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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-seventh session

SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 29 July 2005, at 10 a.m.

Chairperson: Mr. KARTASHKIN

later: Mr. BOSSUYT
(Vice-Chairperson)

later: Mr. KARTASHKIN
(Chairperson)

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The meeting was called to order at 10.10 a.m.

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (agenda item 3) (E/CN.4/Sub.2/2005/6, 7, 8 and Corr.1 and Add.1, 9, 12-15 and 42; E/CN.4/Sub.2/2005/NGO/6, 9, 12, 16, 19, 24 and 25; E/CN.4/Sub.2/2004/6)

1. Mr. DECAUX (Special Rapporteur) introduced his interim report on the universal implementation of international human rights treaties (E/CN.4/Sub.2/2005/8 and Corr.1 and Add.1). In his preliminary report (E/CN.4/Sub.2/2004/8) he had indicated that his study would be in two parts, the first on universal ratification and the second on universal application. The main emphasis of the present interim report was on universal ratification; his final report, due in 2006, would focus on universal application. He had updated the statistics for the interim report in order to give an accurate picture of the present situation. Under his approach the "orphan" treaties, i.e. those lacking a monitoring body, were just as important as the "core" treaties.

2. He had been under two constraints in compiling the tables contained in addendum 1: readability, or the avoidance of too much detail; and space - he would have preferred to have several addenda instead of just one. The presentation of the tables was not based on any legal or political hierarchy.

3. He drew particular attention to paragraphs 8-10, which noted positive developments. But there were still big gaps. In paragraph 13, for example, he pointed out that 28 States had still not signed either of the two International Covenants on Human Rights; that was not a value judgement but a statement of fact. Awareness-raising action should clearly be taken in respect of such States.

4. It was important to identify good practice. Great efforts were made throughout the United Nations system, but they were not always properly coordinated. The Secretary-General himself had submitted to the session a note on specific human rights issues (E/CN.4/Sub.2/2005/32) which was merely descriptive and unlikely to move States to action. The Commission on Human Rights and its subsidiary bodies and special rapporteurs frequently referred to the universal treaties and to the instruments of other agencies in the United Nations system; and resolutions and decisions on the situation in specific countries did likewise. Those were examples of good practice which should be used more systematically and rationally. The International Labour Organization (ILO) provided a model example of good practice outside the human rights system as such.

5. Another positive development was that national institutions for the protection of human rights were playing an increasingly visible role. Many such institutions in States of the South had drawn attention to the importance, for example, of the Migrant Workers Convention, and many European institutions had adopted resolutions encouraging their member States to ratify that instrument.

6. For the future, there were several possible areas of action. It was not a question of imposing standards from the outside; more important was the work of information and awareness-raising and the conduct of a dialogue with States to help them to understand that ratification of the instruments was in the interests of their citizens. Regional or thematic

seminars might be organized for States which had not ratified, with a view to identifying and overcoming their difficulties and fears. Another possibility was to send out a questionnaire to States in order to obtain fuller information for his final report.

7. Mr. SALAMA said that, while the immediate objective was to secure broader ratification, he was sure the Special Rapporteur would agree that the objective of effective application was even more important. The proliferation of international instruments evident from the tables had not always been systematic or rational. Would it not be possible to devise a "legislation policy"? Part of such a policy might be to produce a table showing gaps and imbalances in the human rights instruments on which the Sub-Commission could base proposals. The instruments themselves might be reviewed with an eye to revision.

8. With regard to "orphan" treaties, perhaps Mr. Decaux could say, in the light of the jurisprudence of the existing treaty bodies, how far it was possible to go in monitoring situations and putting requests to States. What were the possibilities of "peer review", and might the Sub-Commission have a role in such an exercise?

9. Ms. HAMPSON said that she had five questions for the Special Rapporteur. Firstly, did the technical means exist within the United Nations to produce the tables in the addendum in colour and thus make their impact even stronger? She had been struck by the examples of ILO good practice described in paragraphs 35-39; in view of the importance of the summit meeting in September, would it be possible in a resolution or decision to bring the evidence of that good practice to the attention of the Commission on Human Rights and the Office of the United Nations High Commissioner for Human Rights (OHCHR)? The Migrant Workers Convention was different from most others in that the ratifying States tended to be "exporters" rather than "importers" of migrant workers; would it be possible to enlist the ILO machinery in the effort to persuade States, especially importing States, to ratify the Convention? On the question of "orphan" treaties, would it be possible to explore the idea of having one or more monitoring bodies (but not one per "orphan" treaty) or, in other words, to group such treaties by subject matter? Lastly, would the Special Rapporteur be able in his final report to address the idea of an "*acquis des droits de l'homme*" along the lines of the "*acquis communautaire*" of the European Union?

10. Ms. KOUFA said that the goal of universal ratification was a laudable if not absolutely essential one, since many instruments had achieved the status of binding international law. She agreed with Mr. Salama that universal application was the more important goal. The Special Rapporteur was right to draw attention to the flagging interest in the Vienna Declaration and Programme of Action, especially as it stressed the need to facilitate implementation. And she shared his regret that the debate on the reform of the United Nations was more concerned with structure than, for example, with the failure to achieve universal recognition of basic values. The final report would be even more interesting because it would be prepared in the light of the reform debate.

11. Ms. MOTOC said that the Special Rapporteur should concentrate on ratification rather than application. Some States which had ratified treaties then proceeded to violate the rights in question more than ever before. If a sociological approach was taken to the exercise of human rights, with a proliferation of reports and figures, there was a danger of falling into the "statistics" trap of thinking that it was better not to ratify than to ratify.

12. She fully supported the "voluntarist policy", and the Special Rapporteur's ideas on how to make progress in that respect were very useful.

13. With regard to Ms. Hampson's comments on monitoring bodies for "orphan" treaties, she noted that the powers of existing monitoring bodies were already under threat from the reform initiative. It might be possible in the future to provide optional procedures for the "orphan" treaties. But she supported Ms. Hampson's suggestion that the Special Rapporteur should consider the question of an "*acquis des droits de l'homme*" in his final report.

14. Mr. PINHEIRO said that the Special Rapporteur's work was particularly important in the context of the wave of scepticism about the work of the Commission and Sub-Commission; it must be demonstrated that ratifying treaties was a worthwhile exercise. The Special Rapporteur's tables did in fact show a positive balance sheet with respect to ratifications; perhaps civil society, and especially the victims of human rights abuses, did not share that scepticism. Ratification was important for civil society because it established State accountability and provided an opportunity to put pressure on Governments to apply the principles contained in the treaties.

15. He supported the Special Rapporteur's suggestions on regional seminars and a questionnaire; States did respond to questionnaires which were well prepared. However, he was very much against the creation of any additional treaty-monitoring bodies. The "orphan" treaties did have "guardians" in the shape of the special rapporteurs.

16. Ms. CHUNG said that suggestions for increasing the number of ratifications should take into account the reasons why States did not ratify treaties. The reports stressed the role of United Nations bodies in persuading Governments to ratify but did not give enough attention to the crucial part played by national human rights bodies in that connection. In paragraph 50 of his report, the Special Rapporteur mentioned the contribution which regional human rights bodies could make. Did he have any advice for the countries of Asia, where there were no such bodies?

17. Mr. ALFONSO MARTÍNEZ, after commending Mr. Decaux on the quality and thoroughness of the report, drew attention to a number of details that he found questionable. First, he noted that paragraph 13 contained a list of States that had not signed or ratified either of the two Covenants. It would, however, be a mistake to infer that such States were undermining international law in any way. It was the sovereign right of a State to decide whether or not to accede to a given instrument and there were many possible reasons for such a decision. National legislation, for example, might provide greater protection than the international instrument in question; or a State might feel that it was not yet ready to enter into international obligations. It had been argued by some in his own country that Cuba should ratify the Covenants for the sake of impressing world opinion; but he himself had argued that such concern for public image was unworthy. Lists and statistics could be extremely instructive, but they could not reflect every aspect of a situation. It might therefore be useful to undertake further analysis into why a given State decided not to accede to a particular instrument. The same applied to the reasons why States made reservations to treaties: in some cases, the reasons were perfectly valid but, in others, a reservation might run counter to the object and purpose of the instrument, thus rendering it ineffective.

18. It was equally unacceptable to extend that argument and imply, as in paragraph 15, that the fact of having ratified or not ratified the core instruments should have a bearing on whether a State should become a member of the proposed Human Rights Council or other human rights bodies. It would be incompatible with the Charter of the United Nations to impose additional obligations on Member States, which were deemed equal under the United Nations system. Lastly, he noted that Cuba did not appear in the list of countries that had ratified the largest number of ILO conventions. As one who had worked with ILO for many years, he was sure that Cuba ranked high among ratifying Governments.

19. Ms. PARKER (Minnesota Advocates for Human Rights), speaking on behalf of some 25 NGOs that had met to discuss the report, expressed strong support for the perspective that had been adopted and hoped that Mr. Decaux would adopt the same approach in his next report. In particular, she endorsed the focus on implementation and the suggestion, in paragraph 50, that seminars should be held on implementation and on the contribution that could be made by NGOs. In particular, it would be helpful if the Second International Decade of the World's Indigenous People, planning for which was currently under way, could earmark some funds for seminars to help indigenous peoples' NGOs. Secondly, the High Commissioner for Human Rights had said that her Office would be devoting more attention to the implementation of human rights instruments. It would therefore be useful if the Office's resources could be brought to bear on offering NGOs assistance in monitoring implementation.

20. Ms. O'CONNOR, after commending the quality of the report, expressed her support for the suggestion that regional seminars should be held. It was important to recognize that different levels of information and awareness existed in various countries. As for the question of accession to human rights instruments, she concurred with the views of Ms. Chung and Mr. Alfonso Martínez: many Governments were coerced into signing conventions that they had not properly read and that their public did not understand; and, in such cases, attempts at implementation could lead to further abuses. In some cases, States would ratify an instrument even if they knew they could not honour it. Some human rights violations occurred because a country was suffering the effects of inappropriate advice from international experts or because it was trying to abide by other United Nations instruments. It was always worth examining the circumstances surrounding a given situation; and seminars would be useful both for establishing how a particular situation had come about and for educating civil society, especially NGOs, in the requirements for implementation. As for the question of basing membership of the Human Rights Council or any other body on an assessment of a country's human rights record, such a procedure would be acceptable only if applied consistently across the board, without fear or favour.

21. Ms. WARZAZI suggested that the Working Group on Contemporary Forms of Slavery should assume the role of following up the implementation of the "orphan" conventions. Such a move, which would naturally need the authorization of the Commission, would involve extending the Working Group's mandate. The problems relating to ratification of instruments were many and various. One major African country, for example, had informed the Working Group on Contemporary Forms of Slavery that ratifying the international human rights instruments was not a priority for his Government. Another failure of ratification, effectively speaking, was the way in which a State could, by means of numerous reservations, defeat the object and purpose of the instrument in question.

22. Ms. MBONU said that, in the light of the statement by Ms. O'Connor and the loss of impetus mentioned in paragraph 34 of the report, one answer might be to provide technical assistance for policymakers of countries aiming at ratification of human rights instruments. The obstacles might be purely technical in nature. Mr. Decaux had been right to concentrate on the question of implementation. Her information was that the United Nations Convention against Corruption had been signed by 190 Governments and ratified by 116; but implementation by no means kept abreast of accession. She urged Mr. Decaux in his next report to consider all the circumstances surrounding ratification and associated matters, including the damage caused to treaties by reservations.

23. Lastly, she requested that the contents of document E/CN.4/Sub.2/2005/8/Add.1 should be issued as a fact sheet. She regretted, however, that the document in question had been issued in French only.

24. Mr. RIVKIN said he agreed with Mr. Alfonso Martínez about the role of reservations to treaties and about the fact that the sovereign equality of States meant that a State could not be forced to ratify an instrument; adverse conclusions should not be drawn if it did not. In any case, compliance was unlikely in a State that had acted under compulsion. There might be benign reasons why a State decided against acceding to an instrument. It might have domestic legislation that already provided for high standards. His country, the United States, was prevented from acceding to some instruments for constitutional reasons; and, even if a ratification obtained congressional approval, the adoption of the instrument might be struck down by the courts. Moreover, a State that took its obligations seriously might feel it wrong to assume obligations that it could not fulfil. It had been argued that instruments should be ratified for symbolic reasons: but he saw no convincing reasons for such an approach. As for reservations, there were States that had excellent records on human rights but found one small proportion of an instrument unacceptable. A flexible approach should be adopted, although he conceded that, in some cases, a treaty was so hedged round with reservations that there seemed little point in accession to it at all.

25. Mr. YOKOTA said, with regard to the reasons why some countries did not ratify human rights instruments, that the different policies in force in various countries should be borne in mind. In some countries, entry into force immediately followed ratification, while in others it was delayed until national legislation had been adopted. Countries in the first category had to take existing legislation into account to ensure that it was compatible with the instrument under consideration. As for the question of reservations, a difficult choice was involved between the desire for the integrity of the instrument concerned - which would suggest that reservations should not be permitted - and the desire for the widest possible ratification, even if a State had to make a reservation about a given feature of the instrument. The more countries ratified an instrument, the more other countries were encouraged to do so. Ratification could also be encouraged with the use of seminars on how to go through the ratification procedure. Moreover, OHCHR had an advisory service promoting human rights and was able to provide assistance in drafting constitutional law. It could perform the same function in encouraging ratification. Lastly, he endorsed the suggestion in paragraph 15 that a State's human rights record - including its ratification and implementation of the core human rights instruments - should, along with geographical balance, be a factor in assessing the eligibility of that State for membership of the Human Rights Council. There should not be automatic assessment on those grounds, but a Government's attitude should be borne in mind.

26. Mr. ALFONSO MARTÍNEZ said that he did not object to reservations in themselves. It was better for a State to accept some obligations, by ratifying an international instrument with reservations, than not to ratify it at all. However, some reservations were so far-reaching as to prevent the State from implementing the instrument properly.

27. Ms. HAMPSON noted Mr. Pinheiro's suggestion that the Commission's special procedures mechanisms might take on the role of monitoring the implementation of treaties which did not have a built-in supervisory mechanism. At present, she could not think of any obvious match between a treaty and an existing special procedure: NGOs might wish to suggest new special procedures for that purpose.

28. She disagreed with the contention that the number of treaties which a State had ratified was a good indicator of its contribution to human rights for the purposes of nomination to the proposed Human Rights Council. It was a State's sovereign decision to ratify a treaty, or not. A more useful criterion might be whether the State in question had issued a "standing invitation" indicating its willingness to comply with all the Commission's special procedures, since that was a question of the State's obligations under the Charter of the United Nations.

29. Mr. Rivkin had said that States might refrain from ratifying a treaty because their own standard of implementation of human rights was already higher than that laid down in the treaty. However, many treaties expressly stated that their provisions should not be used to justify a lower standard of human rights than was already recognized in domestic law. A State which had ratified a treaty was in a stronger position to encourage others to follow suit.

30. She was sure that no one would dispute Mr. Rivkin's assertion that the rule of law and a high standard of human rights protection prevailed in his country, generally speaking. However, if he wished to imply that there was no discrimination at all in the United States of America - considering the number of non-whites among the prison population, or the race and economic status of people condemned to death by the justice system - then she could not agree with him.

31. The study by Mr. Decaux rightly covered not only the status of ratification of a treaty, but also its degree of implementation. Ratification alone was not a reliable indicator of the state of human rights in a country. As Mr. Yokota had pointed out, her own country would sign a treaty and then wait until domestic implementing legislation had been passed before ratifying it. The case law of the European Court of Human Rights and the European Court of Justice showed that some States ratified treaties and then failed to implement them adequately, sometimes in defiance of their own constitutional courts.

32. Mr. SATTAR said that many of the countries which had not signed or ratified international human rights instruments (see E/CN.4/Sub.2/2005/8/Add.1) were developing countries. Theirs might be a sin of omission rather than commission: civil servants had to undertake considerable advocacy work in order to convince their superiors to enter into new international commitments, particularly if the capacity for implementation of the instrument was limited. Nevertheless, developing countries stood to gain considerably from the expansion of all human rights.

33. He suggested that copies of the interim report by Mr. Decaux should be sent to all Member State missions in Geneva, which could then persuade their Governments of the loss of prestige which would result if they remained in the minority of countries which had not yet signed or ratified the key international human rights instruments

34. Mr. CHERIF welcomed the report under discussion, but felt that it could have included specific examples of the way particular States dealt with the various human rights instruments. As the title of the paper implied, Mr. Decaux had rightly concentrated on treaties, which were formal, legally binding instruments, rather than on human rights instruments in general.

35. In his view, it was a positive move if a State ratified a treaty, even with reservations. It was a step along the road to universal acceptance of the instrument, while acknowledging the variations in States' individual circumstances. A reservation could, after all, be withdrawn at any time. Many States felt that universal adherence to a single international instrument constituted a threat to their autonomy and interference from outside. More information, awareness-raising and training for both Governments and the general public was needed in order to dispel such fears and misunderstandings.

36. Mr. RIVKIN said that it would never be possible to achieve a situation in which all States could ratify all human rights treaties without a single reservation. The world was too complex and diverse, and it must remain so if the ethnic and cultural uniqueness of different countries was to be preserved. The best solution that could be hoped for was the harmonization of different approaches to the protection of human rights, although the European Union - a relatively homogeneous group of countries, after all - had still not achieved full harmonization after almost 50 years. It would require more general, less prescriptive standards, more scope for reservations to instruments provided that they were made in good faith, and the opportunity for States to demonstrate that they could achieve the desired outcomes by different means.

37. Monitoring of international obligations was generally considered to be a good thing: States which abided by their obligations would have nothing to fear, it was thought. However, the methods used might be unacceptable to some countries. For example, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction ("Chemical Weapons Convention") had a strong but, for his country, over-intrusive regime. Compulsory, unannounced inspections of privately owned facilities were simply not permissible under the United States Constitution.

38. Ms. MOTOC said that the implementation of international instruments went beyond the scope of the paper by Mr. Decaux: it deserved a study of its own. There was a considerable body of sociological research about the implementation of the international human rights instruments. It had been asserted, for instance, that States which had ratified the instruments might actually violate human rights more frequently than those that had not, and that the rigour with which the treaty-monitoring bodies carried out their work encouraged States to lodge more reservations.

39. Mr. DOS SANTOS ALVES said that ratification and implementation went hand in hand, and it was therefore logical to study them together. He agreed with other members that States which had not yet ratified the key human rights instruments, especially small developing

countries, should receive technical assistance to help them to overcome the obstacles that had prevented them from ratifying. The idea of seminars for both government experts and civil society was a good one. Reservations to international instruments must be taken into account if they would seriously affect the State's implementation of the instrument concerned. More research was needed to show their impact on the overall implementation of the human rights instruments.

40. Mr. YOKOTA said that the number of instruments which a State had signed and ratified was an obvious indicator of its contribution to human rights. It should not, of course, be a compulsory criterion in the selection of members of the proposed Human Rights Council, but it should not be completely disregarded, either.

41. Ms. WARZAZI said that international human rights instruments were adopted after many years of negotiation. Surely Governments had plenty of opportunity to decide what the implications of their accession would be before they ratified?

42. Mr. SALAMA said that creating a new body to monitor instruments which did not have their own monitoring mechanism was not the answer. If an existing treaty-monitoring body or special procedure covered the same area as one of those instruments, it had the right, and the responsibility, to monitor its implementation. The Commission itself could be considered a supervisory body for all the human rights instruments. If the Sub-Commission endorsed that principle, it should state it clearly for the benefit of the other human rights bodies.

43. A State might choose not to ratify an instrument for economic reasons, or for other reasons which were not immediately obvious. An analysis of the grounds for non-ratification might make a useful contribution to international legislative strategy in the future, although he was not sure how it could be done.

44. He was afraid that a "generic" human rights standard, as proposed by Mr. Rivkin, would merely be a lowest common denominator - the minimum standard that all States were prepared to accept. Human rights instruments were often badly negotiated: an individual, NGO or civil institution submitted a draft, which might then be debated and adopted, even if it contradicted existing instruments. Member States which were not involved in the negotiations might remain entirely ignorant of its existence. All draft instruments should be discussed by an expert advisory group at an early stage.

45. He hoped that the report of Mr. Decaux would not be the final word on the subject. A permanent mechanism should be created, using the parameters which Mr. Decaux had defined, to detect inconsistencies in existing and proposed legislation.

46. Ms. RAKOTOARISOA said that ratification was not an end in itself: implementation of the instrument concerned was the most important thing. It was essential to define indicators to measure effective implementation. The reports which were prepared at present did not always reflect the true situation in the country. A system of human rights observation mechanisms might be the answer.

47. She agreed that, when a State ratified an international instrument, it must ensure that its domestic legislation was compatible with it. However, she did not agree with Ms. O'Connor that States should be penalized for their failure to ratify: it was their sovereign decision to ratify or not, and they could only be encouraged to do so.

48. Mr. RIVKIN, responding to Ms. Warzazi, said that, in the case of most civil law countries, it was indeed relatively easy to modify domestic legislation which was inconsistent with a convention. However, the situation was fundamentally different in countries with a written constitution which was difficult to amend, such as the United States. It would be irresponsible for such a State to ratify an international convention which contained key provisions inconsistent with its constitution, as implementation would not follow and the State would be in default of its international obligations. Such circumstances must be taken into account when assessing the reasons for which States did not ratify certain treaties.

49. Mr. ALFONSO MARTÍNEZ said that establishing a body to monitor developments in the area of ratifications was not the solution. For example, which criteria would be used to decide which were the key treaties? It would be preferable to attempt to understand the reasons why a State had not ratified a particular treaty. Such information could be easily accessible, even in the most informal manner. States regularly attended meetings of the Sub-Commission and other human rights bodies, even if they were not members. It would be possible for the Secretariat to carry out a study by simply asking delegations directly why their country had not ratified a particular treaty.

50. Ms. SARDENBERG ZELNER GONÇALVES said that, regardless of the outcome of the United Nations reform, the implementation of the human rights instruments would continue to be an important issue. The ideas of dialogue, as opposed to confrontation, and process, as opposed to instant solution, were of great importance in the context of ratification and reservations. In the experience of the Committee on the Rights of the Child (CRC), dialogue with States parties in relation to the withdrawal of reservations had been successful. Cooperation with other States parties in the region which did not have the same reservation could also be beneficial. She therefore supported the content of paragraph 16 on reservations dialogue.

51. Regarding the translation of human rights treaties into the national languages, the Convention on the Rights of the Child, which was the only international human rights instrument with a specific article on dissemination, had successfully expanded the provision on translation to include all languages in the jurisdiction, including regional and minority languages.

52. She supported Mr. Salama's position regarding Mr. Decaux's mandate. It would be useful to have constant follow-up on the implementation of the international human rights instruments, which was more problematic than ratification.

53. Ms. O'CONNOR explained that she was not in favour of automatically sanctioning States for not signing treaties. It was important that the reasons for not signing, or implementing, should be assessed beforehand. For example, in a situation where a Government opposed capital punishment, but the people were in favour, and capital punishment was on the books but through legal mechanisms executions were no longer permissible, what decision would the country be expected to take?

54. Mr. Bossuyt, Vice-Chairperson, took the Chair.

55. Mr. RAJKUMAR (Pax Romana) said that he viewed the report in conjunction with other documents. A chapter in the OHCHR Plan of Action examined implementation challenges on the basis of four analytical categories: knowledge, capacity, commitment and security. Perhaps further categories could be created. The Revised Draft Outcome Document referred to the need to improve effectiveness of the human rights bodies, but remained silent on the mandate of the proposed Human Rights Council as far as treaties were concerned. It might be necessary to introduce an element to encourage States to ratify the treaties.

56. The question of ratification should be considered in terms of the benefits to the people. In India, for example, ratification had helped the judiciary in justiciability, particularly of economic, social and cultural rights. In analysing the figures, there was a discernible pattern among States but, bearing in mind the notion of the equality of sovereign States, one would hesitate to interpret them.

57. A positive development linked with increased ratification was the greater participation of national NGOs in the work of the treaty bodies. However, there was still a need for greater involvement of civil society, NGOs and national institutions in the process of ratification, compliance, and implementation.

58. Ms. SAITO (International Association of Democratic Lawyers) said that she supported Mr. Decaux's report. However, the study should also include an analysis of the obstacles to ratification which remained in many countries, and a reference to the capacities of NGOs and civil society to overcome those difficulties. She would also welcome an examination of the obstacles impeding the adoption of the draft Declaration on the Rights of Indigenous Peoples, and the objections of several States to ILO Convention No. 169 on Indigenous Peoples.

59. Mr. DECAUX said that his report was now available in all the working languages.

60. He had not wished to demonize States or make any value judgements, but simply to describe the reality. The reason he had not included Cuba's contribution to the work of ILO in paragraph 35 was that he had simply used the G-8 countries as a sample.

61. It had been noted that the domestic norms of a number of States were higher than international standards, and such an example should be followed by all States. For example, although South Africa had not ratified the International Covenant on Economic, Social and Cultural Rights, its Constitution protected those rights, and the jurisprudence of the Constitutional Court was substantial in that regard.

62. On the question of sovereignty and the relationship between constitutional and international law, more time would be needed to discuss the obstacles posed by federalism and legal dualism, and the existence of non-self-executing norms. He was reluctant to discuss the question of superior values which could run counter to the universal human rights corpus. There must be coherence between a State's words and its deeds. At the 1993 World Conference on Human Rights in Vienna, States themselves had decided, by consensus, to make those moral

and political commitments. The concept of sovereignty was important. He agreed with other speakers that it was not an all-or-nothing situation, and that speaking in terms of dualistic oppositions should be avoided.

63. The Sub-Commission should refer to the tenth report by the International Law Commission's Special Rapporteur on reservations to treaties. In that regard, he welcomed the comments on CRC's positive experience of dialogue with States parties.

64. He further welcomed the comments by Mr. Sattar on the situation of developing countries. There were indeed administrative obstacles to ratification, and most often it was not the ministries of foreign affairs that stood in the way, but more technical ministries, such as finance. Parliaments had an important role to play, and the ILO approach of addressing treaties to parliaments for consideration was therefore useful. In the framework of the recent dialogue on human rights between the European Union and China, members of the Chinese parliament had informed the European experts on developments in the preparatory process. In addition to the Executive, the legislature should also be involved in discussions.

65. The idea of holding regional seminars to identify the causes of non-ratification was also important. In the absence of a regional human rights organ, perhaps priority could be given to Asia. National institutions, in their regional structure, could also play an awareness-raising role.

66. As to the proposed questionnaire, it must include an interpretation grid and should be addressed to civil society and NGOs, in addition to the authorities, in order to achieve the widest possible dissemination.

67. Regarding his mandate, although it was three years in duration, it would not be a one-off exercise. The mandate included an internal component, which had been requested by the Sub-Commission. The idea of ratification indicators was an interesting one, which could encompass the sociological aspects or analytical categories. However, in adopting a sociological approach, an effort must be made not to make judgements, of the kind often made in relation to the membership of the Commission, that it was the States with the worst records that ratified treaties.

68. On the legal aspects, it was interesting that ILO conventions had also been mentioned, and it was positive to have a broader perspective. Although nobody could dispute the importance of proposed new treaties such as those on disability or forced disappearances, the danger was that there would be too many to deal with, and the conference of States parties in 2006 risked ending in confusion. Each convention had its status, and it was difficult to mix them; however, it was the States which must decide.

69. The Working Group on Contemporary Forms of Slavery already carried out a sort of follow-up of the slavery conventions. States were submitting reports to the Group, which unfortunately was not in a position to enter into an in-depth dialogue with them. The system should be improved to respond to the goodwill of States, although it was certainly more useful than peer review.

70. He agreed with the suggestion by Mr. Alfonso Martínez that the Secretariat or special rapporteurs should be more proactive and approach States parties on the question of ratification.

71. Mr. Kartashkin, Chairperson, resumed the Chair.

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) (agenda item 2) (continued)

72. Mr. ALFONSO MARTÍNEZ expressed concern at the increasingly frequent invocation of reasons for using armed force in connection with the promotion and protection of human rights. As he understood it, the new body which would replace the Commission on Human Rights under the proposed reforms would have the authority to contact the Security Council for the purpose of invoking Chapter VII of the Charter for States with grave human rights situations. That was a dangerous approach, particularly as armed force could be used without the knowledge of the international bodies charged with authorizing the use of force. There were recent examples of the horrors caused by such activities in Iraq and Afghanistan.

73. He was also concerned by the situation at the border of the United States with Mexico, where private armed guards protected the border from illegal immigrants. There was no question as to the right of States to protect their frontiers, but that must be done in accordance with the law, and without disregarding the rights of those suspected of violating the law simply because they were detained and defenceless, as had been witnessed in Guantánamo and Abu Ghraib. The situation had reached crisis point.

74. Referring to the supposed difficulty for the United States to accept the special mechanisms of the United Nations in respect of private-sector facilities, he asked Mr. Rivkin whether the increasing number of private prisons in the United States would also be out of bounds for activities of the thematic mechanisms.

The meeting rose at 1.05 p.m.