



**Quaker United Nations Office**

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FRIENDS WORLD COMMITTEE FOR CONSULTATION (QUAKERS)

# **SNAKES AND LADDERS**

## **Report on the 58<sup>th</sup> Session of the United Nations Commission on Human Rights**

**Geneva, 18 March-26 April 2002**

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MAY 2002

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The Quaker United Nations Office, located in Geneva and New York, represents Friends World Committee for Consultation (Quakers), an international non-governmental organisation with consultative status at the UN. QUNO works to promote the peace and justice concerns of Friends (Quakers) from around the world at the United Nations and other global institutions. It is supported by the American Friends Service Committee, Britain Yearly Meeting, the worldwide community of Friends, other groups and individuals.

# Snakes and Ladders

## Report on 58th Session of the UN Commission on Human Rights

(18 March-26 April 2002)

### Background:

The UN Commission on Human Rights is the UN's main human rights body. The Commission is entitled to address any human rights issue, whether thematic or by country. It meets for 6 weeks every year in regular session, and comprises 53 Governments, elected for 3 year terms, of which one-third is elected each year. All other governments may attend as observers, and most do, but only Commission members may vote or call for a vote on resolutions. In addition, non-governmental organisations (NGOs) in Consultative Status with the UN Economic and Social Council may also attend, submit written statements and (normally) make oral statements. Amongst the latter is Friends World Committee for Consultation (Quakers), the international NGO which the Quaker UN Office in Geneva and New York represents. The membership of this year's Commission was historic as, for the first time ever, the USA had failed to secure a place - the only permanent member of the Security Council to be absent - but it will return next year.<sup>1</sup>

### Human Rights and Counter-Terrorism:<sup>2</sup>

*Commission on Human Rights or Commission to Protect Governments?* The demand for freedom of Governments to act in any way they think fit in the interests of so-called "State security" is not new. What is new - since 11 September 2001 - is the creation of a Counter-Terrorism Committee (CTC) of the UN Security Council and adoption of resolutions requiring States to take measures to combat terrorism. The CTC, composed of representatives of the States on the Security Council, has the power to appoint advisers for its work but has declined to appoint a human rights adviser. The actions of the Security Council have not only created direct obligations on States (mandatory under Chapter VII of the UN Charter), but have also created a climate of support for State actions to counter, or in the name of countering, terrorism. One problem is that "terrorism" remains without an agreed definition.

Kofi Annan, UN Secretary-General, reminded the Commission that "we cannot achieve security by sacrificing human rights. ...Vigilance is essential - but in exercising it, let us not lose sight of such fundamental principles as the presumption of innocence until guilt is proved. Nor must we forget that even the guilty retain certain basic rights. ...The Commission on Human Rights itself has a vital role to play in devising and overseeing such mechanisms. And in the struggle against terrorism, its role must be complementary

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<sup>1</sup> Members of the UN Commission on Human Rights 2002: Algeria, Argentina, Armenia, Austria, Bahrain, Belgium, Brazil, Burundi, Cameroon, Canada, Chile, China, Costa Rica, Croatia, Cuba, Czech Republic, Democratic Republic of Congo, Ecuador, France, Germany, Guatemala, India, Indonesia, Italy, Japan, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Nigeria, Pakistan, Peru, Poland, Portugal, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Sierra Leone, South Africa, Spain, Sudan, Swaziland, Sweden, Syrian Arab Republic, Thailand, Togo, Uganda, UK, Uruguay, Venezuela, Viet Nam and Zambia. Chair: Poland; Vice-Chairs: Germany, South Africa, Syrian Arab Republic; Rapporteur: Brazil.

<sup>2</sup> This is not intended to be a comprehensive report of the Commission but to identify significant trends and new developments, as well as to focus on the priority issues of our organisation.

to that of the Security Council. Of course, the Council and its Counter-Terrorism Committee must themselves be sensitive to human rights as they pursue their vital work. But while the Council has primary responsibility for the maintenance of international peace and security, this Commission has a particular responsibility to promote the international implementation of human rights. Therefore it must make every effort to protect those threatened by violations of human rights, whether these violations result directly from terrorism or are committed in the name of counter-terrorism."<sup>3</sup>

Mary Robinson, UN High Commissioner for Human Rights, challenged the Commission on Human Rights to provide the human rights protection framework and procedure as the counterpart to the security/counter-terrorism activities of the CTC. Another sign of the times was the first ever address to the Commission by the President of the International Committee of the Red Cross, reminding all States of their obligations under international humanitarian law, and stating that it was not new law which was needed, but the actual application of the existing standards. Many governments in their statements also stressed the importance of the international human rights standards and procedures.

*Toll for the Brave:* However, these fine words were not translated into action. Mexico took the brave decision to put governments to the test, and tabled a resolution on "Protection of Human Rights in Countering Terrorism" calling on the High Commissioner for Human Rights to analyse the effects of counter-terrorism measures on human rights, and to provide advice and assistance to States and UN bodies in how to maintain the protection of human rights and fundamental freedoms whilst countering terrorism. This seemingly innocuous text (L.110)<sup>4</sup> created such fear and animosity (in particular on the part of the USA) that it had to be withdrawn: a humiliating climbdown for the EU, all of whom, including France and the UK, had co-sponsored it. By contrast the regular Algerian resolution on human rights and terrorism was adopted (2002/35; 32-0-21).<sup>5</sup> Many object to this resolution because it refers to "gross human rights violations perpetrated by terrorist groups", whereas such acts are criminal, and only where committed or condoned by a State do they become human rights violations, thus the text perverts the conceptual framework of international human rights law and equates terrorist groups with States themselves. The Russian Federation tabled a new resolution (2002/37; 34-0-19) at this session on "integrity of the judicial system", reminding States of their existing obligations on this subject which are applicable at all times, and that tribunals should not be created outside the regular judicial process. The fragility of the protection of fundamental judicial and due process guarantees was demonstrated by the fact that some States could take exception even to this and see it necessary to call a vote on it, but Canada and the UK did.

### **Countries:**

The "war against terrorism" was not the only feature of this year's Commission. The dire, and rapidly deteriorating situation in the Israeli Occupied Palestinian Territories, the situation in Zimbabwe, and the continuing war in Chechnya, were others. At the same

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<sup>3</sup> Statement of the UN Secretary-General to the UN Commission on Human Rights, 12 April 2002 (emphases in original).

<sup>4</sup> Documents with an "L" reference number indicate that they remained drafts only; adopted resolutions are referred to by year and number, eg 2002/1.

<sup>5</sup> The votes on resolutions are given in the order: for-against-abstentions. If no such reference appears, the resolution was adopted without a vote.

time, the improved prospects for a settlement of the long-standing division of Cyprus and the ceasefire in Sri Lanka were amongst the positive aspects. Completely overlooked were the increasingly violent situations in Nepal and Madagascar. How the Commission responded to many of the "country" situations it did consider can hardly be described as impressive.

The EU (pushed by the UK) tabled a resolution (L.23) on *Zimbabwe* but this was warded off by the African Group moving and winning a "no action motion" (26-24-3) - a ploy hitherto used only by the Chinese to prevent consideration of the substantive resolution. The use of "no action motions" in this way is not merely an abuse of the procedures of the Commission, but also a claim of immunity since it implies that the Commission has no right to consider this issue. Far from being a protection against the alleged double standards, it is a reinforcement of them by claiming that some countries should be "above" or outside the consideration by the Commission. The African Group also terminated the mandate of the Special Representative on *Equatorial Guinea* (2002/11; 32-1-20), defeating an amendment to extend the mandate (L.88; 26-26-1) in a tied vote after the vote was repeated following Malaysia's claim of a malfunction in the new electronic voting system. To understand the likely impact for the people of that country, read the (well-written, black comedy) report of the Special Representative on Equatorial Guinea (E/CN.4/2002/11). As one example, he quotes the "spontaneous and revealing" response of the corporal in charge of detainees showing clear signs of torture : "What do you do in your country to get thieves to confess?" Is it effective in changing the human rights situation if the European Union countries table resolutions on countries in other regions? Perhaps not. However, the question has also to be asked whether the people of these countries do not deserve to have their human rights protected, and is rejection by the African Group not a denial of the fundamental human rights and freedoms of African people?

Such responses were not exclusive to Africa. The defeat of the resolution on *Iran* (L.33; 19-20-14) was no real surprise given the steady erosion of support for it and the general trend in this Commission. Russia's defeat of the EU resolution on *Chechnya* (L.29, 15-16-22) was also unsurprising for those who had observed how that Government had voted on previous resolutions - obviously building up a bank of votes in their favour for this one. However, it is significant that neither Iran nor Russia sought no action motions, in contrast to Zimbabwe and Cuba! However, *Cuba's* no action motion was defeated (23-24-6) and the resolution adopted (2002/18; 23-21-9). More notable than the resolution itself was that for the first time it came from within the Latin American Group (led by Uruguay) rather than an "outsider" (traditionally the USA). This follows the relatively new trend set by the African Group to take over resolutions within their own region. It was also viewed by Cuba as definitely an "unfriendly act" in international relations terms, and indeed it led to the breaking off of diplomatic relations between Uruguay (the main sponsor) and Cuba. Clearly, there are advantages in such intra-group initiatives, in that the allegations of cultural imperialism or neo-colonialism are reduced. At the same time, it does not *necessarily* mean that political motivation is avoided, nor that the resolution will be any more acceptable to the concerned country, or effective in bringing about the desired changes. Incidentally, the Western and Asian Groups have never tabled resolutions on any of their own members.

Less spectacular but more solid achievements were the renewals of the mandates of the country special procedures for *Afghanistan* (2002/19); *Burundi* (2002/12); *Bosnia and*

*Herzegovina/Federal Republic of Yugoslavia*<sup>6</sup> (2002/13); *Democratic Republic of Congo* (2002/14);<sup>7</sup> *Cambodia* (2002/89)<sup>8</sup>; *Haiti* (Chairman's statement); *Iraq* (2002/15; 28-4-21)<sup>9</sup>; *Myanmar* (2002/67); *Somalia* (2002/88); and *Sudan* (2002/16; 25-24-4). There were also country resolutions (but no mandates) on *Western Sahara* (2002/4) and *Sierra Leone* (2002/20), as well as Chairman's statements on *Colombia* and *East Timor*. This year, José Ramos Horta addressed the Commission as Senior Minister of Foreign Affairs and Cooperation in the Transitional Government of East Timor. A few years ago, he was refused the right to speak, despite having just been awarded a Nobel Peace Prize. The change in the status of East Timor was brought about not only through the long struggle of the people of East Timor, but also because of the external pressure and exposure over many years from NGOs and from other Governments, not least (and to the discomfort of some of its EU partners) of Portugal. Indeed, the testimonies from East Timor used to be a regular feature of NGO statements at the Commission: an important and uncomfortable reminder for those who wish to restrict NGO participation and speaking rights in this forum. No Government likes being criticised - the reactions to exposure of human rights violations by NGOs, the UN human rights Treaty Bodies and Special Procedures<sup>10</sup> and of other Governments, are remarkably similar the world over. This is not a good reason for not making such criticisms and trying to embarrass and persuade Governments and assist the processes of positive change. It is, of course, better where such criticism is married with monitoring and assistance such as a special rapporteur, independent expert or in-country presence of the OHCHR.

*Middle East:* Last year John Dugard took over the thankless task of Special Rapporteur on the situation of human rights in the Occupied Palestinian Territories. His report (E/CN.4/2002/32) highlights the points of disagreement (legal and conceptual as well as factual) with the Israeli Government, and the impact of the situation on the Palestinian people, in particular with regard to children and the administration of justice. Israel objects vehemently to the fact that it is singled out by so many resolutions in the Commission. In some previous years, there has seemed to be some justification for their objection, although its continued occupation of various territories is a legitimate reason for the Commission's attention. However, the dire and rapidly deteriorating situation in the Occupied Palestinian Territories, and the Israeli military action there and its consequences, led this year to even more attention (including a special debate in addition to the usual one on this subject) and action by the Commission, notably a request to the High Commissioner to head a visiting mission to travel to the area immediately and submit its findings and recommendations to this session of the Commission (2002/1; 44-2-7).<sup>11</sup> She selected Cyril Ramaphosa and Felipe Gonzalez to accompany her. Not surprisingly given their general rejection, Israel refused to permit the High Commissioner's team to visit; her report on this led to the adoption of yet another resolution (by vote) leaving open the possibility of further Commission action. This raised the total of resolutions this year to seven (including those on the occupied Syrian Golan and Lebanese detainees in Israel). Canada acted as the voice of the absent USA in

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<sup>6</sup> The resolution is actually entitled "Situation of human rights in parts of south-eastern Europe".

<sup>7</sup> includes paragraphs on child soldiers, and to stop using military courts for civilians

<sup>8</sup> This is not a Commission mandate but a Secretary-General's appointment and as such does not need to be renewed by the Commission.

<sup>9</sup> Russia called a separate vote on some paragraphs but these were retained (28-9-15).

<sup>10</sup> "Special Procedures" is the generic term for the Commission's thematic and country-specific Special Rapporteurs, Representatives, Special Representatives, Independent Experts and Working Groups (other than the standard-setting working groups).

<sup>11</sup> This was separate from the UN Secretary-General's team to investigate the events in Jenin.

the Commission, supported by Guatemala, while the EU was split on most of the resolutions.

*1503 "Confidential" complaint procedure:* In addition to the public consideration of human rights violations in specific countries, the Commission has a procedure for "behind closed doors" consideration of allegations of consistent patterns of gross violations of human rights, the outcome of which is subsequently announced publicly by the Chair of the Commission. This year the situations in Liberia and Chad are being kept under consideration, but not those of Nigeria, Togo and Zambia. In addition, the decision (2002/102) proposed by Saudi Arabia that documentation for the 1503 procedure should not be shared with the UN's Division for the Advancement of Women was made public.

### **Thematic issues:**

*Double standards rule OK?* The debates on country situations and resolutions at the Commission are fraught with allegations of double standards. However, it is not enough to point at the undoubted double standards applied by States in their action, and inaction, in the Commission. Of course, the process should be objective, non-selective and non-political. However, if you insist on having a body comprised of Governments, it hardly bears credible inspection to then complain that it behaves like a body of Governments. Furthermore, seeking to minimise the ability of the independent, expert "mechanisms" of the Commission to function effectively, and to address the Commission substantively, gives the lie to any justification of opposing the "political" nature of the Commission and its actions. The speaking time for the mandate holders for these procedures was cut to five minutes which they felt was too short to effectively introduce and update their reports. By contrast, high level Government representatives' speaking time was not cut at all. In addition, the African Group insisted on appointing a mandate holder by name in their resolution on *Racism* (2002/68; vote on this paragraph: 26-14-13): a process directly contrary to the agreed and established procedure of the Commission by which these appointments are made by the Chair of the Commission in consultation with the Bureau (ie the other officers of the Commission which therefore includes representatives of all five of the UN's regional groups). Whatever the merits of the particular candidate, to politicise the appointment process by doing it in a resolution erodes the actual and perceived independence of these procedures.

The thematic special procedures of the Commission are one of the most important and one of the most under-rated activities of the UN human rights field. Most of their work is unspectacular, although they can and do visit countries, and name countries in their reports where they have questions or concerns about laws, practices or individual cases. Many of the reports list countries from all regions of the world from which they have sought clarification about allegations, or responses to specific problems raised. At the same time, the in-depth exploration and analysis of the issue which the procedure has been established to consider, enables the development of a real understanding of the issue, the problems, and ways of addressing them. For example, this year's Report of the Special Rapporteur on the *Right to Education* (E/CN.4/2002/60) identifies the particular issue of lack of access to education for non-citizen and stateless children. She continues to highlight the real impact of primary education not being free - an obligation under both the Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, but also a significant discriminatory factor in preventing certain groups or categories of children receiving in practice the education to which they are entitled. She also shows how discrimination in access to education has inter-generational

effects and reinforces discriminatory attitudes, and that the crucial linkage to economic development, both individual and societal, is the completion of *secondary* education.

*Standing Invitations:* The Special Procedures require an invitation from the Government in order to undertake a country visit. In practice, the procedures themselves usually initiate the process by requesting such an invitation. Unfortunately, too many Governments either do not reply at all or delay responding to these requests. Over the last few years there has been a move to persuade Governments to issue "standing" or "open" invitations, thus ensuring that this initial hurdle is cleared, and that the process of undertaking visits can proceed directly to the stage of agreeing on dates, places to be visited, people to be met, and so on. Since last year's Commission, Brazil, Costa Rica, Georgia, Peru and Switzerland have issued Standing Invitations, bringing the total to 38. The Czech resolution (2002/84) on human rights and thematic procedures records this trend and encourages other Governments to consider doing the same. Mexico, which issued a standing invitation last year, noted that there was a problem because the High Commissioner's Office had not yet set up an effective system for recording these invitations and ensuring that the Special Procedures and their staff were aware of them: they had been approached for a specific invitation even after making the standing one. It certainly makes it easier for the Office if States put their invitations in writing (in addition, if they wish, to announcing them at the Commission), but equally the Office should compile a list and ensure that it is circulated within the Office itself, and also included in the documents for the Commission and put on the website for general reference. In her report and introductory and closing statements to the Commission, the High Commissioner welcomed the developing momentum behind this initiative and challenged all member states of the Commission to take this step.<sup>12</sup> A new development this year was that the resolution on Sierra Leone (2002/20) urged that government to issue a standing invitation to the Commission's special procedures. Ironically, the resolution on Racism (2002/68) also called on States to issue Standing Invitations: the African Group might wish to follow its own recommendation, since none of them has yet issued such an invitation.

The mandate of the Special Rapporteur on *Freedom of Opinion and Expression* was renewed for 3 years (2002/48) and of the independent expert on *human rights and extreme poverty* for 2 years (2002/30). A new mandate was created, a special rapporteur on the right of everyone to the enjoyment of the highest attainable standards of *physical and mental health* (2002/31) - a Brazilian initiative. This follows on from the Brazilian resolution (2002/32) on Access to medication in the context of pandemics such as HIV/AIDS (last year opposed by the USA alone) which builds on the positive developments since then, in particular the Declaration on the TRIPS Agreement and Public Health adopted at the Fourth World Trade Organisation Ministerial Conference in November 2001. In addition, the new Cuban resolution on *Cultural Rights* (2002/26) calls on the High Commissioner to consult about the possibility of establishing a special rapporteur on cultural rights.

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<sup>12</sup> See also joint written (E/CN.4/2002/NGO/111) and oral statement to the Commission by Amnesty International, Association for the Prevention of Torture, International Federation of Action by Christians Against Torture, International Federation of Human Rights Leagues, FWCC (Quakers), Human Rights Watch and International Commission of Jurists.

The biennial resolution<sup>13</sup> on *Conscientious objection to military service* (2002/45)<sup>14</sup> extended, for a further 2 years, the mandate for the OHCHR to complete the compilation and analysis of best practices, as well as calling upon States to bring their current laws and practices into line with the Commission resolutions on this subject. Singapore lodged its usual letter stating that this was not a human rights issue but within the domestic jurisdiction of the State. The Republic of Korea's statement pointed out that this is the subject of a debate in their country and they are awaiting the outcome, and until then cannot take a position one way or the other. Interestingly, the report of the Special Rapporteur on Indigenous Peoples (E/CN.4/2002/97, para. 32) points out that the Russian Federal law on Guarantees of the Rights of Small Indigenous Peoples of the Russian Federation (1999) provides for alternative military service.

The absence of the USA enabled the Austrian resolution on *administration of justice, in particular juvenile justice* (2002/47) to include the wording from the Convention on the Rights of the Child prohibiting the death penalty or life imprisonment without the possibility of release for those under 18 at the time of the offence. It also invites the Secretary-General to include in the study on violence against children, children who are affected by national security, State security, counter-terrorism and similar laws; and encourages States to review their national legislation to ensure that any such laws under which children or juveniles could be tried are compatible with the provisions of international humanitarian law and applicable international human rights instruments including the Convention on the Rights of the Child; and recognises the necessity of ensuring the effective implementation of relevant international standards relating to juvenile justice.

The EU and USA had wanted only a procedural resolution on the *Rights of the Child*, arguing that anything else should await the outcome of the delayed UN General Assembly Special Session on Children. Apart from the fact that the draft Outcome document is already weak in many respects and does not reflect a rights-based approach, there was also no logic to the argument. The Commission on Human Rights is (or should be) a human rights body. The General Assembly has a broader mandate. There were a number of specific issues and developments which many governments and NGOs believed the Commission should include in its resolution on the *rights* of the child. This approach won out, and the resolution (2002/92), *inter alia*, suggests that the Secretary-General appoint an independent expert to direct the Study on Violence against Children requested by the Committee on the Rights of the Child and mandated by the UN General Assembly last autumn. The resolution has some strong provisions on *child soldiers*, including welcoming the entry into force of the Optional Protocol on involvement of children in armed conflicts, and noting the continuing importance of Plan of Action and resolutions of the Red Cross/Crescent Movement, which could be particularly pertinent since the next International Conference of the Red Cross and Red Crescent is due to take place in Geneva in November 2003.

The resolution on *abduction of children from Northern Uganda* (2002/53) reflects the increased *rapprochement* between Uganda and Sudan, which hopefully will lead to the return home in safety of the many abducted children, and adults who were abducted as

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<sup>13</sup> Croatia was the main sponsor this year: their first resolution at the Commission.

<sup>14</sup> Co-sponsored by Austria, Bosnia/Herzegovina, Bulgaria, Canada, Costa Rica, Croatia, Czech Republic, Denmark, Finland, Georgia, Germany, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Republic of Moldova, Romania, San Marino, Slovakia, Slovenia, Spain and the UK.

children. When first initiated by the Government of Uganda itself (last year it was taken over by the African Group) this resolution was controversial because it was a specific country situation taken up under the thematic agenda item on the rights of the child, and because it sought to address an armed group as well as another State. Sceptics of the UN and the Commission always ask what is the point of resolutions and what effect do they have. In this case, the result has certainly included placing the situation on the international agenda, and thus putting pressure not only on the Government of Sudan, but also on the international community to give more serious attention to it. It also increased the pressure on the Ugandan Government itself, and not only in relation to the abduction of Ugandan children by others: the Democratic Republic of Congo withdrew its general resolution on abduction of children in the interest of consensus but in relation to the Ugandan resolution, described Uganda as the arsonist playing at fireman because of its own abductions of Ugandan and Congolese children to fight in the DRC.

In May, there will be the first meeting of the Permanent Forum on *Indigenous Issues*, which includes human rights issues within its mandate but goes beyond this since it comes directly under the UN Economic and Social Council rather than being a body of the Commission. Last year, the Commission created a Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People. Rodolfo Stavehagen's first report (E/CN.4/2002/97 and Add.1) demonstrates how rapidly he has set to work identifying some key issues, and beginning to take up specific situations. Amongst the seven major topics he identifies for future work are the impact of development projects, administration of justice, indigenous children - especially girls, and old and new forms of discrimination. The Sub-Commission's Working Group on Indigenous Populations (2002/63) will this year again focus on "Indigenous peoples and their right to development, including their right to participate in development affecting them". In the meanwhile, progress on the draft Declaration remains glacial.

The Report of the Secretary-General on *Fundamental Standards of Humanity* (E/CN.4/2002/103) includes an analysis of the recent case law of the two International Tribunals (Rwanda and Former Yugoslavia), the General Comment on States of Emergency of the Human Rights Committee and also the Draft Articles on State Responsibility of the International Law Commission. The decision (2002/112) requests the Secretary-General to continue work on this topic, consolidating and updating the previous reports and studies, incorporating relevant developments, including regional and international case law and the study of the ICRC on customary international humanitarian law, but also to give attention to the question of improving implementation of the law. The item is biennialised so that the next analytical report will be at the 60th session (in 2004).

Despite the protestations of some states that the issue of the *Death Penalty* (2002/77; 25-20-8) is not a human rights one but is within the internal affairs of the State, the movement towards abolition of the death penalty continues to gain ground.<sup>15</sup> In the absence of the USA, India called a separate vote on some of the strongest paragraphs but they were retained (18-27-7), including the one requesting States to reserve explicitly the right to refuse extradition in the absence of effective assurances from the requesting State that capital punishment will not be carried out. A step forward was made in the

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<sup>15</sup> For example, Protocol 13 (ETS No. 187) to the European Convention on Human Rights, which bans the death penalty in all circumstances, was opened for signature on 3 May 2002, and by 7 May had been signed by 36 States and ratified by three.

resolution on *Extrajudicial, Summary or Arbitrary Executions* (2002/36; 36-2-14) by the overt acknowledgement that people should be not killed for any discriminatory reason, including their sexual orientation. This led some Islamic countries to call for a vote on this paragraph (15-28-9) because they could not accept the reference to "sexual orientation" while publicly agreeing that they did not disagree with the substance of the paragraph.

The Commission continues to give attention to the situation of *Internally Displaced Persons* (2002/56) and *Migrants*. The most significant developments this year were the extension of the mandate of the Special Rapporteur on the Human Rights of Migrants for three years (2002/62), the near entry into force of the Migrant Workers Convention (only one more ratification needed) (2002/54) and the commitment to next year try to reduce the number of resolutions on migrants through consolidation. As yet, there is no focussed consideration of the human rights of refugees, although a number of references to different aspects of the situation of refugees appear in different resolutions, for example, in the resolution on the right of women to own property, in the question of access to education for refugee children. In addition, the subject of refugees and asylum-seekers appears in a number of the reports to the Commission and it would be useful if these references could be brought together into one document to facilitate consideration of the protection, or the failure of protection, of the human rights of refugees and asylum-seekers in the future.

Half the members of the Commission's *Sub-Commission on Promotion and Protection of Human Rights* came up for re-election or replacement at this session. The Sub-Commission is composed of independent experts who are, however, nominated by their Governments, and elected by the Commission, for 4year renewable terms. Amongst those re-elected was Françoise Hampson (UK). The Commission asked the Sub-Commission (2002/73; 38-15-0) to undertake a study on *human rights and international solidarity*. The Sub-Commission has a permanent Working Group on Minorities composed of five of its members. This year's Commission resolution on *Minorities* (2002/57) requests the High Commissioner to submit a report analysing existing information on situations regarding minorities in particular with regard to conflict prevention.

#### **Standard-setting:**

The adoption of the *Draft Optional Protocol to the Convention Against Torture* (2002/33; 29-10-14), despite last minute attempts to prevent this (led by Cuba) by either extending the mandate of the Working Group (amendment withdrawn), or by taking "no action" on the resolution (defeated, 21-28-4) was a major achievement. The draft Protocol will have to be adopted by the UN General Assembly after passing through the Economic and Social Council, but if this happens, it will provide for preventive visits to places of detention for those States which become parties to it - similar to the system under the European Convention for the Prevention of Torture. It has the possibility to make a major contribution and the objections by States are completely unjustified since (1) it will only apply to those States who become parties to it; and (2) the whole purpose (to which supposedly all States are committed) is prevent torture taking place, not to point a finger of blame after the event. A good illustration of the kind of process and result can be

seen with the recently released report of the (European) Committee for the Prevention of Torture's visit to places of detention in Britain.<sup>16</sup>

The fact that the draft Protocol text was voted through the Commission is significant because there has been a developing reluctance to even consider the possibility of adopting human rights standards by vote. Consensus might be ideal, provided that it is consensus on high standards, not merely *status quo* or lowest common denominator. However, where the standard is one that will only bind those States who choose to become parties to it, the relative importance of consensus versus clear, strong and workable standards, is not obvious. The limited membership of the Commission, and hence the voting figures on this resolution, conceal the fact that there were 52 co-sponsors of it. The opponents were: China, Cuba, Japan, Libyan Arab Jamahiriya, Malaysia, Nigeria, Republic of Korea, Saudi Arabia, Sudan, Syrian Arab Republic.<sup>17</sup> Those abstaining: Algeria, Cameroon, India, Indonesia, Kenya, Pakistan, Russian Federation, Sierra Leone, Swaziland, Thailand, Togo, Uganda, Viet Nam and Zambia.

A new standard-setting exercise is beginning to draft a treaty on *Disappearances*, (2002/41). One of the questions still to be resolved is whether this should be a free-standing convention or whether it should be a protocol to either the Convention against Torture or the International Covenant on Civil and Political Rights. The major significance behind this is to do with the supervision machinery for the treaty: that is, should there be a new treaty body, or should one of the existing bodies take on this additional responsibility. The Report of the Independent Expert (E/CN.4/2002/71) appointed last year by the Commission to look into this comes down in favour of the latter arrangement, with a preference for it being attached to the Covenant and, therefore, supervised by the Human Rights Committee.

Next year (at long last) a working group is to be set up (2002/24) to consider an *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* to establish a complaints mechanism for that Covenant - by contrast the Covenant on Civil and Political Rights has had an optional complaints mechanism from the beginning. In the meanwhile, the mandate of the Independent Expert is extended for a year to look further into the questions of the nature and scope of States Parties obligations under the Covenant, conceptual issues about the justiciability of these rights drawing on the experience of universal, regional and national bodies, and the benefits and practicability of a complaints procedure.

Steps were also proposed for finalising the "Basic principles and guidelines on the right to a remedy and *reparation* for victims of violations of international human rights and humanitarian law" (2002/44).

The Commission encouraged the General Assembly's Ad Hoc Committee to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with *disabilities*, to interact with the Commission itself, NGOs, national human rights institutions and the Commission for Social Development's Special Rapporteur on Disability (2002/61).

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<sup>16</sup> Available on their website: [www.cpt.coe.fr](http://www.cpt.coe.fr)

<sup>17</sup> Behind the scenes, the USA had also made its opposition clear.

### **Procedural Problems and Proposals:**

In addition to the substantive problems, the Commission was faced with a procedural challenge. In recent years, it has completed its work within the 6-week time schedule by holding a number of "night sessions" in addition to the regular morning and afternoon meetings. These were again planned for this year, but after the session started, the Commission was informed that for financial reasons, no night sessions would be allowed. In order to manage this, the already meagre time permitted (5 minutes) for statements from NGOs and observer governments was cut by one-third. Subsequently, additional steps were taken which excluded NGOs from making some of their planned statements.<sup>18</sup> Such time restrictions were also imposed on the Commission's Special Procedures to introduce their reports, including providing updates and highlighting particular issues of importance or concern, that as previously reported most declined to participate in what would have been a purely cosmetic exercise, and simply drew attention to the impossibility of doing so, and circulated their intended introductions in writing instead. The only merit in this approach - apart from its protest value - was that the UN press releases reflected the introductory statements as originally drafted.

By contrast, the visiting "dignitaries" continued to have ample time to make their statements. Although some of these were substantive and important, many were no more than an account of the benign human rights situation in the country as perceived by the Government. The most positively significant of these have already been noted. A clear and obvious solution to this particular problem - and which has been proposed from time to time over recent years - is to have a special "high-level" segment of the Commission at which such dignitaries could speak, while the regular work of the Commission continues in parallel. In this way, the work of the Commission would not be impeded but at the same time, its importance as a forum at which significant political statements and commitment to human rights could continue to be made is maintained. In addition, considerable time would be saved if States were only permitted rights of reply at the end of each Agenda item.

*The Future:* A small but significant step was introduced this year by Latvia (2002/113) on behalf of the Eastern European Group, which prescribes that the Commission will meet for one day (on the third Monday in January) in the future solely for the purpose of electing its Bureau. Thus instead of the Bureau only being elected at the start of the full Commission session, it will now be official and able to engage in a coordinated handover process from one Bureau to the next.<sup>19</sup>

A more radical proposal was put forward by Cuba (2002/91; 36-0-17), entitled "Enhancement of the effectiveness of the working methods of the Commission". It calls for a report from the OHCHR by December, consideration by the regional groups and the "expanded Bureau" of the Commission (Bureau plus Regional Group Coordinators), and for the Bureau to propose to the 59th session of the Commission how to deal with this discussion. The "non-exhaustive" Annex to the resolution of issues to be considered includes: duration of Commission sessions; periodicity of agenda items and sub-items;

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<sup>18</sup> FWCC (Quakers) submitted written statements on conscientious objection to military service (E/CN.4/2002/NGO/16), juvenile justice (E/CN.4/2002/NGO/18), child soldiers (E/CN.4/2002/NGO/17) and a joint one on standing invitations to thematic human rights procedures of the Commission (E/CN.4/2002/NGO/111). Because of the time constraints, only the joint oral statement on Standing Invitations was delivered.

<sup>19</sup> The dates for the 59th session of the Commission were set for 17 March to 25 April 2003.

availability and legislative authority for documentation; written contributions by members of the Commission, observer States and intergovernmental and non-governmental organizations; time management; review of the functions of the Bureau and of regional coordinators; participation of dignitaries in the annual session; establishment and programming of intersessional working groups; and organization and programming of parallel activities during the annual sessions.

**Conclusion:**

Mary Robinson's announcement that she would not seek a second term as UN High Commissioner for Human Rights came as no surprise to those who know how much her strong and principled stand in favour of the human rights and fundamental freedoms of all - irrespective of which Government is in power - has angered many powerful Governments. The challenge will be for Kofi Annan to find a worthy successor, and to persuade the Permanent Members of the Security Council to accept him or her.

This session of the Commission was difficult. The tenor of the debates was often fractious and divisions between and within regional and other groups evident. The externally imposed problems of time management were exacerbated and exploited to create additional restrictions on certain aspects of the Commission's activities least popular with some Governments. However, the bitter atmosphere and the loss of some country resolutions highlights not - as some seemed to think - the Commission's irrelevance, but its importance. At a time when human rights, and those who seek to protect them, are once again under severe attack from Governments in many regions, it is only to be expected that the UN bodies designed to promote and protect human rights will not be in for an easy time. Furthermore, it has to be remembered that the Commission is an unrepresentative body. Because only Commission members may vote on resolutions, those States who fear that they may be the subject of a country resolution, or whose perceived self-interests might be affected, have a strong incentive to seek election to the Commission. In this context, it should be noted that amongst the newly elected members for next year's Commission is Zimbabwe. The whole composition and tenor of the Commission would change if, as suggested by the High Commissioner in her opening address, certain objective criteria were established for membership such as being a party to the major human rights treaties and their complaints procedures, and issuing a standing invitation to the Commission's own mechanisms to undertake country visits.

Received wisdom suggests that difficult Commissions often produce better results than the pleasanter, more consensual ones. Given that on many human rights issues there is no real consensus amongst States, a surface consensus usually implies that the promotion and protection of human rights is the loser. This Commission certainly has its share of achievements to back up this proposition, as well as some failures.

Nevertheless, there are many problems which need to be addressed, including: time management; the role of NGOs; the centrality of the Special Procedures and the importance of providing a proper forum for consideration of their reports (whether thematic or country-specific); finding ways to enable dignitaries to come and speak without impairing either the work of the Commission itself or its continuing importance as the pre-eminent forum both for establishing and maintaining the fundamental building blocks, standards and procedures which truly provide the bulwark of protection for all in times of trouble, and for maintaining the uncomfortable pressure on Governments who do not want to be held to their international legal obligations and

their own high-sounding statements of principle. These functions of the Commission will always be uncomfortable bedfellows, and some years one may predominate over another. The tension is inherent. There are ways in which things could be done better: for example, the idea of having a "high-level segment" in parallel with some of the working sessions of the Commission should be considered. The question however is whether those who will take the decisions about changes - the Governments - actually want a more effective Commission.

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May 2002