

15. SUMMARY OF DEVELOPMENTS AT THE 53rd SESSION OF THE UNITED NATIONS SUB- COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

By: David Weissbrodt, Bret Thiele, Mayra Gómez, and Muria Kruger*

I. Introduction

*David Weissbrodt, Fredrikson and Byron Professor of Law, University of Minnesota; Member, UN Sub-Commission on the Promotion and Protection of Human Rights.

Bret Thiele, Legal Officer, Centre on Housing Rights and Evictions (COHRE); J.D. *cum laude*, University of Minnesota Law School, 1999. Mayra Gomez, Research Officer, Centre on Housing Rights and Evictions (COHRE); Ph.D., Department of Sociology, University of Minnesota, 2001.

Muria Kruger, J.D., *magna cum laude*, University of Minnesota Law School, 2000
© 2002 David Weissbrodt, Bret Thiele, Mayra Gómez, & Muria Kruger.

The authors would like to thank Penny Parker, Joe “Chip” Pitts III, D. Christopher Decker, and Anne Johnston for their excellent work and indispensable help during the 2001 Sub-Commission session.

This article is a summary of David Weissbrodt, Mayra Gómez, Thiele, *A Review of the Fifty-Third Session of the United Nations Sub-Commission on the Promotion and Protection of Human Rights*, 20 NETHERLANDS Q. OF HUM. RTS. -- (June 2002). Readers should consult the full version for relevant citations and other details not included in this version. In particular, the sections of the full article pertaining the Sub-Commission’s working groups have been omitted because of space considerations. Readers should also consult the Report of the Sub-Commission on the Promotion and Protection of Human Rights that is available as U.N. Doc. E/CN.4/2002/2 (2002).

The United Nations Sub-Commission on the Promotion and Protection of Human Rights (Sub-Commission) met at the Palais des Nations, the European Office of the UN in Geneva, Switzerland, from 30 July through 17 August 2001 for its fifty-third session. The Sub-Commission is a subsidiary body of the UN Commission on Human Rights (Commission) and is comprised of 26 independent human rights experts, elected by the Commission, who act in their personal capacity rather than as government representatives. Under the principle of geographic distribution, the Sub-Commission has seven members from Africa, five from Latin America, five from Asia, three from Eastern Europe, and six from the Western Europe and Other group of nations (including Australia, Canada, New Zealand, and the United States).

The mandate of the Sub-Commission includes human rights standard-setting and preparing studies of current human rights issues in all parts of the world. Because of its role in initiating action within the United Nations human rights system and its accessibility to non-governmental organizations (NGOs), each year hundreds of human rights activists from scores of countries travel to Geneva to attend and address the session of the Sub-Commission. This year, 1,059 persons participated in the Sub-Commission session, including 726 NGO representatives and 281 government observers.

The Sub-Commission develops resolutions that are presented to, and are often adopted by, the Commission on Human Rights. Members of the Sub-Commission also prepare working papers and comprehensive studies on human rights problems and issues. This year’s session generated 24 resolutions and 22 decisions. Since many treaties and other human rights instruments have been promulgated, the Sub-Commission has de-emphasized its standard-setting function and has given greater attention to developing strategies aimed at promotion, problem solving, implementation, and the effective use of international pressure to

improve human rights situations around the world.

At its fifty-third session the Sub-Commission went through a substantial restructuring resulting from the reforms adopted by the Commission at its fifty-sixth session in April 2000. That restructuring was evident in the agenda of the 53rd session, which was substantially revised and rationalised for the first time in many years. The agenda for the fifty-third session contained only seven agenda items as opposed to the fourteen agenda items discussed in previous years. This year, the Sub-Commission had specific agenda items under which it discussed human rights situations in various countries; the administration of justice; economic, social, and cultural rights; and the prevention of discrimination and protection of indigenous peoples and minorities. Additionally, the agenda included an item on “Other Human Rights Issues” under which a range of human rights concerns and studies were discussed. Gone from previous agendas were specific items on the implementation of human rights of women, contemporary forms of slavery, the rights of children and youth, and freedom of movement. Most of these topics, however, were addressed under the “Other Human Rights Issues” item. The prevention of discrimination, the rights of indigenous peoples, and protection of minorities, until this year addressed under separate agenda items, were combined into one agenda item.

Each year the Sub-Commission elects a Bureau with one representative from each regional group to lead the session. At this year’s session the Sub-Commission elected Mr. David Weissbrodt (expert from the United States) as Chairperson. It was the first time in the history of the Sub-Commission that a U.S. citizen was elected to serve as Chairperson. In his opening address to the Sub-Commission, Mr. Weissbrodt recalled the many contributions the Sub-Commission has made over the years to advance human rights, including its close interaction with NGOs, its work on specific

country situations, and the unique contributions of its working groups. He also noted, however, that the Sub-Commission had been challenged to seek new ways to focus its efforts and make useful contributions to the promotion and protection of human rights. In addition, he indicated that the Sub-Commission can continue to play a unique role within the United Nations by cooperating more closely with the treaty bodies, and in particular by responding to their requests for substantive studies of pressing human rights issues. To complete this year’s Bureau, the Sub-Commission elected Mr. Paulo Sergio Pinheiro (expert from Brazil), Mr. Soo Gil Park (expert from the Republic of Korea), and Mr. Stanislav Ogurtsov (expert from Belarus) to be Vice-Chairpersons; and Mr. Godfrey Bayour Preware (expert from Nigeria) to serve as the Rapporteur.

The High Commissioner for Human Rights, Ms. Mary Robinson, addressed the Sub-Commission during its first meeting on 30 July 2001. In her statement, the High Commissioner acknowledged her gratitude for the unique contribution that the Sub-Commission has made and continues to make not only to the United Nations but also to the world community. By means of example, she mentioned past accomplishments such as the elaboration of international standards, the development of a better understanding of human rights through the study of important issues, the role the Sub-Commission has played in the creation of new thematic mechanisms of the Commission on Human Rights, as well as the role it has played in preventing violations throughout the world. She also noted the valuable contribution that NGOs have made to the successes of the Sub-Commission.

The High Commissioner thanked the Sub-Commission for the strong role it has played with respect to the struggle against racism, racial discrimination and xenophobia, and noted that the Sub-Commission should be proud of the role it had in making the World Conference Against Racism a reality. She also

took time to note the work of the Sub-Commission's thematic working groups, specifically recognizing the contributions of the Working Group on Minorities, the Working Group on Indigenous Populations, and the Working Group on Contemporary Forms of Slavery. With respect to economic, social, and cultural rights, she reaffirmed the need to ensure that globalisation becomes a positive force for all the world's people, and that the Sub-Commission has been called upon to help achieve that objective through a comprehensive examination of the impact of globalisation on human rights as well as the establishment of a Social Forum to create dialogue and exchange on this important topic.

Ms. Robinson also welcomed the progress of the Sessional Working Group on the Working Methods and Activities of Transnational Corporations, and in particular the elaboration of human rights guidelines for all business enterprises. She pointed out that corporations, their managers, and their personnel have a strong duty to abide by the Universal Declaration of Human Rights and other international human rights principles in the course of their activities and she encouraged further definition of that duty and progress on the human rights guidelines for companies.

II. Innovative Procedural Reforms

This year the Bureau experimented with a number of procedural reforms in an effort to enhance the efficiency and effectiveness of the Sub-Commission. Those reforms were generally well received by members and observers of the Sub-Commission alike. For instance, debates on each agenda item were restructured around reports, working papers, and substantive issues, so that there was some cohesiveness to the Sub-Commission's deliberations. Inter-active discussions were fostered and a "question and answer" format was used particularly during the early part of the session when there was sufficient time. The Sub-Commission held a

closed joint meeting with the Expanded Bureau of the fifty-seventh session of the Commission on Human Rights, at which they exchanged views aimed at improving co-operation between the two organs. The participants agreed to hold similar closed meetings on an annual basis. The Sub-Commission avoided a lengthy and unnecessary procedural debate in public on its working rules, procedures, and timetable at the very beginning of its annual session by holding that discussion in a private meeting. In addition, to the extent there was sufficient time available, the Sub-Commission drafted many of its resolutions in private sessions rather than engage in the spectacle of the public drafting of resolutions by such a large group. Further innovative reforms included the Bureau inviting authors of working papers and comprehensive studies, as well as chairpersons of working groups, to meet informally with interested parties for more open and less formal discussions regarding their work. The Chairperson met regularly with NGOs at the beginning of each week of the session to discuss the Sub-Commission's progress. The Sub-Commission continued the tradition of the past three years in starting its sessions promptly for each meeting and was able for the first time in many years to manage its debates so that there was no need to diminish the speaking time of observers towards the end of the session. The Sub-Commission found a balanced approach to discouraging government criticisms of other governments that may belong in the context of the intergovernmental Commission, but are not generally appropriate in an expert body such as the Sub-Commission. Furthermore, for the first time the Sub-Commission Chairperson was authorized to discourage personal attacks upon any participant and that authority was occasionally used.

A. Debate on Reparations and the World Conference Against Racism

On 1 August, after the list of speakers under agenda Item 2 (violations of human rights) was exhausted, the Chairperson used the opportunity to open the floor for a general dialogue. This spontaneous discussion proved to be one of the more engaging to occur at this year's session. Mr. El-Hadji Guissé (expert from Senegal) raised the topic of reparations for slavery, the slave trade, and colonialism. Other members soon joined the discussion, many of whom noted that the Preparatory Committee (Prep. Comm.) for the World Conference against Racism was meeting in the Palais des Nations at that very time.

As for slavery and the slave trade, there were differences of opinion among members of the Sub-Commission with respect to the appropriate scope of reparations. For example, some members believed that there should be a time limit imposed whereby only victims who are presently living or their next-of-kin should receive compensation. Similarly, some sought to limit reparations for acts that were considered crimes at the time they were committed, arguing that to do otherwise would be to impose *ex post facto* legal obligations. Others countered, however, that slavery and the slave trade resulted in the theft of wealth from colonised regions of the world, which continues to have present consequences for residents and governments of those regions many years later. Additionally, it was argued that slavery and the slave trade constituted crimes against humanity when they occurred.

Turning to the topic of colonialism, many agreed that debt relief offered by former colonial powers toward their former colonies should be explored as a kind of reparation. Such a suggestion, it was contended, would link past wrongdoings and present consequences.

Sub-Commission members generally agreed that their comments should be transmitted to the Prep. Comm. It was eventually decided that the sentiments of the Sub-Commission should be transmitted in the form of a resolution that addressed

responsibility and reparation for massive and flagrant violations of human rights which constitute crimes against humanity and which took place during the period of slavery and of colonialism, as well as during wars of conquest. On 6 August a resolution was adopted and relayed to the Prep. Comm. by Mr. Paulo Sergio Pinheiro (expert from Brazil), the Sub-Commission's representative at the World Conference. The resolution, *inter alia*, suggested various means of reparation including co-operation in development of affected peoples, debt cancellation, implementation of the "Tobin tax," technology transfers, and restoration of cultural objects. In the resolution, the Sub-Commission stated that it was "convinced that such recognition and reparation will constitute the beginning of a process that will foster the institution of an indispensable dialogue between peoples whom history has put in conflict for the achievement of a world of understanding, tolerance and peace."

I. The Sub-Commission's Debate on Country Situations

The Commission decided in April 2000 to "approve and implement comprehensively and in its entirety" the report of its inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights. That report recommended a series of significant changes that, for the past two sessions, have altered the ways in which the Sub-Commission considers specific country situations. Namely, that report recommended that while the Sub-Commission should continue to debate country situations not being dealt with by the Commission, and while it should also be allowed to discuss urgent matters involving serious violations of human rights in any country, the Sub-Commission should not adopt country-specific resolutions. In addition, the Commission's Working Group recommended that the Sub-Commission refrain from

negotiating and adopting thematic resolutions that contain references to specific countries. With the decision by the Commission to implement its Working Group report and the subsequent approval by ECOSOC, those recommendations became directives to the Sub-Commission.

A. Review of Past Work Addressing Country-Specific Situations

Prior to the Commission decision to alter the working methods of the Sub-Commission vis-à-vis specific country situations, the Sub-Commission had for many years adopted resolutions identifying at least a few countries in which human rights situations required expressions of UN concern. In the recent past, the Sub-Commission took action with regard to human rights violations in Bahrain, Belarus, the Congo (Kinshasa), the Democratic People's Republic of Korea, Mexico, Peru, and Togo – all nations that had not been the subject of significant Commission attention, but where serious human rights problems had arisen. In 1999, for example, the Sub-Commission continued to refine its approach on country matters and took important steps towards developing strategic uses for draft resolutions. It was noted that the ability to prepare draft resolutions on country situations was a very effective means of attaining leverage that helped to encourage a constructive dialogue and negotiation between the Sub-Commission and governments responsible for human rights violations. That approach resulted, not in a large number of adopted country-specific resolutions, but rather in an unprecedented series of Chair statements accompanied by concrete commitments voiced and put on the public record by various governments to improve the human rights situations within their respective nations. In using this approach, the Sub-Commission was able to show its ingenuity, expertise, and competence by addressing some

of the most severe human rights situations in the world and, more importantly, by achieving tangible results.

In many cases, government representatives took negotiations seriously because it was in their interest to avoid a Sub-Commission resolution that would draw international attention to their particular human rights situation. One example of a successful negotiation occurred in 1998, when the Sub-Commission had before it a draft resolution on the human rights situation in Bahrain. While the Sub-Commission did not end up adopting this resolution, during the process of negotiation the Government of Bahrain agreed to remove its reservations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Government of Bahrain agreed also to allow the UN Working Group on Arbitrary Detention to visit the country. It is unlikely that even this modest success would have occurred had the Sub-Commission been unable to adopt a resolution on Bahrain. Now that the capacity to adopt country resolutions has been taken away, the capacity of the Sub-Commission to do concrete and effective work has been reduced.

B. The Importance of Country Specific Resolutions

There are a number of reasons why the use of country specific resolutions by the Sub-Commission has been of value to the international human rights community. First and foremost, as indicated above, when handled appropriately, country resolutions, Chair statements, and even mentioning a particular situation (*e.g.*, in Tunisia) have proved successful as tools for persuading governments to undertake human rights improvements. Second, the Sub-Commission provided an opportunity to address developing human rights crises or emergency situations immediately as opposed to waiting for the Commission's next

session, which may be up to seven months away. After all, within 30 days after the Sub-Commission session ended the world had dramatically changed – with the close of the World Conference against Racism and the attacks of September 11th. World developments move so fast that it is important for the Sub-Commission to respond to the contemporaneous events. Third, because country work has attracted the attention of governments, inter-governmental organizations, and NGOs, it has maintained a high degree of visibility on both thematic and country-specific human rights concerns. The resulting transparency has helped ensure not only the Sub-Commission's effectiveness, but also has given human rights situations much-needed visibility. Fourth, because the Commission cannot possibly, for political and/or practical reasons, shed light on all countries in which there are severe and consistent patterns of human rights abuse, the Sub-Commission has used country specific resolutions to help identify and place pressure on those countries which may have otherwise been forgotten or overlooked by other human rights bodies. Fifth, the Sub-Commission should be able to apply its expertise to particular situations. First and foremost, as indicated above, when handled appropriately, country resolutions have proved most successful as tools to gain leverage in the context of persuading governments to undertake human rights improvements. Second, because country work has attracted the attention of governments, inter-governmental organizations, and NGOs, it has maintained a high degree of visibility on both thematic and country-specific human rights concerns. The resulting transparency has helped ensure not only the Sub-Commission's effectiveness, but also has given human rights situations much-needed visibility. Third, because the Commission cannot possibly, for political and/or practical reasons, shed light on all countries in which there are severe and consistent patterns of human rights abuse, the Sub-Commission has

used country specific resolutions to help identify and place pressure on those countries which may have otherwise been forgotten or overlooked by other human rights bodies. Fourth, the Sub-Commission provided an opportunity to address developing human rights crises or emergency situations immediately as opposed to waiting for the Commission's next session, which may be up to seven months away. Fifth, the Sub-Commission should be able to apply its expertise to particular situations.

In 2001, Mr. Louis Joinet (expert from France) presented an especially noteworthy intervention before the Sub-Commission, highlighting that the Sub-Commission had in the past taken several positive initiatives relating to country situations. In particular, Mr. Joinet drew attention to the previous work of the Sub-Commission with regard to the human rights situations in Togo, Bahrain, Peru, and the Democratic People's Republic of Korea.

In the case of Togo, Mr. Joinet noted that in 1999 the Sub-Commission had drafted a resolution addressing the reported disappearance of dozens of persons within Togo. Mr. Joinet told the Sub-Commission that a Minister from the Togolese Government had phoned him on several occasions asking him to withdraw the resolution. Yet, in the end, Mr. Joinet noted that a fruitful dialogue had resulted between the Sub-Commission and the Togolese Government; Togolese officials became increasingly engaged with the Sub-Commission, a Chairperson's statement was adopted in lieu of the original resolution, and a joint UN-OAU (Organization of African Unity) mission was established to look into violations of human rights in Togo. In the end, it had been a constructive process and a final report on the situation was produced.

In the case of Bahrain, a resolution was similarly proposed and withdrawn after constructive negotiations with the Government. Mr. Joinet told the Sub-Commission that since that time, important political changes have taken place within Bahrain, and the Sub-

Commission played an important role in pressuring for positive reforms. In the case of Peru, Mr. Joinet noted that he had drafted a simple resolution requesting that impunity not be extended to all cases under the laws of that country. At first, there was a very sharp response from the Government, but then a more substantive review of the situation began. Mr. Joinet reminded the Sub-Commission that the Working Group on Arbitrary Detention went to investigate the conditions of detention within the country, and that there had been excellent co-operation with the Government.

With the Democratic People's Republic of Korea (DPRK), the Sub-Commission had for several years adopted resolutions addressing the situation of human rights in that country, and many times the Government had reacted sharply – even threatening to withdraw from the International Covenant on Civil and Political Rights. But ultimately, Mr. Joinet pointed out, there was in fact a dialogue. Mr. Joinet stated that he himself had met with many representatives of the DPRK, and he recently learned that the Government had sent its periodic report under the Civil and Political Covenant. The DPRK has also taken some timid positive steps in terms of establishing diplomatic relations with other countries and recently there have been meetings between the leaders of the DPRK and the Republic of Korea.

As Mr. Joinet was able to point out, because the Sub-Commission had the authority to adopt country resolutions, it was also able successfully to negotiate with the representatives of several countries in order to produce tangible, positive results in the area of human rights. The Sub-Commission was able to pursue a range of strategies when addressing country situations and these tools provided the Sub-Commission with a degree of flexibility and versatility in dealing with country situations, and therefore allowed the Sub-Commission to enhance the scope and effectiveness of its work. Unfortunately, the

Sub-Commission is now discouraged from adopting country specific resolutions and is thus less able to replicate the results it has achieved in the past. The inability to pursue country work openly and diligently has significantly hampered the Sub-Commission's ability to promote and protect human rights around the world.

Regardless of these limitations, however, the debate at the Sub-Commission concerning country situations continues to be vibrant. As Ms. Françoise Hampson (expert from the United Kingdom) pointed out during this year's session, while "some might argue that there was no reason for the Sub-Commission to continue its discussion of violations in specific countries if it could no longer pass resolutions on the matter," she disagreed, noting that, "silence is the best friend of human rights violations."

To summarize the Item 2 debate itself, there was some discussion of new, urgent matters involving serious violations of human rights in countries that were also under consideration in the Commission. Accordingly, Ms. Hampson raised the issue of the recent, serious escalation of violence in the Israeli-occupied territories. In addition two NGOs raised concerns about developments in the occupied territories. NGOs also brought to the attention of the Sub-Commission new developments in both Afghanistan and the Chechen Republic of the Russian Federation.

With regard to country situations not currently being dealt with in the Commission, members of the Sub-Commission addressed human rights concerns in regard to Angola, Bhutan, Brazil, China, the Democratic People's Republic of Korea, the detention of aliens throughout Europe, the demonstrations against the G-8 meetings and the alleged police brutality in Genoa, Italy, as well as situations in France, Cyprus, Greece, Guatemala, Indonesia, the Ivory Coast, Jammu and Kashmir, Japan, Liberia, Marshall Islands, Mexico, Nepal, the Philippines, Russia, Saudi Arabia, Sri Lanka,

Tanzania, United Kingdom (Northern Ireland), and the United States.

NGOs added concerns during the debate about Algeria, Belarus, Bhutan, Brazil, Cameroon, Egypt, Guatemala, India (Jammu & Kashmir), Indonesia (as to the Moluccas), Japan, Malaysia, Mexico, Nepal, Pakistan, the Philippines, Saudi Arabia, Tunisia, Turkey, the United States (as to military operations in Vieques, Puerto Rico), Uzbekistan, and Western Sahara. Furthermore, written statements submitted by NGOs under this agenda item, included allegations concerning violations against Tibetans in China, as well as concerns in India, Northern Uganda, and Peru. In addition, a detailed NGO statement filed under this agenda item identified alleged caste discrimination practices in Bangladesh, Burkina Faso, Burundi, Cameroon, Egypt, Guinea, Japan, Mali, Mauritania, Mauritius, and Nepal.

Eleven government observers spoke during Item 2, including Algeria, Azerbaijan, Bahrain, Bhutan, Democratic People's Republic of Korea, Egypt, Indonesia, Iraq, Malaysia, Pakistan, and Turkey. Of these 11 governments, five spoke in right of reply and Bahrain, Bhutan, Pakistan, and Turkey took the opportunity during their interventions to announce major new reforms on human rights initiatives during the past year, and commitments to continued implementation of these and other human rights changes.

In the end, the Sub-Commission did adopt two resolutions and two decisions that, arguably, related specifically to particular country situations. A resolution on the situation of women and girls in territories controlled by Afghan armed groups raised the issue as to whether or not it was within the limits of the Commission's decision for the Sub-Commission to make reference to a particular country situation under certain circumstances. As in 2000, the principal sponsor of that resolution, Ms. Halima Warzazi (expert from Morocco), drafted the resolution so as to make reference to territories controlled by Afghan armed groups

rather than to name Afghanistan explicitly. Although some Sub-Commission members expressed doubt as to whether this action was permitted, others noted the urgency of the situation and that the Commission had not expressly disapproved of previous Sub-Commission resolutions on this subject. Despite the doubts expressed by some Sub-Commission members, they were unwilling to break consensus and the resolution on the "Situation of women and girls in territories controlled by Afghan armed groups" was adopted without a vote. This resolution voiced deep concern over the plight of women and girls in Afghanistan and encouraged the international community to "continue to follow very closely the situation of women and girls in the territories controlled by Afghan armed groups and bring the necessary pressure to bear so that all the restrictions imposed on women, which constitute flagrant and systematic violations of all the internationally recognized economic, social, cultural, civil and political rights, are removed." In addition, the resolution congratulated United Nations agencies and NGOs on "... the measures and programmes adopted with a view to lending support and assistance to women and girls in the territories controlled by Afghan armed groups and strongly encourages them to continue their efforts despite the difficulties encountered."

Similarly, the Sub-Commission adopted a decision, without a vote, addressing the human rights situation of the Iraqi population. The decision principally focused on the grave humanitarian consequences of the sanctions regime imposed upon Iraq and did not criticize directly the Iraqi Government or any government supporting the sanctions, but did recognize the role of sanctioning governments and the Iraqi Government in the ongoing humanitarian crisis facing that population. For instance, the decision urged "the international community and all Governments, including that of Iraq, to alleviate the suffering of the Iraqi population, in particular by facilitating the

delivery of food, medical supplies and the wherewithal to meet their basic needs.”

Through this decision the Sub-Commission once again appealed “to the international community, and to the Security Council in particular, for the embargo provisions affecting the humanitarian situation of the population of Iraq to be lifted.”

A resolution on “Systematic rape, sexual slavery and slavery-like practices” was also adopted without a vote. While this resolution was partly inspired by the plight of the “comfort women” who were held in sexual slavery by the Japanese army during World War II, the resolution did not identify Japan by name. Rather, the resolution dealt thematically with the issue of sexual slavery, and expressed deep concern not only about past abuses, such as those suffered by the “comfort women,” but also noted that “systematic rape, sexual slavery and slavery-like practices are still being used to humiliate civilians and military personnel, to destroy society and diminish prospects for a peaceful resolution of conflicts,” and “that the resulting severe physical and psychological trauma endanger not only personal recovery but post-conflict reconstruction of the whole society.” The resolution also reflected the controversy presently occurring as to the accuracy of Japanese textbooks portraying events during World War II in encouraging “States to promote human rights education on the issues of systematic rape, sexual slavery and slavery-like practices during armed conflicts, ensuring the accuracy of accounts of historical events, in the educational curricula.”

Further, the Sub-Commission adopted a decision on discrimination based on work and descent. The decision arose from the Sub-Commission’s consideration of a working paper presented by Mr. Rajendra Kalindas Wimala Goonesekere (expert from Sri Lanka). He observed that discrimination based on work and descent, often associated with caste systems, is particularly prevalent in certain countries. Indeed, Mr. Goonesekere’s report noted that “the most widespread discrimination on the

basis of work and descent occurs in societies in which at least a portion of the population is influenced by the tradition of caste, including the Asian countries of Bangladesh, India, Nepal, Pakistan, and Sri Lanka.” The report examined five specific countries -- India, Sri Lanka, Nepal, Japan, and Pakistan. The report generated a lively discussion and the Sub-Commission ultimately authorized Mr. Goonesekere to prepare “an expanded working paper on the topic of discrimination based on work and descent in other regions of the world” for presentation to the Sub-Commission in 2002. One possible implication of the decision was that Mr. Goonesekere should focus on countries other than the five he had chosen to consider in his first report.

IV. Realization of Economic, Social, and Cultural Rights including the Right to Development

A. The Social Forum

This year the Sub-Commission devoted a day to a discussion on plans for holding the first Social Forum during the Sub-Commission’s fifty-fourth session in August 2002. The first half of the day was used to allow Sub-Commission members, NGO and government representatives, and other interested parties to discuss the role the Social Forum will play while the afternoon meeting involved a panel discussion on the same topic by high-level experts.

Mr. José Bengoa (expert from Chile) has been the principal advocate for the Social Forum. He began the discussion by saying that the Forum should focus on globalisation, free trade, and threats to poor countries in the labour markets. He stressed that a key objective of the Social Forum should be to achieve an effective incorporation of economic, social, and cultural rights into a global policy, to create partnerships between private enterprise and international financial institutions to help economic

development, to enhance consideration of the environmental aspects and responsibilities of globalisation, to increase social accountability, and especially to set up a process whereby the effects of economic globalisation would be considered in advance, before policies were established, so as to ensure that their positive effects were shared equitably between the developing and developed world, and to ensure that their negative effects on vulnerable populations were reduced.

For the first time in its history the Sub-Commission held a special debate involving a panel discussion of outside experts. The panel discussion to select the principal topics for next year's forum modeled the innovative approach the Social Forum is expected to pursue. The panel of high-level experts this year included Hina Jilani, UN Special Representative of the Secretary-General on the Situation of Human Rights Defenders; George Abi Saab, a Member of the World Trade Organization's Dispute Settlement Body; Andrew Clapham, a Professor at the Graduate Institute of International Studies in Geneva; and Rubens Ricupero, Secretary-General of the United States Conference on Trade and Development. Other participants in the discussion included Paul Hunt, Special Rapporteur of the Committee on Economic, Social and Cultural Rights; Alfredo Sfeir-Younis, Special Representative of the World Bank to the United Nations and the World Trade Organization; Miloon Kothari, Special Rapporteur on Adequate Housing of the Commission on Human Rights; Lee Swepston of the International Labour Organization; and Patricia Feeney of Oxfam.

Most of the participants mentioned that the Social Forum needed to fill a unique niche and to avoid duplicating the work of other UN bodies. Ms. Jilani and Mr. Ricupero thought that the Social Forum might ameliorate the present practice of governments making important decisions without consulting, or even allowing information to reach, their respective constituents. The Social Forum might also

consider whether international human rights law binds international organizations, such as the World Bank, the International Monetary Fund, and the World Trade Organization. Mr. Clapham noted that under international law, intergovernmental organizations are bound by such international law, as are the States that comprise and are the homes of such institutions. He stressed that international financial institutions should consider the human rights impact of their activities and include persons potentially affected by their activities in their decision-making processes. The representative of the International Monetary Fund (IMF) and World Bank believed, however, that international human rights law does not bind those institutions.

Mr. Clapham envisioned the Social Forum as providing a context in which government officials representing States at international financial institutions and government officials representing States at human rights bodies could better connect and thereby bring human rights concerns into the decision-making processes of the financial institutions. Several other participants agreed that the Social Forum should fulfil a unique role by bringing together all international actors that affect economic and social rights so that they can better work towards achieving the UN's overarching goals, including the eradication of poverty and the promotion and protection of human rights.

After considering all the comments and suggestions arising out of this preparatory meeting, the Sub-Commission adopted a resolution on the Social Forum. Most importantly, the Sub-Commission decided that the principal issue for the first session of the Social Forum in 2002 should be: "The relationship between poverty reduction and the realization of the right to food." The Sub-Commission also indicated that the mandate of the Social Forum will be (1) "to exchange information on the enjoyment of economic, social and cultural rights and their relationship

with the processes of globalization”; (2) “to follow up on situations of poverty and destitution throughout the world”; (3) “to propose standards and initiatives of a juridical nature, guidelines and other recommendations for consideration by the Commission on Human Rights, the working groups on the right to development, the Committee on Economic, Social and Cultural Rights, the specialized agencies and other organs of the United Nations system”; and (4) “to follow up the agreements reached at the major world conferences and the Millennium Summit, and to make contributions to forthcoming major international events and discussion of issues related to the mandate of the Social Forum.”

The resolution also set forth various themes to be addressed by the Social Forum in future years, including (1) the interaction between civil and political and economic, social and cultural rights; (2) the relationship between poverty, extreme poverty and human rights in a globalized world; (3) the effect of international trade, finance and economic policies on income distribution, and the corresponding consequences on equality and non-discrimination at the national and international levels; (4) analysis of international decisions affecting basic resources for the population, and in particular those affecting enjoyment of the right to food, the right to education, the right to the highest attainable standard of physical and mental health, the right to adequate housing and the right to an adequate standard of living; (5) analysis of the impact of international trade, finance and economic policies on vulnerable groups, especially minorities, indigenous peoples, migrants, refugees and internally displaced persons, women, children, older persons, people living with HIV/AIDS, people living with disabilities and other social sectors affected by such measure; (6) the impact of public and private, multilateral and bilateral international development cooperation on the realization of economic, social and cultural rights; (7) follow-up of agreements reached at

world conferences and international summits, particularly the Copenhagen World Summit for Social Development, and in other international bodies, concerning the link between economic, commercial and financial issues and the full realization of human rights; and (8) social and economic indicators and their role in the realization of economic, social and cultural rights.

Importantly, the resolution also extended an invitation to participate not only to NGOs in consultative status with the UN, but to other NGOs and particularly to newly emerging actors in the South, such as grass-roots organizations, community organisations, trade unions and associations of workers, representatives of the private sector, and others. If the attention paid to the Social Forum at this year’s meeting is any indication, there should be a very lively debate with respect to how economic, social, and cultural rights can and should be promoted and protected in a globalising world when the Social Forum convenes next year for its first substantive meeting. In April 2002 the Commission on Human Rights accepted the Sub-Commission’s proposal that the Social Forum be held for two days just prior to the Sub-Commission’s 2002 session. Accordingly, it is more likely that the Sub-Commission will have sufficient time to devote to the important issues that will arise during the Social Forum.

B. Sessional Working Group on Transnational Corporations

There is increasing concern about large businesses that operate beyond the reach of any one State. Many of these large corporations, commonly referred to as transnational corporations (TNCs), may already be subject to some international norms, but they are often able to use their great political and economic power to evade national legal limits. Industry groups, trade unions, NGOs, intergovernmental organizations (IGOs), and others have begun to

respond to this issue. One response has been the creation of codes of conduct for adoption by TNCs themselves, trade unions, industry groups, and others. Codes of conduct generally delineate the principles a TNC or other business entity should follow in regard to such issues as worker's rights, consumer and environmental protection, security arrangements and other human rights concerns. The UN Secretary-General, Kofi Annan, has addressed this issue by launching the Global Compact initiative at the World Economic Forum in Davos in February 1999. The Global Compact asks businesses voluntarily to support and adopt nine core principles dealing with human rights, labour, and the environment.

The Commission on Human Rights' Working Group on the Right to Development recommended the adoption of new international legislation and the creation of effective international institutions to regulate the activities of TNCs and banks. In response to this request, in its resolution 1998/9 of 20 August 1998, the Sub-Commission established a sessional working group to examine the methods and activities of TNCs for a three-year period.

At the first meeting in 1999, the Working Group adopted its agenda for the first three years, which included gathering information on the present activities of TNCs; collecting data on how TNCs affect the enjoyment of civil, cultural, economic, political, and social rights, including the right to development and the right to a healthy environment; and asking Mr. David Weissbrodt to prepare a draft code of conduct for TNCs. At its second meeting in 2000, in its recommendations for future work, the Working Group invited Mr. Weissbrodt to revise and update his draft standards on the human rights conduct of companies.

During the Sub-Commission's fifty-third session, the Working Group re-elected Mr. El Hadji Guissé as its Chairperson-Rapporteur. Mr. Vladimir Kartashkin (expert from the Russian Federation), Mr. Miguel Alfonso

Martínez (expert from Cuba), Mr. Soo-Gil Park (expert from the Republic of Korea), and Mr. David Weissbrodt were the other members of the Working Group.

Also at this year's meeting, the Working Group considered papers submitted by three experts. The Chairperson-Rapporteur, Mr. Guissé, submitted a paper on the impact of TNCs' activities on the enjoyment of economic, social, and cultural rights. Mr. Asbjorn Eide (expert from Norway) submitted a paper on the responsibilities and procedures for implementation and compliance on human rights guidelines for TNCs. Further, Mr. Weissbrodt submitted four papers including: an introduction to the draft guidelines, the draft guidelines, a background paper on source materials for the guidelines, and a report of a seminar to discuss the guidelines. The Working Group also received written technical comments on the draft guidelines from the International Labour Office.

The discussion following the introduction of these documents focused around several key issues. These issues are explained below with a brief discussion on the renewal and expansion of the mandate for the Working Group.

1. Binding or Voluntary?

The first issue was whether the draft guidelines should be implemented as a voluntary set of guidelines, or if the Working Group should pursue a binding set of guidelines. From the beginning, there was a high degree of consensus that the Working Group should pursue a binding set of guidelines. Several arguments were raised in favour of binding guidelines. First, purely voluntary guidelines may only reproduce the efforts of many other groups that have already created and implemented avenues to encourage businesses to adopt voluntary guidelines. Second, an NGO speaker noted that there was an urgent need for practical methods of enforcing human rights

standards against TNCs and that voluntary guidelines do not contain any methods of enforcement. Third, States are sometimes too weak or too focused on attracting international investment so that the State cannot or will not stand up to TNCs. International standards could be used to encourage governments to stand up to TNCs.

Some concerns were expressed about binding guidelines. First, international corporate responsibility standards should not diminish the responsibilities and obligations of States to protect human rights. States still carry the primary obligation to enforce laws within their respective boundaries and States should not be able to abrogate these obligations or depend on enforcement from an outside body. Second, most participants in the Working Group session noted that it may take many years to produce a treaty relating to TNCs and other businesses. At the same time these participants expressed a desperate need to hold TNCs accountable as soon as possible rather than waiting for years to develop a treaty. Third, there was also a concern that a binding instrument could only represent a watered-down version of the necessary standards.

Participants in the Working Group concluded that eventually the Guidelines should be binding as “soft law”, or as an authoritative interpretation of existing treaties and other international legal obligations. One expert noted that in light of the need for speed, a set of soft law guidelines would have a clear advantage. The soft law method would result in an immediate standard and methods of implementation, while still not foreclosing the option of developing a treaty at a later time. Soft law standards may be adopted at any one of the many different levels within the UN, although they are ordinarily considered more authoritative if they are adopted by higher organs such as the General Assembly. The Draft Guidelines could be adopted and promulgated: (1) by the Working Group; (2) by the Sub-Commission; (3) by the Commission on

Human Rights; (4) by the Economic and Social Council; and/or (5) by the General Assembly.

2. All Businesses or only TNCs?

A second issue was whether the guidelines should apply only to TNCs or to all companies. While some participants at the Working Group session in the August 2001 session indicated that TNCs are the source of the most serious problems, the great majority of the participants seemed to agree that the guidelines should apply to all companies. Participants were concerned about the difficulty of defining “transnational companies.” They noted that TNCs would be more likely to comply with standards that apply to all companies. Transnational corporations might also be capable of avoiding compliance with narrow standards applicable only to TNCs by transforming themselves into a group of national companies.

Several participants in the Working Group session, however, argued that national companies should be regulated by the State in which they are located and the role of the State should not be reduced through UN adopted guidelines. The purpose of the Working Group, those same people argued, was to examine the activities of TNCs that are currently functioning beyond the borders of any one national framework and create an international framework to hold these actors accountable. They argued that the inclusion of other businesses went beyond the mandate to “identify and examine the effects of the working methods and activities of transnational corporations”

A middle ground considered that the guidelines should be written with binding standards that apply to TNCs and other companies. Accordingly, the guidelines should recognize the responsibilities of larger and more influential companies to use their greater influence to promote human rights in their respective communities. The Draft Guidelines

before the Working Group at its third meeting incorporated this third suggestion; the Guidelines applied to all businesses, but TNCs were given unique responsibilities when their size and power enable them to evade national responsibilities and to do other things smaller companies may be unable to do.

3. Continued Mandate

Because the Working Group did not come to a full consensus on many of the above and other issues, and because there is still much need for more discussion on implementation, the Working Group's mandate was renewed for another three years. The renewed mandate contained many of the tasks in the original mandate, and simultaneously increased the scope of the mandate by adding several new tasks. The mandate's renewed tasks include: (1) examining, receiving, and gathering information on the effects of the working methods and activities of TNCs on the enjoyment of economic, social, and cultural rights and the right to development; (2) compiling a list of various existing regional and international agreements on investment, trade, and services, in relation to the activities of TNCs, and their impact on human rights, and an analysis of their compatibility with various international human rights instruments; (3) requesting the Secretariat to prepare each year a list of countries and TNCs, indicating, in U.S. dollars, their gross national product and financial turnover; and (4) considering the scope of the obligation of States to regulate the activities of TNCs, where their activities have or are likely to have a significant impact on the enjoyment of economic, social, and cultural rights and the right to development, as well as civil and political rights of all persons within their jurisdiction.

The Sub-Commission's resolution also asked the Working Group to contribute "to the drafting of relevant norms concerning human rights and TNCs and other economic units

whose activities have an impact on human rights." This formulation indicates that the Working Group should develop standards that focus on TNCs but also cover other companies. With the renewed mandate, the Working Group will next meet during the fifty-fourth session of the Sub-Commission. Each of the authors of the documents considered at the 2001 session were encouraged to update their work for the next meeting, "taking into account the comments and contributions from experts and any other sources, particularly the specialized agencies of the United Nations system, including the International Labour Organization, the World Health Organization and the United Nations Educational, Scientific and Cultural Organization, so that a binding instrument can be drafted."

C. Resolutions on Economic, Social, and Cultural Rights

This year the Sub-Commission adopted a number of resolutions addressing economic, social, and cultural rights as well as activities that potentially affect those rights. These resolutions covered a range of issues including extreme poverty, drinking water and sanitation, the right to food, the non-discrimination clause in Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the draft Optional Protocol to the Covenant on Economic, Social and Cultural Rights. Resolutions on related issues included those covering intellectual property and human rights, globalisation, and the liberalisation of trade in services and human rights.

With respect to the subject of extreme poverty, the Sub-Commission considered a request from the Commission to explore possibilities for the implementation of existing human rights norms and standards as a means of combating extreme poverty. The Sub-Commission concurred with its parent body that such a study is needed and appointed four of its members -- Mr. Paulo Sergio Pinheiro (expert

from Brazil), Mr. Yozo Yokota (expert from Japan), Mr. El-Hadji Guissé (expert from Senegal), and Mr. José Bengoa (expert from Chile) – to prepare a working paper on the need to develop guiding principles on the implementation of existing human rights norms and standards in the context of the fight against extreme poverty. The working paper will be considered by the Sub-Commission at its fifty-fourth session.

The subject of the right to drinking water and sanitation generated a great deal of discussion as well. In 2000 the Sub-Commission requested that the Commission authorise a comprehensive study on this topic. In April 2001, however, the Commission failed to approve that request. Many members of the Sub-Commission expressed dismay that the Commission failed to authorise such an important study and decided to renew the request, even though the Commission had never previously authorized a study that it had previously refused. The resolution, importantly, requested the author of the proposed study to “define as accurately and as fully as possible the content of the right to water in relation to other human rights.” This request is important as it addresses one of the shortcomings of the original working paper, namely its failure to articulate the basis in international law for a right to water. As the right to water can be implied from numerous explicit rights, such as the right to adequate food, the proposed study would prove valuable if it does indeed accurately and fully explain that basis. In April 2002 the Commission on Human Rights reversed its previous position and authorized the study on the right to drinking water and sanitation.

The resolution on the non-discrimination clause in Article 2(2) of the ICESCR resulted from a request of the Committee on Economic, Social and Cultural Rights. With the resolution, the Sub-Commission charged one of its members, Mr. Fried Van Hoof (expert from The Netherlands)

with the task of preparing a working paper on the above topic. Mr. Van Hoof is expected to submit the working paper to the Sub-Commission at its fifty-fourth session in order that the feasibility of a comprehensive study can be discussed.

The resolution on the draft Optional Protocol, while welcoming the appointment of an Independent Expert of the Commission charged with examining the question of the draft Optional Protocol, stated once again that an inter-sessional open-ended working group of the Commission is the appropriate mechanism to examine such a question and reiterated its suggestion to the Commission that such a working group be established at its next session.

As mentioned above, several resolutions were adopted that touch upon economic, social, and cultural rights to some degree. The resolution adopted on intellectual property and human rights, for instance, reminded governments of the primacy of human rights obligations under international law over economic policies and agreements. This reminder was aimed in part at governments participating in the review of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). Regarding TRIPS, the Sub-Commission urged governments to ensure that the implementation of the TRIPS Agreement does not negatively impact the enjoyment of human rights and reiterated that as currently drafted the treaty poses actual or potential conflict with the realisation of economic, social, and cultural rights, in particular the rights to self-determination, food, housing, work, health, and education. The resolution also requested the High Commissioner for Human Rights to seek observer status with the WTO with respect to the review of the TRIPS Agreement and to hold an expert seminar to consider the human rights dimension of the TRIPS Agreement.

Similarly, the resolution on liberalisation of trade in services and human rights expressed the Sub-Commission’s concerns

regarding the General Agreement on Trade in Services (GATS). In the resolution the Sub-Commission, *inter alia*² called upon governments to ensure that the formulation, interpretation, and implementation of policies related to the liberalisation of trade in services did not negatively affect the enjoyment of human rights.

V. Administration of Justice

This year, Ms. Hampson (expert from the United Kingdom) presented an intervention on United Nations Peacekeeping Operations, which were undertaken to help build institutions based on accountability and the rule of law. At the time of her intervention, Ms. Hampson noted that there were United Nations Civilian Police (CIVPOL) serving in Bosnia, Kosovo, East Timor, and elsewhere. But when these officers committed crimes, they were most often not punished. In Bosnia, for example, United Nations Civilian Police have diplomatic immunity. The highest punishment the United Nations can impose is repatriation to the home country, and the home country is not obligated to investigate any crime or to report back to the United Nations. Recently, Ms. Hampson noted that there were reports that an officer had purchased a woman from a brothel for 6,000 Deutsch Marks. In Kosovo, an officer raped a 14-year-old mentally-handicapped girl. The officer was repatriated and currently there are no criminal charges against him although the whole prosecutor's file was sent to his country's permanent mission in New York. Additionally, three officers are currently under investigation for trafficking women from Serbia into Kosovo.

Further, military forces serving in Kosovo have committed numerous violations of human rights law, and victims have little or no access to an effective remedy. Some Kosovo Force (KFOR) contingents believed that under Security Council Resolution 1244, they could expropriate property without paying for it. Some contingents have built bases or roads on

land owned by private individuals. KFOR spent nearly one year developing a claims commission to deal with these types of complaints, but at the time of the Sub-Commission session it was still not functioning.

Ms. Hampson argued that in a climate in which all legal responsibility was denied within Kosovo, it could not be left to individual victims and local lawyers to submit reports. After all, the KFOR and the officers were supposedly there, under a United Nations mandate, to serve as a model for compliance with human rights standards. At the very least, the Special Rapporteur for the former Yugoslavia, relevant thematic rapporteurs and the Human Rights Committee, when examining the reports of States whose forces or whose police take part in peacekeeping operations, should address this problem as a matter of urgency. Ms. Hampson also urged the Sub-Commission to address the effective accountability of peacekeeping forces and members of the United Nations police force who were acting in the name of the international community.

As a result of her intervention, the Sub-Commission adopted a decision on the "Scope of the activities and the accountability of armed forces, United Nations civilian police, international civil servants and experts taking part in peace support operations (i.e., all operations of a peacekeeping or peace enforcement nature under a United Nations mandate)." This decision expressed concern "at the allegations of serious violations of human rights on the part of personnel serving in peace support operations," and entrusted "Ms. Françoise Hampson with the task of preparing, without financial implications, a working paper on the scope of the activities and the accountability of armed forces, United Nations civilian police, international civil servants and experts taking part in peace support operations, for submission to the Sub-Commission at its fifty-fourth session."

In its consideration of the administration of justice, the Sub-Commission also adopted a resolution addressing “International co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.” This resolution affirmed “that within the framework of international co-operation in the search for, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, the highest priority should be given, independently of the circumstances in which these violations are committed, to legal proceedings against all individuals responsible for such crimes, including former heads of State or Government whose exile serves as a pretext for their impunity.” The resolution also urged all States “to co-operate in order to search for, arrest, extradite, bring to trial and punish persons found guilty of war crimes and crimes against humanity.”

Furthermore, the Sub-Commission considered a working paper on discrimination in the criminal justice system authored by Ms. Leili Zerrougui (expert from Algeria) and initially prepared for the Sub-Commission’s sessional Working Group on the Administration of Justice. The working paper, *inter alia*, discussed how discrimination was still a widespread problem, with each region of the world having its own particular type of discrimination in courts, police stations, and prisons. The Sub-Commission, expressing its concern about the extent of discrimination in criminal justice systems, requested Ms. Zerrougui to continue her research and submit a final working paper on the subject to the Sub-Commission at its next session.

VI. Studies

A. Globalization

Mr. Joseph Oloka-Onyango (expert from Uganda) and Ms. Deepika Udagama (alternate from Sri Lanka) presented their

progress report on globalisation and its impact on the full enjoyment of all human rights. In the report, the Special Rapporteurs stressed that while much has been achieved in the struggle to apply the principles of equitable globalisation to every individual, much still remained to be done. The report called for heightened vigilance on the part of States, members of civil society, and all those concerned with the promotion and protection of human rights. As to specifics, the report discussed the impact of intellectual property rights on human rights, suggesting that any document addressing trade-related intellectual property rights to emerge from Member States of the World Trade Organization (WTO) contain specific language to the effect that no provision in the agreement prohibits members from taking measures to provide access to medicines at affordable prices and to promote public health and nutrition. The report also examined mechanisms, including in particular the dispute settlement mechanism in operation at the WTO as well as poverty-directed efforts at the World Bank and the IMF, including the Highly Indebted Poor Countries Initiative. In addition, the report illustrated how the international financial and trade institutions are bound by international law, including international human rights law, and indicated that subsequent reports will provide further support for that conclusion. The report closed with some specific recommendations regarding the content of the TRIPS Agreement and potential conflicts of that agreement with human rights.

With respect to the dispute settlement mechanism of the WTO, the Special Rapporteurs called for more transparency. The report criticised the closed panel meetings and panel decisions adopted anonymously. The report also called for professionalisation of the panels with the costs of accessing a panel being borne by the WTO and not by aggrieved States. The report noted that, as it currently stands, the panel is often comprised of employees of the

WTO who disproportionately come from developed countries.

Some aspects of the report were challenged by representatives of the World Bank and the IMF, both of which, according to their representatives, were not bound by international human rights law. This stance was challenged by many of the experts on the Sub-Commission, including Mr. Yozo Yokota (expert from Japan), Mr. Asbjørn Eide (expert from Norway), Mr. Fried Van Hoof (expert from The Netherlands), Mr. Soo Gil Park (expert from the Republic of Korea), Mr. Fisseha Yimer (expert from Ethiopia), and Mr. Vladimir Kartashkin (expert from the Russian Federation), all of whom agreed that such bodies are indeed bound by international human rights law and that Member States of such organisations cannot derogate from their respective obligations simply by being a party to a trade or financial agreement. Indeed, as Mr. Yokota pointed out, even if one were to accept the argument that the IMF is not bound by treaties entered into subsequently by Member States, as the IMF contended, it was bound by customary international law.

Representatives of the WTO did admit that international human rights law does bind that organization. Furthermore, the WTO had begun to participate in a dialogue with the Special Rapporteurs regarding its human rights obligations. That dialogue, as well as the lively involvement of the WTO, IMF, and World Bank in the 2001 session, was welcomed by the Sub-Commission, which encouraged similar discussions with all pertinent bodies.

B. Studies Undertaken Pursuant to the Sub-Commission's Cooperation with the Treaty-Monitoring Bodies

One way in which the Sub-Commission contributes to the field of human rights is by co-operating with the treaty-monitoring bodies. In an effort to further such co-operation, the Sub-

Commission has prepared studies for the benefit of those bodies.

In continuing its ongoing co-operation with the Committee on the Elimination of Racial Discrimination (CERD), in particular, the Sub-Commission received a progress report on the concept and practice of affirmative action and a preliminary report on the rights of non-citizens.

This year the Sub-Commission considered requests from CERD and the Committee on Economic, Social and Cultural Rights (CESCR) to conduct additional studies on topics suggested by those bodies. In addition, the Sub-Commission responded to a 1997 request by CERD by authorizing Mr. Paulo Sergio Pinheiro to prepare a working paper on property restitution for refugees and other displaced persons. Further, the Sub-Commission responded to a 2000 request from CESCR by entrusting Mr. Fried Van Hoof with the task of preparing a working paper on the non-discrimination clause in Article 2(2) of the Covenant on Economic, Social and Cultural Rights.

1. Affirmative Action

Special Rapporteur Mr. Marc Bossuyt, former Sub-Commission expert from Belgium who now serves on CERD, presented his progress report on the concept and practice of affirmative action. Mr. Bossuyt told the Sub-Commission that he had sent a questionnaire to governments over a year ago and was still awaiting replies. He also discussed the report's focus, which was to delineate the scope that affirmative action programmes should take.

Sub-Commission experts commented that there would always be controversies surrounding affirmative action programmes. Many suggested that it would be helpful to have a comparative analysis of the effect of affirmative action programmes in various countries. The Sub-Commission also noted that

affirmative action efforts were especially important in the field of education.

2. Rights of Non-Citizens

Mr. Weissbrodt, as Special Rapporteur, presented his preliminary report on the rights of non-citizens. As had been the case in regard to the study of affirmative action, this working paper was in response to a 1997 request from CERD. The report explored the rights of non-citizens under relevant international and regional standards and examined in particular developments since the 1985 Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live.

The Special Rapporteur reiterated his concern that existing standards have not adequately protected the human rights of non-citizens and that, as CERD had itself said, governments have increasingly been making distinctions between different categories of non-citizens and between non-citizens from different nations. He also expressed concern that those distinctions may contravene international law.

Mr. Weissbrodt solicited input from NGOs, governments, and other interested parties as he embarked on the next phase of his study. That phase will include an update of relevant jurisprudence, a survey of factual situations around the world, and an analytical examination of how the international legal regime currently addresses and should address those situations. The Sub-Commission requested authority from the Commission for dissemination of a questionnaire to assist in gathering information for this study. Mr. Weissbrodt will present his progress report when the Sub-Commission next meets in August 2002.

3. Property Restitution for Refugees and Internally Displaced Persons (IDPs)

The issue of refugee and IDP return received attention by the Sub-Commission at

this year's session. On 16 August the Sub-Commission appointed one of its members, Prof. Paulo Sergio Pinheiro, to author a working paper on the topic of the return of refugees' and displaced persons' property. That working paper will not only provide an examination of current international, regional, and national standards relating to property restitution but will also lay the groundwork for a more comprehensive examination of this matter.

It is envisaged that the working paper will focus particularly on housing restitution for returning refugees and displaced persons. Issues to be covered will include an analysis of the role housing restitution plays in ensuring the voluntary, safe, and dignified return of displaced persons to their homes and when compensation in lieu of restitution is appropriate.

Mr. Pinheiro is expected to present his working paper to the next session of the Sub-Commission in August 2002.

C. Other Studies

Other working papers and studies presented at this year's session of the Sub-Commission included those on discrimination against indigenous peoples, and on terrorism and human rights. Working papers authorised at this year's session for presentation at the 2002 session include examinations of indigenous peoples' permanent sovereignty over natural resources; the question of the trade and carrying of small arms and light weapons and the use of such weapons in the context of human rights and humanitarian norms; the testing, production, storage, transfer, trafficking or use of weapons of mass destruction or with indiscriminate effect, or of a nature to cause superfluous injury or unnecessary suffering, including the use of weaponry containing depleted uranium; and human rights and bioethics, including the implications of the Universal Declaration on the Human Genome and Human Rights. Additionally, the Sub-Commission authorised

expanded working papers on reservations to human rights treaties, measures provided in the various international human rights instruments for the promotion and consolidation of democracy, and, as mentioned above, discrimination based on work and descent.

VI. Working Groups

The Sub-Commission makes a unique contribution to the human rights field through its four inter-sessional working groups on minorities, indigenous populations, slavery, and communications. The working groups provide the possibility for a participatory study of current issues, trends, and difficulties in thematically important areas, and involve monitoring of human rights problems by providing a channel for the airing of grievances. For example, there is no other venue in the United Nations where minority issues are being addressed as intensively as in the Working Group on Minorities. The Working Group on Indigenous Populations has also made important strides in the past by drafting a proposed declaration on indigenous rights and continuing to hear the concerns of indigenous communities from around the world. The other working groups, too, help maintain the Sub-Commission's distinct role in protecting and promoting human rights.

Each working group is composed of one Sub-Commission expert from each of the five geographic regions. All of the working groups – with the exception of the Working Group on Communications – are open to participation by observers. Consequently, they have become important fora for NGOs, interested individuals, and others to participate in a discussion of a particular subject. In addition, expert participation in working groups allows Sub-Commission members to focus on a particular area of interest or expertise. Further, the working groups allow for reports of human rights violations and give governments the chance to respond.

The working groups on minorities, indigenous populations, and slavery each compile a report of their respective sessions, to submit to the Sub-Commission's plenary session. In addition, these working groups may place proposals before the Sub-Commission to take action with respect to a particular issue. As

such, the working groups can influence the agenda and the performance of the Sub-Commission.

A. Working Group on Minorities

In 2001 the Working Group on Minorities convened for its sixth session from 14 to 18 May. This Working Group is a subsidiary body of the Sub-Commission and was authorised by the Commission on Human Rights in its resolution 1995/24 of 3 March 1995, and endorsed by the Economic and Social Council in its resolution 1995/31 of 25 July 1995. By decision 1998/246 of 30 July 1998, the Economic and Social Council extended the mandate of the Working Group with a view to its holding one session of five working days annually. In accordance with its mandate, the Working Group is expected to: “(a) review the promotion and practical realization of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; (b) examine possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments; and (c) recommend further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities.”

At its seventh session, the Working Group re-elected Mr. Asbjørn Eide (expert from Norway) as Chairperson-Rapporteur. The Working Group was also comprised of the following experts of the Sub-Commission: Mr. José Bengoa (expert from Chile), Mr. Vladimir Kartashkin (alternate from Russia), Mr. Soli Sorabjee (expert from India), and Mr. Sik Yuen (expert from Mauritius). Representatives of 50 governments, 69 NGOs, 38 scholars, and 10 inter-governmental organisations attended this year’s session of the Working Group.

The Working Group has taken a topic-by-topic approach, focusing on matters such as intercultural and multicultural education for

minorities, the role of the media in regard to minorities, and generally on constructive ways to handle situations involving minorities. During its session, the Working Group considered four principal themes: (1) reviewing the promotion and practical realisation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; (2) examining possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments; (3) recommending further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national and ethnic, religious and linguistic minorities; (4) determining the Working Group’s future role in promoting and protecting the rights of minorities.

At its seventh session the Working Group discussed the practical realisation of the Declaration at the national level, providing opportunities for NGOs, government observers, and other participants to review developments in different parts of the world and discuss possible solutions to minority problems. This theme allowed for a more in-depth examination of the right to effective participation of minorities in the society of which they form a part. Special attention was given to an examination of integrative approaches to minority protection.

At its eighth session in May 2002, the Working Group will examine integrative measures for the better protection of the rights of minorities as well as mainstreaming of the human rights of minority persons in national development plans and international development co-operation.

B. Working Group on Indigenous Populations

Among its many past accomplishments, the Working Group on Indigenous Populations has made a decisive contribution by drafting the

Declaration on the Rights of Indigenous Peoples and giving indigenous peoples a voice at the international level. The Working Group's mandate is to: "review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, together with information requested annually by the Secretary-General, and to give special attention to the evolution of standards concerning the rights of indigenous populations."

The Working Group also plays an important role in reviewing developments related to the situation of indigenous communities throughout the world, providing a unique forum for indigenous peoples from all over the world to assemble in Geneva, exchange experiences, engage in a dialogue with their respective governments, and develop common proposals addressed to the UN system. Every year, hundreds of indigenous human rights advocates from all over the world participate in the Working Group on Indigenous Populations and it continues to rival the Sub-Commission in levels of attendance.

In 2001 the Working Group on Indigenous Populations convened for its nineteenth session from 23 to 27 July. At its first meeting the Working Group elected Ms. Erica-Irene Daes (expert from Greece) as Chairperson-Rapporteur. Other members of the Working Group were Mr. Miguel Alfonso Martínez (expert from Cuba), Mr. El-Hadji Guissé (expert from Senegal), Ms. Iulia Antoanella Motoc (expert from Romania), and Mr. Yozo Yokota (expert from Japan). Representatives of 33 Member States, 5 United Nations bodies and specialized agencies, and 271 indigenous and non-governmental organizations attended the Working Group. A total of 1,033 persons attended the nineteenth session of the Working Group.

The principal theme of this year's session was "Indigenous peoples and their right to development." Many speakers addressed this year's theme, commenting that indigenous

views and values should be incorporated into the concept of development. Similarly, many called for indigenous knowledge and traditions to be taken into account in the planning and implementation of development projects, and that the notion of development should thus be based on a balance between Western or mainstream and indigenous views of development.

In a resolution adopted on 15 August, the Sub-Commission recommended that the United Nations Development Programme and the World Bank present their new policy guidelines on indigenous peoples at the twentieth session of the Working Group. The Sub-Commission also invited members of the Group to prepare working papers containing proposals and suggestions for possible future standard-setting and on indigenous peoples' permanent sovereignty over natural resources. The Sub-Commission also asked the Working Group at its twentieth session to continue its consideration, as a principal theme, of "Indigenous peoples and their right to development."

C. Working Group on Contemporary Forms of Slavery

The Working Group on Contemporary Forms of Slavery is the only mechanism in the UN system for monitoring compliance with several multilateral human rights treaties relating to slavery and slavery-like practices. This Working Group has taken the initiative in developing programs of action against the sale of children, child prostitution, and child pornography; on child labour; on prevention of the traffic in persons and the exploitation of the prostitution of others; and on economic exploitation including the rights of domestic and migrant workers, bonded labour, forced labour, and slavery-like practices in armed conflicts.

The Working Group is a subsidiary body of the Sub-Commission and Commission and was established pursuant to Economic and Social Council decisions 16 (LVI) and 17 (LVI) of 17 May 1974. The Working Group was established in 1975 and has met regularly before each session of the Sub-Commission. This Working Group's mandate is to: "review developments in the field of slavery, the slave trade and the slavery-like practices, of apartheid and colonialism, the traffic in persons and the exploitation of the prostitution of others, as defined in the Slavery Convention of 1926, the Supplementary Convention of 1956 on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and the Convention of 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others."

In 2001, the Working Group on Contemporary Forms of Slavery convened for its twenty-sixth session from 11 to 15 June. This year the Working Group elected Mr. Rajendra K. Goonesekere (expert from Sri Lanka) as Chairperson-Rapporteur. The other members of the Working Group were Mr. Stanislav Ogurtsov (expert from Belarus), Mr. Pinheiro (expert from Brazil), Mr. van Hoof (expert from The Netherlands), and Ms. Halima Warzazi (expert from Morocco). As neither Mr. Paulo Sergio Pinheiro nor his alternate, Mr. Hector Fix-Zamudio (expert from Mexico), could attend, they were replaced by Mr. Miguel Alfonso Martínez (expert from Cuba). Representatives of 19 governments and 20 NGOs attended the 2001 session of the Working Group.

This year the Working Group paid particular attention to the topic of trafficking in persons -- a theme decided upon at its previous session in 1999 and reaffirmed in 2000. As such, the Working Group listened to a number of interventions regarding trafficking in persons. Most speakers welcomed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

(Trafficking Protocol), but they also expressed their concern about some of the provisions, particularly in regard to the protection of the victims of trafficking. Many participants regretted the fact that too often, persons who have been trafficked continue to be considered and treated like criminals, often because of their undocumented immigration status, rather than being treated as victims of the crime of trafficking. Other provisions of the Trafficking Protocol were also discussed.

On 15 August the Sub-Commission, taking note of the report of the Working Group, adopted a resolution concerning seven sub-themes examined at this year's session. These sub-themes included traffic in persons and exploitation of the prostitution of others, prevention of the transborder traffic in children, the role of corruption in the perpetuation of slavery and slavery-like practices, misuse of the internet for the purpose of sexual exploitation, migrant workers and domestic migrant workers, and eradication of bonded labour and elimination of child labour; and the sale of children, child prostitution, and child pornography.

The Working Group decided that its principal theme for 2002 will be the exploitation of children, particularly in the context of prostitution and domestic servitude and in 2003 will be the issue of contemporary forms of slavery related to and generated by discrimination, in particular, gender discrimination, focusing attention on abuses against women and girls, such as forced marriages, early marriages, and sale of wives.

VII. Future of the Sub-Commission

There was a general feeling that the Sub-Commission was again emerging as an expert body filling a unique role in the promotion and protection of human rights. The previous two elections to the Sub-Commission strengthened its expertise in the area of economic, social, and cultural rights, and that

expertise is manifesting itself in a number of thoughtful and timely studies and resolutions, including those on globalisation, international trade and human rights, the effect of intellectual property on human rights, and the relationship between businesses and human rights. The Sub-Commission, of course, has not lost sight of the continuing importance of civil and political rights, and this year continued its contribution to the examination of the administration of justice, including discrimination in the criminal justice system.

The Sub-Commission, however, was somewhat hindered by time constraints. The Sub-Commission did not have enough time to draft resolutions with adequate consultations among members. Both draft resolutions and studies were not made available in time for thorough consideration as the Secretariat itself lacked the time to prepare the relevant documents. Responding to this problem, the Sub-Commission unanimously requested the Commission to restore the four-week duration of its annual session. Inspired by its meeting with the Commission, the Sub-Commission further proposed that the Commission seek authority from the Economic and Social Council to provide at least an advisory decision about Sub-Commission requests for studies and other concrete measures at its September meeting rather than having to wait until March/April for a decision by the Commission. Those two measures will make it possible for the Sub-Commission to fulfill more effectively its “think-tank” role and have the kind of deliberations that will avoid the spectacle of the public drafting of resolutions.