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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 10th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 4 August 2005, at 10 a.m.

Chairperson: Mr. KARTASHKIN

later: Mr. SALAMA
(Vice-Chairperson)

later: Mr. KARTASHKIN
(Chairperson)

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The meeting was called to order at 10.05 a.m.

ORGANIZATION OF WORK (agenda item 1) (continued)

1. The CHAIRPERSON reminded members that, in order for the Sub-Commission to complete consideration of outstanding agenda items by the end of the session, they must be as brief as possible in their discussions.

2. Ms. WARZAZI pointed out that the Sub-Commission's session had been reduced by two meetings as a result of the Swiss national holiday. As the budget was allocated for a full session, perhaps it would be possible to schedule an extra meeting, and close the session on the afternoon of the last day.

3. The CHAIRPERSON said that, unfortunately, the budget did not allow for any extra meetings. However, the Sub-Commission might send a letter to the Commission outlining the difficulties posed by losing one day during the session and scheduling working groups, and requesting additional resources for the following year.

Reform of the United Nations (continued)

4. Mr. KHAN (Pakistan) made a statement on the reform of the United Nations human rights mechanisms on behalf of the Organization of the Islamic Conference (OIC). The reform debate so far had paid little attention to the future of the Sub-Commission. Some countries had suggested that it should be abolished, while others had argued that its useful functions should be taken over by a new body. The Sub-Commission had done valuable work in standard-setting, input to negotiations, interpretation of international law and normative guidance.

5. The OIC believed that standard-setting and the drafting of legal instruments were ongoing functions and that the Sub-Commission or a similar independent body would therefore continue to be needed. It should continue to avoid country-specific references or resolutions in order to avoid undue politicization of its work.

6. The OIC made the following recommendations. The role of an independent think tank must be preserved. The body which fulfilled that role should be a subsidiary body of the main human rights body and should report to it. It should have approximately the same number of members as the existing Sub-Commission. It should undertake analytical studies, identify areas for further consideration and work on initial drafts of international human rights instruments. Its members should be impartial, independent and free from conflicts of interest: their Governments should not try to influence their work. The body should have a clear mandate and avoid duplicating the work of other mechanisms. The collegial approach and collective decision-making practised by the existing Sub-Commission should be preserved.

7. The OIC had worked for many years to promote respect for human rights. It believed that changes were needed, but it was not enough merely to dismantle the existing mechanisms. The valuable legacy built up by the Sub-Commission over recent decades must be passed on to any successor.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 4) (continued)
(E/CN.4/Sub.2/2005/16, 17 and Add.1, 18, 19 and Corr.1 and 2, 20 and Add.1, 21, and 23-25; E/CN.4/Sub.2/2005/NGO/1, 6, 11 and 22; E/CN.4/Sub.2/2004/21, 26 and Corr.1 and 27; E/CN.4/Sub.2/2003/12/Rev.2 and 38/Rev.2; E/CN.4/2005/25 and 91; E/CN.4/2005/WG.18/2)

8. Mr. CHERIF said that at the national and international levels, a blind eye was often turned to the misappropriation of funds, which was later exploited as a means of exerting political pressure. Although the problem was possibly more ethical than legal, the question of incitement to corruption for political purposes should be considered.

9. Fully transparent governance was the best solution to prevent and treat the universal scourge of corruption, which was an increasing threat to human rights, particularly when linked with transnational organized crime. Corruption in the judiciary had a negative impact on the principle of equality before the law and impeded fair trials. The material situation of judges should therefore be examined and improved, and they should be made aware of their responsibilities in that area.

10. Mr. BÍRÓ stressed the importance of the role of the media in revealing cases of corruption, which he hoped would be dealt with in future reports. The question of potential reprisals against those who provided information on corruption should also be considered.

11. Ms. WARZAZI said that combating corruption was essentially a matter of political will at the national level. It was also clear that civil society had an important role to play in raising awareness among the authorities of the damaging effects of corruption.

12. Morocco was not well placed in the international corruption ratings published each year. The Government had therefore drawn up a plan of action, which included cross-sectional and sectoral measures, in which various NGOs and the Ethics and Good Governance Commission, established by the employers' federation, were involved.

13. The plan made provision for reinforcing transparency in the management of public procurement. Calls for tender, and their results, would be posted on the Internet and reasons would be given as to why certain tenders had been refused. There were also provisions for the establishment of an internal management monitoring system and the redefinition of the role of the general inspectorates of the ministries.

14. Monitoring the financing of political parties and elections was also envisaged, as was a re-examination of the question of property declaration, under which people with public mandates, such as judges, members of parliament, directors of public institutions, and even their spouses and children, would be monitored.

15. The Criminal Code provided for sanctions for the practice of corruption, and article 256 had been amended to decriminalize victims of corruption who reported it.

16. The report mentioned the scandal within the United Nations system following the allegations of corruption in the management of the Oil-for-Food Programme. It would be interesting to expand on that idea and study the reasons why the geographical distribution of posts within the United Nations was not respected, to the detriment of the countries of the South.

17. Regarding capital flight due to corruption, perhaps the Special Rapporteur, Ms. Mbonu, could address the question of an effective international mechanism capable of imposing the obligation of returning that capital.

18. She supported the recommendations contained in the report before the Sub-Commission (E/CN.4/Sub.2/2005/18), and also agreed with Mr. Bíró's proposal. It was clear that the Special Rapporteur required greater support from the Office of the High Commissioner for Human Rights (OHCHR)

19. Mr. SATTAR said that the discussion at the previous session had highlighted the prevalence of corruption in countries under dictatorial rule, while the report currently under consideration stressed that corruption could equally be an affliction in fledgling democracies by penetrating political parties, parliaments and the judiciary.

20. Although remedying the situation was primarily the responsibility of the nations themselves, civil society, the media and public opinion had a leading role to play in encouraging the electorate to favour leaders and parties committed to providing good governance. The connection between electoral politics and money was a problem in most democracies, but was particularly acute in low-income countries with low levels of literacy. Given that electoral campaigns were expensive to run, the way was open for exploitation by politicians who had amassed illicit wealth and could buy advertising space, influential people in the media and sometimes even votes.

21. Some nations had demonstrated the political will to address the problem. Corruption ratings published annually by Transparency International testified to the success of certain States that had once been at the top of the list. They had established good accountability institutions which investigated and prosecuted officials unable to explain the accumulation of wealth, and those found guilty were ordered to surrender illicit gains in addition to paying fines and serving prison sentences. The Special Rapporteur on corruption should examine more successful cases and perhaps draw up a list of proven and productive methods used to reduce corruption.

22. That the accountability process had not made greater progress was partly due to the lack of international cooperation, particularly by States with notoriously lax laws which facilitated the transfer and concealment of illicit funds. Litigation in those countries was so expensive that developing countries were discouraged from using their limited resources to pursue the culprits. It was hoped that mature democracies would persuade States to reform their own laws as well as exerting pressure on others to deny asylum to corrupt leaders, bar them from holding funds and assets, and cooperate in the investigation and prosecution of culprits.

23. The entry into force of the United Nations Convention on Corruption, even though its compulsory character was diluted by reservations and the fact that cooperation was subject to the legal systems of countries where the illicit funds had been transferred, would improve the prospects for international cooperation in criminal matters. The Sub-Commission should join the efforts of the "Friends of the Convention" group to promote ratifications and facilitate its entry into force. At its previous session, the Sub-Commission had recommended that the Special Rapporteur should be given the opportunity to interact with that group. It was regrettable that the relatively small amount required for her visit to Vienna had not been forthcoming during the year.

24. The study on corruption had already taken three years; that was not unusual given the working methods of the Sub-Commission, which clearly needed to be reformed so as to facilitate more expeditious work.

25. Mr. YOKOTA welcomed the emphasis placed on the fact that corruption prevailed not only at the level of Governments, but also in the legislature and judiciary. He supported Ms. Mbonu's conclusions that corruption was also rife in developed countries, although it was more serious in developing countries in view of the human rights context and the fact that poorer sections of the population did not have the means to fight against corrupt practices. He agreed with Mr. Bíró on the responsibility of the media in combating corruption, and with Ms. Warzazi on the need to study corruption within the United Nations system.

26. Mr. CHEN said that individual countries and the international community as a whole must prioritize combating corruption and explore ways of doing so effectively. Corrupt persons took advantage of legal loopholes, and avoided punishment by going abroad, for example. Given that many countries experienced great difficulties in extraditing corrupt officials and recovering property and funds, the international community should strengthen cooperation and legal assistance.

27. Ms. KOUFA said it was surprising that political parties were considered the most corrupt institutions in the countries surveyed, followed by legislators, the police, and the justice system. Given that the very institutions available to address corruption were held to be the most corrupt, it was not clear how to remedy the situation. Ms. Mbonu should expand on the issue of corruption in the political process to include more detail on corruption in the administration of elections in both developing and developed countries, where developments such as electronic voting had raised considerable concerns.

28. Corruption in the delivery of aid to those affected by both man-made and natural disasters undermined the best of human acts, namely charity. Corruption was growing, even in the provision of such basics as water and food. She therefore recommended that Ms. Mbonu should expand on the issue of private-sector and national and international procurement.

29. Ms. RAKOTOARISOA commended the examination of corruption in the judicial system, public procurement and the financing of political parties. It was necessary to intensify efforts to encourage States to ratify the Convention against Corruption and thereby accelerate its implementation, which was essential when the links between corruption and transnational organized crime were considered. In her next report Ms. Mbonu should focus on the follow-up of implementation of the Convention. Certain countries had called for the adoption of an ambitious follow-up mechanism controlled by an independent expert body and elected by an intergovernmental authority rather than the States parties to the Convention. Following the preparation of reports and field missions, that body would make public the results of its investigations and formulate recommendations. Once the Convention entered into force, the content of follow-up obligations imposed on States would have to be examined. Without international cooperation and global action, efforts made by States would undoubtedly be in vain. She agreed with Mr. Chen on the question of legal cooperation, extradition and restitution.

30. Mr. AYALOGU (Nigeria) said that high levels of corruption undermined the bureaucratic process, investment opportunities and economic growth, which ultimately led to ineffective government. However, corruption was not a purely economic problem: it had political, social and human rights implications. Given the effect of corruption on the enjoyment of rights such as work, education, health and housing, the need for reforms that might require changes in constitutional structures could not be overemphasized. Such reforms should be aimed at reducing the material benefits from payoffs and the need to seek basic rights through recourse to corrupt practices, and would require the support of domestic political leaders as well as the international community.

31. The Nigerian Government had pledged as one of its cardinal principles the war against corruption. It had put in place several mechanisms and instruments to prohibit corruption and punish perpetrators of corruption, including the Corrupt Practices and Other Related Offences Act, the Independent Corrupt Practices and Other Related Offences Commission, and the Economic and Financial Crimes Commission.

32. Nigeria was also in discussions with a number of States with a view to the restitution of illegally acquired assets concealed in those countries by certain Nigerians and their international collaborators, but results had been disappointing thus far. He called for the full support of the international community in that regard. Nigeria had signed the Convention against Corruption and was in the process of absorbing it into domestic law. The number of countries that had not signed the Convention raised doubts as to the genuine commitment to combating corruption.

33. As a result of the establishment of institutional mechanisms to combat corruption, more Nigerians were now benefiting from the Government's commitment to transparency, accountability, due process, fair competition and prudent management of resources. The visit of the Special Rapporteur to Nigeria in January 2005 testified to the Government's disposition to welcome any assistance in its fight against corruption. The Nigerian Government called on all Governments, international organizations and the international business community to assist such initiatives not only in that country but in other countries undertaking reforms. He welcomed the conclusions and recommendations contained in the report.

34. Ms. MBONU (Special Rapporteur) said that she had been wondering about the best way to complete her study and was therefore very grateful for the many useful suggestions made by the members of the Sub-Commission, which would certainly be taken into account.

35. Mr. PINHEIRO (Special Rapporteur) introduced his final report on housing and property restitution in the context of the return of refugees and internally displaced persons (E/CN.4/Sub.2/2005/17 and Add.1).

36. The loss of land, housing and property was an all too common reality for the world's 12 million refugees and 25 million internally displaced persons. Housing and property restitution programmes played a vital role in promoting regional peace and security, and the observance of the rights in question was central to peace-building and conflict resolution. At the international level the outlook was good, for those rights were increasingly recognized as an essential element of the right to return.

37. Restitution was a particular form of the remedy accorded by international human rights and humanitarian law to victims of forced eviction. It was a form of restorative justice which returned people as far as possible to their original situations. Hundreds of thousands of people had benefited from restorative justice, and the work of United Nations bodies on housing and property restitution represented a unique convergence between international human rights and humanitarian law and grass-roots implementation. That bridge between the international and local levels held great promise.

38. However, returning home was too often fraught with political uncertainty and the restitution processes compromised by a failure to deal with the legal and practical obstacles and enforce the rule of law. There were still serious problems of programme design and implementation: the programmes were not uniform, and human rights principles were often sacrificed in their execution.

39. The draft principles and accompanying commentary set out in his progress report (E/CN.4/Sub.2/2004/22 and Add.1) did not advance new rights but relied on existing ones recognized by the international community. An expert consultation on the draft principles had been held in April 2005 at Brown University in the United States, as a result of which he was sure that the draft principles in their final form addressed the real problems encountered during the implementation of restitution programmes.

40. Ms. HAMPSON said that the situations dealt with in the course of housing and property restitution were often not “black-and-white”. The situation in much of the former Yugoslavia, for example, showed that sometimes a person who had moved into another’s house had himself been forced out of his own home. Ideal solutions were hard to find.

41. The most important characteristic of the draft principles was that they were not absolute rules but operational guidelines which established an assumption of what good practice would be. Although the report was now complete, she hoped that the examination of the topic would continue as experience in the use of the draft principles was gathered. The Sub-Commission and NGOs should ensure that they were circulated to every relevant human rights body, including regional ones, for they provided an example of precisely what the Sub-Commission should be doing: engaging in secondary standard-setting in order to render existing rules operational.

42. Ms. KOUFA said that she welcomed the draft principles and the commentary and the fact that the Special Rapporteur had engaged in extensive consultations on the topic. The commentary, while not as comprehensive as the Special Rapporteur would have wished, could serve as a model for the Sub-Commission’s work on other topics, including terrorism and human rights. It would also be useful to develop principles and guidelines on the exercise of economic, social and cultural rights.

43. The many situations in which property had been illegally seized would never be fully resolved without full restoration or full compensation, for otherwise hostilities and grievances would persist. She supported Ms. Hampson’s suggestion concerning the wide circulation of the draft principles.

44. Ms. CHUNG said that the final report filled a big gap in the work on the responsibility of States to protect the right of return. The fifth preambular paragraph of the draft principles indicated that they were aimed in particular at conflict and post-conflict situations. Due attention should be given to the variety of such situations, especially in the case of displaced persons. She welcomed the emphasis on restorative justice, which was a pivotal element. It would be useful to refer to non-State actors who might have operated in complicity with State actors. The commentary enhanced the possibility that the draft principles would become operational, but it might be helpful to include other categories such as minorities, stateless persons and non-citizens suffering multiple discriminations. It would of course be useful to disseminate the draft principles in all regions.

45. Mr. SATTAR said that international cooperation to help refugees return to their own homes was an important issue. In Afghanistan in the 1980s, some 7 or 8 million people had been displaced, and the Office of the High Commissioner for Refugees, the World Bank and bilateral agencies had played a big part in helping the Government to resettle them. A similar role had been played by the world community.

46. Mr. PINHEIRO (Special Rapporteur) said he could assure the Sub-Commission that the draft principles and the commentary would be circulated to all the relevant United Nations and other human rights bodies. In response to Ms. Chung, he said that section I, paragraph 1.1, did mention a variety of situations. He referred Mr. Sattar to section VI, paragraph 22, on the responsibility of the international community: it was true that international cooperation could be a decisive factor.

47. Ms. O'CONNOR introduced her working paper/concept document on the right to development (E/CN.4/Sub.2/2005/23). The paper presented her preliminary views, but some areas had been left open with a view to stimulating discussion. The paper was not the usual type of United Nations document: it was stark and direct and reflected the true situation in the developing countries. It placed people at the centre of development and challenged everyone to reflect on a development process which denied many the right to decide how to live their lives and sought to impose foreign values with consequent violation of individuals' social, economic and political rights.

48. The paper challenged persons in political power to be mindful of the responsibility of all States to recognize human capital as the most important factor of development. There was a need to replace statistics on growth with assessments as to whether even one family now lived a better life as a result of a development programme and to recognize that people at the grass-roots level did have ideas on how their communities should develop. Progress with regard to the right to development demanded that projects should take into account the views of the local people and that donors should aim at grass-roots empowerment and recognition of the right to development.

49. Her paper offered no answer to the question whether the right to development should be legally enforceable; more research was needed on the ways in which existing binding instruments functioned. However, the right to development was indeed a moral obligation of all people at the national and international levels. She hoped that consensus would be reached on people-centred development.

50. Ms. MOTOC said that it was very important for ordinary people to take part in the work on the right to development, especially where development projects were concerned. Indigenous people, for example, were already consulted on the basis of the principle of informed and prior consent. The question of the participation of poor people had come up repeatedly in the Sub-Commission's work on extreme poverty. It was indeed more difficult to see how the extremely poor could participate in that work, but the Social Forum had demonstrated that a dialogue could be established between them and the Sub-Commission. Ms. O'Connor might examine that aspect further.

51. It was important for the study to take account of the work to be done by the Sub-Commission with specialized bodies such as international and regional banks. Many NGOs had submitted reports on the activities of regional banks which disregarded human rights. In general terms, it might be useful for the future if Ms. O'Connor gave less attention to the procedural aspects and more to the primary rules of the right to development.

52. Mr. DECAUX said that he agreed with Ms. Motoc on the need to focus on grass-roots communities and give emphasis to their participation as a substitute for the imposition of ambitious outside projects. Decentralized cooperation was very important in that connection; in particular, the twinning of communities with common interests could be very fruitful and create strong bonds of solidarity which helped ordinary people to control development activities. Furthermore, the avoidance of middlemen could help to reduce corruption.

53. He also agreed with Ms. Motoc's comments on regional development banks. Such banks had international legal personality and were therefore different from the non-State actors which the Sub-Commission was going to study. The statutes of some of the newer regional banks did refer specifically to human rights, good governance, etc., but it might be too ambitious to ask the older ones to change their statutes. Nevertheless, their policies could still give prominence to such matters as human rights and good governance. Another solution, perhaps a technically complicated one, would be to encourage international organizations to accede to the human rights treaties which were open to their participation. The European Union, for example, was giving serious attention to acceding to the European Convention on Human Rights. There was a need to increase States' awareness of the importance of the role of regional banks and the desirability of consistency between the statements delivered by States in the Commission on Human Rights and their dealings with regional banks.

54. Mr. ALFREDSSON said that in the discussion on the right to development at the previous session he had raised a number of objections to the Sub-Commission's treatment of the topic. Having read Ms. O'Connor's working paper and listened to her introduction, he was now much happier: her approach to the subject was refreshing and founded on practical issues and the need to involve grass-roots communities. That approach was much more likely to bring concrete results.

55. Mr. SATTAR said that the right to development was receiving increasing attention since the establishment of the Millennium Development Goals. It was commendable that all United Nations bodies had taken pains to integrate the Goals into their work. The Sub-Commission also had a responsibility to contribute. Specifically, it should, as requested by the Commission, consider the possibility of developing binding legal standards. The question

lay at the heart of the debate. It had long been recognized that the provision of international economic and technical assistance was a moral obligation. The question was whether it had become also a legal obligation, on the basis of the International Covenant on Economic, Social and Cultural Rights, article 2, paragraph 1, and the requirement under article 5 of the Covenant that States should not engage in any activity aimed at the destruction of any of the rights or freedoms recognized therein. That principle could be interpreted as requiring reform of State policies on international trade, access to markets, agricultural subsidies or even bank secrecy laws. Moreover, it was worth examining whether the target of 0.7 per cent of the gross national product of developed countries for official development assistance (ODA), set by General Assembly resolution 2626 (XXV), had, by general acceptance, acquired a binding character and therefore whether the majority of States were in violation of an obligation.

56. More could have been made of the primacy of national commitment. Many countries of varying degrees of wealth had been successful in achieving rapid development, despite receiving little multilateral or bilateral assistance. Advice from international financial institutions had often been beneficial, but some States had developed even more efficient strategies, as Malaysia had done in East Asia during the fiscal crisis triggered by unscrupulous money traders in the 1990s. Contrary to the comment in paragraph 24, therefore, it was possible, although difficult, to implement the right to development without international cooperation. Lastly, with reference to paragraphs 33 and 55, he endorsed the need for human rights indicators. Fortunately, considerable work had been done by the United Nations Development Programme (UNDP) on establishing human development indicators. The Human Development Report also provided figures on poverty. Ms. O'Connor should seek advice from UNDP and the World Bank.

57. Mr. DOS SANTOS said that the working paper provided a clarification of the concept of the right to development and would thus aid implementation. One aspect of the right to development, which was enshrined in several international instruments, was the recognition that it affected developed and developing nations alike. There had been several international agreements and declarations on narrowing the gap between rich and poor; and the G-8 countries had recently taken the commendable step of providing debt relief. It should be remembered, however, that poverty was often linked with conflict. Development could not take root until political stability, peace and democracy had been established. Developing countries should therefore strengthen the rule of law and good governance by introducing political and economic reforms that would attract domestic and foreign investment. Developed countries must match those efforts by increasing ODA and providing more in the way of debt relief and better trade terms. Lastly, the concept of international solidarity could be further explored in the context of the right to development.

58. Mr. BÍRÓ endorsed the views expressed in the working paper. Participation by local people was essential: projects conceived by bureaucrats with no knowledge of local conditions could be counterproductive. There were numerous examples in Eastern and Central Europe of projects which had had destructive long-term effects that Governments were still struggling to remedy. Secondly, more attention should be paid to vulnerable groups, as stated in paragraph 32. Future reports could consider the situation of minorities, as well, such as the Roma, of which there was a large population throughout Europe. Thirdly, he agreed that

human rights indicators needed closer analysis and that growth statistics could be misleading. Some countries claimed a 5 to 10 per cent growth in gross domestic product, but the low per capita incomes told a different story.

59. Mr. CHEN said that he, like Mr. Sattar, considered the right to development to be both a moral and a legal obligation. Secondly, international cooperation was essential for development. Developed countries should therefore make every effort to meet their ODA targets, especially in relation to the least developed countries, indigenous people and minorities. Lastly, the priorities of such assistance should be the development of infrastructure, education and health.

60. Mr. SALAMA said that, significantly, the mandate for Ms. O'Connor's work had been given not by the Sub-Commission itself but by the Member States, as represented by the Commission, which increasingly called on the Sub-Commission to carry out useful studies. Although States had expected a specific answer to a specific question, Ms. O'Connor had, rightly, focused on the conceptual aspects of the issue, by contrast with the more pragmatic approach adopted by the Working Group on the Right to Development. The work of the Working Group and Ms. O'Connor's working paper thus complemented each other. As for the possible options outlined by States - an international legal standard of a binding nature, guidelines on the implementation of the right to development and principles for development partnership - the three options were not mutually exclusive: different options would best suit different regions. Binding instruments existed already, in any case, in the form of either international treaties or multilateral or bilateral agreements, which related, even if not explicitly so, to the right to development.

61. Ms. RAKOTOARISOA endorsed the view expressed in paragraph 25 of the working paper: it was essential that projects should be planned in a way that encouraged participation by local communities. However, in view of the fact that growth statistics did not always reflect reality, she suggested that a future report should look at impact indicators that gave a more specific picture. The role of education in development should also be emphasized, since ignorance often led to such abuses as corruption.

62. Ms. KOUFA said that a future report should build on the interesting ideas expressed. It should consider whether legally binding instruments were required or whether existing procedures or mechanisms were adequate. It should also consider whether a consensus existed among development partners and, if it did, what the implications were for the content and legal nature of the right to development. She commended the suggestion that an ombudsman might be appointed. She also concurred with the statement in paragraph 47 that the notion of ownership should be broadened to include the people. Two other pertinent aspects of development that could usefully be discussed were development partnerships, with particular reference to the Monterrey Consensus and its aftermath, and the successes and weaknesses of existing development partnerships such as the New Partnership for Africa's Development.

63. Mr. Salama, Vice-Chairperson, took the Chair.

64. Ms. CHUNG said that, given the frequent tendency to regard the right to development as a right of States rather than individuals, a future report should stress that the human person was the essential subject of the development process, while the right to self-determination included

the rights of people to sovereignty over their wealth and natural resources. Such an emphasis would clarify the distinction between right-holders and duty-bearers in the context of the right to development. A future report should also underline the key obstacles to implementing the right to development in national and international agreements. Emphasis should also be laid on the prerequisite of international cooperation on peace and security for the implementation of the right to development. Lastly, a gender perspective should be included.

65. Ms. MBONU noted that the working paper brought out - particularly in paragraphs 56 and 64 - the correlation between the right to development and the need to eliminate corruption. Development was affected if there was no transparency or accountability.

66. Mr. CHERIF said that international solidarity was the most effective way of achieving the realization of the right to development. Such solidarity was a universal responsibility, involving States, international organizations and civil society.

67. Mr. BUTOYI (New Humanity) said that the essence of the principles for development partnership set out in paragraphs 42-51 was fraternity or solidarity, which amounted to more than equality and certainly more than mere assistance. Fraternity presupposed a real relationship. The right to development would be best realized in a spirit of reciprocity.

68. Ms. O'CONNOR said that she foresaw a reluctance in herself, in future work on the topic, to accept the accommodation of people's aspirations in existing frameworks. Too often, in her experience, violations of all rights occurred as a direct consequence of frameworks and agreements. Another factor was the failure by the leaders of developing countries to express their views; even if they did, their views were ignored or not respected. It was therefore essential to take account of political realities. Until the playing field was more level, her aim was to focus on individuals and on what could be built to ensure development, regardless of any formal framework. People in developing countries had waited too long for positive results from international agreements; and world peace and security depended on the readiness of the weak and dispossessed to go on waiting. Their patience was running out. The right to development was therefore a necessity. Lastly, she invited comments for her future work from members, NGOs and States.

69. Mr. BENGOA (Coordinator of the ad hoc group of experts) introduced the group's progress report on the implementation of existing human rights norms and standards in the context of the fight against extreme poverty (E/CN.4/Sub.2/2005/20 and Add.1).

70. Poverty was now on the agenda of every international meeting. There was a general consensus that the current levels of inequality could no longer be tolerated in a globalized world. However, Governments did not seem to have many solutions to suggest: often, they handed the responsibility for action over to religious or other charities. Speakers at the Social Forum meeting immediately prior to the Sub-Commission's session had pointed out that, at the current rate of progress, it would be very difficult to implement the Millennium Development Goals related to poverty on schedule. The Sub-Commission had advocated the adoption of a rights-based approach to the issue of poverty.

71. The progress report was a joint effort by the ad hoc group of experts. The group had worked closely with NGOs and had heard the views of poor people themselves, including people just released from prison and street children from Brazil. Contrary to some expectations, they had been able to participate fully in the debate, since it was relevant to their daily lives.

72. The group had agreed that it was time to stop discussing the theory of combating extreme poverty and to adopt a more political approach - a legal, rights-based approach to the issue of extreme poverty, embodied in an international declaration or other instrument. Doubtless many would disagree with that proposal, but the group was convinced that the Commission on Human Rights, or its successor body, should commit itself to the development of such a high-level instrument. Paragraphs 37 and 38 of the report proposed that certain areas where poverty and extreme poverty had become generalized should be specially designated and accorded priority attention by the international community.

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

74. Mr. DECAUX said that he was a member of the ad hoc group of experts, but had not been able to take part in the drafting of the progress report. It was important to emphasize that extreme poverty was a negation of all human rights. The report referred to the "bounden duty" of States and the international community to remedy extreme poverty (para. 21): however, that was a moral responsibility only, not a legal obligation.

75. He felt that it was too early to talk about drafting an international legal instrument. As he saw it, the task of the ad hoc group was to continue to gather all available information about the access to human rights enjoyed by excluded groups, as a contribution to the "coherent, forward-looking framework" of action to combat extreme poverty which was referred to in paragraph 44.

76. Ms. MOTOC, also a member of the ad hoc group of experts, emphasized the immense value of the group's discussions with people actually living in extreme poverty. She felt that the group's most important task was to make an inventory of rights and obligations arising from existing instruments and to draw up guidelines to improve their implementation, rather than to develop a completely new instrument. That was what the poorest people had said they wanted.

77. Mr. SALAMA said that, while he fully supported the need to address the issue of extreme poverty, it was a question of guaranteeing universal rights to a particularly vulnerable group, rather than one of establishing new rights. In other words, it was the way in which human rights standards were implemented, rather than their substance. It was a key role of the Sub-Commission to identify such gaps and suggest how they might be filled.

78. The members of the ad hoc group of experts did not seem to be in agreement about the next steps to be taken. In his own opinion, the Sub-Commission could only adopt a rights-based approach to the issue, not a sociological or moral one. It should consider how a particular human right - in the current case, the right to development - might be realized for a particular group - the extreme poor. The "social impact assessment" proposed in paragraph 54 of the report would be a useful tool in that task.

79. Ms. HAMPSON said that communities living in extreme poverty were already vulnerable and had less capacity to withstand further adverse events. There had been warnings of imminent famine in the Niger for many months, but no action had been taken until images of dead babies had begun to appear on the world's television screens. That was not the fault of the United Nations: it was the fault of States, which had not shown the political will to act, and of individuals - of everyone - who had not put pressure on them to do so. A relief operation had now begun in the Niger, but thousands of lives would still be lost, and the operation would cost far more than it need have done. A number of ministers of development had suggested the establishment of a humanitarian fund to enable the United Nations to respond more promptly to emergencies. The advocates of the proposed fund had said that it would be both more effective and more cost-effective: she now proposed that the Sub-Commission should support the proposal on the grounds that it would contribute to the enjoyment of human rights.

80. Mr. BENGOA said that, unfortunately, he had not had the opportunity to discuss the report fully with Mr. Decaux. It was true that there were already many human rights instruments, including the Universal Declaration of Human Rights and the two International Covenants, but it had, nevertheless, been thought necessary to draw up specific instruments relating to women, indigenous peoples and other special groups. Ms. Hampson had referred to the issue of responsibility, but there was no mechanism for assigning responsibility for infringements of human rights. The new humanitarian fund to which she had also referred would be a purely voluntary arrangement: there was no legal framework which would make it compulsory.

81. The issue was a complex one, and no consensus was likely to be achieved in the near future. He hoped that there was sufficient interest within the Sub-Commission for it to continue its work in that area.

The meeting rose at 1.05 p.m.