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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion and
Protection of Human Rights
Fifty-fifth session
Agenda item 2

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF
RACIAL DISCRIMINATION AND SEGREGATION, IN ALL
COUNTRIES, WITH PARTICULAR REFERENCE TO
COLONIAL AND OTHER DEPENDENT COUNTRIES AND
TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER
COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)**

**Mr. Eide, Ms. Hampson, Ms. O'Connor, Mr. Park, Mr. Pinheiro
and Mr. Sorabjee: draft resolution**

**2003/... Effects of measures to combat terrorism on the enjoyment
of human rights**

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

Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the International Covenants on Human Rights and other international and regional instruments, relating to human rights and international humanitarian law,

Reaffirming its condemnation of the heinous acts of terrorism that caused enormous loss of human life, destruction and damage in the cities of New York, host city of the United Nations, and Washington, D.C., and in Pennsylvania, which prompted the adoption of General Assembly resolution 56/1 of 12 September 2001, as well as Security Council resolutions 1368 (2001) of 12 September 2001, 1373 (2001) of 28 September 2001 and 1377 (2001) of 12 November 2001,

Reaffirming also that all States have an obligation to promote and protect all human rights and fundamental freedoms and to ensure effective implementation of their obligations under international humanitarian law,

Reaffirming further that all measures to counter terrorism must be in strict conformity with international law, including international human rights standards and obligations,

Noting with great concern that some measures adopted after 11 September 2001 at the national, regional and international levels have a harmful impact on the exercise of human rights and fundamental freedoms,

Alarmed in particular at the establishment of military courts whose rules derogate flagrantly from the intangible standards relating to the right to liberty and security, as well as the right to a fair trial,

Concerned at the existence of discriminatory laws and practices in the administration of justice, directed, in particular, against non-citizens,

Concerned also at the rise in racism and xenophobia following the attacks of 11 September and at the measures adopted by States concerning non-citizens and asylum-seekers, in particular the derogations from the principle of non-refoulement of asylum-seekers,

Deploring that the legitimate measures taken by States to combat terrorism has, in some cases, served as a pretext for infringing the right to liberty and security, freedom of movement, the right to a fair trial, the right to privacy and family life, freedom of expression and the rights to freedom of religion, assembly and association, and deploring, in particular, the measures taken against human rights defenders, unionists, political opponents and journalists,

Bearing in mind the fundamental principle according to which any restriction on the exercise of human rights and fundamental freedoms must be provided for by law and be necessary, in a democratic society, for the pursuit of a legitimate aim, and not undermine the substance of the right considered,

Recalling, moreover, that derogations from human rights and fundamental freedoms must strictly respect the criteria set forth in article 4 of the International Covenant on Civil and Political Rights, as interpreted by the United Nations Human Rights Committee in its general comment No. 29 of 24 July 2001 (CCPR/C/21/Rev.1/Add.11),

Bearing in mind the important studies submitted this year to the Sub-Commission, particularly on terrorism and human rights, and also on the rights of non-citizens (E/CN.4/Sub.2/2003/23 and Add.1-4), on the issue of the administration of justice by military tribunals (E/CN.4/Sub.2/2003/4) and on discrimination in the criminal justice system (E/CN.4/Sub.2/2003/3),

Noting that nothing in the present resolution should be interpreted as limiting in any way any action that may be taken by the United Nations High Commissioner for Human Rights in the field of State measures to counter terrorism,

Welcoming the publication of the Digest of Jurisprudence of the United Nations and Regional Organizations on the Protection of Human Rights While Countering Terrorism,

1. *Strongly condemns* all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed;
2. *Recalls* that States must ensure that all measures adopted to combat terrorism comply with their obligations under international human rights law, international refugee law and international humanitarian law;
3. *Emphasizes* that States have the obligation, under international law, to protect all persons within their jurisdiction against terrorist acts, and to pursue and punish their perpetrators, in full respect of international human rights standards;

4. *Notes* that several important studies submitted this year to the Sub-Commission address, from different standpoints, the problem of respect for human rights in the fight against terrorism, particularly after 11 September 2001;

5. *Decides*, with a view to rationalizing the work of the Sub-Commission on the subject, to establish, under agenda item 2, a sessional working group composed of all members of the Sub-Commission to study the compatibility of counter-terrorism measures, both legislation and other activities adopted at the national, regional and international levels, particularly those adopted after 11 September 2001, with international human rights standards, giving particular attention to their impact on the most vulnerable groups, with a view to elaborating detailed guidelines;

6. *Also decides* to appoint ... as coordinator, with a mandate to gather the necessary documentation for the effective work of the working group with a view to preparing, in consultation with the members of the Sub-Commission, a provisional agenda, which will be adopted at the first session of the working group;

7. *Requests* Governments, intergovernmental organizations, national institutions for the protection and promotion of human rights, experts and non-governmental organizations to provide the coordinator and the working group with all pertinent and precise information in this respect;

8. *Decides* that if, prior to the beginning of the fifty-sixth session of the Sub-Commission, another effective mechanism is established with a mandate similar to that of the working group, such as the appointment of an independent expert on human rights to the Counter-Terrorism Committee of the Security Council or the appointment of a special rapporteur or working group of the Commission on Human Rights, the Sub-Commission shall decide to adjourn the meeting of the working group to the following session.
