. See chap. IV.]

2005/13. Sessional working group on the administration of justice

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

Firmly convinced that the rule of law is an essential factor in the protection of human rights, as stressed in the Universal Declaration of Human Rights, and should continue to attract the attention of the international community,

Convinced that, through their own national legal and judicial systems, States must provide appropriate civil, criminal and administrative remedies for violations of human rights,

Convinced also that international tribunals and national judicial systems can work in a complementary manner to provide appropriate remedies for violations of human rights,

Recalling the numerous international standards in the field of the administration of justice,

Emphasizing that the right to access to justice as contained in applicable international human rights instruments forms an important basis for strengthening the rule of law through the administration of justice,

Mindful of the importance of ensuring respect for the rule of law and human rights in the administration of justice as a crucial contribution to ensuring peace and justice and ending impunity,

Recalling the recommendation of the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, that a comprehensive programme should be established within the United Nations with a view to helping States in the task of building and strengthening adequate national structures that have a direct impact on the overall observance of human rights and the maintenance of the rule of law,

Recalling the United Nations Millennium Declaration of 8 September 2000 which, inter alia, called upon States to strengthen respect for the rule of law in international as well as in national affairs, to consider signing and ratifying the Rome Statute of the International Criminal Court and to ensure implementation, by States parties, of treaties in areas such as international humanitarian law and human rights law,

1. *Takes note with interest* of the report of the sessional working group on the administration of justice and takes note of its discussions on the subjects of international criminal justice, women and children in prison, the right to an effective remedy, and transitional justice;
2. *Notes with interest* the increasing number of States, non-governmental organizations and other observers actively participating in the sessional working group;
3. *Reaffirms* the importance of the full and effective implementation of all United Nations standards on human rights in the administration of justice;
4. *Reiterates the call* to Member States to spare no effort in providing for effective legislative and other mechanisms and procedures, as well as adequate resources, to ensure the full implementation of those standards;
5. *Reaffirms* the importance of combating impunity as a fundamental obstacle to the observance of human rights and welcomes Commission on Human Rights resolution 2005/35 of 19 April 2005 by which it adopted the Basic Principles and Guidelines on the Right to a

Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law annexed to the resolution, and also welcomes the efforts of States and the United Nations international criminal tribunals to work in a complementary manner to ensure that violations of human rights do not go unpunished;

6. *Emphasizes* the importance and urgency of national and international efforts to restore justice and the rule of law in conflict and post-conflict situations and, where relevant, in the context of the transition process, to ensure accountability and justice, to promote and achieve reconciliation and to restore confidence in the institutions of the State, in accordance with international human rights standards and the principle of non-discrimination;

7. *Notes with interest* Commission on Human Rights resolution 2005/70 of 20 April 2005 on human rights and transitional justice and the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), including relevant recommendations contained therein;

8. *Welcomes* the proposal by some non-governmental organizations to organize, in close consultation with members of the Sub-Commission and the Office of the United Nations High Commissioner for Human Rights, a seminar on transitional justice to prepare papers for submission to the next session of the working group on the administration of justice;

9. *Invites* States, competent bodies of the United Nations, specialized agencies and intergovernmental and non-governmental organizations, as well as national human rights institutions, to provide or continue to provide information to the working group at its future sessions;

10. *Decides* to continue consideration of the question of administration of justice at its fifty-eighth session;

*19th meeting
10 August 2005*
[Adopted without a vote. See chap. V.]

**2005/14. Accountability of international personnel taking part
in peace support operations**

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

*Guided by the Charter of the United Nations and the Universal Declaration of
Human Rights,*

*Recognizing the importance of the accountability as an end in itself and, in particular, in
the context of international personnel taking part in peace support operations,*

*Concerned about the allegations of criminal behaviour and other misconduct by military
and civilian personnel in peace support operations,*

*Recalling its decision 2002/104 of 12 August 2002 in which the Sub-Commission
decided to entrust Françoise Hampson with the task of drafting, without financial implications, a
working paper on the scope of the activities and accountability of armed forces, United Nations
civilian police, international civil servants and experts taking part in peace support operations,*

*Recalling also the subsequent discussions during its fifty-fifth and fifty-sixth sessions, in
which the scope of the peace support operations for the purposes of the paper was clarified,*

*Taking into account the working paper on the accountability of international personnel
taking part in peace support operations submitted by Ms. Hampson at its fifty-seventh session
(E/CN.4/Sub.2/2005/42),*

1. *Endorses* the conclusions and recommendations contained in the working paper;
2. *Decides* to appoint Françoise Hampson as Special Rapporteur with the task of preparing a comprehensive study on the accountability of international personnel taking part in peace support operations based on her working paper as well as the comments received and the discussions that took place at the fifty-seventh session of the Sub-Commission, and requests the Special Rapporteur to submit a preliminary report to the Sub-Commission at its fifty-eighth session, a progress report at its fifty-ninth session and a final report at its sixtieth session;

3. *Requests* the Special Rapporteur to submit a preliminary report to the Sub-Commission at its fifty-eighth session, a progress report at its fifty-ninth session and a final report at its sixtieth session;

4. *Requests* the Secretary-General to provide the Special Rapporteur with all the assistance necessary to accomplish this task, including the possibility of visiting United Nations Headquarters and distributing a questionnaire to States that contribute troops to peace support operations;

5. *Decides*, if Ms. Hampson's appointment as Special Rapporteur should not be approved by the Commission on Human Rights or the Economic and Social Council, for whatever reason, to request her to prepare an expanded working paper on the accountability of international personnel taking part in peace support operations, to be submitted to the fifty-eighth session of the Sub-Commission;

6. *Recommends* the following draft decision to the Commission on Human Rights for adoption:

“The Commission on Human Rights, taking note of Sub-Commission on the Promotion and Protection of Human Rights resolution 2005/14 of 10 August 2005, decides to endorse the decision of the Sub-Commission to appoint Françoise Hampson as Special Rapporteur with the task of preparing a comprehensive study on the accountability of international personnel taking part in peace support operations, based on her working paper (E/CN.4/Sub.2/2005/42) as well as the comments received and the discussions that took place at the fifty-seventh session of the Sub-Commission, and requested the Special Rapporteur to submit a preliminary report to the Sub-Commission at its fifty-eighth session, a progress report at its fifty-ninth session and a final report at its sixtieth session. The Commission also decides to endorse the request to the Secretary-General to provide the Special Rapporteur with all the assistance necessary to enable her to accomplish her task, including the possibility of visiting United Nations Headquarters and distributing a questionnaire to States that contribute troops to peace support operations.”;

7. *Decides* to continue consideration of this issue at its fifty-eighth session under the same agenda item.

19th meeting
10 August 2005
[Adopted without a vote. See chap. V.]

2005/15. Issue of the administration of justice through military tribunals

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

Recalling its resolution 2003/8 of 13 August 2003 and its decisions 2001/103 of 10 August 2001 and 2002/103 of 12 August 2002,

Mindful of articles 3, 5, 8, 9 and 10 of the Universal Declaration of Human Rights and articles 2, 4, 7, 10, 14, 15 and 26 of the International Covenant on Civil and Political Rights,

Mindful also of the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors,

Recalling Commission on Human Rights resolutions 2002/37 of 22 April 2002, 2003/39 of 23 April 2003 and 2004/32 of 19 April 2004, and taking note of resolutions 2005/30 of 19 April 2005 and 2005/33 of 19 April 2005, in which the Commission took note of the report of Emmanuel Decaux (E/CN.4/Sub.2/2004/7 and Corr.1 and Add.1),

Recalling also general comment No. 29 on derogations during a state of emergency (article 4 of the Covenant) adopted by the Human Rights Committee, and stressing that only a court of law may try and convict a person for a criminal offence,

Reaffirming that every person is entitled in full equality to a fair and public hearing by a competent, independent and impartial tribunal, in the determination of his or her rights and obligations and the justice of any criminal charge laid against him or her,

Reaffirming also that everyone has the right to be tried by ordinary courts or tribunals using established legal procedures and that tribunals that do not use procedures duly established under the law shall not be created to displace the jurisdiction belonging to the ordinary courts,

Convinced that the independence and impartiality of judges should be respected in all circumstances and that an independent and impartial judiciary is an essential prerequisite for protecting human rights and ensuring that there is no discrimination in the administration of justice,

Stressing that the composition, operation and procedures of military courts should comply with the international standards and rules providing for a fair and just trial,

Stressing also the need to develop principles and guidelines on the administration of justice through military tribunals,

1. *Welcomes* the report on the administration of justice through military tribunals (E/CN.4/Sub.2/2005/9) submitted by Mr. Decaux, including the updated draft principles governing the administration of justice through military tribunals contained therein;

2. *Thanks* Mr. Decaux for having undertaken extensive consultations with relevant bodies, regional intergovernmental organizations and non-governmental organizations in order to update the draft principles;

3. *Expresses its appreciation* to Mr. Decaux for having submitted, in time for the Sub-Commission's consideration at its fifty-seventh session, an updated version of the draft principles;

4. *Decides* to transmit the updated draft principles to the Commission on Human Rights for its consideration, together with the comments of the Sub-Commission during the present session;

5. *Requests* Mr. Decaux to prepare, without financial implications, a note, taking into account the comments and observations of the Sub-Commission referred to in the previous paragraph, in order to facilitate the examination by the Commission of the draft principles, and to revise the draft principles;

6. *Expresses the wish* for the organization, under the auspices of the Office of the United Nations High Commissioner for Human Rights, of a second seminar of military and other experts on the issue of the administration of justice through military tribunals and encourages other such initiatives;

7. *Decides* to continue consideration of this question at its fifty-eighth session, under the same agenda item.

*19th meeting
10 August 2005*

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

**2005/16. Corruption and its impact on the full enjoyment of human rights,
in particular economic, social and cultural rights**

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

Guided by the Charter of the United Nations and the Universal Declaration of Human Rights, the United Nations Convention against Transnational Organized Crime, as well as other relevant human rights instruments,

Deeply concerned that the enjoyment of human rights, be they economic, social and cultural or civil and political, is seriously undermined by the phenomenon of corruption,

Taking account of standards adopted against corruption at the national, regional and international levels, in particular the United Nations Convention against Corruption adopted by the General Assembly in its resolution 58/4 of 31 October 2003,

Convinced that corruption has become a major international concern, taking many forms, from routine cases of bribery or petty abuse of power to the amassing of personal wealth through embezzlement or other dishonest means,

Deeply concerned that serious corruption in the private sector has led to the collapse of many healthy companies, thereby violating the rights of many, and at the high-level corruption engendered by some transnational corporations in countries in which they operate,

Taking into account the progress report submitted by the Special Rapporteur, Christy Mbonu, (E/CN.4/Sub.2/2005/18) and very lively and interactive debate the report elicited among participants,

1. *Expresses its warm appreciation* to the Special Rapporteur for her progress report and endorses the conclusions and recommendations contained therein;
2. *Notes* the obstacles and challenges confronting States that have introduced national mechanisms to prevent and combat corruption and welcomes the achievements and success recorded by these mechanisms;
3. *Urges* States that have not done so to introduce national mechanisms to prevent and combat corruption through the adoption and implementation of specific anti-corruption legislation;
4. *Encourages* political leaders in their respective countries to be national examples of probity, integrity and self-esteem;
5. *Notes* that many States have signed the United Nations Convention against Corruption, and encourages States that have signed the Convention and have not ratified it to do so;
6. *Encourages* States to aggressively combat and eliminate corruption, particularly among law enforcement agencies and the judiciary;
7. *Calls upon* civil society, particularly the media and non-governmental organizations, to become more involved in the prevention and punishment of corruption;
8. *Requests* the Secretary-General to provide the Special Rapporteur with all necessary assistance to enable her to complete her mandate, including study visits to two or one interested countries to enable her to examine obstacles and challenges confronting the national mechanism and best practices to prevent and combat corruption;

9. *Recommends* the following draft decision to the Commission on Human Rights for adoption:

“At its ... meeting, on ... 2006, the Commission on Human Rights, taking note of Sub-Commission on the Promotion and Protection of Human Rights resolution 2005/16 of 10 August 2005, decided, without a vote, to approve the request of the Sub-Commission that the Secretary-General provide the Special Rapporteur with all the necessary assistance to enable her to complete her mandate, including study visits to two or one interested countries to enable her to examine obstacles and challenges confronting the national mechanism and best practices to prevent and combat corruption.”

10. *Decides* to continue its consideration of this question at its fifty-eighth session, under the same agenda item.

*19th meeting
10 August 2005*

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

2005/17. The right to development

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

Recalling the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986, which confirmed the right to development as an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations, and the individual as the central subject and beneficiary of development,

Recognizing the valuable work being done by the open-ended Working Group on the Right to Development of the Commission on Human Rights and its high-level task force,

Noting the request of the Commission in its resolution 2003/83 of 25 April 2003 reiterated in resolution 2005/4 of 12 April 2005, for the Sub-Commission to submit to the Commission a concept document establishing options for the implementation of the right to

development and their feasibility, inter alia, an international legal standard of a binding nature, guidelines on the implementation of the right to development and principles for development partnership, including issues which any such instrument might address,

Firmly believing that its work should proceed in a non-duplicative manner, complementing and integrating into the work of other ongoing efforts on the right to development and utilizing the unique aspects of the Sub-Commission's working methods and functions to contribute valuable ideas and concepts to such efforts,

Welcoming the concept document on the right to development (E/CN.4/Sub.2/2005/23), submitted by Ms. O'Connor, including the conclusions and recommendations,

1. *Recognizes* that the ongoing work of the Sub-Commission is relevant and important to the work on the right to development and should be integrated into the ongoing activities relating to development and the right to development;
2. *Also recognizes* that there is a need to emphasize the importance of a human rights approach to the right to development;
3. *Firmly believes* that in developing human rights indicators of development, it is important to continuously question the validity and relevance of the indicators that emerge and that there should be an ongoing process to evaluate the appropriateness of the indicators themselves and whether they are adequately measuring the true human rights impacts of the programmes concerned;
4. *Believes* that good governance is important to the successful implementation of the right to development;
5. *Also believes* that concrete funding commitments are important to support the right to development and that this subject requires sensitivity and openness on the part of all interested stakeholders;
6. *Requests* each expert preparing a study or working paper for submission under agenda item 4 of the next session of the Sub-Commission to make observations and recommendations in their reports, where appropriate, pertaining to the right to development;

7. *Requests* Ms. O'Connor to continue her work and to submit to the Sub-Commission at its fifty-eighth session a working paper, taking into consideration the discussions at the present session and including, if financial and staff support are available from within existing resources, meeting with people in selected geographic areas to hold discussions and obtain local people's views on development programmes in their community;

8. *Decides* to submit Ms. O'Connor's concept document, together with a summary of the other views and ideas on this subject discussed at the present session to the Commission on Human Rights at its sixty-second session;

9. *Also decides* to review the progress of the implementation of the present resolution at its fifty-eighth session.

*19th meeting
10 August 2005*

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

**2005/18. Working Group on Minorities of the Sub-Commission on
the Promotion and Protection of Human Rights**

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

Recalling Economic and Social Council resolution 1995/31 of 25 July 1995 on the rights of persons belonging to national or ethnic, religious and linguistic minorities establishing the Working Group on Minorities,

Recalling Commission on Human Rights resolution 1998/19 of 9 April 1998, endorsing the Sub-Commission's decision to extend the mandate of the Working Group on Minorities of the Sub-Commission with a view to its holding one session of five working days annually,

Bearing in mind the need for the Sub-Commission to maintain the already limited time available for plenary meetings in fulfilment of its think tank functions,

Concerned about continued widespread discriminatory practices against persons belonging to minorities in their enjoyment of civil, cultural, economic, political and social rights,

Aware that discrimination against minorities continues to constitute potential or real threats to internal and international peace and security,

Noting with appreciation that the Working Group on Minorities is the only human rights forum available for dialogue with minorities,

1. *Requests* the Commission on Human Rights to request the Economic and Social Council to authorize the Working Group on Minorities to meet for five working days prior to the fifty-eighth and subsequent sessions of the Sub-Commission;
2. *Instructs* the Working Group to continue its efforts to identify, study and analyse problems faced by minorities and to encourage dialogues concerning these problems.

*19th meeting
10 August 2005*

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

2005/19. Second International Decade of the World's Indigenous People

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

Bearing in mind that one of the purposes of the United Nations, as set forth in the Charter, is the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recalling General Assembly resolutions 48/163 of 21 December 1993, and 59/174 of 20 December 2004, in which the Assembly proclaimed, respectively, the International Decade of the World's Indigenous People and the Second International Decade of the World's Indigenous People,

Recalling also that the General Assembly established as the goal of the Second Decade the further strengthening of international cooperation for the solution of problems faced by indigenous people, by means of action-oriented programmes and specific projects, increased technical assistance and relevant standard-setting activities,

Taking into account that in resolution 59/174 the General Assembly requested the Secretary-General to appoint the Under-Secretary-General for Economic and Social Affairs as the Coordinator for the Second Decade and to submit a report to the Assembly at its sixtieth session on a comprehensive programme of action for the Second Decade,

Convinced that the recently proclaimed Second Decade and its programme of action should bring about positive changes in terms of achieving full respect and implementation of the rights and freedoms of indigenous people and a real improvement in their daily lives, since, in spite of important achievements during the first Decade, the Commission on Human Rights in its resolution 2005/51 of 20 April 2005 expressed its deep concern about the precarious levels of economic and social development that indigenous peoples continue to endure in many parts of the world and the disparities in their situation in comparison to the overall population and reaffirmed the need to recognize, promote and protect more effectively their rights and freedoms,

Noting with particular and increased concern the delay in the work on the elaboration of the draft United Nations declaration on the rights of indigenous peoples, one of the main objectives of the first Decade,

Stressing the importance of consultation and cooperation with indigenous peoples and their organizations in planning and implementing the programme of action for the Second Decade, as well as of the need to ensure full cooperation and consultation between the Coordinator for the Second Decade and other relevant bodies and mechanisms of the United Nations system such as the Working Group on Indigenous Populations, as recognized by the Commission on Human Rights in its resolution 2005/49 of 20 April 2005,

Convinced, further, that the Working Group on Indigenous Populations is a most valuable forum in which for more than two decades States, indigenous peoples and their organizations and leaders, together with numerous United Nations specialized agencies and a large number of intergovernmental and non-governmental organizations have fruitfully interacted annually, thus facilitating a growing awareness of international public opinion of the many aspects and real dimension of the difficult situation of indigenous peoples in many parts of the world,

Welcoming the invitation extended to the Working Group on Indigenous Populations by the Commission on Human Rights in its resolution 2005/49 to submit to the Coordinator of the Second Decade, through the Office of the High Commissioner for Human Rights, a list of activities to be considered for possible inclusion as part of the human rights component of the comprehensive programme of action for the Second Decade, and the appropriate way in which the Working Group complied with the request at its twenty-third session,

Having considered the report of the Working Group on Indigenous Populations on its twenty-third session (E/CN.4/Sub.2/2005/26), in particular its annex IV, in which the Working Group suggests to the Coordinator for the Second Decade a list of activities to be undertaken at the international, regional and national levels for possible inclusion in the programme of action for the Second Decade,

1. *Endorses* the list of activities recommended by the Working Group on Indigenous Populations to the Coordinator for the Second Decade of the World's Indigenous People for possible inclusion in the programme of action of the Second Decade (E/CN.4/Sub.2/2005/26, annex IV), compiled in compliance with Commission on Human Rights resolution 2005/49;
2. *Requests* the Office of the High Commissioner for Human Rights to forward, at its earliest convenience, the list mentioned in the preceding paragraph and the present resolution to the Coordinator for the Second Decade;
3. *Reiterates* the need to continue giving particular attention to achieving the effective participation of indigenous peoples in the planning, organization and implementation of the activities of the Second Decade in order to fully realize the Decade's goals;
4. *Requests* the United Nations High Commissioner for Human Rights to take the necessary steps to ensure the participation of her Office in the activities of the human rights component of the programme of action of the Second Decade, in full cooperation with the Coordinator for the Second Decade;
5. *Requests* its Working Group on Indigenous Populations to follow closely the activities carried out as part of the human rights component of the programme of action of the Second Decade on the basis of the information to be submitted regularly by the Office of the

High Commissioner to the members of the Working Group, so as to be able to contribute to the mid-term and end-term reviews of the Second Decade to be carried out by the General Assembly in 2010 and 2015;

6. *Expresses* its view that the conclusions and recommendations adopted annually by the Working Group and the experiences accumulated by this body during its 23 years of continuous work on the most diverse indigenous issues and in the evaluation of the implementation of the programme of action of the first Decade could be of particular value for the successful planning and implementation of the activities to be undertaken within the framework of the Second Decade;

7. *Welcomes* the observance of the International Day of the World's Indigenous People on 21 July 2005;

8. *Recommends* that the celebration of the International Day of the World's Indigenous People continue to be held in Geneva, as usual, on the fourth day of the twenty-fourth session of the Working Group on Indigenous Populations, in order to ensure as large a participation of representatives of indigenous peoples, Governments, intergovernmental and non-governmental organizations, as well as of staff of United Nations bodies and the specialized agencies, as possible;

9. *Recommends* that the Coordinator for the Second Decade appeal to Governments and other possible donors to contribute generously to the Voluntary Fund for the Second International Decade of the World's Indigenous People;

10. *Welcomes* the steps that have been taken and continue to be taken to establish and promote cooperation between the Permanent Forum of Indigenous Issues, the Working Group on Indigenous Populations and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, as was the case in working to achieve a successful common approach stressing the need for a second international decade.

19th meeting
10 August 2005
[Adopted without a vote. See chap. VII.]

2005/20. The legal implications of the 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

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

Guided by the Universal Declaration of Human Rights,

Recalling its previous work on the question, in particular decision 2003/24 of 14 August 2003 and resolution 2004/10 of 9 August 2004,

Taking account of Commission on Human Rights resolution 2004/122 of 21 April 2004 and decision 2005/112 of 20 April 2005,

Recognizing the importance and urgency of addressing, in a comprehensive fashion, the legal implications, including implications for the human rights of their residents, with particular reference to the rights of indigenous peoples, of the unprecedented phenomenon of disappearance of States and other territories,

Welcoming the expanded working paper submitted by Françoise Hampson on the human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons (E/CN.4/Sub.2/2005/28),

1. *Endorses* the conclusions and recommendations contained in the working paper;
2. *Decides* to appoint Françoise Hampson as Special Rapporteur with the task of preparing a comprehensive study on the legal implications of the 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, based on her expanded working paper as well as the comments received and the discussions that took place at the fifty-seventh session of the Sub-Commission and the results of the questionnaires endorsed by the Commission in its decision 2005/112;

3. *Requests* the Special Rapporteur to submit a preliminary report to the Sub-Commission at its fifty-eighth session, a progress report at its fifty-ninth session and a final report at its sixtieth session;

4. *Requests* the Secretary-General to provide the Special Rapporteur with all the assistance necessary to accomplish this task;

5. *Decides* that if, for whatever reason, Ms. Hampson's appointment is not endorsed by the Commission on Human Rights or the Economic and Social Council, to request Ms. Hampson to prepare an expanded working paper on the legal implications of the 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 to be submitted to the Working Group on Indigenous Populations at its twenty-fourth session and to the Sub-Commission at its fifty-eighth session;

6. *Recommends* the following draft decision to the Commission on Human Rights for adoption:

“The Commission on Human Rights, taking note of the Sub-Commission on the Promotion and Protection of Human Rights resolution 2005/20 of 10 August 2005, decides to endorse the decision of the Sub-Commission to appoint Françoise Hampson as Special Rapporteur with the task of preparing a comprehensive study on the legal implications of the 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, based on her expanded working paper (E/CN.4/Sub.2/2005/28) as well as the comments received and the discussions that took place at the fifty-seventh session of the Sub-Commission and the results of the questionnaires endorsed by the Commission in its decision 2005/112 of 20 April 2005, and its request to the Special Rapporteur to submit a preliminary report to the Sub-Commission at its fifty-eighth session, a progress report at its fifty-ninth session and a final report at its sixtieth session. The Commission also decides to endorse the request to the Secretary-General to provide the Special Rapporteur with all the assistance necessary to enable her to accomplish her task.”

7. *Decides* to continue consideration of this issue at its fifty-eighth session under the same agenda item.

19th meeting
10 August 2005
[Adopted without a vote. See chap. VII.]

B. Decisions

2005/101. Establishment of a sessional working group on the administration of justice under agenda item 3

At its 1st meeting, on 25 July 2005, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to establish a sessional working group on the administration of justice under agenda item 3, composed of the following members: Ms. Hampson, Ms. Motoc, Ms. Rakotoarisoa, Mr. Sattar and Mr. Tuñón Veilles.

[See chap. III.]

2005/102. Establishment of a sessional working group to examine the working methods and activities of transnational corporations under agenda item 4

At its 1st meeting, on 25 July 2005, the Sub-Commission on the Promotion and Protection of Human Rights, recalling its resolution 2004/16 of 12 August 2004, decided, without a vote, to establish a sessional working group to examine the working methods and activities of transnational corporations under agenda item 4, composed of the following members: Mr. Alfonso Martínez, Mr. Alfredsson, Mr. Bíró, Ms. Chung and Ms. Warzazi.

[See chap. III.]

2005/103. Establishment of a sessional working group to elaborate detailed principles and guidelines concerning the promotion and protection of human rights when combating terrorism under agenda item 6 (c)

At its 1st meeting, on 25 July 2005, the Sub-Commission on the Promotion and Protection of Human Rights, recalling its decision 2004/109 of 12 August 2004, decided, without

a vote, to establish a sessional working group to elaborate detailed principles and guidelines concerning the promotion and protection of human rights when combating terrorism under, agenda item 6 (c), composed of the following members: Mr. Bíró, Mr. Chen Shiqiu, Ms. Koufa, Ms. O'Connor and Mr. Salama.

[See chap. III.]

2005/104. Summary records

At its 15th meeting, on 8 August 2005, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to request the Chairperson of the fifty-seventh session of the Sub-Commission to forward to the Commission on Human Rights the summary records of the deliberations of the Sub-Commission under agenda item 2, at the present session as requested by the Commission in paragraph 8 (b) of resolution 2005/53 of 20 April 2005.

[See chap. IV.]

2005/105. Human rights and State sovereignty

At its 15th meeting, on 8 August 2005, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to request Vladimir Kartashkin to prepare, without financial implications, a working paper on human rights and State sovereignty that should address, inter alia: the notion of sovereignty not only as a right of States but also as a responsibility; grounds for restriction of State sovereignty and the scope of the obligations of States to respect human rights and fundamental freedoms; State sovereignty and international human rights law; and State sovereignty and international criminal violations of human rights. The Sub-Commission further requested Mr. Kartashkin to submit his working paper to it at its fifty-eighth session.

[See chap. V.]

2005/106. Right to an effective remedy

At its 15th meeting, on 8 August 2005, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to request Françoise Hampson and Mohamed Habib Cherif to prepare, without financial implications, an expanded working paper on the implementation in practice of the right to an effective remedy for human rights violations and to submit this document to the working group on the administration of justice at the fifty-eighth session of the Sub-Commission.

[See chap. V.]

2005/107. Request for information from the Office of the United Nations High Commissioner for Human Rights

At its 19th meeting, on 10 August 2005, the Sub-Commission on the Promotion and Protection of Human Rights decided, by a roll-call vote of 19 to none, with 2 abstentions, to request the Office of the United Nations High Commissioner for Human Rights to make available the following information to the Sub-Commission on the Promotion and Protection of Human Rights annually and before the beginning of the Sub-Commission's sessions:

- (a) A list of countries which have proclaimed a state of emergency;
- (b) A list of Member States that have issued a standing invitation to the special procedures;
- (c) A list of States that have rejected a request by a special procedure to visit;
- (d) A list of Member States that are members of the Commission on Human Rights;
- (e) A list of Member States that are members of the Commission and that have issued standing invitations;
- (f) A list of States on the agenda of the Commission on Human Rights;
- (g) A list of States being considered under agenda item 9 that have denied access to the special procedures;

(h) A list of States where the special procedures have indicated inadequate or non-existent follow-up to their recommendations.

[See chap. IV.]

2005/108. Establishment of a working group on the implications of the relationship between international humanitarian law and human rights law

At its 19th meeting, on 10 August 2005, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to request Françoise Hampson to prepare, without financial implications, a working paper on the circumstances in which civilians lose their immunity from attack under international humanitarian law and international human rights law; Ibrahim Salama to prepare, without financial implications, a working paper on measures designed to prevent violations in circumstances in which international humanitarian law and international human rights law are both applicable; and Yozo Yokota to prepare, without financial applications, a working paper on the issues of amnesties, impunity and accountability for violations of international humanitarian law and international human rights law, to be submitted to the next session of the working group on the administration of justice.

[See chap. V.]

2005/10. Transitional justice: investigation mechanisms for truth and reconciliation, with emphasis on Latin America

At its 19th meeting, on 10 August 2005, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to request Janio Iván Tuñón Veilles to prepare, without financial implications, a working paper on transitional justice and investigation mechanisms for truth and reconciliation, with emphasis on the experiences in Latin America, and to submit it to the sessional working group on the administration of justice at the fifty-eighth session of the Sub-Commission.

[See chap. V.]
