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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-seventh session

SUMMARY RECORD OF THE 16th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 August 2005, at 10 a.m.

Chairperson: Mr. KARTASHKIN

later: Mr. SALAMA
(Vice -Chairperson)

later: Mr. KARTASHKIN
(Chairperson)

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(b) CONTEMPORARY FORMS OF SLAVERY

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

The meeting was called to order at 10.05 a.m.

ORGANIZATION OF WORK (agenda item 1) (continued)

1. The CHAIRPERSON asked members to resolve any disagreements relating to draft resolutions informally, as far as possible. In the public meeting, draft resolutions which met with general agreement would be adopted straight away, while any controversial ones would be referred back to the sponsors without further discussion.

2. The proposed dates for the next session of the Sub-Commission were 7-25 August 2006. That was after the session of the Economic and Social Council, which would take place in Geneva in 2006, and would also avoid the Swiss national holiday.

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.2/2005/32-41; E/CN.4/Sub.2/2005/NGO/2-5, 8, 14-16, 18, 20, 23, 26-31, 33 and 35; E/CN.4/Sub.2/2004/47; E/CN.4/Sub.2/AC.2/2005/5; E/C.12/2000/4)

3. Mr. BOSSUYT (Chairperson-Rapporteur of the Working Group on Contemporary Forms of Slavery) introduced the report of the Working Group on its thirtieth session (E/CN.4/Sub.2/2005/34). The Working Group, consisting of himself, Mr. Alfonso Martínez, Mr. Bíró, Mr. Salama and Mr. Sattar, had met in June 2005. Many NGOs had attended the session, along with representatives of the International Labour Organization (ILO) and the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery.

4. The Working Group's recommendations were contained in paragraph 36 of the report. The Group felt that its sessions provided a unique opportunity for NGOs and victims of slavery and slavery-like practices to appear before an international forum. Trafficking in human beings was a global phenomenon, and countries of origin, transit and destination all had a responsibility to address the problem. The Working Group called upon States to regulate the situation of migrant workers, especially domestic workers, who were extremely vulnerable, and to ensure that an employer with diplomatic status was not immune from prosecution for human rights violations.

5. Mr. CHEN said that the Working Group's activities over the past 30 years had helped to publicize the plight of children exploited in prostitution, pornography and armed conflict. The situation was constantly changing: it was important to consider not only the current situation, but future trends as well. In particular, the issue of sex tourism required special attention. He hoped that the Sub-Commission would endorse all the Working Group's recommendations.

6. Mr. SATTAR said that the Working Group had found it particularly valuable to hear the vivid testimonies of people who had endured contemporary forms of slavery. Sadly, bonded labour was still an enormous problem in South Asia. He called upon the Office of the United Nations High Commissioner for Human Rights (OHCHR) to make more grants available to South Asian representatives, so that the Working Group could hear about their experiences at first hand.

7. Mr. HULL (Dominicans for Justice and Peace) suggested that any working paper on the human rights dimension of prostitution, as proposed in the Working Group's recommendations (E/CN.4/Sub.2/2005/34, para. 36, recommendation 3) should bear in mind the fact that prostitution was a phenomenon which occurred in developed countries as well as developing ones.

8. Mr. MONOD (International Fellowship of Reconciliation) said that forced recruitment into a country's armed forces was one contemporary form of slavery. Armed groups forced parents to hand over their children, who were used to carry baggage and ammunition and subjected to sexual abuse. They were taught to be aggressive and cruel, so that even if they were set free their families often rejected them. They would then have to beg for a living or rejoin the armed groups in order to survive. In some countries, including Eritrea and the Sudan, the national army practised forced recruitment. In the Democratic Republic of the Congo and Angola, soldiers took young men away by force, shooting any who tried to escape. If the new recruits refused to obey orders, they were sent, untrained, to the front line as cannon fodder. Forced recruitment was a modern form of slavery which must be denounced wherever it occurred.

9. Mr. SALAMA said that he had been most impressed by the contribution which the specialized NGOs had made to the Working Group. NGOs must be encouraged to contribute actively to working papers and studies, for instance by communicating their views on the proposed working paper on human rights and prostitution to the Secretariat in good time for the Working Group's next session.

10. Mr. BENGOA asked how the Working Group planned to deal with the issue of trafficking in persons in future. The problem seemed to be increasing as the world became more globalized. If the Working Group had no clear plans for dealing with the issue, a study might be required to determine the correct course of action.

11. Mr. BOSSUYT thanked participants for their comments and expressed the hope that the Sub-Commission would endorse the Working Group's recommendations.

12. Ms. MOTOC (Special Rapporteur on human rights and the human genome) introduced her interim report (E/CN.4/Sub.2/2005/38), which focused on intellectual property rights in the context of biotechnology and genetic resources. Part I of the report dealt with the international context. The principal relevant instrument was the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Declaration on TRIPS and Public Health (Doha Declaration), signed by a number of NGOs and intergovernmental organizations in 2001, and a report on making global trade work for people issued by the United Nations Development Programme (UNDP) in 2003, had questioned the relevance of TRIPS to the developing world and urged developing countries to find an alternative mechanism.

13. Despite the declaration in the International Undertaking on Plant Genetic Resources, adopted in 1983, that plant genetic resources were a "heritage of mankind" which "should be available without restriction", the 1992 Convention on Biological Diversity recognized the sovereign rights of States over their natural resources, including genetic resources.

14. Part II of the report dealt with national and regional legislation, including the European Patent Convention, and European Union Directive 98/44/EC which prohibited the patenting of gene therapy or of complete or partial gene sequences. It went on to discuss United States patent law in relation to biotechnology and relevant regulations of the Andean Common System, the African Union and a number of individual countries.

15. The report concluded that there were two approaches to intellectual property rights in relation to biotechnology: the first, which placed too much emphasis on patenting and privatization, might stifle innovation, whereas the second, in which developing countries insisted on their sovereign rights over their natural resources, did not encourage scientific progress. Both approaches called into question the notion of a "common human heritage". In response to international concerns about the patenting of genetic material, such material should be considered a natural product, rather than a manufactured and therefore patentable one, should emphasize the utility of biotechnology and should maintain the use of genetic material for experimental purposes. Any solution which was adopted should take account of the growing role of the private sector. A transnational forum would be required, and all parties should be involved in voluntary structures, even though a compulsory regime would be imposed.

16. Mr. DECAUX said that the issue of human cloning, which was closely linked with research into the human genome, was a highly controversial one, as shown by the debate preceding the adoption of the United Nations Declaration on Human Cloning by the General Assembly in March 2005. Both States and individuals were unsure how to react to a technique which, on the one hand, had enormous medical potential but, on the other, brought into question the very essence of humanity. A collective process of ethical review was required at all levels.

17. Ms. Motoc's study should emphasize the human rights aspects of human cloning, rather than the economic aspects. The human body was not a commodity, and human blood and the human genome were not commercial products in the ordinary sense. Before deciding whether the human genome was patentable, it was essential to decide what was patentable, and what was not. One criterion was whether the object in question had been discovered or invented; another lay in the concepts of morality, human dignity and ordre public (here not only meaning "law and order", but also implying an element of jus cogens, or binding law).

18. The international community's failure to create an unequivocal legal framework governing human cloning had allowed a variety of solutions to persist, each as unsatisfactory as the last. A total ban on cloning, even for therapeutic purposes, had led, paradoxically, to a complete absence of regulation.

19. The ideal solution should be based on sound scientific principles, along the lines of European Union Directive 98/44/EC, which allowed therapeutic, but not reproductive, cloning. It seemed essential to allow the use of embryonic cells in research into Parkinson's or Alzheimer's disease - although, even there, promising new research was being conducted using adult stem cells.

20. The information in Ms. Motoc's study should be complemented by a questionnaire sent to States, national human rights institutions and ethics committees. He hoped that, in her final report, she would submit specific proposals and plans for future action for the Sub-Commission's consideration.

21. Mr. RAJKUMAR (Pax Romana) said that intellectual property rights involved the issue of power. Most patents and other rights belonged to large transnational corporations. It was important to look at them from a human rights perspective as well as an economic or trade perspective, as was usually done. It would be appropriate to consider intellectual property rights in the context of articles 2 (2) and 15 (1) (b) of the International Covenant on Economic, social and Cultural Rights, dealing respectively with non-discrimination and the right of everyone to enjoy the benefits of scientific progress and its applications. The Sub-Commission might wish to ask the Committee on Economic, Social and Cultural Rights to consider the human rights aspects of article 15. The issue had also arisen in the Working Group on Indigenous Populations in respect of the traditional knowledge of indigenous people. Mr. Bossuyt might wish to consider intellectual property rights in his work on non-discrimination. He hoped that Ms. Motoc's final report would focus more closely on the human rights aspects of intellectual property rights.

22. Ms. MOTOC said that her final report would contain guidelines on the use of the human genome from a human rights perspective, which was different from the ethical aspect considered by the United Nations Educational, Scientific and Cultural Organization (UNESCO), for example. It was important to reiterate the principle that the human being was not a commodity to be bought or sold. She would bear in mind the comments of the representative of Pax Romana.

23. Mr. ALFREDSSON, introducing the working paper he had co-authored with Mr. Salama on technical cooperation in the field of human rights (E/CN.4/Sub.2/2005/41), said that it addressed institutional arrangements within the United Nations system, including the question of mainstreaming and rights-based activities. The contents of technical cooperation had also been examined, based on international instruments adopted by the United Nations, pointing out that greater emphasis should be placed on technical cooperation in the field of economic, social and cultural rights. The importance of dialogue and the exchange of positive experiences had been highlighted, using examples from the work of national institutions. Emphasis had been placed on national ownership as a crucial element in the sustainability of technical cooperation. Technical aspects of the delivery of cooperation had also been discussed. The working paper was essentially a list of the issues which needed to be addressed in the area of technical cooperation.

24. Mr. SALAMA said that in the field of human rights there was an imbalance between protection and promotion, and also between civil and political rights and economic, social and cultural rights. It was therefore necessary to rethink technical cooperation more strategically. The working paper highlighted the fact that national ownership entailed the cultural legitimacy of solutions. Although it was constantly claimed that human rights were universal, until local people perceived them as such, the situation would not change. For example, in Egypt, the law on marriage had recently been amended to grant women the equal right to divorce not as a result of international human rights instruments, but because Islamic scholars had discovered a precedent in Islamic history. If people were capable of discovering in the local culture the basis of modern human rights concepts, it would do more to advance human rights than insisting on one international instrument. However, that in no way reduced the importance of those instruments. There was clearly a necessity to train people within the local culture on human rights concepts and encourage them to demystify the victim notion of cultural particularities. It was necessary to operate change from within, and that would only be possible if there was a cultural marriage between modern universal human rights concepts and the local culture.

25. Attention must be paid to examining ways of extending technical cooperation to the field of economic, social and cultural rights. In many countries, much was being done in favour of those rights, but the link with human rights was absent.

26. The next step would be to work more closely with OHCHR to expand on some of the ideas contained in the working paper.

27. Mr. SORABJEE agreed with Mr. Salama's emphasis on the need to operate change from within. In India, for example, certain provisions of both the Christian and Hindu marriage and divorce acts had clearly discriminated against women. Amendments to those laws had been brought about not exclusively by court judgements, but by movements started by enlightened people within the communities themselves. The Government was anxious that proposals should come from the communities themselves, lest it be considered that it was interfering in the personal laws of any community.

28. Mr. RAJKUMAR (Pax Romana) said that, due to past experience in the Commission on Human Rights, he was hesitant with regard to the working paper. Too often, States had used technical cooperation as a tactical concession to avoid scrutiny. On the other hand, changes were taking place, and the challenge of the particular was gaining importance. The key question was how technical cooperation answered the challenge of the particular. All cultures had notions of justice, so the question was to what extent enculturation of human rights was possible. When reference was made to ownership, participation of the people in designing human rights policy should also be mentioned. The question should also be examined in terms of the pitiful budgets allocated for human rights.

29. He stressed the imbalance between promotion and protection. Concerning institutional arrangements, the OHCHR regional representative for Asia-Pacific was based in Bangkok. Unfortunately, OHCHR policy appeared to be characterized by continuous interruption. There was a need for a consistent, coherent policy at the regional levels. As regional representatives were very often isolated from the other United Nations mechanisms, there was clearly a need for a more integrated approach.

30. Ms. PARKER (Minnesota Advocates for Human Rights) said that technical cooperation should be promoted in a spirit of openness and transparency. It would be beneficial to have more systematic references to NGOs in the ideas contained in the paper. She welcomed the comments on NGOs in paragraphs 20 and 22, but, referring to paragraph 24 on impact assessments, pointed out that that was an area where NGOs could play a key role.

31. She agreed that economic, social and cultural rights required greater attention, but it was not clear which form of technical cooperation best suited that field, as it involved an interdisciplinary approach. One possible example of technical cooperation in that field would be to help Governments to negotiate the human rights concepts into a poverty reduction paper or a multilateral agreement with a bank or development agency.

32. Mr. SATTAR said that one successful example of technical cooperation was the assistance provided by the ILO in dealing with the problem of bonded labour in Pakistan. ILO had discreetly cooperated with the Government to help build its capacity to deal with the problem. The report on technical cooperation could help identify how the international community could discreetly provide assistance to States. He agreed that it was an area that required a great deal of sensitivity, as there was a certain resistance to the imposition of Western standards on the local culture. That was a misperception on the part of critics, as it was not a question of imposing the values of a particular culture, but rather helping States to respect international norms to which they were parties.

33. Mr. ALFREDSSON said that he and Mr. Salama would take account of the comments made if they had the opportunity to continue research in that area. The notion of change from within was already present in the working paper, with the emphasis on national ownership. Regarding the efforts of other organizations, it was pointed out in the paper that OHCHR was not the only actor in the field, which was further underlined by references to South-South cooperation and bilateral efforts. He shared the concerns raised by the NGO representatives, but there would be nothing in the paper indicating approval of using technical cooperation as a means of avoiding scrutiny. Account would be taken of the suggestion to pay more attention to the potential role of NGOs and the need for interdisciplinary efforts in the field of economic, social and cultural rights.

34. Mr. SALAMA said that although the concerns raised regarding tactical concessions to avoid scrutiny were legitimate, such a tactic could also be viewed as a way of bypassing alleged interference in domestic affairs or imposed solutions, and should not be used to deny the genuine importance of technical cooperation. Such fears would be assuaged when there was a fairer system of institutional scrutiny in place, and States became aware of the benefits of technical cooperation. Sensitivity to local cultures must be shown when presenting the case for technical cooperation.

35. Although the emphasis in that paper had been on national institutions, the role of NGOs could be expanded upon in future reports. The international human rights community was partly responsible for the difficulties involved in extending technical cooperation to the field of economic, social and cultural rights because, until now, it had not developed a clear and coherent methodology for addressing those rights and the right to development. Added to that, the developing countries had not produced sufficiently clear concepts of operationalization and realization of the right to development.

36. The three areas in which economic, social and cultural rights could be the subject of technical cooperation were impact assessment, justiciability and providing guidelines for negotiators to use in international trade forums.

37. Mr. BÍRÓ, introducing the working paper he had prepared with Ms. Motoc on human rights and non-State actors (E/CN.4/Sub.2/2005/40), said that the paper was necessarily limited in scope. A number of questions which required clarification had been raised, the answers to which would determine the direction and the main topics of future research.

38. The problem of non-State actors in international relations was primarily a political one. Certain political non-State actors challenged the sovereignty, and sometimes territorial integrity, of one or more States, while others sought to bring about changes to the international or regional distribution of power. However, non-political actors also had a multitude of goals they wanted States to pursue and implement, such as respect for human rights, eradication of poverty and preservation of the environment. The assertion that the problem was essentially political in nature did not contradict the claim that all non-State actors had responsibilities in the field of human rights.

39. A number of theoretical and practical problems arose, such as whether all non-State actors should respect and undertake responsibilities regarding all internationally recognized human rights, or only those with jus cogens status, plus certain categories of rights relevant to their specific goals and activities.

40. Given that the field of non-State actors was extremely heterogeneous, it was necessary to establish a number of research priorities. In his view, emphasis should be placed on political non-State actors. Although it could be claimed that all types of actors could affect political outcomes, it could not be assumed that all actors with influence on domestic or international politics were also political actors. According to a recent study, the main categories of political actors in the global system were: almost 200 Governments, 64,000 major transnational companies, 9,000 single-country NGOs, 240 intergovernmental organizations, and 6,000 international NGOs.

41. The main substantive criteria given for the non-State actors listed was that they lobbied foreign Governments on issues such as trade, and might therefore become international political actors. However, such a broad definition was not ideal, as there were specific features which differentiated political actors from other non-State actors. Political non-State actors tended to emulate State behaviour, and identified themselves as political actors through their self-definitions and programmes. They had a significant degree of autonomy with regard to the formulation of their programmes and goals, and consciously accepted the risk of failure, in return for potential benefits and privileges. Historically, one of the most important privileges sought by non-State political actors was statehood, and that was also one of the greatest challenges for States and the international community. Finally, since most political actors were in a weaker position structurally, they sometimes resorted to the use of force in pursuing their goals.

42. Ms. MOTOC drew the Sub-Commission's attention to a number of key sections in the working paper, which included examination of the non-State element, international organizations and other non-State actors, as well as transnational corporations and the contemporary crisis of the nation State. A number of issues highlighted in the report required further clarification, such as the question of actors and political actors, non-State or transnational actors, freely assumed or internationally assigned responsibilities, and those who benefited.

43. Mr. SALAMA said that the topic was not a new one, but there were now additional reasons for considering it a topic of the future. The situation had moved on from the traditional view that States were the only actors which could bear responsibility for human rights violations and that individuals and non-State actors could be responsible only indirectly through the State. The change was illustrated, for example, by the Declaration on Human Rights Defenders. There seemed to be some reluctance to embrace one of the options mentioned by Ms. Motoc for coping with the transition, i.e. to draft responsibilities and rules for non-State actors. It might be useful to think in terms of national regulatory powers to address specific categories of such actors, along the lines of the powers of national human rights institutions, with a view to seeing which approaches were successful and why. States could not unilaterally frame through the normal legislative avenues rules applicable to the new categories of non-State actor.

44. Ms. HAMPSON said that there was a risk that readers of the working paper would think that it dealt with non-State actors from the standpoint of human rights law when in fact it took an international-relations approach without distinguishing clearly between international law and international relations.

45. Where international relations were concerned, the working paper described the development of new actors but did not say anything about their rights and obligations, which was a legal question to be determined by the relevant legal orders. Nor did it explain how to exercise effective control over such actors - another legal question. A description based on international relations could identify harmful effects produced by such actors but it could not prescribe a particular remedy. Such effects could not be described as violations of human rights law unless the actor in question was legally recognized as having legal obligations.

46. Human rights law was part of public international law and subject to the general rules of that legal order. States had positive and negative international legal obligations with regard to the treatment of persons under their jurisdiction. That concept and the content of human rights law existed only within the framework of international law, which determined which actors had rights and obligations and the content thereof. The content of international law could be changed only by using the tools of international law. Currently, the only actors with international human rights obligations were States, possibly quasi-State entities and possibly intergovernmental organizations. Human rights law was perhaps a modern form of social contract between the governing and the governed. That was why States could be called upon to deliver the requirements of human rights law and why the governed accepted the imposition of rules as a quid pro quo for the protection provided by human rights law. It was meaningful to speak of international human rights obligations only in terms of the exercise of governmental or quasi-governmental authority.

47. Some States had suggested that non-State armed groups could violate human rights law. That meant that those members of their populations living in areas controlled by non-State forces were required to obey the attempted exercise of governmental authority by such forces. If a sovereign State accepted that position, it called into question its own sovereignty. In fact, such non-State groups did not violate human rights law but only domestic criminal law. In an armed conflict in which they violated international humanitarian law or committed crimes against humanity they would be infringing both domestic and international criminal law. However, to say that such groups did not violate human rights law did not mean that they were doing nothing wrong or could not be punished. The reason why some Governments urged such an analysis was to displace their own responsibility to act to protect their peoples against such groups.

48. In the case of transnational corporations, to start by examining the impact of non-State actors and arguing that they ought to have human rights obligations would be to lose the opportunity of using existing machinery to achieve progress now. There was in fact no need to wait for a future remedy, for States were already obliged to protect their peoples from the acts of business enterprises under their jurisdiction. Such obligations could be asserted in jurisdictions in which human rights treaties had the status of domestic law or before regional and international human rights bodies. It seemed that NGOs, for example, did not make more use of such possibilities because they were more interested in attacking transnational corporations than in securing effective protection and redress.

49. International law had already established that intergovernmental organizations did have some measure of international personality which could form the basis of human rights responsibility. What was lacking was the machinery for monitoring and enforcement. There were two possible remedies: either an action could be brought by all the States members of an organization which had ratified a particular treaty; or provision would have to be made for independent accountability before human rights bodies for activities within the organization's sphere of authority. The subject was already under study in the International Law Commission. The enforcement machinery might take the shape of a third optional protocol to the International Covenant on Civil and Political Rights.

50. Any study of the topic must take as its starting point the framework provided by international law: there must be a violation of legal obligations, for that was what human rights law was about. She would welcome further discussion of the concept of quasi-governmental entity but, in practical terms, it appeared more useful to examine what could be done now through much more effective recourse to the existing machinery.

51. Mr. Salama, Vice-Chairperson, took the Chair.

52. Mr. KENNEDY (Indian Law Resource Center) said that non-State actors were very active in violating the human rights of the Western Shoshone people. The Shoshone held the earth, the sun, water and air and the benefits which they brought to be sacred. Modern activities which destroyed those sacred things were violations of human rights. In particular, the Shoshone were currently under threat from the nuclear and mining industries. Oral history held that if the area of Shoshone land known as Yucca Mountain was not respected, it would spew forth

poisons. That mountain, which contained large fossil aquifers, was where the United States planned to store 70,000 tons of spent nuclear waste. The claim of United States scientists that there was no threat to Shoshone waters was not true. The United States had not consulted the Shoshone about its plans or obtained their consent. The Shoshone people had earlier been affected by fallout from nuclear testing; now they would again be affected by nuclear contamination.

53. Nor had the Shoshone consented to the gold-mining taking place on their lands, which used 70,000 gallons of water every minute of every hour of every day. They received nothing from the mining except violations of their rights. The United States claimed that under its 1872 legislation, a mine could not be closed. Why was it more important to dig minerals out of the earth to make money than it was to respect life? The Indian Law Resource Center requested the Sub-Commission to take action to help the Shoshone people. Working papers such as the one currently under consideration were an important means of addressing the issue of non-State actors.

54. Ms. MOTOC said it must be remembered that the working paper sought to ask questions rather than to give answers. It would be very useful to take the approach suggested by Mr. Salama: the authors of the working paper had indeed suggested that experts such as Mr. Salama should be involved in future work on the topic.

55. Turning to the comments made by Ms. Hampson, she said that the working paper blended the two approaches of international relations and international law. Ms. Hampson's concept of human rights as a kind of social contract was not unanimously accepted in the academic world: some authorities preferred to link human rights to the individual, i.e. to view them as natural rights. The authors and some other members of the Sub-Commission took a different view from Ms. Hampson. Furthermore, in the work on the responsibility of States human rights were regarded as a custom of international law and violations of human rights as international crimes. The international-relations approach had helped the authors to frame the topic and take a more realistic view of non-State actors. Furthermore, they had taken a natural-law approach since individuals incurred liability under international criminal law precisely because they violated human rights as individuals.

56. The authors had taken matters relating to intergovernmental organizations into account, in particular in the light of the current work of the International Law Commission. There was a fairly rich case law on the subject: the most important point was whether such non-State actors exercised effective control over the activity in question. Several of the Commission's special rapporteurs had addressed the activities of such actors precisely because they exercised effective control.

57. It might be useful to establish a working group in 2006 to consider the points raised by Ms. Hampson in greater detail.

58. Mr. BÍRÓ said that, like Ms. Motoc, he hoped that Mr. Salama would join in the future work and have an opportunity to develop his ideas.

59. He could agree with most of the points raised by Ms. Hampson, many of which had deliberately not been addressed in the working paper: the limited aim had been to clarify the terminology and typology of non-State actors. The working paper used the term "political actors" to mean what Ms. Hampson referred to as quasi-governmental entities, but it might be possible to make more subtle distinctions in the future work. The terms "obligations" and "violations" were used in the working paper, but it usually referred more generally to responsibilities in the political, legal and moral senses. The fact that all non-State actors had responsibilities had been clearly established in the relevant international instruments, but the authors had deliberately not provided a list of such instruments.

60. All of Ms. Hampson's comments would be very valuable in the future work on the topic, if any. Account would also have to be taken of a number of other working papers before the Sub-Commission which related either directly or indirectly to the topic, with a view to establishing a coherent framework for its consideration.

61. The CHAIRPERSON said that on the legal issue it was impossible to disagree with Ms. Hampson as to who was addressed by human rights obligations. But there could be situations in which the State was extremely weak, vis-à-vis transnational corporations for example, and then the question was whether addressing non-State actors relieved the State of its obligations, or displaced the responsibility, as Ms. Hampson had put it.

62. Ms. AULA (Franciscans International), speaking also on behalf of Dominicans for Justice and Peace and the Dominican Leadership Conference, in cooperation with Initiative d'Entreaide aux Libertés, said that once again members of Franciscans International from several countries had testified in 2005 in the Working Group on Contemporary Forms of Slavery alongside victims of traffic in persons, forced labour and enslavement for debt. The efforts to improve the Working Group's methods of work were welcome, but problems persisted. In view of the number of persons affected by slavery throughout the world, the Working Group should be seeking urgent and effective responses to the challenges. It was regrettable that at the 2005 session the Working Group's experts had not continued on the path of analysis of international standards relating to contemporary forms of slavery outlined by Mr. Decaux in his working paper (E/CN.4/Sub.2/AC.2/2004/CRP.1). There were a large number of indicators, on the profitability of contemporary forms of slavery for example, which had an impact on the development of the phenomenon itself but were not taken fully into account by the Working Group.

63. Traffic in persons was a serious violation of human rights which had to be tackled from a global standpoint. The ILO report "A global alliance against forced labour" was welcome, for it had the merit of establishing the relationship between forced labour, migration and traffic in persons and the underlying causes of such phenomena. It also stated that 2.5 million of the 12.3 million victims of forced labour had a link to traffic in persons.

64. The Sub-Commission was invited in its resolution on the item to urge States to criminalize all forms of exploitation deriving from contemporary forms of slavery, to strengthen the links between the application of the law and the protection of victims, and to strengthen their legal cooperation with a view to tracking down the criminal networks. And the Working Group was urged to engage with fresh vigour in an analysis of the international instrument on the topic with a view to filling the existing gaps in legislation.

65. Mr. DECAUX drew attention to Security Council resolution 1612 (2002) on children affected by armed conflict, which illustrated the question of non-State actors both in its negative and in its positive aspects. More importantly, paragraph 132 of the report of the Secretary-General on children and armed conflict (S/2005/72) envisaged a direct role for the Sub-Commission through the establishment of a standing working group on the topic. That was a very promising prospect, and it was a pity that the Sub-Commission had not been notified directly about the proposal.

66. Mr. SHARAFEDDIN (International Organization for the Elimination of All Forms of Racial Discrimination) drew attention to the difficult situation of women workers in some of the Gulf States who suffered from contemporary forms of slavery at the hands of criminal networks. The work of the Special Rapporteur on the human rights of migrants was welcome, and the international human rights community should take into consideration the recommendations made in her report on specific groups and individuals (E/CN.4/2005/85).

67. Sending and receiving States should conclude agreements to safeguard the rights of migrant workers and establish monitoring mechanisms with the support of NGOs, the United Nations and ILO. States should also address their human rights obligations in terms of their immigration policies and incriminate all forms of discrimination. The measures taken by the Spanish Government in that connection were commendable. It was regrettable that most of the developing countries, the main recipients of migrant workers, had not ratified the Migrant Workers Convention.

68. The thousands of irregular migrants from North Africa and sub-Saharan Africa were the victims of exploitation by criminal networks and also of the failure of States to address the structural causes of the phenomenon. The Special Rapporteur had indicated that in the period 1999-2003 more than 4,000 bodies had been found in the Strait of Gibraltar, not to mention all those who had simply disappeared. Furthermore, African migrant workers living in Morocco as a transit country suffered daily deprivations. The Sub-Commission must help to draw the attention of the international community to the need for States to take their human rights obligations seriously.

69. Ms. BEUTLER (Worldwide Organization for Women), speaking also on behalf of the Inter-African Committee on Traditional Practices, the International Council of Jewish Women, the International Council of Women, the International Federation of University Women, the Women's International League for Peace and Freedom, the World Movement of Mothers, the World Union of Catholic Women's Organizations and World Citizens, expressed concern that, alongside its important implications for scientific advances and health applications, genetic testing - whether by amniocentesis, using chromosomal analysis, or later in pregnancy by sonogram technology - was used to prevent the birth of female babies. Studies showed that, increasingly, there were more males than females in the population. UNESCO had warned that, unless steps were taken to address the problem, men would be unable to find brides, the workforce would be depleted and there would be increased trafficking of women.

70. Genetic information could be used to discriminate or stigmatize in the context of other social practices. For example, in the case of arranged marriages, families might seek genetic information about their child's potential spouse, thus making a woman unmarriageable if she was known to carry genes for a serious disease or blaming her for the birth of a child with a disease. Businesses might utilize genetic information to discriminate against future employees.

71. Females suffered other forms of violence in some cultures. Female babies were sometimes murdered at birth. Young girls were often fed less well than their male counterparts and were less likely to receive medical care when ill. The traditional practice of early marriage was harmful to girls' health and education. Child brides could sustain injury during sexual intercourse and were particularly vulnerable during childbirth. In established market economies, violence against women was responsible for one out of every five health days of life lost to women of reproductive age. Governments must prioritize women's access to health and eliminate violence against females. The Sub-Commission should examine the results of cultural practices that seriously affected the health and well-being of women and girls. International guidelines and legislation should be developed. Any application of genetic engineering that denied human rights should be eliminated.

72. Ms. SRIVASTAVA (Women's International League for Peace and Freedom), speaking on behalf of the same NGOs as the previous speaker, said that violence against women had a devastating impact not only on them but also on their families, their communities and society at large. The public health sector and health workers in most countries gave inadequate attention to women's needs and lacked understanding of violence against women.

73. The number of armed conflicts around the world had grown enormously since 1990, with a catastrophic impact on women, directly and indirectly. Whereas men were killed in combat, women were always tortured and raped before being killed. Sexual violence as a weapon of war was a well-known phenomenon. In some conflicts, women who had been raped had been charged with illegal pregnancy, which was a punishable offence under their national criminal codes. Such women were thus doubly punished, as well as contracting AIDS in disproportionate numbers. After long political battles by women's movements, international humanitarian law and human rights law were beginning to incorporate provisions on rape as a weapon of war, but the road to full international recognition of such violence as an international crime was strewn with obstacles. Health-care workers were in a unique position to detect violence and support survivors of abuse, yet many rejected or neglected abused women, because of the social norms that dictated man's superiority over women. Such workers should be provided with educational guidelines and training. Public health services should be assisted so that they could identify, treat and prevent violence against women. All agencies that dealt with women and children should be trained and sensitized on gender and violence against women.

74. Ms. PONCINI (International Federation of University Women), speaking also on behalf of the International Federation of Business and Professional Women, said that Commission resolutions on women's rights had failed to address equal economic empowerment for women and women's equal participation in decision-making in the world of work. Yet those two areas were fundamental. Although women represented about 70 per cent of the labour force in developed countries and 60 per cent in developing countries, there had been little change in their share of professional or managerial jobs. Cultural and social attitudes had retained the occupational segregation of "male" and "female" jobs. Family responsibilities were also

instrumental in impeding women from achieving management or leadership positions. It was essential that the ILO Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1960 (No. 111) should be ratified. Without the infrastructure and conditions called for in the Workers with Family Responsibilities Convention, 1981 (No. 156) and the Maternity Protection Convention, 2000 (No. 183) basic equality could not be achieved. Men and boys had a fundamental role in sharing childcare, which currently fell to women. Women were not a homogeneous category: some were entrepreneurs and decision-makers, but women also represented the majority of the world's poor, disproportionately affected by negative aspects of economic policy. Thus, for example, the privatization of health services had increased women's responsibility for the care of the elderly, owing to the increased cost and lower standards of professional care. Meanwhile, the policy of attracting foreign direct investment by lowering worker-protection standards could expose women to low-paid work in exploitative conditions.

75. Ms. MARCOVICH (Coalition Against Trafficking in Women), speaking also on behalf of the Movement for the Abolition of Prostitution and Pornography, said it was essential that the Working Group on Contemporary Forms of Slavery should be allowed to continue its work. The Working Group had played a major role, over the past few years, in the fight against trafficking in women. Thanks to the Working Group's recommendations, her organizations had been able to influence negotiations on new regional or international treaties, such as the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The same applied to the South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and the Council of Europe Convention on Action against Trafficking in Human Beings. In that context, she urged the Sub-Commission to renew its resolution 2001/14, in which it had called for "the elaboration of an additional protocol to the three conventions on slavery and slavery-like practices" so as to "strengthen the effectiveness of these conventions through the establishment of an efficient monitoring mechanism". Trafficking in women for sexual exploitation was reaching alarming proportions. More and more countries, including those which had ratified the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, wished to organize and legalize the exploitation of prostitution. One country, the Czech Republic, had gone so far as to deratify the Convention. That was all the more reason to strengthen the existing treaties and to resist the abolition of the Working Group.

76. Since the adoption of the Palermo Protocol, the recognition of "demand" as a factor encouraging trafficking and exploitation had been taken into account by the international community. She welcomed the initiative by the Department of Peacekeeping Operations to launch a zero-tolerance campaign against violence and sexual abuse by peacekeeping forces. Prostitution played an essential role in the development of trafficking in women and girls. It should be recognized as an extreme form of violence and exploitation of women and the 1949 Convention should be promoted and further ratified.

77. Mr. STABEROCK (International Commission of Jurists), speaking also on behalf of the International Service for Human Rights, the International Federation of Human Rights Leagues and Franciscans International, said that the draft principles and guidelines on human rights and terrorism appearing in document E/CN.4/Sub.2/2005/39 constituted an invaluable compilation of human rights standards. A number of counter-terrorism measures adopted by States were

incompatible with those States' international legal obligations. Jurisprudence was necessarily ad hoc. Clear and detailed guidelines issued by the United Nations were therefore urgently needed to ensure that States complied with international law. Action had been taken by the Council of Europe, the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights, but guidelines were required at the universal level. Even though, as the Secretary-General had said, human rights law made ample provision for strong counter-terrorist action, such law was not readily accessible to all those responsible for carrying out counter-terrorism measures. Moreover, some situations had been affected by new technologies. The Sub-Commission was better placed to elaborate clear and practical guidelines than any other United Nations body.

78. Mr Kartashkin, Chairperson, resumed the Chair.

79. Ms. CATHAUD (International Federation of Human Rights Leagues) said that many of the provisions of the Beijing Declaration and Programme of Action, limited as they were, had still not been realized, although some progress had been made since the Fourth World Conference on Women. The feminization of poverty and the violation of women's rights had been recognized as major obstacles to democratization and development. Provisions on sexual crimes had been added to the Rome Statute of the International Criminal Court. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) had come into force. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms had been adopted by the General Assembly in 1998, with specific provisions relating to women human rights defenders. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families had come into force. Such successes had, however, owed more to the activism of international organizations and NGOs than to the political will of States. Although it was encouraging that, over the past 10 years, 28 States had ratified CEDAW, making it all but universal, too few States had withdrawn their reservations to the Convention and 52 States retained reservations. All the new parties, with the exception of Mozambique and South Africa, had made reservations that stripped the Convention of its meaning. Even in countries where CEDAW had been ratified, politics remained openly discriminatory. In various important areas, the situation had stagnated or even regressed. The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others had still not been universally ratified. International and regional organizations and Governments allocated far less than 20 per cent of their budget to women's NGOs. Impunity for perpetrators of violence against women was still widespread, and few States had shown any real will to take action. No State had given refugee status to women fleeing sexual violence in their own countries. Many States also continued to fail to recognize married migrant women as individuals and thus denied them independent legal status. Moreover, some reactionary States, including the United States, were calling into question earlier decisions on abortion. She called for the reaffirmation of the universality of women's rights and the implementation of the Beijing Platform of Action; the withdrawal of reservations to CEDAW and the integration of CEDAW into domestic law; and the creation of a United Nations mechanism to monitor national legislation that discriminated against women.

80. Mr. ALVAREZ ADRIAANSEN (Foundation of Japanese Honorary Debts) said that his Foundation had been founded in 1990 following the decision by the United States Government to pay Japanese Americans interned in the United States and Canada during the Second World War compensation of US$ 20,000. By contrast, the Japanese Government had never acknowledged the plight of 95,000 Dutch citizens imprisoned in concentration camps at that time, and other Dutch victims of the Japanese occupation of South-East Asia and the country then known as the Dutch East Indies. The victims had heartbreaking stories to tell, but, owing to the trauma involved, they had only recently begun to disclose what had happened. He wondered why, if Germany could provide victims of the Nazi regime with compensation, Japan could not do likewise.

81. Ms. BALDASSARRI HOGER (American Association of Jurists) commended the expanded working paper by Ms. Koufa (E/CN.4/Sub.2/2005/39), which made it clear that serious human rights violations were occurring in the name of the war against terrorism and also that national liberation struggles, including armed struggles, should not be confused with terrorist acts. In that connection, she drew attention to paragraph 33 (a) of the report. Any discussion of fundamental human rights in the face of terrorism must include all forms of terrorism, including terrorism by States, whether within or outside their own borders. National terrorism was aimed at paralyzing or destroying a State's political or ideological opposition and eliminating armed opposition. The peoples of Latin America had suffered decades of national State terrorism, which had involved hundreds of thousands of killings, disappearances and instances of torture, carried out by 60,000 military personnel trained at the School of the Americas. Collaboration by the United States with the State terrorism of dictatorships in Latin America or elsewhere represented one type of international State terrorism. Another type was the dispatch of agents to other countries to carry out attacks, provide logistical support for terrorist activities and murder foreign nationals. In time of war, international State terrorism took the form of terrorist air strikes designed to sap enemy morale, especially among the civilian population. On the sixtieth anniversary of the bombing of Hiroshima and Nagasaki, it should be reiterated that that action had constituted the most cruel, inhuman and barbaric form of State terrorism. Terrorist bombs had subsequently formed part of United States military doctrine in Viet Nam, Panama, Iraq, Yugoslavia, Afghanistan and, once more, in Iraq. Sometimes terrorist groups acted as the voluntary or involuntary instrument of State terrorism. That had been the case in Italy, where there had been proof of involvement by the United States and Italian intelligence services in terrorist acts. The various forms of terrorism were mutually reinforcing. For example, terrorist acts or threats had the effect of maintaining in power political elites whose primary aim was to circumscribe the rights and freedoms of their people. It was regrettable that the International Law Commission had failed to reach agreement in the 1990s on including the crime of State terrorism in its draft Code of Crimes against the Peace and Security of Mankind. It was also noteworthy that State terrorism was not mentioned either in international conventions against terrorism dating from before the terrorist attacks in the United States on 11 September 2001 or in international, regional and national legislation adopted after that date.

82. Mr. KHAN (Afro-Asian Peoples' Solidarity Organization) said that, although the second half of the twentieth century had been notable for the process of decolonization and the growth of regional cooperation, the seeds of international terrorism had been sown during the same period by the very countries that had become its victims. Their pursuit of their own short-sighted priorities had led to the encouragement of extremism across the world. Thousands of men bloodied in the Afghan jihad had fanned out to various parts of the world, often targeting

the regimes that had earlier nurtured them. Only after the terrorist attacks in the United States on 11 September 2001 had the world become conscious of the dangers of international terrorism. Terrorism could never be acceptable. Political, economic and social structures and relationships between or within countries were not always just and there would always be grievances. To argue that terrorism would inevitably occur until such situations were resolved, however, was dangerous. Indeed, if political concessions were seen to be extorted more easily through terrorist acts than through peaceful dialogue, there would be a strong incentive for yet more bloody acts of violence. Any optimism following the unequivocal response of the world community to the terrorist acts of 2001 had evaporated: acts of global terrorism still occurred, even if the terror network had been weakened. Among the reasons for the persistence of terrorism was the complicity of States in allowing terrorists to operate from their soil. In Pakistan, the madrasas and the terrorist infrastructure continued to thrive, acting as a global fulcrum of terrorist organizations, despite the Government's statements to the contrary. That fulcrum must be dismantled.

The meeting rose at 1.05 p.m.