



INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "

ICJ Priority Issues and Objectives at the 60th session of the United Nations Human Rights Commission (15 March-23 April 2004)

The Commission on Human Rights is the principal human rights body under the United Nations Charter, comprising member and observer Governments, intergovernmental and non-governmental organisations, national human rights institutions, and the mechanisms created by the Commission itself. The Commission has as its central role the promotion and protection of internationally recognised human rights. However, after a long period of incremental gains in advancing human rights during the 1980s and 1990s, over the past three years the Commission's performance in carrying out its mission has turned lacklustre. This erosion has been stemmed from a climate of hyper-politicisation, with an increase in block voting, the propensity to place purported security considerations above human rights imperatives and an overall weakening of political will and diminution of energy by the strongest human rights proponents. While the Commission, with a membership composed of States, is necessarily a political body, the overwhelming influence of predominately political factors in the Commission's deliberations and activities have paralysed it from acting robustly in respect of many of the key human rights issues of the day. (See attachment for the ICJ press release on the 59th session, 18 March to 25 April 2003.) The overarching objective of reversing this decline will therefore guide the ICJ in its pursuit of all of its subsidiary objectives and activities.

At the 60th session, the main priorities for the ICJ will be to work for the Commission:

- **Counter-Terrorism and Human Rights:** To create a mandate of an independent mechanism to examine national counter-terrorism measures and their impact on human rights;
- **Discrimination on the Grounds of Sexual Orientation:** To adopt for the first time a Resolution on discrimination on the grounds of sexual orientation;
- **Economic, Social and Cultural Rights:** To give a clear mandate to the inter-sessional working group to draft an optional protocol to the International Covenant on Economic and Social Rights, so as to provide for an individual complaint mechanism;
- **Enforced Disappearances:** To reinforce the mandate of the inter-sessional working group to continue to elaborate a new treaty against enforced disappearances;
- **Impunity:** To continue to examine the question of impunity and the Set of principles on impunity with a view to their speedy adoption;
- **Independence of Judges and Lawyers:** To strengthen and develop the resolution on the independence of judges and lawyers;
- **Reparations:** To gain the adoption of the Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international law; or, if a consensus on the text is not possible by the time of the 60th session, to continue to examine the draft text as matter of high priority with a view to its speedy adoption;

- **Torture:** To strengthen the resolution on torture, particularly through the inclusion of an explicit affirmation that the prohibition of torture is a peremptory norm of international law (*jus cogens*);
- **Situation of Human Rights in Colombia:** To adopt a stronger position on the situation of Human Rights in Colombia and to request the Office of the High Commissioner in Colombia to report to the UN General Assembly;
- **Situation of Human Rights in Nepal:** To urge the Government to sign the Human Rights accord proposed by the National Human Rights Commission and to take measures to ensure that Nepal accept assistance from the Office of the High Commissioner to monitor the situation of human rights in the country;
- **Situation of Human Rights in the Occupied Palestinian Territories:** To adopt a strong resolution condemning, *inter alia*, attacks against both Israeli and Palestinian civilians, the existence and expansion of settlements and construction by Israel of an unlawful "security fence."

In addition to these priorities, the ICJ will closely follow the Commission's work on the right to life, including the resolutions on extrajudicial, summary and arbitrary executions and the death penalty. The ICJ will also monitor the methods of work of the Commission with a view to ensuring its maximum effectiveness and to protect the integrity of its working methods.

The ICJ Priorities at the 60th session

Counter-Terrorism and Human Rights

Background:

The impact on human rights of certain counter-terrorism measures taken by States has been of paramount concern to the ICJ, particularly with the escalation of the implementation of such measures following the 11 September attacks and the adoption of Security Council Resolution 1373 (2001). Many of the constituent organs of the United Nations, including the Security Council, the General Assembly and the Human Rights Commission have strongly affirmed that the fight against terrorism be conducted within the framework of human rights law.¹ A number of the thematic special procedures and human rights treaty bodies have also highlighted specific instances in which counter-terrorism measures have appeared to contravene States human rights obligations. The Special Rapporteur on Human Rights and Terrorism of the UN Sub-Commission on the Protection and Promotion of Human Rights has studied and reported on certain conceptual aspects of the problem. The Office of the High Commissioner has also been engaged in efforts to address this question, having produced the Guidance and Further Guidance for the submission of reports pursuant to paragraph 6 of Security Council Resolution 1373 and a Digest of Jurisprudence on the protection of human rights while countering terrorism.

The General Assembly, under resolution 57/219 and the Human Rights Commission under Resolution 2003/68, have recently requested the High Commissioner to make general recommendations concerning the obligations of States to promote and protect human rights and fundamental freedoms while taking action to counter terrorism. On 28 November 2003,

¹ See, e.g., SC Resolution 1456 (2003); GA Resolution 57/219 of 18 December 2002; Commission on Human Rights Resolution 2003/68 of 25 April 2003.

the Third Committee of the General Assembly asked the High Commissioner to undertake a study on the extent to which the human rights special procedures and treaty monitoring bodies are able to address the compatibility of national counter-terrorism measures with international human rights obligations.²

Despite these efforts, there remains a substantial gap in respect of processes and mechanisms available for monitoring the human rights impact of counter-terrorism measures, including in the implementation by States of Security Council Resolution 1373. The Counter-Terrorism Committee of the Security Council has declined to accept the application of a human rights analysis of its work and has failed to appoint a human rights specialist among its various expert advisers. During the past two years the ICJ has worked for the establishment of a mechanism to monitor national counter-terrorism measures and their impact on human rights. In 2002 and 2003, Mexico took the lead, both at the Commission and at the General Assembly, in sponsoring Resolutions on Counter-Terrorism and Human Rights.³ In 2002, the Commission Resolution was withdrawn due to stiff opposition from certain powerful States and the 2003 Resolution, while a step forward, failed to contain a mandate for an independent expert or other monitoring mechanism.

On 23-24 October 2003, the ICJ convened a Conference on Gaps in International Monitoring of Human Rights and Counter-terrorism, during which experts from UN special procedures and treaty bodies, regional bodies and non-governmental organisations discussed international efforts and their shortcomings in respect of monitoring human rights and counter-terrorism. A joint NGO Declaration on the Need for an International Mechanism to Monitor Human Rights and Counter-Terrorism was launched calling on the establishment of such a mechanism at the 60th session of the Human Rights Commission.⁴

ICJ Objective:

The ICJ will work toward the establishment of an independent mechanism on the question of human rights and counter-terrorism to monitor and help ensure the compliance of States with their international human rights obligations in their efforts toward countering terrorism. The mechanism should have the capacity to undertake *in situ* visits, to establish a dialogue and enhanced Cooperation with the Security Council and to engage with treaty bodies, the Sub Commission, special procedures mechanisms, regional institutions and mechanisms and the Office of the High Commissioner. The ICJ will use the NGO Joint Declaration as the basis for its work in the area.

Discrimination on the Grounds of Sexual Orientation

Background:

The ICJ is concerned with all forms of discrimination and has made it a particular priority to address discrimination in the context of the administration of justice. While the question of

² Resolution on protecting human rights and fundamental freedoms, UN Doc A/C.3/58/L.71.

³ GA Resolution 57/219 of 18 December 2002; Commission Resolution 2003/68 of 25 April 2003.

⁴ The founding signatories to the Declaration are the Coalition of International Non-Governmental Organisations against Torture (CINAT) (comprising Amnesty International, Association for the Prevention of Torture (APT), International Federation of Action by Christians for the Abolition of Torture (FIACAT), International Commission of Jurists (ICJ), International Rehabilitation Council for Torture Victims (IRCT), Redress: Seeking Reparation for Torture Survivors, and World Organisation against Torture (OMCT)), Fédération Internationale des Ligues des Droits de l'Homme (FIDH), Human Rights Watch (HRW), International Service for Human Rights and Friends World Committee for Consultation (Quakers).

discrimination on such grounds as race, colour, gender, language, religion or other belief, political or other opinion, national, social or ethnic origin, have received substantial, if not always adequate, attention at the international level, discrimination on the basis of sexual orientation has gone largely unaddressed. Although recognising that the reluctance to confront this very serious problems stems in part from political, cultural or religious sensitivities, the ICJ believes that this neglect has contributed to rendering millions of persons world-wide vulnerable to the most invidious forms of human rights violations solely on the basis of their status. Lesbian, gay, bi-sexual and transgendered persons are frequently denied basic civil, political, social and economic rights, either by law or through practice. Among some of the most serious violations include denial of the right to life, including application of the death penalty for certain sexual practices, arbitrary detention and torture or inhuman or degrading treatment by state officials or with their acquiescence.

Several UN Special Procedures and Treaties have raised the question of denial of human rights on the basis of sexual, including Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary execution, and the Human Rights Committee, which supervises the implementation of the International Covenant on Civil and Political Rights.⁵

In 2003, for the first time a number of States at the Commission on Human Rights sought to address the question of discrimination on the basis of sexual orientation. Brazil presented a resolution under item 17 of the Commission's agenda (Promotion and Protection of Human Rights) entitled "Human rights and sexual orientation". Fierce opposition, especially by some member States of the Organisation of the Islamic Conference (OIC) and the Holy See, forced the postponement of the action on the resolution to the 60th session of the Commission. Saudi Arabia, Pakistan, Egypt, Libya and Malaysia led a disgraceful procedural filibuster by presenting 55 amendments unrelated to the text of the resolution, which itself was a mere six paragraphs in length.

The ICJ considers that, despite the objections to discussion of the question on purported religious grounds, the question of the treatment of people on the basis of sexual orientation is, in the last analysis, a question of fundamental rights and State obligations. States have the duty to ensure that no person within their jurisdiction is discriminated against on the grounds of status. However, the resolution tabled by Brazil did not even go this far, but merely affirmed that sexual orientation was not a basis upon which a State could depart from ensuring the enjoyment of basic human rights. Thus, its resolution does not grant any 'special' or 'additional rights', but simply enjoins States to respect the rights of all persons, regardless of sexual orientation.

⁵ See, e.g., Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN Doc E/CN.4/2003/3, paras. 66-67 (referring to cases reported in Venezuela, Mexico and Afghanistan); Report of the Working Group on Arbitrary Detention UN Doc E/CN.4/2003/8 paras. 68-70, referring to a case of 55 persons detained in Egypt on the account of their homosexuality and expressing the view "that their detention was arbitrary because it violated article 2, paragraph one of the International Covenant on Civil and Political Rights, which guarantee equality before the law and the right to equal legal protection against all forms of discrimination, including sex."; Concluding Observations of the Human Rights Committee on El Salvador, 22/07/2003 (CCPR/CO/78/SLV, § 16): "The Committee expresses concern at the incidents of people being attacked, or even killed, on account of their sexual orientation (art. 9), at the small number of investigations mounted into such illegal acts, and at the current provisions (such as the local "contravention orders") used to discriminate against people on account of their sexual orientation (art. 26)". See also *Communication No 941/2000 : Australia, 18/09/2003*, CCPR/C/78/D/941/2000, in which the Human Rights Committee found that Australia violated article 26 of the Covenant by denying the author a pension on the basis of his sex or sexual orientation.

ICJ Objective

The ICJ will work to support and strengthen the Brazil-led resolution on human rights and sexual orientation during the 60th session of the Commission, including by seeking in the resolution a request for the relevant special procedures mechanisms and treaty bodies to consider the question within their mandates and for the Office of the High Commissioner to undertake a study on the question. The ICJ will seek to convince reluctant States that no person should be denied basic rights on the basis of such status. The ICJ will also work to ensure that the Commission, and in particular the Chairperson, not allow a minority of States to prevent the Commission from debating and deciding upon any human rights questions within its competence through the application of procedural contrivances.

Economic, Social and Cultural Rights

Background:

In 1990, some members of the Committee on Economic, Social and Cultural Rights mooted the question of establishing an individual complaint procedure for the International Covenant on Economic, Social and Cultural Rights (ICESCR). The envisaged mechanism - taking the form of an optional protocol to the ICESCR - would create an individual complaint mechanism in respect of economic, social and cultural rights and would ensure that at the international level persons have access to a quasi-judicial remedial mechanism capable of addressing violations of at least the most basic of these rights. Over the past decade, momentum toward a protocol has steadily gathered apace.

In 2001 the Commission decided to appoint an independent expert to examine the question of the draft Optional Protocol with a view to consideration of possible follow-up, including the establishment of an open-ended working group of the Commission.⁶ In 2002 the Independent Expert, Hatem Kotrane, submitted his report supporting an optional protocol to the 58th session of the Commission. The Commission decided to renew his mandate and requested that the Independent Expert produce an additional focused report on specific ECSR questions. The Commission also decided that it would establish, at its 59th session, an open-ended working group of the Commission to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights. At its 59th session in 2003, the Commission mandated such a working group.⁷ This working group will begin its deliberations in February 2003. However, it remains an open question as to whether work will begin on the drafting of an optional protocol.

The ICJ believes that the open-ended working group will have the adequate conceptual material and expertise at its disposal to begin the elaboration of a draft protocol. Its deliberations should build upon the considerable efforts of the Commission, the Sub-Commission on the Promotion and Protection of Human Rights and the UN Committee on Economic, Social and Cultural Rights, which has previously studied the various questions and modalities associated with the drafting of the text of an optional protocol.

ICJ Objective:

⁶ Resolution 2001/30.

⁷ Resolution 2003/18

The ICJ will urge the Commission to provide the open-ended working group a clear mandate to begin the examination and drafting of an optional protocol to the International Covenant on Economic, Social and Cultural Rights, with a view to its future adoption.

Enforced Disappearances

Background

The ICJ has worked for a number of years with several other NGOs for the elaboration and adoption of a United Nations Treaty on Enforced Disappearances. A first step was achieved in 1992 with the adoption of the UN General Assembly Declaration on the Protection of All Persons from Forced Disappearance. In 1998, the Sub-Commission on the Promotion and Protection of Human Rights adopted a Draft International Convention on the Protection of All Persons from Enforced Disappearance.⁸ The Draft Convention was transmitted to the Commission on Human Rights for consideration and adoption by the General Assembly.

Following strong opposition to the Draft Convention by a few States, led by the United States, the Commission in 2001 decided to entrust an expert, Manfred Nowak, with the task of “examin[ing] the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance [...] with a view to identifying any gaps in order to ensure full protection from enforced or involuntary disappearance.” The Commission also decided to establish an inter-sessional working group “with the mandate to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance.”⁹ The reference to a “legally binding normative instrument” reflects the lack of agreement among States as to whether the new treaty should take the form of a free-standing convention with its own supervisory body or instead be a protocol to the International Covenant on Civil and Political Rights. In 2002 the Commission requested the inter-sessional working group to elaborate the new treaty against enforced disappearances on the basis of the Declaration on the Protection of All Persons from Enforced Disappearance, in the light of the work of the independent expert and taking into account, *inter alia*, the draft international convention on the protection of all persons from enforced disappearance.¹⁰

In January 2003, the first meeting of the inter-sessional working group concentrated on the substantive provisions of the draft.¹¹ In October 2003, an informal session of the working group was convened with under the direction of the Chairperson, Ambassador Bernard Kessedjian (France). In December 2003, the Chairperson submitted a draft treaty on enforced disappearances and in January 2004 the working group will meet to consider the draft.

The ICJ believes that this treaty must have clear provisions regarding 1) a definition of the crime of enforced disappearance; 2) the obligation to prevent, investigate and punish this practice; 3) the obligation to combat impunity; 4) the appropriation and/or adoption of children born during the captivity of their disappeared mother; and 5) the right to a remedy and reparation for victims and their relatives. The ICJ considers that any adopted instrument,

⁸ Resolution 1998/25. UN Document E/CN.4/Sub.2/1998/19, Annex, 19 August 1998.

⁹ Resolution 2001/46

¹⁰ Resolution 2002/72

¹¹ See report of the inter-sessional working group, UN. Doc. E/CN.4/2003/71.

whatever form it ultimately takes, must guarantee the existence of an effective international monitoring mechanism, a flexible system of reports, an urgent humanitarian procedure, and a strong procedure for consideration of individual complaints.

ICJ Objective

The ICJ will work for the adoption of a resolution to continue the mandate for the working group to elaborate a treaty on enforced disappearances as a matter of high priority and to ensure that the working group will have at least one formal and one informal meeting before the 61st session of the Commission. The working group should be asked to continue to incorporate the previous work of experts Louis Joinet and Manfred Nowak into its deliberations.

Impunity

Background:

In 1991, the ICJ, in conjunction with a number of other NGOs, initiated a process for the elaboration of a set of UN principles against impunity for human rights violations. The same year, the Sub-Commission for the Promotion and Protection of Human Rights mandated Sub-Commission Expert Louis Joinet to conduct a study on the question.¹² In his final report of 1997, Mr. Joinet submitted a set of principles for the protection and promotion of human rights through action to combat impunity.¹³ The ICJ cooperated closely with Mr. Joinet and its contribution was critical in the elaboration of the principles. The Sub-Commission adopted the principles in Resolution 1997/28 and decided to submit them to the Commission with a view to their adoption and submission to the General Assembly. In 1998 the Commission began the examination of the set of principles, through an open procedure of comments by States, and inter-governmental and non-governmental organisations.¹⁴

During 2000 and 2002, the examination procedure was suspended due primarily to the absence of agreement between Canada, the author of the resolution on impunity, and Cuba, which sought an additional study by the Sub-Commission on impunity for perpetrators of violations of economic, social and cultural rights. During those years, the ICJ worked towards reviving the examination procedure and towards the dissemination of the principles at the national and regional levels. In 2002, the Commission reintroduced the examination of the principles onto its agenda.¹⁵ In 2003 the Commission requested the Secretary-General to provide for “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 Principles and how they have been applied, reflecting recent developments and considering the issue of their further implementation [...]” In the same resolution, the Commission “[took] note that the Principles have already been applied at the regional and national levels and invite[d] other States, intergovernmental organisations and non-governmental organisations to consider integrating the Principles into their efforts to combat impunity.”¹⁶

¹² Named at this time Sub-Commission on Prevention of Discrimination and Protection of Minorities.

¹³ UN Doc. E/CN.4/Sub.2/1997/20/Rev.1.

¹⁴ Resolutions 1998/53 and 1999/43.

¹⁵ Resolution 2002/79.

¹⁶ Resolution 2003/72.

During the second half of 2003, the Secretary-General appointed Professor Diane F. Orentlicher to conduct a study to be submitted to the Commission on Human Rights in 2004. The ICJ is hopeful that the report of this Expert will contribute to the progression of the adoption of the set of principles.

ICJ Objective:

The ICJ will request the Commission on Human Rights to continue to examine the question of impunity and the set of principles on impunity with a view to their speedy adoption.

Independence of Judges and Lawyers

Background:

The ICJ and its Centre for the Independence of Judges and Lawyers (CIJL) has long been concerned with the independence of the judiciary and the legal profession throughout the world. The ICJ/CIJL was instrumental in the creation of the mandate of the Special Rapporteur on the Independence of Judges and Lawyers, as well as the elaboration of the UN Principles on the Independence of Judges and Lawyers. Each year, the Commission adopts a resolution, usually tabled by Hungary, on the Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers. The ICJ/CIJL considers that while this resolution captures certain critical elements, it is short on normative content and should therefore be strengthened. In particular, the text should bring in some of the contemporary regional standard setting initiatives and should contain a greater focus on the role of the judiciary in protecting human rights.

Since 2002, the Russian Federation has introduced a complementary resolution entitled "Integrity in the Judicial System", which reaffirms many of the fundamental rights principles in respect of the administration of justice. This resolution, seen by some States as superfluous, has not been adopted by consensus, as an unfortunate consequence of which these important principles risk being undermined. The ICJ/CIJL believes that the Commission would speak more effectively and the mandate of the Special Rapporteur strengthened were the Commission to combine the key elements of these two resolutions into a single resolution.

Objective:

The ICJ will seek the strengthening of the Commission resolutions on the Independence and impartiality of the judiciary, jurors and assessors and on the Integrity in the Judicial System through their combination into single cohesive resolution. The ICJ/CIJL will also call attention to the situation of the independence of the judiciary in individual countries, with a special attention to the situations in Tunisia, Turkey and Zimbabwe.

Reparations

Background:

In 1989, the ICJ initiated a process in the United Nations intended to achieve the elaboration and adoption principles on the rights to a remedy and to reparation for victims of human rights violations. The same year, the Sub-Commission on the Promotion and Protection of

Human Rights requested its expert, Professor Theo van Boven, to conduct a study on the question of the right to a remedy and to reparation for gross human rights violations. In 1993, Professor Van Boven submitted a first draft of principles to the Sub-Commission,¹⁷ and the Commission on Human Rights took a decision to continue the process of elaborating a body of principles and guidelines on the right to a remedy and reparation.¹⁸ In 1997, the Commission began soliciting comments on the project¹⁹ and requested Professor Cherif Bassiouni to elaborate a revised version of the Principles, which he submitted in 2000.²⁰ During the Durban World Conference against Racism in 2001, the discussion on the project became bogged down and came to a halt.

After the process was revived in 2002, the Commission requested the United Nations High Commissioner for Human Rights to hold two consultative meetings for all interested Member States, intergovernmental organisations and non-governmental organisations, with a view to finalising the "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law", with the participation of experts Van Boven and Bassiouni, in 2002 and 2003.²¹ The Government of Chile took a lead in the process and Alejandro Salinas chaired the consultative meetings.

As an outcome of the second consultative meeting (20-23 October 2003), the Chairperson-Rapporteur presented a draft for a revised version of the Basic Principles, now entitled "Basic principles and guidelines on the right to a remedy and reparation for victims of [gross] violations of international human rights and [serious] violations of international humanitarian law" (Revised Principles of 24 October 2003). At the same time, the Chairperson-Rapporteur and the independent experts presented an alternative proposal arising out of the informal consultation, renaming the Principles "Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international law".

The ICJ is satisfied that the Revised Principles of 24 October 2003 meet most of its concerns and provide a useful instrument on reparations for violations of human rights, as long as they clearly reaffirm the right of all persons to obtain reparation for all violations of human rights or humanitarian law, not merely for gross violations. Similarly, the ICJ could accept the alternative proposal by the Chairperson-Rapporteur and independent experts, as long as its wording does not impede an understanding that both international human rights and international humanitarian law are covered.

Objective

The ICJ will work to gain the adoption of the Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international law. If a consensus on the text is not possible by the time of the 60th session, the Commission should continue to examine the draft text as a matter of high priority with a view to its speedy adoption.

Torture

¹⁷ UN Doc E/CN.4/Sub.2/1993/8, para. 137.

¹⁸ Resolution 1993/17.

¹⁹ Resolution 1997/29, para. 4.

²⁰ UN Doc E/CN.4/2000/62, Annex.

²¹ Resolutions 2002/44 and 2003/34.

Background:

The normative content of the prohibition of torture and inhuman or degrading treatment or punishment is well developed. Freedom from torture is a non-derogable norm under the International Covenant on Civil and Political Rights and regional human rights instruments. An act of torture constitutes an international crime over which universal jurisdiction may be exercised.

The ICJ is alarmed by suggestions made recently in some quarters that the prohibition against torture might be relaxed to confront serious security concerns, such as in cases concerning terrorism. To counter any attempt to undermine the absolute nature of the prohibition against torture, the ICJ considers that the Commission should strengthen its annual resolution on torture to make explicit that the prohibition against torture is *jus cogens*, or a peremptory norm of international law. At the 59th session of the Commission, the ICJ proposed during drafting consultations that a reference to the *jus cogens* principle be included in the text. Although the suggested language appeared in brackets in a draft version of the resolution, it was ultimately deleted. The ICJ and its partners of the Coalition of International Non-Governmental Organisations against Torture (CINAT)²² have decided to press for its inclusion at the 60th session. The *jus cogens* nature of torture has been affirmed in various judicial fora, most notably by the International Criminal Tribunal for the Former Yugoslavia. In addition to the symbolic resonance of this affirmation of the *jus cogens* nature of the prohibition, it is important to recall the legal effects, as enunciated by the ICTY:

‘The fact that torture is prohibited by a peremptory norm of international law has...effects at the interstate and individual levels...At the inter-state level, it serves to internationally delegitimise any legislative, administrative or judicial act authorising torture...[I]n spite of possible national authorisation by legislative or judicial bodies to violate the principle banning torture, individuals remain bound to comply with that principle.’²³

Objective:

The ICJ will seek the inclusion in the Commission’s omnibus resolution on torture of an explicit affirmation that the prohibition of torture is a peremptory norm of international law (*jus cogens*).

Human Rights in the Occupied Palestinian Territories

Background:

The human rights situation in Israel and the Occupied Palestinian Territories remains a source of grave concern to the ICJ, as daily occurrences of serious human rights and humanitarian law violations have reached an unprecedented level. Among the most severe of numerous pernicious developments are a dramatic increase in attacks on civilians and the construction of a "security fence" ensconcing substantial portions of Palestinian territory on the Israeli side. The "security fence" has serious negative repercussions for the enjoyment of human rights, especially in respect of freedom of movement and various economic, social and

²² CINAT is composed of Amnesty International, Association for the Prevention of Torture (APT), International Federation of Action by Christians for the Abolition of Torture (FIACAT), International Commission of Jurists (ICJ), International Rehabilitation Council for Torture Victims (IRCT), Redress: Seeking Reparation for Torture Survivors, and World Organisation against Torture (OMCT).

²³ *Prosecutor v. Anto Furundzija*, IT-95-17/1-T (10 December 1998).

cultural rights. It also may constitute a de facto annexation of Palestinian territory, in violation of the 4th Geneva Convention relative to the Protection of Civilian Persons in Time of War. Israel has also continued the practice of confiscation of land, demolition of houses, blockades, curfews, closures, home confinement, extrajudicial killings, including “targeted assassinations,” and administrative detention.

The Commission has in recent years adopted two major resolutions on the Occupied Palestinian Territories under the Question of the violation of human rights in the occupied Arab territories, including Palestine (item 8 of the Commission’s agenda). A resolution on the general situation is usually tabled by States representing the Organisation of the Islamic Conference (OIC) and a second resolution dealing primarily with the question of illegal Israeli settlements is introduced by the European Union. The ICJ will engage primarily with this latter resolution.

ICJ Objective:

The ICJ will work to achieve a strong resolution containing:

- An unequivocal condemnation of attacks against civilians conducted by all parties, whether Israeli or Palestinian;
- The dismantling of settlements in the Occupied Palestinian Territories and a declaration that States providing financial or other material support to the establishment or expansion of settlements are also internationally responsible;
- A denunciation of the "security fence", with an affirmation that its construction constitutes a dereliction of Israel’s human rights and humanitarian law obligations, and a demand that Israel cease construction of the fence and dismantle portions already built;
- A reminder to Israel that human rights law obligations, particularly the provisions of the International Covenant on Civil and Political Rights, are fully applicable in the Occupied Palestinian Territories, as affirmed by the Human Rights Committee;
- An affirmation of the rights of conscientious objectors and other military personnel to refuse carry out unlawful activity in the Occupied Palestinian Territories;
- A call to Israel to reverse its refusal to cooperate with the Special Rapporteur on the Occupied Palestinian Territories.

Human Rights in Colombia

Background:

The situation of human rights in Colombia has long been a concern of the ICJ. In 1991, the ICJ conducted a fact-finding mission to Colombia and subsequently supported the efforts of the Colombian Commission of Jurists and other national NGOs to achieve the establishment of an Office of the United Nations High Commissioner for Human Rights in Colombia.²⁴ In 2003, as in previous years,²⁵ the UN-HCHR Office in Colombia noted that "there were grave,

²⁴ This Office was established on 26 November 1996 under an agreement signed by the Colombian Government and the then United Nations High Commissioner for Human Rights

²⁵ *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, 24 February 2002, document E/CN.4/2002/17, par. 72 and 73; and *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, 8 February 2001, document E/CN.4/2001/15, par. 250 and 251.

massive and systematic violations of those rights, several of them constituting crimes against humanity.”²⁶ The Colombian Government has failed to implement the majority of the recommendations made by UN treaty bodies, special procedures of the Commission, the UN-HCHR Office in Colombia and in the statements by the Commission’s Chairperson.

The Government of President Alvaro Uribe Vélez, elected in 2002, has recently adopted a “democratic security policy”, a significant part of which contravenes fundamental rules of humanitarian law by involving the civilian population more and more in the armed conflict. The Government seeks through this policy to convert at least one million civilians into public force informers, “under the control, supervision, and evaluation of the military and police commanders and of State security organisations located in each one of the regions.”²⁷ The Government announced that it would incorporate at least 15,000 peasants into a programme called “peasant soldiers” from August 2002 to March 2003. In practice, military authorities have begun to combine the programme of the informers’ network and the peasant soldiers programme, thus denying more and more the possibility for persons to stay away from the hostilities.

In 2003, the Colombian government adopted Decree N° 128 and presented the Parliament with a draft bill (Law on “alternative criminal legality”) to grant impunity to members of paramilitary groups. It also submitted for consideration of the Congress a Bill on constitutional reform in the administration of justice, through which it is intended to restrict the “*acción de tutela*”, a special legal action for protection of fundamental rights, to curtail the powers of the Constitutional Court, and to change the structure and functions of the High Council of the Judiciary. It also submitted a proposal for constitutional reform in order to grant judicial police powers to the armed forces – allowing it to search premises and intercept communications and correspondence without prior judicial warrant, to interrogate civilians, and to restrict the right to *habeas corpus*. Human Rights Defenders have also been the targets of denigration, harassment and persecution. This campaign reached its height in September 2003, when the president pronounced two speeches against human rights NGOs, accusing some of them of being terrorist.

ICJ Objective:

The ICJ considers that the UN Commission on Human Rights must adopt a stronger position vis-à-vis the Colombian Government, proportionate to the extreme gravity of human rights violations in Colombia. The ICJ continues to support the demands of the Colombian Commission of Jurists and other Colombian human rights NGOs and social organisations. The ICJ will request that the Commission on Human Rights:

- Based on the High Commissioner’s report, adopt a resolution expressing in the strongest terms its deep concern for the human rights crisis in Colombia, as well as for the Government’s disregard of its recommendations;
- Ask the High Commissioner to present its report on Colombia to the United Nations General Assembly.
- Name a Special Rapporteur for Colombia as a complementary mechanism to the UN-HCHR Office in Colombia.

²⁶ UN Doc. E/CN.4/2003/13 of 24 February 2003, “Executive summary”, page 6.

²⁷ Presidency of the Republic, National Planning Department (DNP is the Colombian acronym), *National Development Plan Foundations, 2002-2006, Toward a Community State*, Bogota, DNP, 2002, Page 36.

- Urge the Commission's thematic mechanisms to redouble their attention to Colombia's human rights crisis and request that they visit the country once again.

Human Rights in Nepal

Background:

The human rights situation in Nepal has continued to deteriorate rapidly since the 59th session of the Commission on human rights. In January-February 2003, the ICJ undertook a fact-finding mission to Nepal and reported on a break down of the rule of law and wide scale human rights abuses. Among the most serious of concerns were the widespread instances of illegal arbitrary and incommunicado detention by the Royal Nepalese Army, which placed detainees beyond judicial review; lack of an effective *habeas corpus* remedy and numerous cases of extrajudicial killings, torture and enforced disappearances.²⁸ Since the collapse of the cease-fire in August 2003, the instances of abuses have increased markedly. On 10 October the ICJ wrote to the King of Nepal regarding at least 19 persons extrajudicially executed by personnel of the Royal Nepalese Army, according to a team of independent investigators assembled by the National Human Rights Commission (NHRC). The ICJ has called on the King, *inter alia*, to bring the Army under civilian control, investigate and prosecute violations, end near absolute impunity. More recently, the ICJ has denounced plans by the Government to set up civilian militias to perform security functions and the undermining of the independent NHRC through the establishment of human rights promotion unit under the supervision of the Prime Minister.

The NHRC has proposed a human rights accord which would see the establishment of five regional monitoring units consisting of Nepalese personnel assisted by the UN Office of the High Commissioner for Human Rights. A number of Nepalese and international NGOs and eight governmental donor agencies and Embassies in Kathmandu donor have urged that the Government sign the accord and establish an effective monitoring system.²⁹ The NHRC has also called upon Special Procedures mechanisms of the UN Human Rights Commission to visit Nepal.

Objectives:

The ICJ will bring to the attention of the Commission the grave human rights situation in Nepal and will call upon the Commission to ensure that Nepal institute a system of human rights monitoring and establish a field office presence by the High Commissioner on Human Rights. The Commission should also call on the Government to extend invitations to visit the country to special procedure mechanisms of the Commission, as requested by the NHRC, including the Special Rapporteur on Torture, the Special Rapporteur on summary, arbitrary or extra-judicial executions, the Working Group on Arbitrary Detention, the Special Rapporteur on the Independence of Judges and Lawyers, and the Working Group on Enforced Disappearances.

²⁸ The full report is available on the ICJ website at www.icj.org/news.php3?id_article=2950&lang=en

²⁹ The Canadian Embassy, the United Kingdom Department for International Development (DFID), the French Embassy, the German Society for Technical Cooperation (GTZ), the Royal Danish Embassy, the Royal Norwegian Embassy, the Swiss Agency for Development and Cooperation and the Netherlands Development Organisation...

