

**Friends World Committee for Consultation (Quakers)
Quaker United Nations Office, Geneva**



Shadow Play

**Report on the 59th Session of the
United Nations Commission on Human Rights**

Geneva, 17th March - 25th April 2003

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FWCC Statements to the 59th Session of the UN Commission on Human Rights:

- “Standing Invitations to Thematic Human Rights Mechanisms.” Joint written statement submitted by FWCC, Amnesty International, the Association for the Prevention of Torture, Human Rights Watch, the International Commission of Jurists, the International Federation of ACAT and the International Federation of Human Rights Leagues. (1/03)
- “Specific Groups and Individuals: Mass Exoduses and Displaced Persons.” Joint written statement submitted by FWCC, Amnesty International and Human Rights Watch. (2/03)
- “Rights of the Child.” Written statement. (3/03)
- “Indigenous Issues.” Written statement. (4/03)
- “Conscientious Objection to Military Service.” Oral Statement. (5/03)
- “Child Soldiers”. Oral statement. (6/03)
- “Specific Groups and Individuals: Mass Exoduses and Displaced Persons.” Joint oral statement submitted by FWCC and the Jesuit Refugee Service. (7/03)
- “Standing Invitations to Thematic Human Rights Mechanisms”. Press release by FWCC, Amnesty International, the Association for the Prevention of Torture, Human Rights Watch, the International Commission of Jurists, the International Federation of ACAT, the International Federation of Human Rights Leagues and the International Rehabilitation Council for Torture Victims.

QUNO has also produced the following compilations of references in the documents submitted to and resolutions of the 59th Session of the UN Commission on Human Rights:

- References to Refugees and Asylum-seekers (8/03)
- References to Conscientious Objectors (9/03)
- References to Child Soldiers (10/03)

Available on request

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.

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Shadow Play: Report on the 59th Session of the United Nations Commission on Human Rights (17th March-25th April 2003)¹

The Commission met in the shadow of war: not only the war against Iraq, and the broader "war on terrorism", but the continuing situations in the Occupied Palestinian Territories, Democratic Republic of Congo and elsewhere. The Commission did not respond decisively to any of these situations, although the atmosphere was subdued. It did, however, continue to address many serious human rights issues, including seeking to maintain the fundamental safeguards and to prevent the erosion of human rights. The Commission operates at different levels: the "output" in the form of resolutions and decisions, the formal statements in the plenary, and the negotiations on the resolutions, mostly behind the scenes. Often the public debate and adoption is only a shadow of what is going on behind the scenes. Sometimes that shadow is exaggerated, with the differences appearing greater, at other times the surface appears relatively smooth, cloaking significant activities to water down human rights standards, to prevent development of new mechanisms of accountability, and to limit those which already exist.

A Commission of Whom?

The UN Commission on Human Rights is the main regular human rights body of the United Nations. It meets for six weeks every year, and can also hold Special Sessions to consider urgent human rights situations. It is an inter-governmental body, comprised of the representatives of 53 Governments, elected for three-year renewable terms by the UN Economic and Social Council (ECOSOC).² Each year, one third of its membership is renewed.

There is an agreed distribution of seats amongst the UN's five regional groups: Africa (46 seats), Asia (26 seats), Latin America and Caribbean (18 seats), Central and Eastern Europe (11 seats), and Western Europe and Other³ (21 seats). This can result in the regional group putting forward only the number of candidates for the number of vacancies, thus ruling out any actual "election" by ECOSOC. There are no requirements for candidates except that they must be Member States of the UN. Some regional groups (or sub-regional components of them) seek to ensure a rotation of membership but some States have *de facto* permanent membership. Although only India and the Russian Federation (formerly as the USSR) have had continuous membership since the Commission was established in 1947, until last year the same was true of the USA. On the other hand, only 123 of the UN's 191 States have *ever* been members of the Commission and several of these served only one term.

All other States can, and most do, attend the Commission as observers, speak in debates and co-sponsor resolutions. However, they are not able to call for or participate in votes on resolutions. This provides an incentive for States with poor human rights records to become members of the Commission (and to support others in a similar situation to do so). In this way they seek to guard themselves against criticism and censure in the form of Commission resolutions, since as members they can vote which also means that they can trade their vote on other resolutions in order to garner support. An analysis of Russia's voting record at this session of the Commission is instructive in this regard: the pay-off being the defeat of the resolution on the situation of human rights in Chechnya (L.13/Rev.1; 15-21-17).⁴

This raises the question whether there should be criteria for Commission membership. Suggestions have included being a party to the main international human rights treaties, accepting the complaints mechanisms

¹This is not a comprehensive report on the Commission but seeks to identify, analyse and comment on new issues or major developments and trends, and those of particular interest or concern to the Quaker UN Office in Geneva. The South Asia Human Rights Documentation Centre's lively and informative weekly newspaper during the Commission, "Human Rights Features", is also recommended reading.

²UN Commission on Human Rights members in 2003: Algeria, Argentina, Armenia, Australia, Austria, Bahrain, Belgium, Brazil, Burkina Faso, Cameroon, Canada, Chile, China, Costa Rica, Croatia, Cuba, Democratic Republic of the Congo, France, Gabon, Germany, Guatemala, India, Ireland, Japan, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Pakistan, Paraguay, Peru, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Sierra Leone, South Africa, Sri Lanka, Sudan, Swaziland, Sweden, Syrian Arab Republic, Thailand, Togo, Uganda, Ukraine, UK, USA, Uruguay, Venezuela, Viet Nam and Zimbabwe.

³"Other" comprises Australia, Canada, Japan, New Zealand and the USA. However, Japan is also a member of the Asian Group. Despite US attempts, Israel has not been given membership of the "WEOG".

⁴An "L" number indicates an unadopted draft resolution. Where the resolution is adopted only the year and number are indicated, eg 2003/22. Votes are given in the order for-against-abstention. If no figures are given this is because the resolution was adopted without a vote.



under them, and issuing Standing Invitations for country visits by the Commission's own human rights mechanisms. These are all actions which *all* UN Member States should be encouraged to take, and those who seek to become members of the Commission should feel a particular responsibility to do so, or to provide an explanation why they are unable or unwilling. However, whether they should be *criteria* for membership depends on the concept of the role of the Commission. It also, it must be said, depends on political realities: any of these criteria would exclude the USA from membership, as well as China and many others. Even if such criteria were established, all these, though important, are "formal" requirements that do not in themselves demonstrate the degree either of real cooperation and compliance with the mechanisms or of the situation of human rights in the country. Colombia has become notorious as a State which accepts all requests for visits, has now issued a Standing Invitation, is a party to human rights treaties, but over the years has shown little willingness to address the human rights crisis in the country.

The question of the election of the Libyan Ambassador as Chair was seen by some as creating a crisis of confidence in the Commission's legitimacy: fuelled by the US anger and disbelief that it failed to get elected last year. The Commission has a five-person "Bureau", to enable representation from each of the five UN regional groups. This year it was the turn of the African Group to Chair, and they agreed on Libya. Normally, such an agreement would mean that the "election" was a formality. However, the USA called for a vote even though there was no other candidate and it was obvious that the Libyan Ambassador would be elected, which she duly was by secret ballot (33-3-17).⁵ South Africa, on behalf of the African Group, proposed a retaliatory vote on Australia as the Vice-Chair but, in a nice diplomatic touch, the new Chair appealed to them not to pursue it, and they agreed.⁶ This election took place in January for the first time, following a sensible proposal adopted last year, to hold a one-day meeting of the Commission in January to elect the Bureau rather than waiting until the first day of the six-week session itself. This enables the new Bureau to set to work in advance of the session: a distinct improvement on the previous practice.

An alternative approach to criteria for membership would be to transform the Commission into a universal body. This would prevent the competition for seats amongst States thus reducing the imbalance in terms of those with poor human rights records seeking membership in order to protect themselves, and would enable all States to participate fully rather than precluding some from doing so. It might also discourage States from feeling that they have to introduce a new resolution when they become Commission members for the first time in order to "prove" themselves: this is one (but only one) of the reasons for the constantly increasing number of resolutions.

High Level Segment: A number of innovations at this year's Commission arose from the reform process started last year, which resulted in the adoption by consensus of the Report of the Expanded Bureau.⁷ These included the (partially successful) High Level Segment: of the 84 statements by Foreign Ministers or similar,⁸ 67 were delivered in the days in the first week of the Commission which had been set aside for the High Level Segment. The advantages of clustering the statements in this way were better adherence to the time limit assigned for each speaker, a more attentive audience, and less interruption to the regular business of the Commission. The down side was that the other 17 statements remained scattered throughout the Commission and were still delivered from the podium, rather than from the delegation desk, with the consequent disruption and additional time wasted by ushering the dignitary up and back. More generally, having almost the entire first week taken up by the High Level Segment meant that, in work terms, the Commission was a week late in getting down to business, which intensified the time-pressure. If the High Level Segment is to continue, to set aside a few days in the middle of the session might be better than having it at the beginning. This would enable dignitaries to address what was or was not happening in the Commission (if they wished) while work on resolutions could continue behind the scenes. At the same time, in order to encourage such speakers to come at the set time, those who did not should be required to speak from the delegation desk, not the podium.⁹

⁵The USA and Canada made their "no" votes clear. The best guess is that Guatemala was the third, while the EU and associated countries abstained.

⁶The other members of the Bureau are Sri Lanka and Peru as the other Vice-Chairs and Croatia as Rapporteur.

⁷E/CN.4/2003/118

⁸Some, understandably, cancelled their visit because of the start of the war on Iraq.

⁹As proposed in E/CN.4/2003/118



Colombia, Croatia and Paraguay used the High Level Segment to announce Standing Invitations to the Commission's procedures. The new Brazilian Human Rights Minister presented the proposed changes in that country; others commented on the state of the world, the legality of the war against Iraq, the importance of multilateralism and of adhering to human rights standards in all circumstances. Too many presented the usual idealised picture of the state of human rights in their country.

The Interactive Dialogue with Special Procedures (the generic term for the Commission's Special Rapporteurs, Representatives or Special Representatives of the UN Secretary-General, Working Groups and Independent Experts) was another of the reforms, modelled on the process adopted at the Third Committee (Social, Humanitarian and Cultural) of the UN General Assembly. In practice this meant that the mandate holders briefly presented their reports. If they had undertaken any country visits, the "concerned" country or countries could speak, and then other States could ask questions or make short comments (but not read a statement), and then the mandate holders had a few minutes in which to respond. The level of interest and quality of the exchanges varied - not helped by the paucity of information about when they would be taking place. The arcane rules of the UN apparently prohibit the Commission's own Special Procedures being listed on the "Order of Day". This is patently absurd, as it meant that even those Governments who wished to participate in the Dialogue often were either not present or not fully prepared. A practical solution to this must be found. Best would be to list them in the Order of Day including the time, as is done for "dignitaries". If this is not "acceptable", then they should be listed in a separate document either as an annex to the Order of the Day, or available at the same time and place both on the OHCHR website and physically from the documentation desk.

The interactive dialogue was an interesting and potentially important development. One of the bizarre features of the Commission has been the tendency to create these mechanisms and then to ignore them. How many of the Government delegates actually read the reports produced - unless they mention their own country? At the same time, governments certainly *do* read the parts which pertain to their own country and this is important since the steady constructively critical attention of these independent mechanisms often have had an effect, though it may take some years to bear fruit. The global overview of the thematic – as opposed to the limited number of country specific – procedures means that no country can escape scrutiny. It is, therefore, no surprise that some sharp comments from Governments came as a result of their complaints about the Special Procedures: **USA** on Special Rapporteur on the Independence of Judges and Lawyers and Special Rapporteur on Summary, Arbitrary or Extrajudicial Executions, the **Philippines** on Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples, **Algeria** on Special Rapporteur on Torture, and **Australia** on the Working Group on Arbitrary Detention.¹⁰

More generally a number of interesting comments or questions were raised and responded to in the interactive dialogue elaborating on what was or was not in the reports. Making (more) time for this dialogue, and finding practical ways of enhancing it, could provide the beginnings of a shift in the way in which the Commission operates. At present, most of the plenary debate in the Commission is not a debate at all but a reading of set speeches which do not necessarily bear any relation to each other except in so far as they address the general item of business - the exception being the rights of reply. At the same time, one of the reasons why resolutions are sometimes proposed appears to be because this is in effect the only process for focussing a real discussion on something, for example the Brazilian draft resolution on sexual orientation: there is nothing like having to take a position on a resolution to make governments give attention to an issue! Developing the interactive dialogue with the Special Procedures could help to improve the understanding of what they do and why they do it, as well as a way of beginning to explore new, under-considered or contentious issues.

At present only Governments participate in the interactive debate. Perhaps the next step should be to invite national human rights institutions to participate as well (see below).

¹⁰ "Australia is concerned about the Working Group's focus on immigration detention in Australia...focus on this issue must mean that attention has been diverted from egregious detention practices that should be, and are, of greater concern to the international community." (Ambassador Mike Smith, 7 April 2003)



Standing Invitations: In general terms, the Special Procedures examine the issues within their mandate and report to the Commission annually (and some also to the General Assembly); consider, and raise with governments, allegations of individual violations or more general situations; make urgent appeals; and undertake in-country visits.¹¹ What these mandates do well is to examine a human rights issue, or the situation of a particular category of people, or the situation in a particular country in a clear, independent and impartial way. Their field missions allow them “to gather first-hand information for preparing well-informed and objective reports. Field missions to specific countries are also of crucial importance when analysing patterns of human rights abuses and the root causes which give rise to and perpetuate violations ... [and] an opportunity to exchange views with Governments and lends support to the work of civil society.”¹² Some Governments recognise that these mandates and the country visits are a valuable source of assistance in analysing and identifying ways of addressing their human rights problems and actively seek such expert assistance, rather than refusing to cooperate or attacking or obstructing them. However, because of the concept of State sovereignty, visits to countries have traditionally required a specific invitation from the Government to the specific Special Procedure. This is not only bureaucratic but can enable governments to delay, sometimes indefinitely.

One of the small steps forward has been to persuade Governments to issue standing or open invitations for such visits by all the Special Procedures.¹³ (This does not mean that they all wander in and out at will without notifying the Government, since they still need to arrange the specific dates, times, places and so on.) By the end of the Commission a total of 47 States¹⁴ had issued standing invitations. The breakthrough this year was extending this to the African Group by means of Sierra Leone. Thus Governments from all of the UN's regional groups are now amongst those who have committed themselves in this way. Colombia, Croatia, Paraguay and San Marino took the opportunity presented by this session of the Commission to issue Standing Invitations, and Liechtenstein to reiterate the one already issued in writing. The resolution on Sierra Leone (2003/80) welcomed the Government's Standing Invitation, and the one on Afghanistan (2003/77) called upon the Transitional Authority "to consider extending a standing invitation".

Even apart from the Standing Invitations there have been encouraging signs of greater cooperation with the Commission mechanisms by some States. Last year Saudi Arabia had its first country visit (by the Special Rapporteur on the Independence of Judges and Lawyers), and the Special Rapporteur on Freedom of Religion or Belief visited Algeria. This reinforces the importance of the existence and quiet persistence of these mandates. At the same time, it would be helpful if a comprehensive chart was made available to the Commission listing all visits undertaken by Special Procedures, and all outstanding requests for visits, with the response (if any) from the government. In this way, States which refuse or fail to respond to requests for visits, or agree but delay implementation of the visit in practice, will also be highlighted and not only those which cooperate by enabling visits to take place.

Another encouraging feature has been the emphasis on follow-up to country visits. The purpose of these procedures after all is to improve the human rights situation in the country by helping the government to make the necessary changes. The report is the public, transparent and accountability element for both the government and the mandate holder of the broader process of identifying and implementing the changes required. Further progress would be possible if more financial and personnel resources in the Office were provided since the mandate-holders themselves are not UN staff but independent experts working on this part-time and *pro bono*.

Thematic mandates: The Special Procedures fall into two groups: those which cover all human rights in one country (“country-specific”) and those which cover a topic in relation to all countries (“thematic”). A major

¹¹ Because each one is created by individual resolutions of the Commission, there is no standardisation of the mandates: thus some have all these features, others do not, and some have more specific tasks, for example the Working Groups on Disappearances and on Arbitrary Detention.

¹² Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, E/CN.4/2003/3, para.28.

¹³ Initiated by the Quaker UN Office, Geneva: for background and further information see the joint NGO written statement (E/CN.4/2003/NGO/1) available from www.unhchr.org or www.quno.org.

¹⁴ Argentina, Austria, Belgium, Brazil, Bulgaria, Canada, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Georgia, Greece, Guatemala, Hungary, Iceland, Ireland, Islamic Republic of Iran, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Norway, Paraguay, Peru, Poland, Portugal, Romania, San Marino, Sierra Leone, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and UK.



development over the last few years has been the creation of Special Rapporteurs on economic and social rights: first the right to education, then food, and last year on the right to health. These are enabling the development of a better understanding of these rights individually and of the nature of the State obligations for them more generally. For example, the right to food does not mean that the State is obliged to provide free food to everyone. The State has three levels of obligation: it must refrain from taking measures liable to deprive anyone of access to food (the obligation to *respect*); secondly, it must ensure that third parties (individuals or companies) do not interfere with the right of access to adequate and sufficient food (the obligation to *protect*); thirdly, the obligation to *fulfil (facilitate)* means that States must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood. It is only when individuals or groups are unable, for reasons beyond their control, to enjoy the right to adequate food through the means at their disposal, that States have the obligation to *fulfil (provide)* that right directly.¹⁵ FWCC, together with the Jesuit Refugee Service and supported by Amnesty International, drew attention to the need to give attention to how the State obligation to fulfil these rights applies to refugees and asylum-seekers who are not in a position to provide for themselves.¹⁶

The following thematic mandates were due for renewal and were extended for a further three years: Special Representative on **Human Rights Defenders** (2003/64); Working Group on **Arbitrary Detention** (2003/31); Special Rapporteurs on the **Independence of Judges and Lawyers** (2003/43), on **Violence against Women** (2003/45), on the Right to **Adequate Housing** (2003/27); and on the Right to **Food** (2003/25; 51-1-1);¹⁷ as well as the Independent Expert on effects of **structural adjustment policies and foreign debt** on the full enjoyment of human rights (2003/21; 29-14-10). Although the mandates continue, the mandate-holders may change. The original mandate-holders on Violence against Women and on Independence of Judges and Lawyers are leaving. The value of such mandates is well illustrated by the stock-taking report, since its creation in 1994, presented by the Special Rapporteur on Violence against Women (E/CN.4/2003/75).

Other important studies begun this year by Special Rapporteurs are: trade in and production of equipment specifically designed to inflict torture (E/CN.4/2003/69); the human rights of migrants deprived of their liberty (E/CN.4/2003/85); and women and adequate housing (E/CN.4/2003/55). The latter identifies the many ways, legal and practical (such as access to credit and inability to prove title), in which women tend to be discriminated against in access to and in security of housing. The study also considers the relationship to other Special Procedures mandates, such as violence against women, since many women stay in situations of domestic violence because of the lack of opportunities to move out with any security or to obtain the right to stay in the "marital" home in security.¹⁸

In his first report (E/CN.4/2003/58) Paul Hunt, Special Rapporteur on the **Right to Health**, identifies three primary objectives for this mandate: to promote - and encourage others to promote - the right to health as a fundamental human right; to clarify the contours and content of the right to health; and to identify good practices for the operationalisation of the right to health at the community, national and international levels. In order to do this, one part of his work will be to examine constitutional and other law and practice concerning the right to health. He also proposes to take two main themes: the right to health and poverty; and the right to health, discrimination and stigma. The resolution (2003/28; 39-1-13) draws attention to the World Health Organisation's Global Report on Violence, calls on ECOSOC to recommend that the General Assembly declare 2007 the UN Year for Violence Prevention. It also calls on the Office of the High Commissioner for Human Rights to organise an international expert consultation on violence prevention and human rights with the aim of developing guidelines on violence, based on human rights instruments. There is an interesting link here with the new UN Study on Violence against Children, mandated by the UN General Assembly at the

¹⁵ E/CN.4/2003/117, para. 16.

¹⁶ See joint written statement by FWCC, Amnesty International and Human Rights Watch (E/CN.4/2003/NGO/2), joint written statement by International Catholic Migration Commission and Jesuit Refugee Service (E/CN.4/2003/NGO/172), and joint oral statement by FWCC and Jesuit Refugee Service (available from the Quaker UN Office, Geneva, www.quano.org).

¹⁷ USA opposing and Australia abstaining.

¹⁸ This links with the resolution on Women's equal ownership, access to and control over land and equal rights to own property, which this was expanded to explicitly include adequate housing (2003/22).



request of the Committee on the Rights of the Child.¹⁹

The Special Rapporteur on the **Right to Education** continues to highlight the central importance of access to education, but also of the content of education and the linkage with human rights education (E/CN.4/2003/9).

The strengths and weaknesses of the UN system and the Special Procedures of the Commission is well-illustrated by the experience of the Representative of the Secretary-General on **Internally Displaced Persons** (IDPs) over the 10 years since the mandate was created. The undoubted successes have been to put the issue on the international agenda and consciousness, to produce the compilation and analysis of legal standards, and from there to identify the Guiding Principles on Internal Displacement, and to see them translated into domestic law and practice in some States. The weakness is that too many IDP situations continue unabated and without an adequate response from the UN in either protection or assistance, let alone both. As with refugees (who have crossed an international border), the underlying problem is the unwillingness of States to accept and address the real need to protect human rights at home and thus avoid the need for such displacement whether internal or external. The challenge, therefore, is how to truly strengthen in practice the implementation of human rights. As with all the Special Procedures, the successes are in no small measure due to the commitment and quality of the individual mandate holders, in this case Francis Deng. The weaknesses are institutional and political, both within the UN and at the national level. Resolution (2003/51) rightly emphasizes “the primary responsibility of national authorities to provide protection and assistance to internally displaced persons within their jurisdiction, as well as to address the root causes of their displacement in appropriate cooperation with the international community”.

The Commission approved four new studies to be undertaken by its Sub-Commission on the Promotion and Protection of Human Rights. These are on: **discrimination in the criminal justice system**,²⁰ **prevention of human rights violations perpetrated with small arms**;²¹ **housing and property restitution in the context of refugees** and other displaced persons,²² and **indigenous peoples’ sovereignty over natural resources**.²³ Only the latter was contentious and that was because the expert nominated to do the study (Erica-Irene Daes) is no longer a member of the Sub-Commission.

In addition to this study and the report of the Special Rapporteur on the **Indigenous**, the Working Group on the **draft declaration** (2003/57) is mandated to meet again, and the Chairman-Rapporteur to hold informal consultations prior to the next meeting. The “historic first session” of the Permanent Forum was welcomed, and the Working Group on Indigenous Populations is to meet this year (2003/58). Its longer-term future depends on the outcome of the review of all UN mechanisms, procedures and programmes concerned with indigenous issues to be undertaken by ECOSOC. The battle lines are already drawn, with Australia and the USA having made clear that they think this Working Group should be abolished, while Cuba supports its continuance.²⁴

The study on discrimination in the criminal justice system links in with continuing concern about the use of the **death penalty**, the abolition of which moves ahead despite continuing resistance in some quarters (2003/67; 23-18-10).

The High Commissioner is requested to commission an independent study on best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of **impunity**, taking into account the "Set of Principles for the protection and promotion of human rights through action to

¹⁹ The UN Secretary-General has appointed Paulo Sergio Pinheiro, well-known to the Commission as a member of its Sub-Commission, and Special Rapporteur on Myanmar, to undertake this study.

²⁰ 2003/108 - Sub-Commission expert Leila Zerrougui.

²¹ 2003/112 - Sub-Commission expert Barbara Frey.

²² 2003/109 - Sub-Commission expert Paulo Sergio Pinheiro.

²³ 2003/110; 334-8-10 - UK amendment defeated by 16-30-7.

²⁴ Cuba's proposed decision 2003/111 would have pre-empted the results of the review in this regard, but the UK's amendment was adopted.



combat impunity",²⁵ how they have been applied, and recent developments, such as the establishment of the International Criminal Court and the various other international bodies.

No new mandate was created on **minorities** despite calls for a Special Representative of the Secretary-General with a conflict prevention/resolution as well as a human rights mandate, but the Sub-Commission's Working Group on Minorities continues.

At the initiative of Cuba, the High Commissioner for Human Rights is requested to consult States, NGOs and others on the possibility of appointing a special rapporteur on the enjoyment of cultural rights and respect for different cultural traditions (2003/26).

Standard setting: Work on the draft "legally binding normative instrument" for the protection of all persons from **forced disappearance** has started and the working group is mandated to meet again (2003/38).²⁶ The "Basic principles and guidelines on the right to a remedy and **reparation** for victims of violations of international human rights and humanitarian law" are to be revised and presented for discussion to a second consultative meeting (of interested governments, NGOs and others) with a view to finalising them (2003/34).

The working group "to consider options regarding the elaboration of an **optional protocol to the Covenant on Economic, Social and Cultural Rights**" was mandated to meet again (2003/18), but not yet given an unequivocal mandate to draft the optional protocol. This Covenant, unlike the one on Civil and Political Rights, has no complaint mechanism. Many feel that the time has come (is overdue) to remedy this deficiency, but there is resistance, even though such a mechanism would be optional and would only apply to those States who choose to become parties to the protocol. Some have reservations because of their dislike of any international supervision or accountability, others, in particular the USA, because they do not accept that economic, social and cultural rights are "rights", claiming that they are only policies. The USA repeatedly made its position clear on this more general point, on a number of occasions calling votes - all of which it lost - on specific paragraphs of resolutions.

The proposal to extend the mandate of Miguel Alfonso Martinez, member of the Sub-Commission and of the Cuban delegation to the Commission, to enable him to continue work on his pre-draft declaration "**Human rights and human responsibilities**"²⁷ was defeated (L.86; 25-25-3).

The Commission requested the Sub-Commission to prepare a concept document establishing options for the implementation of the **right to development** and their feasibility, *inter alia* an international legal standards of a binding nature, guidelines on the implementation of the right to development and principles for development partnership, based on the Declaration on the Right to Development (2003/83; 47-3-12). The mandate of the Working Group on the Right to Development was extended for a year.

Human Rights and Counter-Terrorism: An issue of concern to many of the Special Procedures (as well as to many others) is the way in which the reaction to the events of "11 September" has eroded human rights. Both the UN General Assembly (Resolution 57/219 of 16 December 2002) and the UN Security Council (Resolution 1456 of 20 January 2003) make clear that States must ensure that any measure taken to combat terrorism are in accordance with international law, including international human rights, refugee and humanitarian law. However, the reality as described by the Special Representative on Human Rights Defenders is that:

"The introduction of exceptions to the rule of law, for example, through special legislation on security in general or against terrorism in particular, has affected the ability of national judicial systems to protect human rights defenders from arbitrary actions. These measures have their most severe impact on defenders in States where respect for human rights is already restricted. However, such

²⁵ E/CN.4/Sub.2/1997/20/Rev.1, annex II, produced by the Sub-Commission on the Promotion and Protection of Human Rights.

²⁶ Report of first working group session E/CN.4/2003/71.

²⁷ E/CN.4/2003/105, Annex I.



*measures are now also being adopted in States where fundamental human rights are largely guaranteed. These measures are seriously undermining the very norms which underlie the legitimacy of human rights activity and make the protection of defenders an obligation."*²⁸

Last year the Mexican draft resolution had to be withdrawn in the face of fierce opposition from the USA and others. This year, the Commission adopted the resolution (2003/68) asking the High Commissioner to examine the question, to make recommendations and to provide assistance and advice to States and to report to the General Assembly and the Commission, as well as requesting the Special Procedures and the human rights treaty bodies to consider the issues. Many of the Special Procedures are already doing so. The "Situation of Muslim and Arab peoples in various parts of the world in the aftermath of the events of 11 September 2001" is the subject of a specific report (E/CN.4/2003/23) by the Special Rapporteur on Contemporary Forms of Racism. The legal limbo in which the US Government and Courts have left the persons detained in Guantanamo Bay is a matter of concern, exacerbated by the revelation that the US has now transferred juveniles there. "The war on terrorism cannot be won by denial of the rights to those arrested and detained purely on suspicion of terrorism. Detentions without trial which are in effect administrative detentions offend the first principle of the rule of law."²⁹ "The increasing tendency for extrajudicial executions to be carried out in the context of the fight against terrorism or crime. Too few are the voices which simultaneously support our efforts against terror and crime but at the same time also remind us to respect the human rights common to all humanity and enshrined in the Universal Declaration and the many international human rights treaties....there can be no derogation from the right to life even in times of such emergencies."³⁰ The Special Rapporteurs on Migrants, on Torture and on Freedom of Opinion and Expression have also voiced concerns and their commitment to continue to monitor the impact of counter-terrorism measures on the human rights issues in their mandates.

Some of the resolutions also highlight particular concerns arising out of measures taken in the name of countering terrorism, for example the resolution on torture (adopted without a vote) condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified (2003/32). The resolution on arbitrary detention encourages Governments not to extend states of emergency beyond what is strictly required by the situation, in accordance with article 4 of the International Covenant on Civil and Political Rights, and to pay special attention during states of emergency to the exercise of those rights that ensure protection against arbitrary detention, and requested the Secretary-General to extend his assistance to Governments, Special Rapporteurs and Working Groups with a view to ensuring the promotion and observance of the guarantees relating to states of emergency that are laid down in the relevant international instruments (2003/31).

NGOs: Although the Commission is an inter-governmental forum, the other active participants in the work of the Commission are Non-Governmental Organisations (NGOs) in Consultative Status with ECOSOC, including Friends World Committee for Consultation (FWCC, the Quaker NGO). Such NGOs are entitled to make oral statements and to submit written statements that are circulated as UN documents. NGOs can act as a reality check on the self-serving rhetoric and political games at the Commission. Such a role does not, of course, guarantee popularity and NGO-bashing is a regular feature of the Commission. It is not that NGOs are above reproach. It is time action was taken to ensure consistency of application of the rules under which NGOs operate so that they accord with the letter and spirit of ECOSOC resolution 1996/31. NGOs on the Roster should be required to submit quadrennial reports to the ECOSOC NGO Committee. At present they are not required to do this, and yet at the Commission they are in practice given the same rights as NGOs in Special Consultative Status with regard to making oral and written statements. This is fundamentally inequitable as well as contrary to the ECOSOC resolution. If Roster NGOs are to receive the same rights as those in Consultative Status they should go through the same process to acquire the Status and be subject to the same reporting and accountability mechanisms.³¹

²⁸ E/CN.4/2003/104, para. 20. Hina Jilani's analysis of other trends is equally trenchant.

²⁹ Dato' Param Cumaraswamy, Special Rapporteur on the Independence of Judges and Lawyers, Geneva, 7 April 2003.

³⁰ Asma Jahangir, Special Rapporteur on Summary Executions, Geneva, 8 April 2003.



The routine demand for NGOs to give joint statements was in practice dealt another blow by the clustering of six of the later items on the Commission's agenda. Many NGOs who had planned - and taken a considerable amount of time to draft and agree - joint statements were either unable to deliver them at all, since the clustering meant that only one statement was possible on the whole group of agenda items, or had to deliver the statements individually or in smaller groupings.³² Such clustering had occurred the previous year as an emergency measure because of externally imposed time constraints, and assurances had been given that it would not occur again. If clustering is to become a regular feature of the Commission's work, it would make more logical sense to cluster the agenda items dealing with country situations (see below).

National Human Rights Institutions: The other category of speakers at the Commission is National Human Rights Institutions. Of the 38 statements this year, one of the more interesting was from the Ugandan Human Rights Commission which raised concerns about Governmental restrictions being proposed on one of its peers: the Australian Human Rights and Equal Opportunity Commission. What action is being taken to investigate and respond to these concerns? It is ironic that Australia is the main sponsor of the resolution on this subject, and perhaps in the circumstances the relative lack of "teeth" in it is not surprising. National Human Rights Institutions can - and should - be an important component of the promotion and protection of human rights within the country concerned. They have the potential to become a more important part of the Commission on Human Rights as well, by participating in debates on issues, and in the interactive dialogue with the Special Procedures, and not only speaking on the agenda item on National Human Rights Institutions.

However to be legitimate and effective they have to conform, and be seen to conform, to the Paris Principles Relating to the Status of National Institutions (adopted unanimously by UN General Assembly resolution 48/134 of 20 December 1993).³³ Sometimes it is unclear how independent of their Governments they really are, and it would be useful to have an effective mechanism not only to help the institutions to be independent but also to vouch for the independence of the ones that address the Commission. This is recognised in the resolution (2003/76), which calls on States, national institutions and other interested parties to consider ways of strengthening the application of the Paris Principles. There is an International Coordinating Committee of National Institutions (ICCN) with an accreditation sub-committee, whose roles could perhaps be strengthened in this regard.

Country resolutions and statements: Although the war in **Iraq** overshadowed the Commission in some respects, what was remarkable was how little serious attention it received. The proposal that the Commission should hold a "special sitting" on Iraq was a geo-political 'shadow play' without evident concern for the human rights situation in that country.³⁴ The original motion indeed did not even mention human rights, focussing only on "the effects of the war on the Iraqi people and their humanitarian situation, and to reaffirm the applicability of the Fourth Geneva Convention to the belligerent parties." The amended version included human rights as well as the humanitarian situation but only "as consequences of the war". This undoubtedly made it easier for the USA and its "coalition" partners to persuade other States to reject the motion (18-25-7).³⁵ This was a missed opportunity. For years, the Special Rapporteur on Iraq has been limited by mandate, covering only the human rights violations committed by the Government of Iraq; this could have been an opportunity to broaden the mandate to cover all human rights violations in the territory. It would also have been an opportunity to put in place the in-country human rights monitors that the Commission had mandated many years ago to assist the Special Rapporteur. The USA not only opposed the Special Sitting but also successfully limited the extension of the mandate of the Special Rapporteur so that its focus is on "newly

³¹ According to the UN Press Releases, at least 58 oral statements were made by Roster NGOs, of which 8 were joint ones; while there were 319 individual statements by NGOs in General or Special Consultative Status, and 65 joint ones.

³² For example, the joint NGO Statement on Standing Invitations to the Commission's mechanisms was not delivered at all, and the one on Human Rights and Refugees was only joint between FWCC (Quakers) and the Jesuit Refugee Service because the other NGOs who had been involved in the drafting wished to speak to other agenda items which were part of the "clustering".

³³ This could parallel the Northern Ireland Human Rights Commission's engagement with the Treaty Bodies where they have been a pioneer in both providing information and comments on the Government's Reports and in follow-up to the Treaty Bodies' recommendations, and are encouraging the Treaty Bodies to engage meaningfully with national human rights institutions.

³⁴ The proposal to convene a special sitting was called for by Algeria, Burkina Faso, Democratic Republic of Congo (which subsequently withdrew its co-sponsorship), Libyan Arab Jamahiriya, Malaysia, Russian Federation, Sudan, Syrian Arab Republic and Zimbabwe.

³⁵ The abstention of Chile lost the Ambassador his job.



available information about violations of human rights and international law by the Government of Iraq over many years" (2003/84; 31-3-12).

One of the most contentious aspects of the Commission's agenda is the debate and resolutions on human rights in specific countries. Some countries object to what they see as "finger-pointing" by other governments or NGOs, while others see this as an essential element in trying to effect change on the ground. Obviously no government likes to be put in the "hot seat" in this way and is likely to protest. The questions are: is it legitimate and is it effective? The argument about "legitimacy" revolves around two sets of issues. First, is this a permissible intrusion into the affairs of another country? The simple answer is that it has become so, and this is generally accepted although the particular State on the "receiving end" often denies it. A country's human rights record is not a matter for itself alone: the whole international human rights system is based on, and has established that, the way a government treats those within its territory or jurisdiction - whether they are its own nationals or those of another State - are not matters within the "reserved domain" discussion of which is forbidden as "interference in internal affairs". Second is "who are you to do this"? In the Commission, this most frequently translates into an argument about what right do the countries of the European Union, or Western States more generally, have to criticise other states (variously described as "African States" or "Developing Countries").

This year, South Africa (speaking on behalf of the African Group) stated that they did not think there should be any "naming and shaming" of countries, which they described as being "an embarrassment to the credibility and dignity of the Commission", stating that "Dialogue should prevail over condemnation". However, Pakistan (on behalf of the Organisation of the Islamic Conference) produced its own list of situations of concern, including Jammu and Kashmir, Cyprus, Afghanistan, occupied Azerbaijani territories, Iraq, Kuwait and the various territories occupied by Israel.

Over all, 69 different situations were named in the general debate under Item 9³⁶ and by no means all of these were African and/or Developing countries. When it comes to resolutions or Chair's statements, the numbers are much smaller, although in total 32 resolutions, decisions or statements were presented of which only 4³⁷ were rejected.

Under item 9, three new resolutions were adopted: **Belarus** (2003/14; 23-14-16), **Democratic People's Republic of Korea** (2003/10; 28-10-14),³⁸ and **Turkmenistan** (2003/11; 23-16-14) as well as the perennial resolutions on **Iraq** (2003/84; 31-3-12), **Myanmar** (2003/12),³⁹ **Democratic Republic of the Congo** (2003/15),⁴⁰ **Burundi** (2003/16),⁴¹ **Cuba** (2003/13; 24-20-9)⁴² and **Lebanese detainees in Israel** (2003/8; 32-1-20). Three were defeated: **Chechnya** (L.13/Rev.1; 15-21-17), **Sudan** (L.35; 24-26-3) and **Zimbabwe** (No Action Motion carried 28-24-1).⁴³ In addition, public decisions were taken on **Cyprus** (2003/106), and to move **Chad** (2003/104) and **Liberia** (2003/105) from the confidential 1503 procedure⁴⁴ to item 19. A Chair's Statement was made on **Timor-Leste**, and the Chair also announced that **Djibouti** and **Uzbekistan** had been considered under "1503" with the latter being "discontinued". Six country resolutions were adopted under Item 19:⁴⁵ **Afghanistan** (2003/77),⁴⁶ **Somalia** (2003/78),⁴⁷ **Cambodia** (2003/79), **Sierra Leone** (2003/80),

³⁶ Item 9 is "Question of Human Rights and Fundamental Freedoms in any part of the world", which is perceived as the confrontational item, although countries are named under other items as well.

³⁷ Includes the rejection of the motion for a special sitting on Iraq.

³⁸ Republic of Korea did not participate in the vote.

³⁹ Renews the mandate of the Special Rapporteur for another year, and "Strongly urges the Government of Myanmar ... to put an immediate end to the recruitment and use of child soldiers".

⁴⁰ "Condemns ... The continuing recruitment and use of child soldiers by armed forces and groups in the territory of the Democratic Republic of the Congo"; and "Urges all parties to the conflict ... To put an immediate end to the recruitment and use of child soldiers".

⁴¹ Extends the mandate of the Special Rapporteur for a further year and "Urges all parties to the conflict to end the use of children as soldiers, welcomes the commitment made in that regard by the Transitional Government and the signature of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and encourages the Transitional Government to ratify it".

⁴² "Urges the Government of Cuba to receive the personal representative of the UN High Commissioner for Human Rights".

⁴³ The African Group's use of a no action motion in relation to the resolution on Zimbabwe was shameful: such a motion indicates that they were not confident of winning a vote on the resolution itself and/or that they consider that indeed the Government of Zimbabwe is above the law. It was equally shameful that the Russian Federation voted in favour of this no action motion and that Brazil abstained.

⁴⁴ Called after the number of the resolution which set it up, it deals with patterns of gross violations of human rights, not individual cases. The results are announced publicly, but until then which country is being considered and the state of consideration is confidential.



Chad (2003/81) and **Liberia** (2003/82)⁴⁸ and a Chair's statement made on **Haiti**.⁴⁹ The Chair made a statement on **Colombia**⁵⁰ under item 3.⁵¹ Two country resolutions were adopted under item 5:⁵² **Western Sahara** (2003/1) and **Occupied Palestine** (2003/3: 51-1-1). Three country resolutions were adopted under item 8:⁵³ **Occupied Syrian Golan** (2003/5: 31-1-21); **Occupied Arab Territories, including Palestine** (2003/6: 33-5-15); and **Israeli settlements in the occupied Arab Territories** (2003/7: 50-1-2).

Showing the full range of resolutions, decisions and statements illustrates that all those countries that protest that country resolutions are a bad thing, actually support numerous country "actions". Thus, although the positions are articulated starkly and as a matter of principle, in practice no current member of the Commission abstained or absented themselves from the vote on all resolutions pertaining to specific country situations. Indeed, it is notable that despite the rhetoric, the resolution on Myanmar was adopted without a vote, although it was tabled by the countries of the European Union. What this suggests is that all members of the Commission are in fact operating double standards, or to put it another way, since they are governments, they operate politically even in a human rights forum, and human rights is (at most) only one of their considerations. As Sergio Vieira De Mello, UN High Commissioner for Human Rights, put it in his closing statement to the Commission:

Let me suggest ... that the word 'politicization' and its variants be retired from active service. ... Let me be frank: most of the people in this room work for government or seek to affect the actions of governments. That is politics. For some to accuse others of being political is a bit like fish criticizing one another for being wet.

Of course the EU, and other Western states, are open to criticism for addressing some situations and not others: though the strong EU text on Israeli settlements and the (failed) resolution on Chechnya give the lie to the argument that they "only" target developing countries. Of course, it would be welcome if more serious attention was given to human rights violations within the Western Group: the Commission's own human rights Special Procedures provide plenty of evidence of where some valid criticism could be made: detention of asylum-seekers in Australia, denial of due process to detainees in Guantanamo Bay, the investigation of the killings of lawyers in Northern Ireland and the application of the juvenile death penalty in the USA⁵⁴ for a start. Equally, it is notable that the resolution on Cuba was tabled by four Latin American countries, and the resolution on Burundi was by the African Group. There are advantages in such approaches, although Cuba is no more receptive to a resolution coming from within the GRULAC than to one coming from "outside" it. However, the question remains: if other members of the group are unable or unwilling to address a serious human rights situation, should it remain unaddressed? Alternatively, is there another way in which such situations can be put on the international agenda?

What effect do such resolutions have? The answer to this question is not simple either. Those resolutions that establish mandates (special rapporteurs, special representatives, independent experts) to monitor and report on the situation can play a very valuable role in engaging with a government on issues and encouraging and helping them to find ways forward, as well as focussing the attention of others. Even if the Government is not willing to engage, where there is an active civil society in the country the Commission rapporteur can provide an intermediary, or access point to the Government, and a validation of the concerns expressed by those from

⁴⁵ Item 19 is Advisory Services and Technical Cooperation in the Field of Human Rights.

⁴⁶ UN Secretary-General to appoint an Independent Expert for one year in place of Special Rapporteur to develop a programme of advisory services and to seek and receive information and report on the human rights situation in an effort to prevent human rights violations.

⁴⁷ Mandate of Independent Expert extended for one year.

⁴⁸ Independent expert appointed for 3 years- normally country mandates are created for one year at a time.

⁴⁹ Mandate of independent expert extended for a further year.

⁵⁰ "The Commission welcomes the standing invitation issued by the Government of Colombia to all United Nations special procedures and mechanisms for the protection of human rights to visit the country", and "condemns the recruitment of a large number of children by illegal armed groups and urges those groups to stop the recruitment of children and to demobilize immediately those children currently in their ranks."

⁵¹ Item 3 is Organization of the work of the session.

⁵² Item 5 is The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation.

⁵³ Item 8 is Question of the violation of human rights in the occupied Arab territories, including Palestine.

⁵⁴ Although no "country resolution" is tabled on the USA, the strong prohibitions on the juvenile death penalty in both the omnibus resolution on the rights of the child as well as in the resolution on the death penalty itself are a clear and direct criticism of the US - and it reacts accordingly. Similarly, The US reacts as though it is the target of the Russian Federation's resolution on **Integrity of the judicial system** (2003/39; 31-1-21) which seeks to limit the use of military tribunals amongst other things.



within the country. At present, the Commission has two different kinds of mandates: in essence, "special rapporteurs" and "independent experts" with the former supposedly focussed on "monitoring" and the latter on "advisory services and technical assistance". This division is perhaps unhelpful since in order to provide appropriate advice and assistance, fact-finding and an analysis of the problems is necessary, which is what "monitoring" actually comprises. On the other hand, monitoring which does not lead to recommendations, or "advice" is not particularly helpful, and if it could also be linked to assistance where this is required and is available, so much the better. Thus all Commission mandates should contain both elements. Country resolutions that do not create a mandate are more questionable, although the strong reaction of Governments "threatened" with any resolution suggests that they do have an impact. In fact, such resolutions should perhaps be considered in the same light as thematic resolutions which do not create a mandate: one function of such resolutions is to create a debate on an issue - see for example the Brazilian resolution on sexual orientation. Without a draft resolution on which to focus, how would the Commission engage in a serious discussion on the issue?

One logical step for the Commission, which would also help with one of the time management issues, would be to cluster the agenda items on country situations, in particular item 19 which deals with advisory services and technical assistance, item 9 on country situations and item 8 on the Israeli Occupied Territories. This would be more logical than clustering the later agenda items in a random bunch as happened this year as well as last year.

Another logical step would be for the Commission to be provided with a better basis for consideration of country situations: such a basis could be a country-by-country compilation of the reports of the thematic special procedures of the Commission. As already noted, these reports raise many more situations than are considered by the Commission. They are already Commission documents and thus no new work would be entailed, except to rearrange the information and present it in one volume. It would not, therefore, be a major undertaking, but would be a useful tool for the Commission, providing an independent and objective basis for consideration. This could then be the subject of a debate in its own right.

Conscientious Objection to Military Service: Although no resolution was presented this year (this is a biennial resolution), the issue was on the agenda and was addressed in Commission documents (including in relation to Colombia, Bosnia and Herzegovina, the Federal Republic of Yugoslavia, Armenia, and the Republic of Korea) and by NGOs.⁵⁵ In addition, three NGOs raised the specific situation of conscientious objectors and reservists in Israel,⁵⁶ and the resolution on **Turkmenistan** (2003/11; 23-16-14) expressed "grave concern ... At the heavy prison sentences given to objectors to compulsory military service on religious grounds, such as Jehovah's Witnesses, and the lack of alternative service compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature"; and "Calls upon the Government of Turkmenistan ... to take the necessary measures to refrain from subjecting conscientious objectors to imprisonment". The report being prepared by the OHCHR for next year's Commission is on best practices in relation to the recognition of the right of conscientious objection and the provision of alternative service, and further contributions are needed from Governments, National Human Rights Institutions, NGOs and other bodies.

Rights of the Child: In previous years, there has been a resolution focussing on the Abduction of Children from **Northern Uganda**. This year it was broadened to cover abduction of children in Africa (2003/85). The benefit is the recognition of a serious problem which affects more than one country and situation, and if this resolution can help to focus attention on doing something about it, this would be good. On the other hand, the broader focus reduces attention to the dire situation in Northern Uganda, following the vain attempt to persuade the Ugandan Government to have a UN Special Envoy to try to help resolve the long-standing, and

⁵⁵ The Quaker UN Office has prepared a compilation of references to conscientious objection in the reports, statements and resolutions of the Commission, which is available on request.

⁵⁶ Amnesty International, Human Rights Watch and International Commission of Jurists. A full report of the situation of conscientious objection to military service in Israel is available from War Resisters' International: www.wri-irg.org. See also the written NGO Statements by MINBYUN-Lawyers for a Democratic Society (E/CN.4/2003/NGO/25) and the oral NGO Statements by Friends World Committee for Consultation (Quakers) - available on www.quano.org.



deteriorating situation.

The general (omnibus) resolution on the rights of the child is a frustrating exercise. It is the EU's only thematic resolution, other than the one on the death penalty. The EU took over the death penalty resolution from Italy only when the UK abolished the death penalty, thus establishing an EU-wide norm. By contrast, there is little real agreement within the EU on the rights of the child and what the priorities should be. The result is that producing a text takes a very long time, and the result is patchy and in some places simply weak. This is compounded by the resolution being a joint EU/Latin-American Group one, with the lead alternating between them and so when, as this year, the EU has finished, it then negotiates with the Latin-American Group, before other Governments are allowed into the process. This often means that proposals are met with refusal because of the difficulty of making changes - although sometimes, of course, this is an excuse for declining to make unwanted changes, rather than admitting that support for the rights of the child is not high in some EU countries. This can be illustrated by the section on children in armed conflict, where a significant breakthrough was achieved by including a reference to the "rights" of girls in demobilisation and reintegration processes and not only to their "specific needs". The biggest problem for girl ex-soldiers is that they are discriminated against all down the line, to the extent that often they do not make it into the demobilisation process at all.⁵⁷ On the other hand, the EU included a weak formulation about voluntary recruitment of children into the armed forces, pandering to the lowest standards in the EU. This contrasts with the strong resolutions on children in armed conflict unanimously adopted by the UN Security Council in the last few years. It was only due to heavy external pressure from other governments and NGOs, that the EU did not, in the interests of appeasing the USA, give away both the strong section on the prohibition on the juvenile death penalty and the pre-eminence and call for universal ratification of the Convention on the Rights of the Child. As a result, the US called a vote on these two sections, on which of course it was the only dissenter, but the resolution as a whole was then adopted without a vote (2003/86). There is no logic to this being an EU resolution and it would be in the best interests of the rights of the child if it were to cease being such.

Human Rights and Refugees: Increasing concerns about the way in which refugees, asylum-seekers and failed asylum-seekers are being categorised, stigmatised and treated in practice, led FWCC, Amnesty International, Human Rights Watch, Jesuit Refugee Service and the International Catholic Migration Commission to propose a new resolution on "Human Rights and Refugees".

*"One of the most disadvantaged groups of people, in any country, is that composed of people who have migrated. People who are seen by their host communities as "foreign". People who frequently are unable to enjoy the full range of rights guaranteed by international and national law."*⁵⁸

The Commission's Special Procedures are giving attention to these people within their existing mandates⁵⁹ and although no new resolution was forthcoming, increased attention was given to refugees in a number of existing resolutions, in particular the one on **Human Rights and Mass Exoduses** (2002/52): which gave greater emphasis to the protection of refugees and not only to situations of mass flows. It "Calls upon States to ensure effective protection of refugees by, *inter alia*, respecting the principle of non-refoulement and urges all States to promote and protect the human rights and fundamental freedoms of refugees and asylum-seekers". It also calls on all relevant agencies to ensure the effective implementation and monitoring of the United Nations Inter-Agency Standing Committee Plan of Action on 'Protection from Sexual Exploitation and Abuse in Humanitarian Crises'; and other relevant codes of conduct. In addition to requesting the High Commissioner for Human Rights to prepare a report for the 61st session of the Commission (ie 2005), it requests him to include, in an annex, "a thematic compilation of relevant reports and resolutions of the Commission and Sub-Commission".

Another group of vulnerable people on the move are migrant workers, so the entry into force on 1 July 2003 of

⁵⁷ For more on this see the FWCC written and oral statements on child soldiers. The Quaker UN Office, Geneva, has prepared a compilation of references to child soldiers in the resolutions and reports of the Commission, which is available on request.

⁵⁸ Christopher Lamb, Statement by the International Federation of Red Cross and Red Crescent Societies to the UN Commission on Human Rights, 15 April 2003

⁵⁹ The Quaker UN Office, Geneva, has prepared an extensive compilation of such references in this year's Commission documents and resolutions, which is available on request.



the International Convention on the Protection of the Rights of All **Migrant Workers** and Members of Their Families is a cause for celebration, although a supervisory committee is yet to be established. As with concerns about the human rights of refugees, the need to provide better protection for migrant workers and their families is too obvious to need elaboration. This step gives cause for hope that progress may be possible. For anyone wanting more information, see the reports of the Special Rapporteur on the human rights of migrants (E/CN.4/2003/85 and Adds 1-4).

New Initiative: Brazil introduced a new resolution on "Human Rights and Sexual Orientation" (L.92), identifying the need not to discriminate against people because of their sexual orientation, but omitting any reference to the right to marry and found a family. This was as controversial as anticipated – with countries from the Organisation of the Islamic Conference proposing 55 amendments aimed at removing any reference to sexual orientation. (They had also opposed such a reference in the resolution on summary executions but had failed to eliminate it) The Libyan Chair stepped in to postpone consideration of the resolution, raising questions about her impartiality, with the result that it was not put to the vote but held over until next year's Commission (2003/118; 24-17-10).

Conclusion: Too often the Commission on Human Rights is a sickening display of hypocrisy from which Governments in no region of the world are exempt. The fact is that many of them lie and try to "shoot the messenger" or place the blame on other countries, rather than face up to the reality of and the responsibility for their own actions or inaction.

There are exceptions: over the years a pattern emerges whereby States coming out of repressive regimes (of whatever political character and whether of their own or others' making), become strong proponents of human rights and express their appreciation for the work of the UN and non-governmental human rights bodies. This is followed by a period when economics and trade alliances rather than human rights tend to become the priority.

Realpolitik will never be eradicated from inter-governmental bodies. Nevertheless, over the years the Commission has demonstrated its importance as a forum for standard-setting, identification of new issues, creation of better-understanding of specific rights and the relationships between rights, and in both assisting and embarrassing governments into paying more attention to implementation of human rights. For some Governments, the uncomfortable reality against which they are reacting is that the mechanisms they worked so hard to create are now giving critical attention to *them*. Others present themselves as champions of the rights of those of the same ethnic, religious, linguistic or cultural background, while resisting effective international supervision to enhance their protection.

These positive elements can be maintained by ensuring that a broad spectrum of governments are represented so that the different interests are balanced out, and by creating and supporting independent mechanisms. A list of States that attack the UN human rights Special Procedures should in fact be read as a list of States with human rights problems that they are trying to cover up.

At the same time, the Commission has reached a point at which it needs to develop new ways of undertaking some aspects of its work. The interactive dialogue with the Special Procedures was a breakthrough in this respect, while still leaving much room for further development.

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