

GENERAL ASSEMBLY RESOLUTION 60/147
(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)

The issue of basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights and humanitarian law was first raised in 1988 during the fortieth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in the context of its basic mandate to make recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms. On 1 September 1988, the Sub-Commission adopted resolution 1988/11 in which it decided to discuss the matter of compensation at its forty-first session with a view to considering the possibility of developing some basic principles and guidelines in this respect (see Report of the Sub-Commission, E/CN.4/Sub.2/1988/45).

At its forty-first session, the Sub-Commission adopted resolution 1989/13 of 31 August 1989, by which it decided to entrust Mr. Theo van Boven, as Special Rapporteur, with the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, with a view to exploring the possibility of developing some basic principles and guidelines in this respect, and requested him to submit a preliminary report on the matter for consideration by the Sub-Commission at its forty-second session (see Report of the Sub-Commission, E/CN.4/Sub.2/1989/58 (E/CN.4/1990/2)). At its forty-sixth session, upon recommendation of the Sub-commission, the Commission on Human Rights adopted resolution 1990/35 of 2 March 1990, by which it recommended the Economic and Social Council to adopt a resolution authorizing the Sub-Commission to entrust Mr. van Boven with the abovementioned task and requesting the Secretary-General to provide him with all the assistance needed for this task (see report of the Commission on Human Rights, E/1990/22). The Economic and Social Council adopted resolution 1990/36 of 25 May 1990 to this effect.

At its forty-second session, the Sub-Commission considered the preliminary report submitted by the Special Rapporteur (E/CN.4/Sub.2/1990/10) and adopted resolution 1990/6 of 30 August 1990, by which it requested the Special Rapporteur to prepare a progress report for its forty-third session, taking into account comments made in the discussion on the preliminary report, as well as the relevant work and recommendations of the Committee on Crime Prevention and Control and relevant decisions of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and to undertake the necessary consultations with the United Nations Centre for Social Development and Humanitarian Affairs (see Report of the Sub-Commission, E/CN.4/Sub.2/1990/59 (E/CN.4/1991/2)).

The Special Rapporteur accordingly submitted his first progress report to the Sub-Commission on 25 July 1991, for its forty-third session (E/CN.4/Sub.2/1991/7). On 29 August 1991, the Sub-Commission adopted resolution 1991/25, by which it requested the Special Rapporteur to continue his study and to submit a second progress report containing additional information on and an analysis of relevant decisions and views of international human rights organs, as well as of national law and practice to the Sub-Commission, at its forty-fourth session, and a final report at its forty-fifth session (see Report of the Sub-Commission, E/CN.4/Sub.2/1991/65 (E/CN.4/1992/2)).

The Special Rapporteur submitted his second progress report to the Sub-Commission on 29 July 1992, for its forty-fourth session (E/CN.4/Sub.2/1992/8). On 27 August 1992, the Sub-Commission adopted resolution 1992/32, by which it requested the Special Rapporteur to continue his study and to submit to the Sub-Commission, at its forty-fifth session, a final report which should include a set of conclusions and recommendations aimed at developing basic principles and guidelines with respect to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (see Report of the Sub-Commission, E/CN.4/Sub.2/1992/58 (E/CN.4/1993/2)).

The Special Rapporteur submitted his final report on 2 July 1993, at the forty-fifth session of the Sub-Commission (E/CN.4/Sub.2/1993/8). On 25 August 1993, the Sub-Commission adopted resolution 1993/29, by which it decided to transmit the study of the Special Rapporteur to the Commission on Human Rights. By the same resolution, the Sub-Commission decided to examine further, at its forty-sixth session, the proposed basic principles and guidelines included in the study and, for that purpose, to establish, if necessary, a sessional working group at that session with a view to adopting a body of such principles and guidelines, and it further requested the Secretary-General to invite governments and competent intergovernmental and non-governmental organizations to submit their comments on the proposed basic principles and guidelines (see Report of the Sub-Commission, E/CN.4/Sub.2/1993/45 (E/CN.4/1994/2) and Corr.1). At its fiftieth session, the Commission on Human Rights adopted resolution 1994/35 of 4 March 1994, in which it expressed its appreciation for the work of the Special Rapporteur and regarded the proposed basic principles and guidelines as a useful basis for addressing the question of restitution, compensation and rehabilitation for victims of gross violations of human rights. It therefore recommended that the Sub-Commission take measures to examine the proposed basic principles and guidelines with a view to making proposals thereon and report to the Commission (see Report of the Commission on Human Rights, E/CN.4/1994/132 (E/1994/24)).

At the forty-sixth session of the Sub-Commission, held from 1 to 26 August 1994 in Geneva, a Sessional Working Group on the Administration of Justice and the Question of Compensation was established to examine further the proposed basic principles and guidelines in accordance with resolution 1993/29 of the Sub-Commission. On 26 August 1994, the Sub-Commission adopted resolution 1994/33, by which, after noting the report of the Secretary-General prepared pursuant to Sub-Commission resolution 1993/29 (E/CN.4/Sub.2/1994/7 and Add.1) and the report of the sessional working group (E/CN.4/Sub.2/1994/22), it decided to continue the consideration of the proposed basic principles and guidelines at its forty-seventh session (see Report of the Sub-Commission, E/CN.4/Sub.2/1994/56). On 3 March 1995, the Commission on Human Rights, at its fifty-first session, adopted resolution 1995/34, in which it encouraged the Sub-Commission to continue to give consideration to the proposed basic principles and guidelines, requested States to provide information about relevant national legislation to the Secretary-General and requested the Secretary-General to submit a report to the Commission on this subject at its fifty-second session (Report of the Commission on Human Rights, E/CN.4/1995/176 (E/1995/23)).

The Working Group continued its consideration of the proposed basic principles and guidelines at the forty-seventh session of the Sub-Commission, which was held in Geneva from 31 July to 25 August 1995. On 24 August 1995, the Sub-Commission adopted decision 1995/117 (see Report of the Sub-Commission, E/CN.4/Sub.2/1995/51 (E/CN.4/1996/2)), by which it decided to request the Working Group to continue the consideration of the proposed basic principles and guidelines, with priority, at the next session and requested the former Special Rapporteur to submit a revised set of proposed basic principles and guidelines, taking into account the new comments received from States and intergovernmental and non-governmental

organizations (see Report of the Secretary-General E/CN.4/Sub.2/1995/17 Add.1 and Add.2) and the discussions on the matter in the Working Group (see Report of the Working Group, E/CN.4/Sub.2/1995/16). On 19 April 1996, the Commission on Human Rights, at its fifty-second session, adopted resolution 1996/35, by which, taking note of the report of the Secretary-General submitted to the Commission in compliance with its resolution 1995/34 (E/CN.4/1996/29), it requested States that had not yet done so to submit information in accordance with that resolution, and requested the Secretary-General to prepare an additional report, taking into account the information provided by States (see Report of the Commission on Human Rights, E/CN.4/1996/177 (E/1996/23)).

As requested by the Sub-Commission in its decision 1995/117 of 24 August 1995, the former Special Rapporteur submitted a revised text of the basic principles and guidelines to the Sub-Commission at its forty-eighth session (E/CN.4/Sub.2/1996/17). On 29 August 1996, the Sub-Commission adopted resolution 1996/28, by which it expressed its appreciation to the former Special Rapporteur and decided to transmit the revised draft to the Commission on Human Rights, together with its comments and the comments of the Working Group (E/CN.4/Sub.2/1996/16). By the same resolution, the Sub-Commission requested the former Special Rapporteur to prepare a note taking into account the comments and observations of the Working Group and the Sub-Commission in order to facilitate the examination by the Commission on Human Rights of the revised draft basic principles and guidelines (see Report of the Sub-Commission, E/CN.4/Sub.2/1996/41 (E/CN.4/1997/2)).

On 13 January 1997, the former Special Rapporteur accordingly submitted a note to the Sub-Commission, together with an adapted version of the draft revised basic principles and guidelines (E/CN.4/1997/104, annex). On 11 April 1997, at its fifty-third session, the Commission on Human Rights adopted resolution 1997/29, by which it invited the Secretary-General to request all States to submit their views and comments on the note and revised draft basic principles and guidelines and to prepare a report setting out such views and comments (see Report of the Commission on Human Rights, E/1997/23).

At its fifty-fourth session, the Commission on Human Rights adopted resolution 1998/43 of 17 April 1998 by which it took note of the report of the Secretary-General (E/CN.4/1998/34) submitted pursuant to the abovementioned resolution and, with the approval of the Economic and Social Council (see Economic and Social Council resolution 1998/256 of 30 July 1998), requested the Chairman of the Commission to appoint an independent expert to prepare a revised version of the basic principles and guidelines, taking into account the views of and comments provided by States and intergovernmental and non-governmental organizations, and to submit it to the Commission at its fifty-fifth session, with a view to its adoption by the General Assembly. By the same resolution, the Commission continued to request the Secretary-General to invite States that had not yet done so, as well as intergovernmental and non-governmental organizations, to submit their views and comments as soon as possible, and by no later than 31 October 1989, and to make that information available to the independent expert (see Report of the Commission on Human Rights, E/1998/23).

The independent expert appointed by the Commission on Human Rights, Mr. M. Cherif Bassiouni, submitted his first report to the Commission in February 1999, at its fifty-fifth session (E/CN.4/1999/65). On 26 April 1999, the Commission on Human Rights adopted resolution 1999/33, by which it requested him to complete his work and to submit to the Commission at its fifty-sixth session, in accordance with its resolution 1998/43, a revised version of the basic principles and guidelines (see Report of the Commission on Human Rights, E/1999/23).

The independent expert submitted his final report to the Commission on Human Rights (E/CN.4/2000/62) in January 2000, at its fifty-sixth session. On 20 April 2000, the Commission adopted resolution 2000/41, by which it requested the Secretary-General to circulate to all Member States the draft text of the “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law”, annexed to the final report of the independent expert, and to request that they send their comments thereon to the Office of the United Nations High Commissioner for Human Rights. The Commission further requested the High Commissioner for Human Rights to hold a consultative meeting for all interested States, intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council, in order to finalize the basic principles and guidelines on the basis of the comments submitted, and to transmit to the Commission, at its fifty-seventh session, the final outcome of this meeting (see Report of the Commission on Human Rights, E/2000/23).

By note verbale of 31 August 2000, the Secretary-General invited all Member States to submit their comments on the basic principles and guidelines. However, as at 20 November 2000, replies had been received from only six Member States (see E/CN.4/2001/61). At its fifty-seventh session, the Commission on Human Rights therefore adopted decision 2001/105 of 23 April 2001, by which it requested again the High Commissioner for Human Rights to hold a consultative meeting in order to finalize the basic principles and guidelines and to transmit the final outcome of the consultative meeting to the Commission for consideration at its fifty-eighth session (see Report of the Commission on Human Rights, E/2001/23). On 24 July 2001, the Economic and Social Council adopted decision 2001/279, by which it endorsed the decision of the Commission on Human Rights.

At its fifty-eighth session, the Commission on Human Rights adopted resolution 2002/44 of 23 April 2002 by which it made an identical request (see Report of the Commission on Human Rights, E/2002/23).

The requested consultative meeting on the draft Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law took place on 30 September and 1 October 2002 in Geneva, and the report of the Chairperson-Rapporteur, Mr. Alejandro Salinas, was transmitted by the High Commissioner to the Commission on Human Rights on 27 December 2002 (E/CN.4/2003/63). On 23 April 2003, at its fifty-ninth session, the Commission on Human Rights adopted resolution 2003/34, by which it requested the Chairman-Rapporteur of the consultative meeting, in consultation with the independent experts, Messrs. van Boven and Bassiouni, to prepare a revised version of the “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law”, taking into account the opinions and comments of States and of intergovernmental and non-governmental organizations and the results of the consultative meeting. The Commission further requested the High Commissioner for Human Rights to hold a second consultative meeting, with a view to finalizing the basic principles and guidelines, encouraged the Chairman-Rapporteur of the first consultative meeting to conduct informal consultations with all interested parties, and requested the High Commissioner for Human Rights to transmit to the Commission at its sixtieth session the final outcome of the second consultative meeting (see Report of the Commission on Human Rights, E/2003/23).

The second consultative meeting took place on 20, 21 and 23 October 2003 in Geneva and the report of the Chairperson-Rapporteur of the consultative meeting (E/CN.4/2004/57, annex) was transmitted by the High Commissioner for Human Rights to the Commission on Human Rights, at its sixtieth session. On 19 April 2004, the Commission on Human Rights adopted resolution 2004/34, by which it requested

the Chairman-Rapporteur, in consultation with the independent experts, to prepare a further revised version of the basic principles and guidelines. It further requested the High Commissioner for Human Rights to hold a third consultative meeting and to transmit to the Commission on Human Rights, at its sixty-first session, the outcome of the consultative process (see Report of the Commission on Human Rights, E/2004/23). On 22 July 2004, the Economic and Social Council adopted decision 2004/257, by which it approved the request by the Commission on Human Rights to hold a third consultative meeting.

At its sixty-first session, the Commission on Human Rights adopted resolution 2005/35 of 19 April 2005 by which, welcoming the report of the Chairman-Rapporteur of the third consultative meeting (E/CN.4/2005/59), it adopted the 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 (see Report of the Commission on Human Rights, E/2005/23). Upon recommendation of the Commission, the Economic and Social Council adopted resolution 2005/30, by which it adopted the Basic Principles and Guidelines and recommended their adoption to the General Assembly.

At the sixtieth session of the General Assembly, the Third Committee discussed the text adopted by the Commission on Human Rights at four separate meetings (see A/C.3/60/SR.22, 29, 37 and 39). On 28 October 2005, a joint draft resolution (A/C.3/60/L.24) was submitted by Chile on behalf of forty-five delegations to the Third Committee entitled "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" which was adopted by the Committee on the same day. On 16 December 2005, upon recommendation of the Third Committee (see Report of the Third Committee A/60/509/Add.1), the General Assembly adopted resolution 60/147 (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) without a vote.