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Summary record of the 56th meeting

Held at the Palais des Nations, Geneva, on Tuesday, 19 April 2005, at 12 p.m.

Chairperson: Mr. Ould Mohamed Lemine.....(Mauritania)
later: Mr. Mr. Wibisono.....(Indonesia)
(Chairperson)

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The meeting was called to order at 12 p.m.

Advisory services and technical cooperation in the field of human rights

(agenda item 19) (*continued*) (E/CN.4/2005/110 to 123 and 133;
E/CN.4/2005/NGO/16, 166, 254, 266 and 288)

1. **Ms. Williams** (Amnesty International) said that situations of serious human rights violations, such as those currently prevailing in Darfur, should not be considered under agenda item 19. To suggest that such situations concerned advisory services and technical cooperation only aggravated the Commission's lack of credibility. When almost 2 million displaced persons in Darfur were the target of attacks by militia; when women in Darfur not only continued to be the victims of sexual abuse but were even pursued when they became pregnant after being raped; and when the Sudanese Government prevented the forces of the African Union from protecting populations, the Governments represented on the Commission were showing themselves incapable of acknowledging that the Sudanese Government was primarily responsible for these acts of violence and for taking action. The children, women and men of Darfur were not only the victims of abuse in their own land, but were also the victims of the Commission's perverse logic, which put politics above action, and which contented itself with purely formal measures instead of protecting populations. Reforming the functioning of the United Nations in the field of human rights was therefore vital. Amnesty International urged Governments to take the opportunity provided by the reports of the High-level Group and of the Secretary-General to create a body that could truly protect the human rights of all, at all times and in all places.

2. **Mr. Shiokawa** (International Association of Democratic Lawyers) deplored the too-modest financial contribution of Japan, the world's second largest economy, to the budget of the Office of the High Commissioner for Human Rights (OHCHR). His organization contributed to four United Nations voluntary funds. Knowing that "great oaks from little acorns grow", he himself never missed a chance to encourage individuals and groups to contribute to United Nations human rights funds. The public was generally inclined to cooperate once it knew the role and importance of the Commission and the Sub-Commission. The more people were involved in human rights issues, including through financial contributions, the sooner international cooperation in this field would materialize.

3. **Mr. Neuer** (United Nations Watch) called the attention of the Commission members to the two draft resolutions on Darfur that were currently being negotiated. One of them had been introduced under agenda item 19 and the other under agenda item 9. What was at stake in these negotiations was nothing less than the credibility or even the future of the Commission.

4. War crimes and crimes against humanity had been and were still being committed in Darfur. The Janjaweds, acting in connivance with the Sudanese Government, had killed 300,000 people in Darfur and caused the displacement of nearly 2 million others. At a time when the Commission was being asked to show proof of its credibility — at the risk of being replaced, as the Secretary-General had suggested, by a human rights council composed of countries that had concretely proved their commitment to human rights — the Commission should demonstrate that it was capable, unlike what had happened at the previous session, of condemning Sudan. He urged the members of the Commission to rally around the draft resolution introduced under agenda item 9 and to reject any motion of "non-action" on the text.

Statement in exercise of the right of reply

5. **Mr. Soemarno** (Indonesia), referring to the statement made on behalf of the European Union (EU) by the representative of Luxembourg under agenda item 19, said that

the Commission of Truth and Friendship had been established on 9 March 2005 by the Governments of Indonesia and Timor-Leste in order to replace the Commission of Experts, and not to work in parallel with it. His delegation called on the European Union and on the entire international community to respect the two countries' decision to settle between themselves questions of human rights violations that had been committed in the past and to establish their bilateral relations based on mutual respect and good-neighbourliness. The two countries were currently appointing members to the Commission so that it could fulfil its mandate without delay, namely, to establish the facts about the incidents that had taken place before and immediately after the popular consultation of 1999.

6. **The Chairperson** said that the Commission had thus concluded its general discussion of agenda item 19.

Rationalization of the work of the Commission (agenda item 20) (*continued*)
(E/CN.4/1999/104 and Corr.1; E/CN.4/2000/112; E/CN.4/2005/132)

7. **Mr. Costea** (Romania) said that the Commission's mandate holders played a vital role in the United Nations human rights protection system. That was because of their impartiality and independence, and their ability to gather first-hand information and establish direct contact with the parties concerned. As a result, they enjoyed the favour of Governments, as testified by the growing number of invitations they received. The interactive dialogue that had been established with these mandate holders had improved in recent years but was still hampered by the fragmented manner in which their reports were introduced. That fragmentation did not give the listeners a complete picture of a given situation, and it also prevented the rapporteurs themselves from benefiting from the reports of other mandate holders. The limited time allotted to the dialogue made matters worse, and he therefore proposed organizing a special four-day meeting every year devoted exclusively to special procedures. During those days, the mandate holders would introduce their reports and hold a dialogue with member States and with one another. The dialogue would gain in quality and depth.

8. His delegation was submitting the proposal for consideration by participants and by the Commission's mandate holders.

9. **Ms. de Rivero** (International Service for Human Rights) said that, when the High-level Group of the Secretary-General denounced the lack of credibility and professionalism of the Commission on Human Rights, it was calling into question not the work of the mandate holders, but the behaviour of member States. Some States, including those belonging to the like-minded Group, were insinuating that the credibility of the rapporteurs posed a problem, whereas for NGOs, it was clearly the member States who were preventing the Commission from discharging its functions of monitoring and protection. As soon as they felt themselves targeted, States cast doubt on the credibility of the rapporteurs. Spain had criticized the Special Rapporteur on torture, who had denounced the use of torture against presumed members of the ETA, and Australia had questioned the merits of the report published by the Working Group on arbitrary detention following its visit to that country. Some States, such as Cuba, had no scruples about denying human rights violations committed in China, Russia and Zimbabwe.

10. Her organization called on States that had expressed a clear commitment to the special procedures to react firmly and systematically to proposals aimed at hindering the independence of special rapporteurs and restricting their functions.

11. **Mr. Sweeney** (South Asia Human Rights Documentation Centre), referring to the proposals to reform the Commission, insisted on the need to preserve and even strengthen the two positive features of the Commission, which were the special procedures and the participation of NGOs in its debates. There was no point in proposing to move a future

Human Rights Council to New York, where NGOs were relegated to second place. There were several advantages to the notion that such a council would meet in permanent session, but the six-week session should nonetheless be maintained so that participation in the debates would not be limited to NGOs that were able to be present year-round. He also regretted that the Secretary-General had presented the reform proposals precipitately, without prior discussion, and furthermore as “take-it-or-leave-it”. All the aspects of the proposed reforms should be debated and analysed in detail.

12. Once a State had been admitted to the Commission, it should automatically send standing invitations to the special rapporteurs and commit itself to ratifying human rights instruments.

13. **The Chairperson** said that the Commission had thus concluded its general discussion of agenda item 20.

The meeting was suspended at 12.30 p.m. and resumed at 12.50 p.m.

14. *Mr. WIBISONO (Indonesia) took the Chair.*

Consideration of draft resolutions (continued)

Consideration of draft resolutions under agenda items 6 and 9 (continued)

15. **The Chairperson** announced that the revised version of draft resolution L.13, which had been submitted under agenda item 6 and entitled “World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action”, had been introduced at the end of the previous day and was therefore not available in all the working languages. The sponsors had proposed that the Commission decide on the text at a later date. He took it that the Commission accepted the proposal.

16. *It was so decided.*

17. *Consideration of draft resolution L.13/Rev.1, which had been introduced under agenda item 6, was postponed to a meeting to be held the following day.*

18. **The Chairperson** announced that a revised version of draft resolution L.33, entitled “Situation of human rights in the Sudan” and introduced under agenda item 9, had also been introduced at the end of the previous day and was therefore not available all working languages. He suggested that consideration of the text be postponed, and took it that the Commission accepted the suggestion.

19. *It was so decided.*

20. *Consideration of draft resolution L.33/Rev.1, which had been introduced under agenda item 9, was postponed to a meeting to be held the following day.*

Consideration of draft resolutions under agenda item 11

Draft resolution on human rights and forensic science (E/CN.4/2005/L.39)

21. **Ms. Mattila** (Finland), introducing draft resolution L.39, stressed the importance of forensic science, which made it possible to collect evidence of torture and other inhuman treatment. New elements had been added to the draft, which basically reproduced several resolutions that had already been adopted on the subject. The preamble referred to the operational best practices regarding the management of human remains and information on the dead, as contained in the report of the International Committee of the Red Cross (ICRC) entitled *The Missing and their Families*. In paragraph 2, which was new, the Commission urged States to ensure the safety and security of forensic and related experts. In paragraph

8, which was also new, the Commission urged Governments to make every effort to ensure that personal information, including medical and genetic data, was not used in a way that might infringe human rights. The sponsors of the text recommended that OHCHR encourage the dissemination and use of the principles, best practices and manuals of forensic medicine, and the promotion of forensic capacity-building, including training. The report which the Commission, in resolution 2003/33, had asked OHCHR to provide would be available later in the year. The sponsors thus asked the Office to submit to the Commission at its sixty-third session an updated version of the report. She hoped that the draft resolution, as in previous years, would be adopted without a vote.

22. **The Chairperson** announced that four delegations had become sponsors of draft resolution L.39 and that the financial implications of the text had been circulated in writing to all members of the Commission.

23. *Draft resolution E/CN.4/2005/L.39 was adopted without a vote.*

Draft resolution on enforced or involuntary disappearances (E/CN.4/2005/L.40)

24. **Mr. Kessedjian** (France) stressed the particularly odious nature of enforced disappearances, a form of physical and moral coercion that violated all human rights. Enforced disappearances were tantamount to repudiating the victims' very existence by placing them in an environment of lies and neglect. Draft resolution L.40 called for measures to prevent enforced disappearances, above all by combating impunity and punishing the perpetrators. The draft also drew attention to the work of the Working Group on Enforced or Involuntary Disappearances, and particularly to the need to respond to its urgent appeals. The resolution called for negotiations to begin on a legally binding instrument on the protection of all persons from enforced disappearance. An additional session was envisaged to that end. He hoped that the text, as in previous years, could be adopted by consensus.

25. **The Chairperson** announced that 20 delegations had become sponsors of the draft resolution.

26. **Mr. Vlasov** (Russian Federation) said that his delegation attached great importance to the draft resolution introduced by France. Russia was in favour of strengthening legislation to prevent and combat enforced disappearances, including through the adoption of a legally binding instrument. It did, however, have reservations on operative paragraph 13, in which the intersessional Working Group was requested to hold a session with a view to the completion of its work. His delegation would not oppose adoption of the text, but wished to point out that consultations on the legal instrument should continue until consensus had been reached on all of the draft's provisions, including the controversial ones.

27. **The Chairperson** said that the financial implications of the draft resolution had been circulated to Commission members in writing.

28. *Draft resolution E/CN.4/2005/L.40 was adopted without a vote.*

Draft resolution on arbitrary detention (E/CN.4/2005/L.41)

29. **Mr. Kessedjian** (France) said that the draft recalled the universal principle that anyone who was deprived of his/her liberty had the right to bring proceedings before a court without delay, or else to be released. The principle applied in all places and to all forms of detention, including administrative detention ordered within the framework of action to combat terrorism. The draft requested the Working Group on arbitrary detention to continue its work and called on States to cooperate with it. His delegation hoped that, as in previous years, the draft resolution would be adopted without a vote.

30. **The Chairperson** announced that 19 delegations had become sponsors of the draft. Its financial implications had been circulated to all delegations in writing.

31. *Draft resolution E/CN.4/2005/L.41 was adopted without a vote.*

Draft resolution on strengthening of popular participation, equity, social justice and non-discrimination as essential foundations of democracy (E/CN.4/2005/L.42)

32. **Ms. Herrera** (Cuba) said that four countries had joined the sponsors of the draft: Angola, Cameroon, Sudan and Venezuela. The text had been adopted several years in a row by the vast majority of Commission members. It was very similar to versions submitted previously on the same subject. The sponsors had added the notion that, while the electoral regime was a basic and fundamental element of democracy, democracy involved more than the mere holding of elections. It was also about the struggle against poverty, inequalities and discrimination — in short, any impediment of effective popular participation.

33. She called particular attention to paragraphs 1 and 2, in which the Commission declared that popular participation, equity, social justice and non-discrimination were essential foundations of democracy and that democracy was based on the freely expressed will of the people to determine their own political, economic, social and cultural systems.

34. Her delegation hoped that the draft resolution would be adopted by a large majority, as had been the case at the previous session.

35. **The Chairperson** announced that the draft had no financial implications.

36. **Mr. de Jong** (Netherlands), speaking on behalf of the European Union and the acceding country Romania, said the EU regretted that the text had again been submitted for consideration by the Commission. The draft did not define democracy or its concrete implications for both the Government and its citizens. It presented international cooperation and development as preconditions for democracy. For the European Union, however, nothing could justify Governments preventing their citizens from exercising their political rights and fundamental freedoms. The draft advanced neither the cause of human rights nor that of democracy. The Union thus asked that it be put to the vote, and said it would vote against it. The EU had, however, decided to co-sponsor draft resolution L.45 on democracy and the rule of law, which would be introduced by Romania.

37. *At the request of the representative of the Netherlands, a recorded vote was taken on draft resolution L.42.*

In favour: Bhutan, Brazil, Burkina Faso, China, Congo, Cuba, Ecuador, Egypt, Eritrea, Ethiopia, Gabon, Guinea, India, Indonesia, Kenya, Malaysia, Mauritania, Nepal, Nigeria, Pakistan, Qatar, Russian Federation, South Africa, Lanka, Sudan, Swaziland, Togo, Zimbabwe.

Against: Australia, Canada, Finland, France, Germany, Hungary, Ireland, Italy, Netherlands, Republic of Korea, Romania, Ukraine, United Kingdom, United States.

Abstaining: Argentina, Armenia, Costa Rica, Dominican Republic, Guatemala, Honduras, Japan, Mexico, Paraguay, Peru, Saudi Arabia.

38. *Draft resolution E/CN.4/2005/L.42 was adopted by 28 votes to 14, with 11 abstentions.*

Draft resolution on integrity of the judicial system (E/CN.4/2005/L.43)

39. **Mr. Lukiyantsev** (Russian Federation) said that the protection of human rights in the framework of legal procedures was at the forefront of debates in human rights forums.

Such protection assumed the existence of a functioning judicial system, no matter what the circumstances, in keeping with the principles governing the administration of justice. The principles were those appearing in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

40. He thanked the delegations that had helped to draft the text. In keeping with the wishes expressed by some of them, Russia had agreed to some changes in the draft. In paragraph 7, it had decided to replace the words “international human rights standards” with the word “law”. His delegation hoped that the draft resolution could now be adopted without a vote.

41. **The Chairperson** announced that two more countries had decided to sponsor the draft.

42. **Mr. Peay** (United States) said that, unlike the previous year, the United States delegation was not in a position to support draft resolution L.43. He proposed three amendments.

43. Operative paragraph 3 was formulated in such a way as to turn principles that were no more than recommendations into standards. The qualifier “ordinary” was applied to courts and tribunals. The term risked being interpreted as negating the legitimacy of courts of special jurisdiction or military tribunals, which were independent, impartial bodies. Deleting the word “ordinary” would make the paragraph acceptable. The second part of paragraph 3, and specifically the clause “and that tribunals that do not use such duly established procedures of the legal process shall not be created”, was superfluous and should be deleted.

44. Paragraph 7 should also be amended to make it consistent with the wording of article 14, paragraph 5, of the International Covenant on Civil and Political Rights, which dealt with judicial remedies, which referred to a “higher tribunal according to law”.

45. In paragraph 8, the phrase “when required by applicable law”, which had been used in the text from the previous year, should be reintroduced into the current draft so as to take account of the diversity of national legal systems.

46. His delegation requested that a recorded vote should be taken on each of the amendments it had just proposed and that they should be submitted in writing to all delegations.

47. **Mr. Lukiyantsev** (Russian Federation) said that his delegation could not accept the amendments proposed by the United States, which seemed contrary to the spirit of the original draft. For example, paragraph 3, which the United States wished to redraft, reproduced the provisions of paragraph 5 of the Basic Principles on the Independence of the Judiciary. To single out this paragraph, as the United States wanted to do, was inadmissible. His delegation would therefore vote against the United States amendments and called on other delegations to do likewise.

48. **Mr. Reyes Rodriguez** (Cuba) said that his delegation fully endorsed the draft resolution introduced by Russia and Belarus, which Cuba wished to co-sponsor. It was obvious that in introducing its amendments, the sole purpose of the United States had been to legitimize the special courts established by the Bush Administration to try, if that word could be used, in totally arbitrary fashion the individuals being illegally held in Guantanamo and other secret detention centres. This undertaking was totally counter to international law. Cuba would thus vote against the amendments and called on other delegations to do likewise.

49. **The Chairperson** announced that draft resolution E/CN.4/2005/L.43 had no financial implications.

50. *A recorded vote was taken on the amendment proposed by the United States to paragraph 3 of draft resolution E/CN.4/2005/L.43.*

In favour: Australia, Canada, Eritrea, United States.

Against: Argentina, Armenia, Bhutan, Brazil, China, Costa Rica, Cuba, Dominican Republic, Ecuador, Finland, France, Germany, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Malaysia, Mexico, Nepal, Netherlands, Nigeria, Paraguay, Peru, Republic of Korea, Romania, Russian Federation, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Ukraine, United Kingdom, Zimbabwe.

Abstaining: Burkina Faso, Congo, Egypt, Ethiopia, Gabon, Mauritania, Pakistan, Qatar, Saudi Arabia.

51. *The amendment proposed by the United States to paragraph 3 of draft resolution E/CN.4/2005/L.43 was rejected by 40 votes to 4, with 9 abstentions.*

52. *A recorded vote was taken on the amendment proposed by the United States to paragraph 7 of draft resolution E/CN.4/2005/L.43.*

In favour: Australia, Canada, Eritrea, India, Pakistan, United States.

Against: Argentina, Armenia, Bhutan, Brazil, China, Costa Rica, Cuba, Dominican Republic, Ecuador, Finland, France, Germany, Guatemala, Guinea, Honduras, Hungary, Indonesia, Ireland, Italy, Japan, Kenya, Malaysia, Mexico, Nepal, Netherlands, Nigeria, Paraguay, Peru, Republic of Korea, Romania, Russian Federation, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Ukraine, United Kingdom, Zimbabwe.

Abstaining: Burkina Faso, Congo, Egypt, Ethiopia, Gabon, Mauritania, Qatar, Saudi Arabia.

53. *The amendment proposed by the United States to paragraph 7 of draft resolution E/CN.4/2005/L.43 was rejected by 39 votes to 6, with 8 abstentions.*

54. *A recorded vote was taken on the amendment proposed by the United States to paragraph 8 of draft resolution E/CN.4/2005/L.43.*

In favour: United States.

Against: Argentina, Armenia, Bhutan, Brazil, China, Costa Rica, Cuba, Dominican Republic, Ecuador, Eritrea, Finland, France, Germany, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Malaysia, Mexico, Nepal, Netherlands, Nigeria, Paraguay, Peru, Republic of Korea, Romania, Russian Federation, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Ukraine, United Kingdom, Zimbabwe.

Abstaining: Australia, Burkina Faso, Canada, Congo, Egypt, Ethiopia, Gabon, Mauritania, Pakistan, Qatar, Saudi Arabia.

55. *The amendment proposed by the United States to paragraph 8 of draft resolution E/CN.4/2005/L.43 was rejected by 41 votes to 1, with 11 abstentions.*

56. *At the request of the delegation of the United States, a recorded vote was taken on draft resolution E/CN.4/2005/L.43, as amended by the Russian delegation.*

In favour: Argentina, Armenia, Australia, Bhutan, Brazil, Burkina Faso, Canada, China, Congo, Costa Rica, Cuba, Dominican Republic, Ecuador, Egypt, Eritrea, Ethiopia, Finland, France, Gabon, Germany, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Malaysia, Mauritania, Mexico, Nepal, Netherlands, Nigeria, Pakistan, Paraguay, Peru, Qatar, Republic of Korea, Romania, Russian Federation, Saudi Arabia, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Ukraine, United Kingdom, Zimbabwe.

Against: None.

Abstaining: United States.

57. *Draft resolution E/CN.4/2005/L.43, as amended by the Russian Federation, was adopted by 52 votes to none, with 1 abstention.*

Draft resolution on hostage-taking (E/CN.4/2005/L.44)

58. **Mr. Lukiyantsev** (Russian Federation), introducing draft resolution L.44 on hostage-taking, said that the Commission had last considered this question in 2003. Since then, unfortunately, the problem had lost none of its urgency. One had only to recall the September 2004 tragedy in Beslan, where children and their parents had been taken hostage and shot in cold blood by terrorists. Nothing could justify such barbaric acts. That was the message that the Commission, through the draft resolution, sent to terrorists. His delegation hoped that, as in the previous year, the text would be adopted without a vote.

59. **The Chairperson** announced that six delegations had become sponsors of the draft.

60. **Mr. Peay** (United States) said he wished to stress an important aspect of the text. There had been some tendency to consider that individuals who claimed that their rights had been violated had reasons for taking hostages, because they wished to avenge themselves or simply to protest a particular situation. Such arguments were unacceptable, regardless of the circumstances. Those who engaged in hostage-taking were nothing more than criminals, and should be strongly condemned. That was the position of the United States in the face of terrorism. His delegation fully joined the consensus on the draft text.

61. **The Chairperson** announced that draft resolution L.44 had no financial implications.

62. *Draft resolution E/CN.4/2005/L.44 was adopted without a vote.*

Draft resolution on democracy and the rule of law (E/CN.4/2005/L.45)

63. **Mr. Costea** (Romania) introduced draft resolution L.45 on behalf of the United States, Peru, Timor-Leste and his own country. The text was supported by countries from all the regional groups. The following countries had joined the list of sponsors: Afghanistan, Australia, Azerbaijan, Bolivia, Colombia, Iceland, Iraq, Mongolia, Morocco, New Zealand, Niger, Rwanda, Switzerland and Ukraine. His delegation welcomed the excellent contribution made by delegations to the negotiations on the text and was particularly grateful to those who had come up with paragraph 10.

64. The draft resolution was a new initiative to rally all the regional groups around a specific idea of democracy by identifying the main aspects of the rule of law that were vital to the promotion and strengthening of democracy. In drafting the text, the sponsors had taken into account the conclusions of the recent seminar on democracy and the rule of law.

65. The gist of the draft was contained in paragraph 14, which clearly enumerated the three pillars for the rule of law, namely: the separation of powers; the guarantee that no

individual or public or private institution is above the law; and equal protection under the law. The sponsors hoped that the text would be adopted as introduced, and by a large majority.

66. **Mr. Reyes Rodriguez** (Cuba) proposed an amendment to the draft, eliminating the reference in paragraph 13 to the Second Ministerial Conference of the Community of Democracies, held in Seoul from 10 to 12 November 2002. Cuba had serious objections to mentioning the Community of Democracies in any resolution. That organization, which was supposed to promote democracy, had in fact been established by the United States for the sole purpose of excluding and condemning certain countries, of promoting its own concept of “preventive wars” and of imposing its hegemony on the rest of the world. Cuba requested that the proposed amendment to paragraph 13 of the draft should be put to the vote.

67. **Mr. Costea** (Romania) said that more than 100 countries had participated in the conference referred to in paragraph 13. The Community of Democracies was part of a general trend towards democracy, as demonstrated by the other two events mentioned in the paragraph. During consultations on the draft resolution, participants had considered the three meetings to be consistent and mutually reinforcing. His delegation was therefore in favour of keeping the text in its present form.

68. **Mr. Sha Zukang** (China) said that democracy could take many forms. There was no single model for democracy. Draft resolution L.45 ignored that fact. It did not take account of the democratization of international relations with regard to the protection of human rights, peacekeeping and the promotion of development. It created the impression that specific countries were democracies. China would abstain from the vote and would support Cuba’s amendment.

69. *A recorded vote was taken on the amendment proposed by Cuba to paragraph 13 of draft resolution E/CN.4/2005/L.45.*

In favour: China, Cuba, Eritrea, Togo, Zimbabwe.

Against: Argentina, Armenia, Australia, Brazil, Canada, China, Costa Rica, Dominican Republic, Finland, France, Germany, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Malaysia, Mauritania, Mexico, Nepal, Netherlands, Nigeria, Paraguay, Peru, Qatar, Republic of Korea, Romania, South Africa, Sri Lanka, Togo, Ukraine.

Abstaining: Bhutan, Burkina Faso, Congo, Egypt, Ethiopia, Gabon, Pakistan, Russian Federation, Saudi Arabia, Sudan, Swaziland.

70. *The amendment proposed by Cuba to paragraph 13 of draft resolution E/CN.4/2005/L.45 was rejected by 36 votes to 5, with 11 abstentions.*

71. **Mr. Reyes Rodriguez** (Cuba) said that his delegation’s objections to draft resolution L.45 were not only about the reference to the Community of Democracies. In its explanation of vote on draft resolution L.42, which had been introduced by Cuba, the European Union had claimed that the text contained no definition of democracy. That was untrue. The problem was that Western countries had a vision of democracy that they were trying to impose on the rest of the world. Democracy could not be imposed. It had to be defined democratically. For Cuba, democracy was above all the right of each people to choose freely the system of government that suited it. Draft resolution L.45 failed to create a balance between democracy at the national level and democracy at the international level. In fact, many of the sponsors of the draft were among the main opponents to the democratization of international relations. Cuba therefore requested that the text should be put to a recorded vote.

72. **Mr. Tekle** (Eritrea) said that his delegation would abstain from the vote, for the simple reason that paragraph 13 referred to a conference in which Eritrea had not participated, and to documents with which the Eritrean delegation was not acquainted.

73. *At the request of the Cuban delegation, a recorded vote was taken on draft resolution E/CN.4/2005/L.45.*

In favour: Argentina, Armenia, Australia, Brazil, Burkina Faso, Canada, Congo, Costa Rica, Cuba, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Germany, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Malaysia, Mauritania, Mexico, Nepal, Netherlands, Nigeria, Pakistan, Paraguay, Peru, Qatar, Republic of Korea, Romania, Russian Federation, South Africa, Sri Lanka, Swaziland, Togo, Ukraine, United Kingdom, Zimbabwe.

Against: None.

Abstaining: Saudi Arabia, Bhutan, China, Cuba, Eritrea, Gabon, Sudan.

74. *Draft resolution E/CN.4/2005/L.45 was adopted by 46 votes to none, with 7 abstentions.*

Draft resolution on independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/2005/L.46)

75. **Ms. Toth** (Hungary), introducing draft resolution L.46, said that the independence of the judiciary was one of the foundations of democracy, the rule of law and respect for human rights. That independence, which had its source, among others, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, had been reaffirmed as a fundamental principle in the Vienna Declaration and Programme of Action.

76. She called attention to paragraphs 11 and 12, which referred to the draft principles governing the administration of justice through military tribunals — principles contained in the report submitted by Mr. Emmanuel Decaux to the Sub-Commission. The Special Rapporteur, Mr. Leandro Despouy, had not been able to present his last report to the Commission. With his consent, an amendment had thus been introduced to paragraph 13 of the draft, requesting him to submit the report to the General Assembly as well.

77. She introduced two minor amendments to the text. Paragraph 12 should read as follows: “Notes that the report of Mr. Decaux containing an updated version of the draft principles will be submitted to the Commission at its sixty-second session for its consideration”. Paragraph 13 had also been redrafted, and should read as follows: “Requests the Special Rapporteur to submit a report on the activities relating to his mandate to the General Assembly at its sixtieth session and to the Commission at its sixty-second session and decides to consider the question at that session, under the same agenda item”.

78. The draft resolution submitted by the delegation of Hungary was a text that had always been widely supported by the Commission. The sponsors hoped that this would also be the case for the present draft.

79. **The Chairperson** announced that six delegations had become sponsors, and that the financial implications of the draft resolution had been circulated in writing to all delegations.

80. *Draft resolution E/CN.4/2005/L.46, as orally amended by the Hungarian delegation, was adopted without a vote.*

Draft resolution on extrajudicial, summary or arbitrary executions
(E/CN.4/2005/L.47/Rev.1)

81. **Ms. Sundberg** (Sweden) introduced draft resolution L.47/Rev.1 on behalf of the Nordic countries and co-sponsors. The text reaffirmed the right to life of all persons and, consequently, the obligation for all States to prevent extrajudicial, summary or arbitrary executions, to investigate all such cases and to punish those responsible. Such executions were crimes under international law and, when they amounted to genocide, crimes against humanity or war crimes, fell within the jurisdiction of the International Criminal Court.

82. The draft had been amended. After paragraph 18, the revised text of paragraph 19 should be inserted, and should read as follows: “*Welcomes* the cooperation established between the Special Rapporteur and other United Nations mechanisms and procedures in the field of human rights and encourages the Special Rapporteur to continue his efforts in this regard”.

83. Her delegation thanked all the delegations that had helped draft a text capable of drawing the broadest possible support, and hoped that it could be adopted by consensus.

84. **The Chairperson** announced that six delegations had joined the sponsors.

85. **Mr. de Jong** (Netherlands), speaking on behalf of the European Union, said that the Union attached great importance to the draft, as presented by Sweden. It was a balanced text that accurately reflected the current situation with regard to extrajudicial, summary or arbitrary executions, as well as the concerns expressed by the Special Rapporteur. He played a crucial role by launching urgent appeals to States to prevent such executions and by visiting countries to encourage Governments to take the steps required to put an end to them. The International Criminal Court (ICC) could help combat impunity in this regard when such executions amounted to genocide, crimes against humanity or war crimes. The EU would vote against any amendment that might be proposed.

86. **Ms. Janjua** (Pakistan), speaking on behalf of the member States of the Organization of the Islamic Conference (OIC) that were also members of the Commission on Human Rights, said that during the past three years, the sponsors of the draft on extrajudicial, summary or arbitrary executions had included various categories of victims of such executions, whose list was expanded according to their own selective interpretation. The list, which was by no means exhaustive, appeared in paragraph 5 of the text. In the opinion of OIC member States, the draft should limit itself to stipulating the obligation of States to investigate promptly and thoroughly all cases of killings, without putting the victims into different categories. The reference to these categories should be deleted in order to achieve consensus. If that were not possible, her delegation would be obliged to request a vote on its proposed amendment to paragraph 5. The amendment would consist of deleting the part of the text beginning with “including those committed”. The rest of the text, beginning with “which are being committed in various parts of the world”, would not be changed.

87. **Ms. Mattila** (Finland), speaking on behalf of the co-sponsors of draft resolution L.47/Rev.1, said they insisted that paragraph 5 of the text should not be changed. Over the years, the special rapporteurs on extrajudicial, summary or arbitrary executions had called the Commission’s attention to various categories of individuals or groups who were particularly vulnerable to that type of violation, and to the fact that those responsible for such violations remained unpunished. Such a situation only encouraged the perpetration of those crimes. Ensuring the impunity of the murderers created the impression that some persons deserved to be protected and to enjoy the right to life less than others. The purpose of paragraph 5 was precisely to ensure equal protection to all those who, for different reasons, were particularly under threat. The sponsors would also have liked to include in the list in paragraph 5 persons who were especially vulnerable by reason of their sexual identity. They regretted that they had been obliged to omit that category of persons in order

to reach a consensus. However, that omission should not be interpreted as limiting the obligation to protect that all Governments had towards such persons — quite the contrary. Finland would vote against the Pakistani amendment.

88. **Mr. Leo** (United States) said that paragraph 5, as currently worded, was controversial and divisive. The list of categories of victims could never be exhaustive. His delegation therefore supported the amendment proposed by Pakistan.

89. His delegation wished also to propose another amendment, which was to rephrase paragraph 9 as follows: “*Recognizes* that extrajudicial, summary or arbitrary executions can amount to genocide, crimes against humanity or war crimes, as defined under the Rome Statute of the International Criminal Court”. The United States delegation requested that a recorded vote should be taken on that amendment. His country could not support a text that committed States to sign and ratify the Rome Statute, which the United States had itself opposed and by which it did not consider itself bound.

90. **Mr. Normandin** (Canada), speaking on behalf of his country and the Nordic countries, regretted the United States amendment. Impunity was one of the main causes of the continuation of extrajudicial, summary or arbitrary executions. Paragraph 9 recognized that the International Criminal Court could help put an end to such impunity. The paragraph simply called on States to *envisage* signing and ratifying the Rome Statute, which gave them complete freedom of decision. There were currently 98 States parties to the Statute and 139 signatories. The overwhelming majority of the international community had thus recognized the importance of the Court as a means of ending that impunity. For all those reasons his delegation called on all States to vote for paragraph 9 of the draft resolution as currently worded.

91. **Ms. Janjua** (Pakistan) requested that a separate recorded vote should be taken on each of the two amendments.

92. *A recorded vote was taken on the amendment proposed by Pakistan to paragraph 5 of draft resolution E/CN.4/2005/L.47/Rev.1.*

In favour: Saudi Arabia, China, Congo, Egypt, Eritrea, Ethiopia, Gabon, Guinea, India, Indonesia, Kenya, Malaysia, Mauritania, Nepal, Nigeria, Pakistan, Qatar, Sudan, Togo, United States.

Against: Argentina, Armenia, Australia, Brazil, Canada, Costa Rica, Dominican Republic, Ecuador, Finland, France, Germany, Guatemala, Hungary, Ireland, Italy, Japan, Mexico, Netherlands, Paraguay, Peru, Republic of Korea, Romania, Swaziland, Ukraine, United Kingdom.

Abstaining: Bhutan, Burkina Faso, Congo, Honduras, Russian Federation, Sri Lanka, Zimbabwe.

93. *The amendment proposed by Pakistan to paragraph 5 of draft resolution E/CN.4/2005/L.47/Rev.1 was rejected by 25 votes to 20, with 7 abstentions.*

94. *A recorded vote was taken on the amendment proposed by the United States to paragraph 9 of draft resolution E/CN.4/2005/L.47/Rev.1.*

In favour: China, Dominican Republic, Eritrea, Ethiopia, India, Indonesia, Mauritania, Pakistan, United States.

Against: Argentina, Armenia, Australia, Brazil, Canada, Congo, Costa Rica, Ecuador, Egypt, Finland, France, Gabon, Germany, Guatemala, Guinea, Honduras, Hungary, Ireland, Italy, Kenya, Malaysia, Mexico, Nepal, Netherlands, Nigeria, Paraguay, Peru, Republic of Korea, Romania, Russian Federation, South Africa, Swaziland, Ukraine, United Kingdom, Zimbabwe.

Abstaining: Bhutan, Burkina Faso, Japan, Qatar, Saudi Arabia, Sri Lanka, Sudan, Togo.

95. *The amendment proposed by the United States to paragraph 9 of draft resolution E/CN.4/2005/L.47/Rev.1 was rejected by 35 votes to 9, with 8 abstentions.*

96. **Mr. Leo** (United States) said that his Government strongly condemned extrajudicial, summary or arbitrary executions. Under the United States Constitution, no one could be deprived of life without having been sentenced under due process. The Constitution also guaranteed everyone protection under the law. In the United States, extrajudicial executions were investigated impartially and without discrimination. The United States legal system had been designed so as to prevent impunity. That being said, the text now before the Commission raised some difficulties for his delegation.

97. For many years, the special rapporteurs on this question had taken the unilateral initiative to enlarge on their mandate and interpret it as they liked. His delegation had thus asked that the Special Rapporteur should be invited, under paragraph 13 of the text, to limit himself to the mandate that had been originally established by the Commission itself.

98. While acknowledging the validity of the idea expressed in paragraph 11, the United States considered that the Standard Minimum Rules for the Treatment of Prisoners referred to were only one set of recommendations and not a binding instrument.

99. An unacceptable confusion existed in several paragraphs between human rights law and international humanitarian law. This was, for example, the case with paragraph 7, in which respect for those two branches of law was required of the police, law enforcement officials, armed forces and other Government officials.

100. Similarly, the draft resolution did not take due account of the deliberate attacks against civilians in situations of armed conflict, as the terms used on this subject were too vague.

101. His delegation had already expressed its reservations concerning paragraph 5, which listed the categories of victims, and paragraph 9, which mentioned the Rome Statute.

102. For all those reasons, his delegation requested that a recorded vote should be taken on draft resolution L.47/Rev.1, on which the United States would abstain.

103. *At the request of the United States delegation, a recorded vote was taken on draft resolution E/CN.4/2005/L.47/Rev.1, as orally revised by the Swedish delegation.*

In favour: Argentina, Armenia, Australia, Bhutan, Brazil, Canada, Congo, Costa Rica, Cuba, Dominican Republic, Ecuador, Eritrea, Finland, France, Germany, Guatemala, Honduras, Hungary, Ireland, Italy, Japan, Kenya, Mexico, Netherlands, Nigeria, Paraguay, Peru, Republic of Korea, Romania, Russian Federation, South Africa, Sri Lanka, Swaziland, Ukraine, United Kingdom, Zimbabwe.

Against: None.

Abstaining: Burkina Faso, China, Egypt, Ethiopia, Gabon, Guinea, India, Indonesia, Malaysia, Mauritania, Nepal, Pakistan, Qatar, Saudi Arabia, Sudan, Togo, United States.

104. *Draft resolution E/CN.4/2005/L.47/Rev.1 was adopted by 36 votes to none, with 17 abstentions.*

Draft resolution on basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (E/CN.4/2005/L.48)

105. **Mr. Utreras** (Chile), introducing draft resolution L.48, said that it sought at the adoption by the Commission of the Basic Principles and Guidelines and the submission of the final text for adoption by the Economic and Social Council and the General Assembly. The text, which was basically a compilation of existing legal standards, entailed no new obligations for States but did indicate the steps to take to enable victims to exercise their right to apply for remedies and to obtain redress. The resolution recommended that States take the Principles and Guidelines into account, promote their respect and bring them to the attention of members of the executive, legislative and judiciary branches, as well as to victims and their representatives, human rights defenders, the media and the public in general. To date, 44 delegations had co-sponsored the draft. His delegation asked that it should be adopted by consensus.

106. **Mr. de Alba** (Mexico) said that the Group of Latin America and Caribbean States (GRULAC) supported draft resolution L.48. The text of the Basic Principles and Guidelines marked the conclusion of a long process guided by a spirit of participation and transparency. GRULAC welcomed the fact that the final version of those Principles and Guidelines retained the references to international human rights law and international humanitarian law, as those branches of law were equally pertinent with respect to the obligations of States concerning redress. Knowing that each delegation had had to show some flexibility in order to support the draft, GRULAC called on the Commission to adopt it without a vote.

107. **Mr. Thorne** (United Kingdom) said that his delegation was pleased to co-sponsor draft resolution L.48. The Basic Principles and Guidelines were the result of 15 years of work by independent experts, and of three consultative meetings in which member States, organizations and NGOs had participated. The United Kingdom commended the experts and the Chairperson-Rapporteur for that work, and thanked the Chilean delegation for coordinating the process with great efficiency. As the Chairperson-Rapporteur had indicated, the Principles and Guidelines did not introduce new principles and did not create new obligations for States under international law. They were nonetheless an extremely valuable tool for States as part of their policy-making on remedies and redress.

108. **Ms. Bartoni** (United States) regretted having to ask that the draft should be put to the vote. Although her delegation was in favour of the text as a whole, and appreciated its importance, it had not succeeded in getting the fifth preambular paragraph of the Basic Principles and Guidelines replaced by a neutral formulation with regard to the ICC. States not parties to the Rome Statute were not legally bound by that Statute, unless the Security Council decided otherwise.

109. **Mr. Cerda** (Argentina) said that his delegation fully endorsed the statement by the representative of Mexico on behalf of GRULAC, and regretted that the draft could not be adopted by consensus. His delegation did not think that the fifth preambular paragraph of the Principles, which simply *noted* a provision of the Rome Statute, should have led the United States delegation to ask that the draft be put to the vote. In the opinion of most of the sponsors, the present formulation was neutral. He hoped that it would be adopted by a very large majority.

110. **The Chairperson** announced that draft resolution L.48 had no financial implications.

111. **Mr. Normandin** (Canada) said that his delegation supported the adoption by the Commission of the Basic Principles and Guidelines and would therefore vote in favour of the draft resolution. Canada welcomed in particular the fact that the Principles and Guidelines were focused primarily on the protection of the rights of victims. His delegation also wished to state that acts perpetrated in the past, which had not been considered as violations of international law at the time they were committed, were not subject to remedies.

112. **Mr. Saha** (India) said that Indian courts frequently granted compensation to individuals whose rights had been violated. Indian jurisprudence could testify to this. The Indian Government was currently planning to introduce a statutory law on redress, and consultations on the matter were under way in the central administration and in the states. At the present stage, his delegation did not think it appropriate to take a position on the question, and would accordingly abstain from the vote.

113. *At the request of the United States delegation, a recorded vote was taken on draft resolution E/CN.4/2005/L.48.*

In favour: Argentina, Armenia, Bhutan, Brazil, Burkina Faso, Canada, China, Congo, Costa Rica, Cuba, Dominican Republic, Ecuador, Finland, France, Gabon, Guatemala, Guinea, Honduras, Hungary, Indonesia, Ireland, Italy, Japan, Kenya, Malaysia, Mexico, Netherlands, Nigeria, Pakistan, Paraguay, Peru, Republic of Korea, Romania, Russian Federation, South Africa, Sri Lanka, Swaziland, Ukraine, United Kingdom, Zimbabwe.

Against: None.

Abstaining: Australia, Egypt, Eritrea, Ethiopia, Germany, India, Mauritania, Nepal, Qatar, Saudi Arabia, Sudan, Togo, United States.

114. *Draft resolution E/CN.4/2005/L.48 was adopted by 40 votes to none, with 13 abstentions.*

*Draft resolution on the incompatibility between democracy and racism
(E/CN.4/2005/L.49)*

115. **Mr. de Seixas Correa** (Brazil), introducing draft resolution L.49, said that an electoral system was not necessarily democratic. When political parties based their platforms on racist and discriminatory notions, that was contrary to democracy, which implied the free exchange of ideas in the general interest. The text accordingly called on heads of political parties to combat racism and related forms of intolerance, including by voluntarily adopting codes of conduct in this area. The prohibition of all propaganda based on racial superiority or any incitement to racial hatred was perfectly compatible with the right to freedom of opinion and expression, as the Committee on the Elimination of Racial Discrimination had indicated in its general recommendation no. 15.

116. **The Chairperson** announced that 11 delegations had joined the sponsors of the draft resolution and that it had no financial implications.

117. **Mr. Tekle** (Eritrea) said that he fully endorsed the draft. However, he would have preferred for the reference to ethnic discrimination, which had been inserted in paragraph 6, to appear also in the preamble and in the other paragraphs of the text. That would have made it stronger and more complete.

118. **Mr. de Seixas Correa** (Brazil) said that it was difficult for him to follow up on the suggestion of the representative of Eritrea. In-depth consultations had been held on the text,

which already had more than 50 co-sponsors. He would therefore prefer sticking with the version that had been submitted.

119. **Mr. Tekle** (Eritrea) said that it was simply a suggestion and not an amendment.

120. *Draft resolution E/CN.4/2005/L.49 was adopted without a vote.*

The meeting rose at 2.55 p.m.