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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-sixth session
Agenda item 3

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

**Mr. Alfredsson, Mr. Bengoa, Mr. Bíró, Mr. Bossuyt, Mr. Chen,
Mr. Cherif, Ms. Chung, Mr. Decaux, Mr. Dos Santos, Mr. Guissé,
Ms. Hampson, Ms. Koufa, Ms. Mbonu, Ms. Motoc, Ms. O'Connor,
Mr. Pinheiro, Ms. Rakotoarisoa, Mr. Salama, Mr. Tuñón Veilles,
Ms. Warzazi and Mr. Yokota: draft resolution**

2004/... Issue of the administration of justice through military tribunals

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

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

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

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

Recalling Commission on Human Rights resolutions 2002/37 of 22 April 2002 and 2003/39 of 23 April 2003, and noting with appreciation Commission resolution 2004/32 of 19 April 2004,

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

Welcoming the holding in Geneva, from 26 to 28 January 2004, of a seminar of military and other experts, organized by the International Commission of Jurists in response to the request made by the Sub-Commission in resolution 2003/8, on the issue of the administration of justice through military tribunals,

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

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

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

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

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

1. *Welcomes* the report on the administration of justice through military tribunals submitted by Mr. Emmanuel Decaux, including the draft principles governing the administration of justice through military tribunals contained therein (E/CN.4/Sub.2/2004/7);

2. *Requests* Mr. Decaux to continue his work and submit an updated version of his draft principles governing the administration of justice through military tribunals, taking account of the Sub-Commission's discussions on the topic, at the fifty-seventh session of the Sub-Commission with a view to their consideration and adoption;

3. *Requests* the Secretary-General to provide Mr. Decaux with all necessary assistance to enable him to carry out his mandate;

4. *Invites* Governments, the relevant United Nations bodies, specialized agencies, regional intergovernmental organizations and non-governmental organizations to provide or continue to provide information on the issue to Mr. Decaux;

5. *Hails* the initiative taken by the International Commission of Jurists of organizing a second seminar of military and other experts on the issue of the administration of justice through military tribunals, and encourages other such initiatives;

6. *Decides* to continue consideration of the issue at its fifty-seventh session, under the same agenda item.
