



**Economic and Social
Council**

Distr.
LIMITED

E/CN.4/Sub.2/2005/L.10/Add.2
11 August 2005

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-seventh session
Agenda item 7 (b)

ADOPTION OF THE REPORT ON THE FIFTY-SEVENTH SESSION

**Draft report of the Sub-Commission on the Promotion
and Protection of Human Rights**

Rapporteur: Mr. Yozo YOKOTA*

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* E/CN.4/Sub.2/2005/L.10 and Addenda contain the draft chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Sub-Commission, as well as draft resolutions and decisions for action by, and other matters of concern to, the Commission on Human Rights will be contained in documents E/CN.4/Sub.2/2005/L.11 and Addenda.

V. Administration of justice, rule of law and democracy

1. The Sub-Commission considered agenda item 3 at its 6th and 7th meetings, on 28 and 29 July, at its 8th and 9th meetings, on 2 and 3 August, at its 14th and the public part of its 15th meeting, on 8 August, and at its 19th meeting, on 10 August 2005.

2. For the list of documents issued under agenda item 3, see annex VII to the present report.

3. At the 6th meeting, on 28 July 2005:

(a) Ms. Rakotoarisoa, Special Rapporteur on the difficulties of establishing guilt and/or responsibilities with regard to crimes of sexual violence, made an oral presentation in connection with her mandate. In the interactive dialogue that followed, statements were made by Ms. Hampson and Ms. O'Connor. At the same meeting, Ms. Rakotoarisoa made her concluding remarks;

(b) Mr. Decaux presented his working paper containing an updated version of the draft principles governing the administration of justice through military tribunals (E/CN.4/Sub.2/2005/9). In the interactive dialogue that followed, statements were made by Mr. Alfredsson, Mr. Cherif, Ms. Hampson, Ms. Koufa, Ms. Motoc, Mr. Rivkin, Mr. Salama, Ms. Sardenberg and Mr. Yokota. At the same meeting, Mr. Decaux made his concluding remarks;

(c) Ms. Hampson presented her working paper on the scope of the activities and accountability of armed forces, United Nations civilian police, international civil servants and experts taking part in peace support operations (E/CN.4/Sub.2/2005/42). In the interactive dialogue that followed, statements were made by Mr. Alfredsson, Mr. Bossuyt, Ms. Koufa, Ms. Motoc and Mr. Salama. At the same meeting, Ms. Hampson made her concluding remarks.

4. At the 7th meeting, on 29 July 2005, Mr. Decaux, Special Rapporteur on the universal implementation of international human rights treaties, introduced his interim report (E/CN.4/Sub.2/2005/8 and Add.1 and Corr.1). In the interactive dialogue that followed, statements were made by Mr. Alfonso Martínez, Mr. Cherif, Ms. Chung, Mr. Dos Santos, Ms. Hampson, Ms. Koufa, Ms. Mbonu, Ms. Motoc, Ms. O'Connor, Mr. Pinheiro, Ms. Rakotoarisoa, Mr. Rivkin, Mr. Salama, Ms. Sardenberg, Mr. Sattar, Ms. Warzazi and

Mr. Yokota, as well as the observers for the following non-governmental organizations: International Association of Democratic Lawyers, Minnesota Advocates for Human Rights and Pax Romana. At the same meeting, Mr. Decaux made his concluding remarks.

5. At the 8th meeting, on 2 August 2005, Ms. Zerrougui, Special Rapporteur on discrimination in the criminal justice system, introduced her interim report (E/CN.4/Sub.2/2005/7). In the interactive dialogue that followed, statements were made by Mr. Chen Shiqiu, Mr. Cherif, Mr. Decaux, Ms. Hampson, Ms. Koufa, Ms. Motoc, Ms. O'Connor, Mr. Salama, Ms. Warzazi and Mr. Yokota. At the same meeting, Ms. Zerrougui made her concluding remarks.

6. At the 9th meeting, on 3 August 2005:

(a) Alexandre Sicilianos, Vice-Chairperson of the Committee on the Elimination of Racial Discrimination, made a statement;

(b) Régis de Gouttes, member of the Committee on the Elimination of Racial Discrimination, also made a statement.

In the interactive dialogue that followed, statements were made by Mr. Bengoa, Mr. Decaux, Ms. Hampson, Mr. Yokota and Ms. Zerrougui.

7. At the 14th meeting, on 8 August 2005, Ms. Motoc, Chairperson-Rapporteur of the sessional working group on the administration of justice, presented the report of the working group (E/CN.4/Sub.2/2005/11). In the interactive dialogue that followed, a statement was made by the observer for the non-governmental organization Minnesota Advocates for Human Rights. At the same meeting, Ms. Motoc made her concluding remarks.

8. In the general debate on agenda item 3, statements were made by members of the Sub-Commission and observers for Governments and non-governmental organizations. For the detailed list of speakers, see annex II.

Human rights and State sovereignty

9. At the 15th meeting, on 8 August 2005, the Sub-Commission considered draft decision E/CN.4/Sub.2/2005/L.2 sponsored by Mr. Alfredsson, Mr. Bengoa, Mr. Bíró, Mr. Bossuyt, Mr. Chen Shiqui, Mr. Cherif, Ms. Chung, Mr. Decaux, Mr. Dos Santos, Ms. Motoc, Ms. O'Connor, Mr. Pinheiro, Ms. Rakotoarisoa, Mr. Salama, Mr. Sattar, Mr. Tuñón Veilles, Ms. Warzazi and Mr. Yokota. Mr. Alfonso Martínez, Mr. Sorabjee and Ms. Wadibia-Anyanwu subsequently joined the sponsors.

10. Ms. Warzazi orally revised the draft decision.

11. Mr. Sorabjee proposed an amendment to the draft decision, which was accepted by the sponsors.

12. The draft decision, as revised and amended, was adopted without a vote. For the text of the decision, see chapter II, section B, decision 2005/105.

Right to an effective remedy

13. At the same meeting, Ms. Motoc introduced draft decision E/CN.4/Sub.2/2005/L.16, sponsored by Mr. Bíró, Mr. Chen Shiqui, Mr. Cherif, Ms. Chung, Mr. Decaux, Mr. Dos Santos, Ms. Hampson, Ms. Koufa, Ms. Motoc, Ms. O'Connor, Mr. Pinheiro, Mr. Salama, Mr. Sattar, Mr. Tuñón Veilles, Ms. Warzazi and Mr. Yokota. Mr. Alfonso Martínez, Mr. Sorabjee and Ms. Wadibia-Anyanwu subsequently joined the sponsors.

14. The draft decision was adopted without a vote. For the text of the decision, see chapter II, section B, decision 2005/106.

The difficulty of establishing guilt and/or responsibility with regard to crimes of sexual violence

15. At the same meeting, Ms. O'Connor introduced draft resolution E/CN.4/Sub.2/2005/L.17, sponsored by Mr. Bíró, Mr. Bossuyt, Mr. Chen Shiqui, Mr. Cherif, Mr. Decaux, Mr. Dos Santos, Ms. Koufa, Ms. Mbonu, Ms. Motoc, Ms. O'Connor,

Ms. Rakotoarisoa, Mr. Salama, Mr. Sattar, Mr. Tuñón Veilles and Ms. Warzazi.

Mr. Alfonso Martínez, Mr. Alfredsson, Ms. Chung, Ms. Hampson, Mr. Pinheiro, Mr. Sorabjee and Mr. Yokota subsequently joined the sponsors.

16. Ms. O'Connor orally revised operative paragraph 2 of the draft resolution.

17. The draft resolution, as revised, was adopted without a vote. For the text of the resolution, see chapter II, section A, resolution 2005/3.

The universal implementation of international human rights treaties

18. At the same meeting, Ms. Hampson introduced draft resolution E/CN.4/Sub.2/2005/L.19, sponsored by Mr. Bíró, Mr. Bossuyt, Mr. Chen Shiqiu, Ms. Chung, Ms. Hampson, Ms. Koufa, Ms. Mbonu, Ms. Motoc, Mr. Pinheiro, Mr. Salama, Mr. Sattar, Ms. Warzazi and Mr. Yokota. Mr. Alfonso Martínez, Mr. Alfredsson, Mr. Dos Santos, Ms. O'Connor, Ms. Rakotoarisoa, Mr. Sorabjee, Mr. Tuñón Veilles and Ms. Warzazi subsequently joined the sponsors.

19. The draft resolution was adopted without a vote. For the text of the resolution, see chapter II, section A, resolution 2005/4.

Discrimination in the criminal justice system

20. At the same meeting, Mr. Decaux introduced draft resolution E/CN.4/Sub.2/2005/L.20, sponsored by Mr. Bossuyt, Mr. Chen Shiqiu, Mr. Cherif, Mr. Decaux, Ms. Hampson, Ms. Koufa, Ms. Motoc, Ms. O'Connor, Mr. Pinheiro, Ms. Rakotoarisoa and Ms. Warzazi. Mr. Alfonso Martínez, Mr. Alfredsson, Mr. Bíró, Ms. Chung, Mr. Dos Santos, Mr. Sattar, Mr. Sorabjee, Mr. Tuñón Veilles, Ms. Wadibia-Anyanwu and Mr. Yokota subsequently joined the sponsors.

21. Mr. Dos Santos proposed to amend the draft resolution by deleting operative paragraph 2, which was accepted by the sponsors.

22. The draft resolution, as amended, was adopted without a vote. For the text of the resolution, see chapter II, section A, resolution 2005/5.

Sessional working group on the administration of justice

23. At the 19th meeting, on 10 August 2005, Ms. Motoc introduced draft resolution E/CN.4/Sub.2/2005/L.5, sponsored by Mr. Alfredsson, Mr. Bengoa, Mr. Bíró, Mr. Chen Shiqiu, Ms. Hampson, Ms. Koufa, Ms. O'Connor, Ms. Rakotoarisoa and Mr. Tuñón Veilles. Mr. Cherif, Ms. Motoc, Mr. Pinheiro, Mr. Sorabjee and Ms. Wadibia-Anyanwu subsequently joined the sponsors.

24. Mr. Decaux proposed an amendment to operative paragraph 8 of the draft resolution, which was accepted by the sponsors.

25. Ms. Koufa proposed a revision to operative paragraph 1, which was not accepted by the other sponsors. The text of the proposed revision read as follows:

“1. *Welcomes with satisfaction* the report of the sessional working group on the administration of justice;

“2. *Takes note* of its discussions on the subjects of international criminal justice, women and children in prison, the right to an effective remedy, and transitional justice.

26. Ms. Warzazi proposed an amendment to operative paragraph 1, as well as the introduction of a new operative paragraph 8 to the draft resolution, which were accepted by the sponsors.

27. Mr. Alfredsson and Mr. Chen Shiqiu subsequently withdrew from the sponsors.

28. Statements in connection with the draft resolution were made by Mr. Alfonso Martínez, Mr. Bengoa, Mr. Bossuyt, Mr. Chen Shiqiu, Mr. Decaux, Ms. Hampson, Ms. Motoc, Mr. Pinheiro, Mr. Sattar, Mr. Sorabjee, Mr. Tuñón Veilles and Ms. Warzazi.

29. The draft resolution, as amended, was adopted without a vote. For the text of the resolution, see chapter II, section A, resolution 2005/13.

Accountability of international personnel taking part in peace support operations

30. At the same meeting, Ms. O'Connor introduced draft resolution E/CN.4/Sub.2/2005/L.14, sponsored by Mr. Bíró, Mr. Chen Shiqiu, Ms. Chung, Mr. Decaux, Mr. Dos Santos, Ms. Hampson, Ms. Koufa, Ms. Motoc, Ms. O'Connor, Mr. Pinheiro, Mr. Salama, Mr. Sattar, Ms. Warzazi and Mr. Yokota. Mr. Alfredsson, Mr. Bossuyt, Mr. Casey, Mr. Cherif, Ms. Rakotoarisoa and Ms. Wadibia-Anyanwu subsequently joined the sponsors.

31. Ms. O'Connor orally revised operative paragraphs 3, 4, 5 and 6 of the draft resolution.

32. Statements in connection with the draft resolution were made by Mr. Alfonso Martínez, Mr. Casey, Ms. Hampson and Mr. Yokota.

33. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Sub-Commission was drawn to the estimated administrative and programme budget implications of the draft resolution.

34. The draft resolution, as revised, was adopted without a vote. For the text of the resolution, see chapter II, section A, resolution 2005/14.

The relationship between international humanitarian law and human rights law

35. At the 19th meeting, on 10 August 2005, Mr. Yokota introduced draft decision E/CN.4/Sub.2/2005/L.15, sponsored by Mr. Bíró, Mr. Cherif, Ms. Chung, Mr. Decaux, Mr. Dos Santos, Ms. Hampson, Ms. Motoc, Mr. Pinheiro, Mr. Salama, Mr. Tuñón Veilles and Mr. Yokota.

36. Mr. Yokota proposed to extensively revise the draft decision on the basis of a document which he had circulated among the members. The proposed revision was not accepted by the other sponsors.

37. Mr. Yokota subsequently orally revised the draft decision.

38. Statements in connection with the draft decision were made by Mr. Alfonso Martínez, Mr. Chen Shiqiu, Mr. Decaux, Mr. Sattar, Mr. Sorabjee, Ms. Wadibia-Anyanwu and Ms. Warzazi.

39. The draft decision, as revised, was adopted without a vote. For the text of the decision, see chapter II, section B, decision 2005/108.

Issue of the administration of justice through military tribunals

40. At the same meeting, Mr. Pinheiro introduced draft resolution E/CN.4/Sub.2/2005/L.18, sponsored by Mr. Bíró, Mr. Bossuyt, Mr. Chen Shiqiu, Ms. Chung, Ms. Hampson, Ms. Koufa, Ms. Mbonu, Ms. Motoc, Ms. O'Connor, Mr. Pinheiro, Mr. Salama, Mr. Sattar, Ms. Warzazi and Mr. Yokota. Ms. Rakotoarisoa subsequently joined the sponsors.

41. Mr. Decaux proposed amendments to the fourth preambular paragraph and to operative paragraphs 1, 2, 3 and 5 of the draft resolution, which were accepted by the sponsors.

42. Mr. Pinheiro orally revised operative paragraph 6 of the draft resolution.

43. The draft resolution, as amended and revised, was adopted without a vote. For the text of the resolution, see chapter II, section A, resolution 2005/15.

Transitional justice: investigation mechanisms for truth and reconciliation, with emphasis on Latin America

44. At the same meeting, Ms. Motoc introduced draft decision E/CN.4/Sub.2/2005/L.23, sponsored by Mr. Bengoa, Mr. Bíró, Mr. Decaux, Mr. Dos Santos, Ms. Hampson, Ms. Mbonu, Ms. Motoc, Ms. O'Connor, Ms. Rakotoarisoa, Mr. Sattar and Ms. Warzazi.

45. Mr. Alfonso Martínez proposed an amendment to the draft decision, which was accepted by the sponsors.

46. The draft decision, as amended, was adopted without a vote. For the text of the decision, see chapter II, section B, decision 2005/109.
