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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 5th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 28 July 2005, at 10 a.m.

Chairperson: Mr. KARTASHKIN

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

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)

1. Mr. BOSSUYT said that terrorist attacks such as those in London and Sharm al-Shaikh violated the most fundamental human right, namely the right to life and physical integrity. The international community must be united in its condemnation of fundamentalist ideologies preaching intolerance and hatred, which were at the origin of such acts. Greater vigilance was necessary, and the international community must do everything in its power to prosecute the perpetrators. The attack in Egypt had targeted tourism, an important source of economic development, and might consequently affect the economic and social rights of many Egyptians.

2. The situations in Iraq and the Middle East were often invoked as a motive for terrorist acts, but no cause could justify such atrocities. The new Palestinian leadership offered the possibility of a just and sustainable solution, and the evacuation of Israeli settlers from Gaza was a step in the right direction.

3. There were many sources of concern in Africa. The situation in Darfur required sustained attention and a more assertive attitude on the part of the United Nations. He welcomed the Security Council's referral of the matter to the International Criminal Court, which it was hoped would demonstrate its efficiency and impartiality to those who did not recognize the Court's competence.

4. The situation in Côte d'Ivoire also remained worrying, and proved that xenophobia could be a source of major tension leading to grave violations of human rights. In Burundi, parliamentary elections had finally been organized and the new President was to be elected the following month. Peace would never be achieved in Burundi so long as the rebels continued to receive assistance in neighbouring countries, particularly in the Democratic Republic of the Congo (DRC). The situation in east Congo was a matter of grave concern. Just recently, dozens of civilian women and children had been burned alive. The international community must intervene to stop the Hutu militias who for 10 years had killed, plundered and raped with impunity. They also threatened the security of Burundi and Rwanda. The slow transition in the DRC required the demobilization of armed people, the adoption of fundamental legal texts, and the organization of the first elections in 40 years.

5. The average standard of living in the DRC had decreased by 80 per cent in 25 years. The international community had turned a blind eye for too long to the disastrous consequences for economic and social rights of policies followed in the DRC and other African countries. That was why the Sub-Commission could not remain silent on the developments in Zimbabwe, where the speed of economic decline was shocking, and there were serious violations of human rights. Solidarity should be with the Zimbabwean people rather than their leader.

6. Although the Sub-Commission could no longer adopt country-specific resolutions, members had the obligation to express themselves individually on situations of concern, particularly when the Commission had not adopted the necessary resolutions, as was the case with Zimbabwe.

7. Ms. CHUNG said that the initiatives aimed at United Nations reform with an emphasis on "development, security and human rights for all" highlighted the pivotal role of agenda item 2.

8. She noted that, to date, only 100 countries had ratified the Convention against Transnational Organized Crime, and only 80 the related Protocols. She therefore fully endorsed the appeal by the Secretary-General that all States should ratify and implement them.

9. Certain countries had adopted a law-and-order approach to the campaign against trafficking in persons, which could deny women freedom of movement, rather than a human rights-based approach. The latter addressed the root causes of trafficking, while protecting the victims and bringing the perpetrators to justice. She welcomed the work of the Special Rapporteur on trafficking in persons, especially women and children, and hoped she would also address the critical issue of the demand side of trafficking, which should be referred to more explicitly in the proposed Plan of Action of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

10. She welcomed a number of positive developments, particularly the culmination of the peace process in the Sudan, the initiatives towards the proposed peace treaty between the Indonesian Government and GAM, the Free Aceh Movement, and attempts at reaching agreement on post-tsunami relief operations in Sri Lanka. However, the upsurge of street power by people challenging the crisis in democratic governance in Bolivia and the Philippines was worrying, as was the growing number of civilians killed in Iraq. Those situations deserved more rigorous consideration by the entire United Nations human rights system.

11. The spiral of violence in the southern provinces of Thailand was also a matter of concern, as some 800 people had died in the conflict since January 2004. The recent declaration of a state of emergency had further obstructed the reconciliation process. The systematic patterns of violations had been taken up by the special procedures of the Commission as well as by the eighty-fourth session of the Human Rights Committee, which had raised concerns related to the right to appeal under the new Emergency Act. Action to combat violence by non-State actors must be taken within a human rights framework. Moreover, the Thai Government had denied access to the Special Rapporteur on extrajudicial, summary or arbitrary executions to investigate the Tak Bai incident.

12. A number of issues raised previously remained unresolved, such as the situation of the 100,000 Bhutanese refugees, which had last been dealt with at the fifty-first session.

13. Mr. DECAUX said that the London and Sharm al-Shaikh bombings had coincided with what should have been positive events: the G-8 summit between Western and third world leaders to draw up a plan of action for African development, and the Israeli evacuation of the

Gaza strip, which seemed to offer a chance of relaunching the roadmap for peace. In Iraq, kidnappings, killings and summary executions were multiplying on the eve of the adoption of a constitution, which it was hoped would conform to United Nations human rights principles.

14. The fight against terrorism should mobilize the international community, but must not divert it from its long-term objectives. States must do everything possible to adopt a global convention against terrorism. Judicial cooperation must play a role in the respect of the guarantees of the rule of law. Delays in extraditions and the implementation of a European mandate were regrettable.

15. States, particularly democracies, must not sacrifice their values in the fight against terrorism. Open, vibrant and multicultural societies must not be transformed into besieged fortresses, and particular attention must be paid to combating racism, anti-Semitism and xenophobia. Principles of international human rights and humanitarian law, such as the absolute prohibition of torture and rules on the treatment of prisoners of war, must be respected. It was time to put a stop to the extralegal status of those detained at Guantánamo Bay.

16. Attempts must be made to understand the causes of terrorism. Priority must be given to resolving regional crises from Afghanistan to Iraq, which were focal points for grievances and the proliferation of violence, with the support of the United Nations. Similarly, it was also necessary to combat nuclear proliferation and bring regimes such as those in Iran and the Democratic People's Republic of Korea out of isolation.

17. Among a number of welcome advances in the area of international criminal justice was the recent sentencing by British judges of an Afghan war chief to 20 years in prison on the basis of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It was obviously important that criminal justice should also be administered in the country itself, and in that regard, the "disappeared at Beach port" case in Brazzaville was particularly interesting.

18. The reason why Western States were rarely referred to under agenda item 2 was that there were mechanisms for the collective guarantee of human rights in the framework of the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE). The European Court of Human Rights had handed down its first decisions concerning violations of human rights committed in Chechnya and Transdniestria, and the Office for Democratic Institutions and Human Rights of the OSCE had ensured free and honest elections in a number of member States.

19. There was a need for greater synergy between the United Nations and regional organizations. Three years previously, the OSCE had referred to the Commission violations committed in Turkmenistan. Resolutions had been adopted in 2003 and 2004, but not at the previous session, although the situation there had not changed. For example, the whereabouts of political prisoners tortured and convicted following a show trial, including two former Foreign Ministers, were not known. The only concession made by the regime was to submit its report to the Committee on the Elimination of Racial Discrimination, which would be an important test. Although the Committee would not be able to examine the overall situation, it would focus on the situation of the Uzbek and Russian-speaking minorities, which suffered discrimination.

20. Mr. SALAMA said that the key words for the new approach to agenda item 2 appeared to be "contextualize" and "extract". What had been contextualized in the debate had been the increase in terrorist acts all over the world, from which he extracted the thematic idea that the longer the international community was unable to reach agreement on a global multilateral convention against terrorism, the more violations of human rights would proliferate. Until a convention was adopted, there would also continue to be a contradiction between measures to combat terrorism and the respect of human rights. In failing to agree on a convention, the international community could be held partly responsible for the recurrence of terrorist acts.

21. Ms. HAMPSON thanked the Pakistan representatives for their follow-up to her statement at the previous session. Such responses were an important example of the possibilities of dialogue with member States, and she encouraged all States to follow that example.

22. She welcomed the amendment to Kuwait's electoral law in May 2005, under which women could for the first time vote and stand in parliamentary and local elections, and the appointment of a female cabinet minister.

23. A matter of grave concern was the execution of two children in Iran, in breach of its treaty obligations and a Sub-Commission resolution confirming that the imposition of the death penalty on those aged under 18 at the time when the offence was committed was contrary to customary international law.

24. She was concerned at reports of continued killings and forced disappearances of civilians and human rights defenders at the hands of paramilitaries in Colombia. In addition to violations by State agents, there had also been violations of international criminal and humanitarian law committed by the Revolutionary Armed Forces of Colombia (FARC). There were also concerns that, in negotiating a deal with right-wing paramilitaries, the authorities would accept an amnesty provision which included serious international crimes.

25. She welcomed the downgrading of the military emergency to a civil emergency in Indonesia, and the developments in Aceh, although cases of extrajudicial executions continued to be reported, and the situation in Irian Jaya and in Maluku was marked by serious human rights violations. The majority of human rights violations were not investigated, and the few that were did not usually result in prosecution. Proceedings were fundamentally flawed, as illustrated by the failure of any tribunal to ensure accountability for the situation in East Timor.

26. The situation in the neighbouring republics of Chechnya, Ingushetia, North Ossetia and Kabardino-Balkaria in the Russian Federation was worrying. In Chechnya, killings, abductions and forced disappearances of civilians and human rights defenders were reportedly systematic and widespread. The Deputy Prosecutor of Ingushetia had himself been abducted and had then disappeared in March 2004 while attempting to investigate the involvement of the federal security forces in abductions of Chechens and Ingushetians.

27. Regarding Togo, there had been violations of fundamental rights in the days preceding and following the presidential election of April 2005 by the security forces and the militias. Evidence suggested a significant number of dead and wounded, and thousands of people had

sought refuge in Ghana and Benin. The practice of torture was widespread in Egypt, and according to the Egyptian Supreme Council for Human Rights, the authorities had detained and tortured large numbers of people in north Sinai following the bombings the previous October.

28. In relation to the "war on terror", it was worrying that the secret transfer of people from one State to another without any legal proceedings continued, apparently with the use of torture, and the number of persons transferred from countries such as Pakistan whose whereabouts were unclear had increased. The States effecting such transfers without a mechanism for the enforcement of diplomatic assurances included the United States, Canada, the United Kingdom, the Netherlands, Austria and Germany. She would introduce a resolution designed to reduce such transfers in violation of human rights law, while ensuring that those suspected of serious crimes were brought to trial.

29. NGOs had also expressed concern with regard to the human rights situation in Iraq and Afghanistan. In both cases the Commission on Human Rights had terminated the mandates of country-specific special procedures without putting in place an alternative effective monitoring mechanism. She would propose a draft resolution under agenda item 2 requesting the Commission to consider making the termination of such mandates conditional upon the issuing of standing invitations to special procedures. A limited number of States had extended such invitations, and a number had refused to grant access to special procedures, notably the United States. She proposed that for the following session the Secretariat should provide a list of States being considered under the Commission's agenda item 9 which had denied access to the special procedures, those which had issued a standing invitation, and a list of members of the Commission so as to identify States which had not issued a standing invitation.

30. Mr. PINHEIRO said that that, like Ms. Hampson, he wanted to stimulate the Sub-Commission's thinking about how to use agenda item 2 more effectively. He was about to conclude his study under item 4 on housing and property restitution and had been prompted to reflect about the country situations which he had studied for that report in terms of the other human rights which were often at stake when refugees and internally displaced persons faced housing and property restitution problems. In other words, he had tried to identify gaps and patterns.

31. Problems of housing and property restitution had a unique bearing on the promotion and protection of other human rights in that their solution was often a very long process for the victims. During that long waiting period people who had been traumatized by such events as armed conflict needed counselling and assistance on a wide variety of other problems; contacts with such individuals over several months or years offered an opportunity to help them, for example by providing them with promotional and educational materials and briefings by human rights officers on their other human rights problems.

32. In the course of his study he had found many human rights problems. Many persons awaiting property restitution knew someone who had been sexually assaulted or enslaved as a result of an armed conflict. Nearly all of them had suffered intolerance of some kind and were unfamiliar with opportunities for basic human rights education or with the materials available in the United Nations human rights system. Nearly all had suffered severe disruption of their economic, social and cultural life and had lost the cultural history of their communities and peoples. In the case of the poor and the extremely poor, restitution of their housing and payment

of compensation for loss of property was not a sufficient human rights solution: they needed assistance and encouragement to involve themselves in the development programmes in their communities, and development activities had to be tailored to their situations. The need for physical security and the fear of further suffering permeated the lives of all the victims and would often dictate the timing of their willingness to return to their original homes.

33. He would be interested to have the views of the other members of the Sub-Commission on the approach which he had outlined. Could they incorporate those dimensions of item 2 in their studies and use their research experience to look for such gaps, patterns or synergies? He strongly favoured the retention of item 2 on the agenda and of allocation of time for the Sub-Commission and NGOs to reflect on particular country situations at the beginning of each session so that they could ground themselves in the reality of present-day human rights violations.

34. Mr. RIVKIN said that the members whom he had consulted concerning his suggestion that he should produce a working paper on the problem of terrorism had been generally supportive of the idea. He would like to build on the work done by Ms. Koufa but would focus more on terrorism itself than on counter-terrorism.

35. Mr. ALFONSO MARTÍNEZ said he would welcome confirmation that such a working paper would be undertaken in accordance with a decision taken by the Sub-Commission under item 2.

36. Mr. RIVKIN said that it should be under item 2, for that would demonstrate the continuing vigour and relevance of the item.

37. Mr. AGAB (Sudan), speaking in exercise of the right of reply, said that his delegation was grateful to the NGO Minnesota Advocates for Human Rights for producing statistics on violations of human rights throughout the world. Information presenting with such objectivity made a good contribution to the Sub-Commission's work. However, the NGO had been right to say that its approach was not the best or only way of proceeding. There was in fact a need to assess a number of criteria before deciding which countries the Sub-Commission should discuss. The accuracy of the NGO and media information must be confirmed, a point made by the representative of Nigeria at a previous meeting. The information should be updated to include any positive developments in given situations. It must be established that the information was objective and free of political bias. Account must be taken of the acts and the omissions of other States to the extent that they affected human rights violations elsewhere. And attention should be given to the negative effects of violations of rights other than that of civil and political ones.

38. Mr. FARHANE (Morocco), speaking in exercise of the right of reply, said that three NGOs had regrettably made statements containing erroneous, tendentious and partial information about the situation in Morocco's southern provinces and had deliberately omitted to mention the mass violations of human rights and fundamental freedoms of the people who had sought refuge in the camps, as detailed in the latest report of the NGO US Committee for Refugees.

39. His delegation wished in particular to correct some of the statements made about the incidents in El Aain. They had been provoked by an administrative decision to transfer a prisoner convicted under ordinary law and serving a sentence of 12 years for drug trafficking and

illegal immigration from one civilian prison to another. That decision had been justified under the regulations in force which, as in any other country, permitted the prisons administration to move prisoners around in the light of the length of their sentences and in an effort to reduce overcrowding. That simple administrative measure had been exploited by the enemies of Morocco's territorial integrity and sovereignty to incite acts of provocation, destruction of property, and vandalism. The use against them of burning gas canisters had prompted the forces of law and order to intervene on 25 May; they had arrested 33 persons, 16 of whom had later been released. They had acted within the law to restore order and safeguard personal security and property.

40. Like any other State, Morocco could not accept the burning of its symbols of sovereignty in public places; like any other democratic State, it discharged its duties and obligations to all its citizens. Morocco was determined to continue its efforts, under the enlightened leadership of His Majesty King Mohammed VI, to complete the establishment of a democratic and forward-looking society based on the protection of human rights and fundamental freedoms.

41. Ms. FERNANDO (Sri Lanka), speaking in exercise of the right of reply, said that her delegation wished to respond to the comments made by the representative of India on tsunami-related assistance in Sri Lanka. It had been felt that a joint mechanism for managing such assistance would help to create an environment of enhanced mutual trust among the parties in the areas of the country affected by the conflict and would enhance the prospects for peace. The corresponding memorandum of understanding had been negotiated between the two peace secretariats with the assistance of Norway and had been officially signed on 24 June.

42. Following that event, 39 petitioners had lodged an appeal with the Supreme Court of Sri Lanka, which on 15 July had issued a restraining order against some parts of the memorandum which conflicted with the Constitution, stating that further arguments could be heard on 12 September. It had held that the memorandum was legal and that the signatories had had the authority to sign it. It was her Government's view that the memorandum could be put into effect in all its aspects other than the ones mentioned in the Supreme Court's order. It had already appointed its nominee to the High-level Committee and proposed to make the remainder of its nominations and to seek the names of the nominees of the Liberation Tigers of Tamil Eelam (LTTE) and the Muslim party.

43. Ms. PRIETO (Colombia), speaking in exercise of the right of reply, said that the Justice and Peace Act did not imply an amnesty such as the amnesties previously granted to other illegal armed groups. It was instead intended to strike a balance between punishment and restoration of the social fabric, reconciliation and exercise of victims' rights. It must be made absolutely clear that the Act could be applied to any illegal armed group.

44. Colombia hoped that the international community would urge the guerrilla groups to accept the Act and make a contribution to the attainment of national reconciliation by demobilizing, releasing the children which they had forcibly recruited and the persons whom they had kidnapped, handing over their weapons, and making reparations to their victims. The benefit of the provisions of the Act relating to humanitarian agreements was also available to all the illegal armed groups. The rights of the victims would be guaranteed, and the courts would order compensation even in cases in which no individual victims had been identified. Institutions were being created to deal with such matters as the restitution of property.

45. The effective application of the Act would make it possible to heal the wounds of the past, prevent violence in the future, disband the illegal armed groups, make reparations to the victims, and restore the monopoly of the use of force to the State. The number of victims of the violence continued to decline, a fact confirmed by OHCHR, as a result of the policy of democratic security. It must be remembered that Colombia's democratic system had been seriously affected by the activities of the illegal armed groups.

ORGANIZATION OF WORK (continued)

Reform of the United Nations system

46. The CHAIRPERSON recalled that some members had requested an opportunity to comment on the future of the Sub-Commission in the light of the reform of the United Nations system. He invited them to proceed to offer their comments.

47. Mr. BOSSUYT said it was surprising that less than five years after the Commission on Human Rights had concluded a lengthy reform of the system for the protection of human rights the question of reform was again on the agenda. He almost had the impression that the United Nations was suffering from an acute attack of "reformitis". He therefore approached the subject with a degree of mistrust: experience had shown that reform did not necessarily amount to progress. It was in fact possible to speak of progress only in terms of the extent to which the capacity of the United Nations human rights bodies to influence the conduct of States was strengthened. The reforms to the Sub-Commission in 2000 could certainly not be regarded as progress: the prohibition of resolutions on the human rights situation in specific countries, the reduction of the duration of the session and the discontinuation of statements by the Sub-Commission in plenary meetings under Economic and Social Council resolution 1503 (XLVIII) were only a few examples of reforms which had made the Sub-Commission not more but less effective.

48. Five years previously it had been fashionable to criticize the Sub-Commission; now it was the Commission's turn, and some of the critics would like to sweep away the Sub-Commission with the Commission. None of those criticisms came from quarters having a long experience of the operation of the bodies in question. The Commission was criticized for having lost all credibility owing to the excessive politicization of its work. There had indeed been many cases in which the Commission had been slow to speak out when there was no doubt of the truth of alleged violations. Such failings must of course be condemned, and the same standards must be applied to all States. But a body consisting of 53 representatives of Governments could not be criticized for being a political body. The Commission was not a human rights court or Amnesty International, nor was it a college of eminent experts on human rights. Its purpose was precisely to be a political body which spoke on behalf of the international community of States. The Commission's decisions had a particular weight because they enjoyed the political support of the Governments which had voted for them. There was a simple solution to the problem of politicization of the Commission: its powers could be transferred to the Sub-Commission, which was certainly less politicized.

49. The new reform initiative had originated in the High-Level Panel on Threats, Challenges and Change, which had made special reference to security issues. Few of that Panel's members had any great expertise in human rights. One of the proposals was to make the membership of

the Commission universal, but it was already very difficult for many of its 53 member delegations to follow all its work closely. How would the entire membership of the United Nations be able to play a serious part in that work?

50. The Secretary-General's proposals were much better, in particular the proposal to elevate the Commission to the level of a Council. That proposal would be meaningful only if the new body became a principal organ of the United Nations by replacing the Trusteeship Council. That would require amendment of the Charter, for otherwise conflicts might arise between the Economic and Social Council and the Human Rights Council. It would also be necessary to determine the place of the Commission on the Status of Women in such a structure.

51. A more important proposal was to make the Human Rights Council into a standing body, something which he had already argued for when chairing the Commission in 1989. Since then the Commission's work had expanded even further; the main problem was that an enormous number of sometimes extremely important documents were submitted to the Commission but did not receive due attention. One session was far from sufficient to do justice to the mass of information contained in the documents. As a result, at every session the Commission missed many opportunities, sometimes with serious consequences. Who had read the annex to the report of the Special Rapporteur on extrajudicial, arbitrary or summary executions detailing acts of genocide in Rwanda published just a few weeks before those acts had begun?

52. More meeting time was not necessarily the answer. Instead, the agenda items could be grouped in six clusters, to which the Commission would devote six times 10 meetings at a rate of one morning meeting per working day for two weeks every month. That would provide infinitely more time for serious work while maintaining the annual number of meetings at its existing level. And such a change would not require amendment of the Charter. It would of course disrupt certain set habits: the diplomatic personnel based in Geneva would play an even more important role than at present, so that NGOs might see certain disadvantages in such an arrangement. However, not all NGOs would have the same degree of interest in all of the clusters, and they would still have the annual session of the Sub-Commission.

53. He had deliberately not said much about the Sub-Commission. The new proposals did not have much to say on that subject either. It would be a serious mistake to think that the principal human rights organ of the United Nations could do without a subsidiary body composed of independent experts, for human rights was the very area in which a contribution by experts other than governmental experts was needed. A membership of 26 experts seemed a good compromise between effective functioning and the exclusion of small States from the possibility of having one of their national experts elected. And the election procedure must be maintained, for any other arrangement would be less democratic and transparent. The only change which he would like to see would be the deletion of the "Sub" from the present name.

54. Mr. YOKOTA said that he had been following closely the discussions on the reform of the United Nations in general and human rights mechanisms in particular. The discussion had culminated in the issue of the revised draft outcome document of the high-level plenary meeting of the General Assembly of September 2005 submitted by the President of the General Assembly (A/59/HLPM/CRP.1/Rev.1). A significant aspect of the document was the proposal that a Human Rights Council should be established to replace the Commission on Human Rights. He welcomed the proposal, which meant that the profile of human rights would be enhanced. He

also welcomed the fact that it was to be a standing body. In the past, human rights bodies had often been unable to intervene when sudden human rights crises arose, because any decision had had to await the next session of the Commission, the Sub-Commission or a working group. A standing council could respond more effectively.

55. It would be natural to assume that the proposed council would be on a par with the Security Council, the Economic and Social Council or the Trusteeship Council (which, incidentally, the document virtually pronounced to be defunct), but in fact, under Article 7 of the Charter of the United Nations, the Human Rights Council could not be a principal organ of the United Nations but would be a subsidiary organ of the General Assembly, in the same way as such major agencies as the United Nations Development Programme, the United Nations Children's Fund or the United Nations Conference on Trade and Development. Nonetheless, the document held out the possibility that, within five years, the proposed Council could be transformed into a principal organ. Such a course of action would, of course, be complicated, since it would entail amending the Charter, whereas the creation of a subsidiary body required only a two-thirds majority vote by the General Assembly.

56. Some NGOs and other parties had expressed the fear that the practices and procedures of the Commission and Sub-Commission would be lost; but the document specifically stated that the Council would assume the functions of the Commission. That assurance of continuity was most welcome. Another welcome feature was the fact that the Council would report direct to the General Assembly, instead of the current procedure whereby the Commission had access to the General Assembly only through the Economic and Social Council. It was also good that the Council would have the power to evaluate the fulfilment by all States of all their human rights obligations and to address any situations related to the promotion and protection of human rights and make recommendations thereon. It was noteworthy that there had never been direct communication between the human rights mechanisms and the International Monetary Fund and the World Bank, even though they were United Nations bodies. Under the proposed reforms, the Council would be entitled to make direct policy recommendations to those bodies.

57. With regard to the proposed size of membership of 30 to 50, with each member serving for a period of three years, he considered that the current size of the Commission was more representative and effective. It was not, however, clear from the document whether a member might be re-elected. He would be in favour of such a procedure. He also supported the principle of equitable geographical distribution, although he believed that the regional structure should be reorganized. Some regions were currently underrepresented. There should be a new arrangement reflecting more accurately the number of States and the size of populations in each region.

58. He welcomed the proposal that the contribution of Member States to the promotion and protection of human rights should be taken into account when elections to the Council took place. As for the proposal that the arrangements made by the Economic and Social Council for consultations with NGOs under Article 71 of the Charter should apply to the Council, he believed that the Council should enter into a consultation relationship with any appropriate NGO independently of the Economic and Social Council because, under Article 71, only the latter was entitled to grant such consultative status.

59. He was puzzled that the document made no reference to the proposal by the Secretary-General's High-level Panel on Threats, Challenges and Change (from which the idea of establishing the Human Rights Council had originally come) that a committee of 15 experts should be set up. Whatever the shortcomings of the Sub-Commission, no one could deny the contribution made by a committee of independent and competent experts to the promotion and protection of human rights. It would be a pity if the proposed Council operated only at intergovernmental level and he hoped that the General Assembly would ultimately create a body of experts akin to the Sub-Commission which would preserve procedures that had stood the test of time.

60. The CHAIRPERSON said that the discussion had already thrown up a number of interesting ideas. He suggested that members should distribute copies of their statements, which could form the basis for a summary that could be distributed to the Expanded Bureau of the Commission and Member States. The Sub-Commission could thus exert real influence on the reform of the United Nations.

61. Mr. CHUMAREV (Russian Federation) said that the proposals contained in document A/59/HLPM/CRP.1/Rev.1 and the OHCHR Plan of Action merited the closest attention and also further discussion, since many issues remained unresolved. With regard to the ideological basis of the reform, the proposal to make the Human Rights Council a subsidiary body of the General Assembly was crucial, since it would avoid the need to introduce amendments to the Charter. It was also important to raise the level of the investigative and research activities of a reformed human rights system. His delegation welcomed the fact that, under the various proposals, OHCHR could continue its work side by side with the proposed Human Rights Council. The implementation of the Plan of Action would also improve the potential for cooperation between OHCHR, the Council and States by involving States more closely in the human rights process.

62. It was essential that the Sub-Commission's successor body should take on all the basic features of the Sub-Commission's mandate, without automatically following its agenda in every respect. It would doubtless develop its own agenda in time and adopt its own rules of procedure. Care should be taken, however, to avoid the mistakes and misunderstandings that had occurred within the Sub-Commission. Thus reform would probably be required in the election procedure for members of the new body, including a review of the criteria for membership, in order to improve the quality of the experts' work.

63. One technical detail that would have to be resolved was that States would need to set out guidelines for the transitional period. In particular, it would be important to settle the question of the future status of communications under the 1503 procedure and to develop it into a special procedure of the Council. Lastly, a plan should be agreed on the possibility of retaining or adapting the Sub-Commission with a view to creating an expert body focusing on research activities, which would answer to the Council. At the same time, it was essential to retain and build on the Sub-Commission's achievements.

64. Ms. WARZAZI said that, when the question of discussing the reforms had first been mooted, she had urged that the available time should be allotted to the experts. There would not be sufficient time if Governments were allowed to contribute.

65. Mr. SALAMA extended his condolences to the Algerian Government for the murder of two Algerian diplomats in Iraq. As for the United Nations reform proposals, he believed that only minor adjustments to the human rights machinery were needed. The Sub-Commission played an important role. It should not fall victim to the urge to reform the whole of the United Nations in one fell swoop. Any change should be gradual. Thought should be given to the essential function of the Sub-Commission. The name it bore was immaterial, but certain features were essential. Above all, any question of appointing experts was unacceptable. Some changes should undoubtedly be made. Further thought should be given to the criteria for the selection of experts; but in that regard the experts themselves were best placed to give advice. Proposals for improving the Sub-Commission's research strategy were well set out in document E/CN.4/Sub.2/2005/5. It was, however, important that the Sub-Commission should continue its thematic work as well as looking at individual situations.

66. Members' views should be amalgamated in a single paper, which would form part of the reform process. NGOs, too, should put their proposals in writing, since there would be insufficient time to hear their points of view in plenary. Some response should be made to document A/59/HLPM/CRP.1/Rev.1, which contained not a single reference to the Sub-Commission and was indicative of a trend towards reform for reform's sake.

67. Mr. ALFONSO MARTÍNEZ said that the current debate was the Sub-Commission's first opportunity to speak on the proposed reforms, and priority should be given to members to express their views. Members should be in no doubt that changes in one area would have an impact in other areas, too. Yet the specific proposals had been sprung on the Sub-Commission with a view to a decision within the next three months. He warned that amendments to the Charter would be necessary, in accordance with Articles 108 and 109. It was true that there had been a deterioration in the work of the Commission, which had lacked the courage to examine human rights violations in developed countries, where abuses were rampant.

68. The proposed Human Rights Council, or any other new human rights mechanism, would be a political body, and would have to avoid the faults for which the Commission had been criticized. How could it avoid the accusation that it chose to consider situations in certain countries, but ignored similar situations in others? How would it ensure that it applied the same standards to all countries? Would it be able to prevent the use of armed force by certain countries without the approval of the international community, on the pretext that they were acting to protect human rights? Only the Security Council could approve the use of force. He was concerned that Chapter VII of the Charter of the United Nations might be cited in justification of unilateral action, as implied in paragraph 113 of document A/59/HLPM/CRP.1/Rev.1.

69. Paragraph 131 of the same document gave further details of the proposed Human Rights Council, which gave him some cause for concern. Subparagraph (a) (iii) called for "effective coordination and the mainstreaming of human rights within the United Nations system". What was meant by "mainstreaming"? Perhaps it meant the creation of a single focal point within the United Nations, which was surely not appropriate, given the enormous diversity of countries and situations. Subparagraph (a) (iv) referred to evaluating "the fulfilment by all States of all their human rights obligations": that sounded as though the new human rights body might become a political "court", in which Member States would judge the conduct of their fellows.

70. Subparagraph (b) proposed that the new Human Rights Council should have 30-50 members - considerably fewer than the existing Commission on Human Rights. A smaller body was bound to be less democratic and less representative.

71. Finally, subparagraph (c) stated that members of the new Council would be evaluated during their term of membership to ensure that they abided by human rights standards. In other words, the new body would be a court which would judge its own members.

72. He was not sure how useful the current discussion would ultimately prove to be, but the members of the Sub-Commission must make their views clear, and they would need more time to do so.

73. Mr. DECAUX said that any new human rights body would need input from independent experts. An expert body with around 15 members had been proposed: however, he felt that continuity must be maintained, and the Sub-Commission in its current form, with its 26 members from both large and small countries, was the right size to work efficiently and achieve consensus, but still succeeded in representing a wide range of views. Experts must be independent, competent and impartial: they must also, as other members had pointed out, actually be available to carry out their work. The present Sub-Commission acted as a link between NGOs, United Nations institutions (OHCHR in the present case) and the treaty-monitoring bodies.

74. He felt that the Sub-Commission was uniquely qualified to carry out certain tasks. It could watch out for systematic violations of human rights and identify thematic gaps in the current regime of protection. It could undertake action-oriented research designed to develop further the body of international human rights law - much as the International Law Commission did for other areas of law. It could act as a "laboratory" to test new ideas.

75. He also felt that the Sub-Commission's Working Group on Communications had a valuable role to play. The Working Group's activities had to remain confidential, and it was therefore difficult for it to justify its existence. However, he could say the following. Some of the cases dealt with under the procedure for dealing with complaints from individuals under the 1503 procedure would otherwise not be considered at all. The Working Group was appointed by the Sub-Commission and was geographically representative. It maintained a highly professional legal dialogue with Member States and was not politicized. However, it worked slowly, since it met only once a year: that might be remedied by cutting out the stage of referring cases to the Working Group on Situations of the Commission, which brought in an added political dimension. The Working Group on Communications should perhaps report back to the Sub-Commission, in a closed meeting in order to preserve the confidentiality of its work.

76. Mr. ALFREDSSON said that the Sub-Commission should put its own house in order before suggesting reforms to any other part of the system. It needed to improve its selection process, and perhaps limit the total length of time a member could serve, as was done with the special rapporteurs. The Sub-Commission should use its time more efficiently: the working group on transnational corporations had run out of matters to discuss the day before, yet it still had a further meeting scheduled.

77. He felt that the Sub-Commission should heed the Commission's expressed wish for it to act as a think tank, with the main emphasis being placed on the production of studies and reports.

The working papers by Mr. Decaux (E/CN.4/Sub.2/2005/5) and Ms. Hampson (E/CN.4/Sub.2/2005/4) provided valuable ideas. Reports and studies should focus on the information which the human rights system and the United Nations as a whole really needed, rather than on members' own personal areas of interest.

78. He believed - controversially, he knew - that the Sub-Commission should remove item 2 from its agenda. Many working groups and monitoring procedures now existed to keep track of human rights violations. The item should be replaced by a general debate, in which NGOs, Member States and intergovernmental bodies could still make their views known, and which would provide the Sub-Commission with material for its role as a think tank.

79. He likewise felt that the Working Group on Communications should be abolished. It did not even report to its parent body, the Sub-Commission, and he had been told nothing about it officially, except for the information which Mr. Decaux had just given. Cases could continue to be examined under the 1503 procedure, for instance by a working group which reported to the Sub-Commission in the usual manner, or a working group of the Commission, although the latter would need to be made up of independent experts rather than representatives of Member States.

80. Mr. CHEN said that the working methods of the United Nations human rights system required radical reform. The Charter of the United Nations (Chapter I, Article 1 (3)) called for respect for human rights and fundamental freedoms, but that had not been achieved over the last 60 years: instead, human rights had become an arena for political and ideological conflict. Some States were seen as constant offenders, and others as invariable defenders of human rights.

81. The most important task of the reforms was to return to the principles enshrined in the Charter. To that end, it was essential to identify the main human rights problems. In his own view, the most important issues were situations arising from aggression, occupation and the aftermath of colonialism; regional, national and ethnic conflicts; international terrorism; inequities in levels of development, including poverty, disease, HIV/AIDS, environmental damage and natural disasters; discrimination on the grounds of race, religion, gender or language and prejudice against immigrants; corruption, which existed everywhere, even within the United Nations itself; and the lack of respect for human rights and humanitarian law. No State could honestly say that its human rights situation was perfect. No reforms would be effective unless every State was prepared to address its own problems first.

82. The working methods of any new human rights body must be different from those of the Commission. It must work to promote international cooperation and resolve human rights problems. It must be fully representative from a geographical, linguistic, religious and cultural point of view: that could not be achieved with a membership smaller than that of the existing Commission on Human Rights.

83. Finally, the new body must have a subsidiary body to act as a think tank, as the Sub-Commission did at present. The working methods of such a think tank were open to discussion.

84. Ms. HAMPSON said that the Sub-Commission should concentrate on the impact which the proposed reforms would have on it, as a group of independent experts subordinate to the Commission. It was essential to safeguard the current strengths of the system.

85. If human rights were to be "mainstreamed", or given a higher profile in the United Nations system, the various roles involved must be defined more clearly. She could identify three main roles for the human rights system. The first was an executive role, which involved proposing policy and implementing rules and guidelines. In the "OHCHR Plan of action: protection and empowerment" (A/59/2005/Add.3), emphasis was placed on the Office's increasing participation in operational activities and its growing presence in the field which, in her view, would preclude it from also carrying out judicial, legislative or monitoring functions.

86. The second function of the United Nations human rights system was a judicial or quasi-judicial one. The judicial function was clearly fulfilled by the treaty-monitoring bodies, which were authorized by States which had ratified a human rights instrument to raise issues and reach conclusions connected with that instrument. The special procedures of the Commission fulfilled a quasi-judicial role - more like a prosecutor or police officer than a judge. The review mechanism proposed by the high-level plenary meeting (A/59/HLPM/CRP.1/Rev.1, para. 131, subpara. (c)) would also come into the category of a quasi-judicial review, since the issue in question would be a State's obligations as a Member of the Organization, rather than its obligations under international law. The review mechanism would, therefore, not be a "court", but an internal disciplinary body.

87. The third function was a legislative one, involving the generation of ideas for new rules and guidelines and a thorough examination of their implications. It would have two stages: the identification and preliminary examination of new ideas, and the political negotiation which would be required to produce a specific proposal with wide-ranging political support. The latter role was currently played by the Commission, and would be taken over by the proposed Human Rights Council. However, neither the Commission or Council, nor OHCHR, nor the special procedures mechanisms, nor the treaty-monitoring bodies, could take on the first role. That was a task for a body which was in touch with the situation in the field by virtue of its contacts with civil society institutions, including NGOs and national organizations. It must be a group of independent experts from a wide range of professional and intellectual backgrounds, with an open-ended mandate. A group of 15 experts would be too small: the Sub-Commission, with 26 experts, was about the right size.

88. Rules, principles, guidelines and standards should not be adopted unless they had been discussed by an expert body first. The Sub-Commission needed to improve the way it discharged that function. It had begun to do so, using the principles outlined in Mr. Decaux' paper (E/CN.4/Sub.2/2005/5), but she hoped that it would adopt practical guidelines at the current session.

89. She had proved, she hoped, that there was a need for an expert body like the Sub-Commission: it was now up to the Sub-Commission to show that it could reform its working methods in order to fulfil that role more effectively, although the discussion so far had not been focused enough to achieve that goal.

The meeting rose at 1. p.m.