



人权理事会
咨询委员会
第二十六届会议
2021年8月16日至20日
议程项目4
咨询委员会第二十六届会议报告

咨询委员会第二十六届会议报告*

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* 本报告附件不译，原文照发。



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一. 咨询委员会第二十六届会议采取的行动

26/1. 研究提案和思考文件

人权理事会咨询委员会，

满意地注意到委员会 2021 年向人权理事会第四十七和第四十八届会议提交的报告，¹

尤其表示满意的是，委员会及时向人权理事会提交了关于评估世界种族平等情况的适当方式方法的研究报告，² 铭记 2021 年恰逢《德班宣言和行动计划》通过二十周年，并期待根据大会 2017 年 12 月 19 日第 72/157 号决议第 23 段将其提交大会第七十六届会议，

指出它已完成人权理事会迄今赋予它的所有任务的相关工作，而理事会自 2020 年以来没有要求委员会开展新的研究或提供基于研究的咨询意见，

回顾人权理事会 2007 年 6 月 18 日第 5/1 号决议附件第 77 段和 2011 年 3 月 25 日第 16/21 号决议，

又回顾委员会于 2021 年 3 月 8 日致函人权理事会主席，列出了供理事会审议的优先专题和研究提案，³

审议了咨询委员会成员在本届会议上就拟提交人权理事会审议的新的优先事项和可能的研究提案进行讨论时提出的研究提案和思考文件，并欢迎在上述讨论期间从会员国和非政府组织收到的意见，

1. 提交以下研究提案供人权理事会审议和批准：

- (a) 疫情与人权：留给未来的经验教训；
- (b) 保护学术自由和研究的自由流动：从疫情中汲取的经验教训；
- (c) 气候保护技术与人权；
- (d) 对移民人权利造成不利影响的做法；⁴

2. 决定根据委员会议事规则第 17 条，将上述研究提案的概念文件列入其第二十六届会议报告附件；

3. 提请理事会注意以下专题，一些会员国和非政府组织鼓励委员会在今后的研究和研究报告中重点关注这些专题：

- (a) 军事领域新的和新兴的数字技术与人权；
- (b) 国际司法管辖议程中的经济、社会及文化权利；
- (c) 加强老年人权利的手段。

¹ A/HRC/47/51、A/HRC/47/52、A/HRC/48/66和A/HRC/48/72。

² A/HRC/48/72。

³ 见A/HRC/AC/25/2, 第21段。

⁴ 咨询委员会在第二十四届会议上向人权理事会提交了一份题为“关于对移民权利造成不利影响的种种做法的研究”的研究提案，见A/HRC/AC/24/2, 附件三。

2021年8月20日
第5次会议

[经口头修订，未经表决获得通过。]

二. 通过议程和安排工作

A. 会议开幕和会期

1. 根据人权理事会 2007 年 6 月 18 日第 5/1 号决议设立的人权理事会咨询委员会于 2021 年 8 月 16 日至 20 日在联合国日内瓦办事处并利用 Zoom 平台举行了第二十六届会议。第二十五届会议主席阿贾伊·马尔霍特拉宣布会议开幕。
2. 人权理事会主席纳兹哈特·沙米姆·汗在 2021 年 8 月 16 日举行的第 1 次会议上作了开幕发言。
3. 在同次会议上，联合国人权事务高级专员办事处(人权高专办)人权理事会处处长代表秘书长作了发言。
4. 在同次会议上，与会者为咨询委员会已故成员谢赫·蒂迪亚内·蒂亚姆和全世界侵犯人权行为的受害者默哀一分钟。

B. 咨询委员会的人员组成

5. 咨询委员会目前成员名单如下：⁵ 易卜拉欣·阿卜杜勒阿齐兹·阿尔谢迪(沙特阿拉伯，2021 年)；白凡锡(大韩民国，2023 年)；纳迪娅·阿迈勒·贝尔努西(摩洛哥，2023 年)；莱兹赫里·布齐德(阿尔及利亚，2022 年)；阿莱西奥·布鲁尼(意大利，2021 年)；米莱娜·科斯塔斯·特拉斯卡萨斯(西班牙，2022 年)；尤里·亚历山德罗维奇·科列斯尼科夫(俄罗斯联邦，2022 年)；若泽·奥古斯托·林格伦·阿尔维斯(巴西，2021 年)；刘昕生(中国，2022 年)；阿贾伊·马尔霍特拉(印度，2023 年)；中井伊都子(日本，2022 年)；莫纳·奥马尔(埃及，2022 年)；哈维尔·帕鲁莫(乌拉圭，2022 年)；伊丽莎白·萨尔蒙(秘鲁，2023 年)；帕特雷茨娅·萨斯纳尔(波兰，2023 年)；迪鲁杰拉尔·西图辛格(毛里求斯，2023 年)；卡特琳纳·范德黑宁(比利时，2023 年)。

C. 出席情况

6. 出席本届会议的有：咨询委员会成员以及联合国会员国、若干政府间组织和非政府组织的观察员。
7. 咨询委员会全体成员参加了本届会议。

⁵ 括号中年份的9月30日任期届满。

D. 会议

8. 咨询委员会在第二十六届会议期间举行了 5 次全体会议和 11 次闭门会议。委员会也与区域和政治集团协调员交换了意见。此外，委员会还与非政府组织代表举行了一次非公开会议。

E. 通过议程

9. 咨询委员会在 2021 年 8 月 16 日举行的第 1 次会议上通过了议程 (A/HRC/AC/26/1)⁶。

F. 安排工作

10. 咨询委员会在第 1 次会议上还通过了秘书处编写的工作方案草案。

三. 人权理事会决议中对咨询委员会提出的要求

A. 提交人权理事会第四十七届会议的报告

11. 在 2021 年 8 月 16 日举行的第 1 次会议上，白先生以起草小组报告员的身份介绍了咨询委员会提交人权理事会第四十七届会议审议的关于新的和新兴的数字技术对促进和保护人权的可能影响、机遇和挑战的报告 (A/HRC/47/52)。在随后的讨论中，委员会成员、观察员国代表和非政府组织代表作了发言(见附件二)。

12. 在第 1 次会议上，萨尔蒙女士也以起草小组报告员的身份，介绍了提交人权理事会第四十七届会议审议的关于“目前妇女在人权机构和机制中的代表性水平：确保性别均衡”的报告 (A/HRC/47/51)。在随后的讨论中，委员会成员、观察员国代表和一个非政府组织的代表作了发言(见附件二)。

B. 提交人权理事会第四十八届会议的报告

13. 在 2021 年 8 月 17 日举行的第 2 次会议上，科斯塔斯·特拉斯卡萨斯女士以起草小组报告员的身份介绍了咨询委员会提交人权理事会第四十八届会议审议的关于评估种族平等状况的适当方式方法的报告 (A/HRC/48/72)。在随后的讨论中，委员会成员、观察员国代表和非政府组织代表作了发言(见附件二)。

14. 在同次会议上，奥马尔女士以起草小组报告员的身份介绍了提交人权理事会第四十八届会议审议的关于恐怖主义对享有人权的不利影响的报告 (A/HRC/48/66)。在随后的讨论中，委员会成员、观察员国代表和非政府组织代表作了发言(见附件二)。

⁶ 为第二十六届会议印发的文件清单见附件一。

C. 咨询委员会提交人权理事会的报告中所载建议的后续行动

15. 在 2021 年 8 月 19 日举行的第 3 次会议上，咨询委员会讨论了“目前妇女在人权机构和机制中的代表性水平：确保性别均衡”这份报告(A/HRC/47/51)所载建议的后续行动。围绕这个主题，安哥拉常驻代表兼人权理事会性别平等问题协调人玛格丽塔·罗萨·达席尔瓦·伊萨塔和人权高专办妇女人权和性别事务科的一名代表作为嘉宾参加了讨论。在随后的讨论中，委员会成员、观察员国家的代表和一个非政府组织的代表作了发言(见附件二)。

四. 人权理事会 2007 年 6 月 18 日第 5/1 号决议附件第三和第四节及理事会 2011 年 3 月 25 日第 16/21 号决议附件第三节的执行情况

A. 审查工作方法

16. 2021 年 8 月 17 日和 19 日，咨询委员会在闭门会议上就工作方法进行了讨论。委员会讨论了有关提高自身工作的影响力和知名度以及与非政府组织、国家人权机构和委员会的学术界朋友进行接触的问题。

17. 在 2021 年 8 月 20 日举行的第 5 次会议上，咨询委员会就其工作方法进行了讨论。讨论期间，委员会成员作了发言(见附件二)。

B. 议程和年度工作方案，包括新的优先事项

18. 咨询委员会在 2021 年 8 月 16 日、18 日和 19 日举行的闭门会议上讨论了可以向人权理事会提出的新的优先事项、思考文件和可能的研究提案。

19. 在 2021 年 8 月 18 日举行的第 3 次会议上，咨询委员会讨论了其成员提交的下述研究提案，并决定将其提交人权理事会审议和批准(见附件三)：

- 疫情与人权：留给未来的经验教训(帕鲁莫先生)
- 保护学术自由和研究的自由流动：从疫情中汲取的经验教训(范德黑宁女士)
- 气候保护技术与人权(萨斯纳尔女士)
- 对移民人权利造成不利影响的做法(科斯塔斯·特拉斯卡萨斯女士)

20. 在同次会议上，委员会成员提出了下述思考文件：

- 军事领域新的和新兴的数字技术与人权(马尔霍特拉先生)
- 严重违反国际人权法和国际人道法行为的受害者获得补救和赔偿的权利(白先生)

21. 在同次会议上随后举行的讨论中，咨询委员会成员、观察员国代表和一个非政府组织的代表作了发言(见附件二)。

22. 在 2021 年 8 月 20 日举行的第 5 次会议上，主席介绍了由咨询委员会全体成员提出的案文草案(A/HRC/AC/26/L.1)，并对其进行了口头修订。经口头修订的案文草案未经表决获得通过(通过的案文见上文第一节)。

C. 任命来文工作组成员

23. 根据人权理事会第 5/1 号决议附件第 91 至 93 段，咨询委员会要在适当顾及性别平衡的情况下，从每个区域组指定一名、共计五名成员组成来文工作组。如出现空缺，咨询委员会应从同一区域组指定一名独立且高度合格的专家补缺。由于审查和评估收到的来文需要有独立的专家意见和连续性，来文工作组的独立且高度合格的专家任期为三年。任期只能延长一次。

24. 来文工作组的现任成员是咨询委员会在第十七、第二十一和第二十三届会议上以及在 2020 年闭会期间任命的⁷。

25. 鉴于两名成员阿尔谢迪先生(亚太国家组)和布鲁尼先生(西欧和其他国家组)于 2021 年 9 月 30 日任期届满，工作组出现两个空缺，咨询委员会在 2021 年 8 月 20 日第 5 次会议上任命刘先生和科斯塔斯·特拉斯卡萨斯女士为工作组新成员，任期从 2021 年 10 月 1 日开始。

26. 在同次会议上，委员会成员也做了发言(见附件二)。

五. 咨询委员会第二十六届会议报告

27. 在 2021 年 8 月 20 日举行的第 5 次会议上，咨询委员会报告员介绍了第二十六届会议报告草稿。咨询委员会通过了尚待核准的报告草稿，并委托报告员完成报告定稿。

28. 在同次会议上，报告员作了总结发言。委员会成员和一个非政府组织的代表也作了发言(见附件二)。

29. 在同次会议上，主席作了最后发言，宣布咨询委员会第二十六届会议闭幕。

⁷ 见 A/HRC/AC/17/2, 第 26 段; A/HRC/AC/21/2, 第 22-24 段; A/HRC/AC/23/2, 第 25-27 段; A/HRC/AC/25/2, 第 22-24 段。

Annex I

Documents issued for the twenty-sixth session of the Advisory Committee

Documents issued in the general series

<i>Symbol</i>	<i>Agenda item</i>	
A/HRC/AC/26/1	2	Provisional agenda and annotations
A/HRC/AC/26/2	4	Report of the Advisory Committee on its twenty-sixth session

Documents issued in the limited series (actions)

<i>Symbol</i>	<i>Agenda item</i>	
A/HRC/AC/26/L.1	3 (b)	Research proposals and reflection papers

Documents issued in the non-governmental organizations series

<i>Symbol</i>	<i>Agenda item</i>	
A/HRC/AC/26/NGO/1	3 (g)	Written statement submitted by the Organization for Defending Victims of Violence (ODVV), a non-governmental organization with special consultative status
A/HRC/AC/26/NGO/2	3 (g)	Written statement submitted by the Maat for Peace, Development and Human Rights Association, a non-governmental organization with special consultative status

Annex II

List of speakers

<i>Agenda item</i>	<i>Meeting and date</i>	<i>Speakers</i>
1. Adoption of the agenda and organization of work	1st meeting 16 August 2021	Observer States: Cameroon (on behalf of the African Group), Cuba, Venezuela (Bolivarian Republic of), Indonesia Non-governmental organizations: International Human Rights Council, Associazione Comunità Papa Giovanni XXIII
2. Requests addressed to the Advisory Committee stemming from Human Rights Council resolutions		
(a) Requests currently under consideration by the Committee		
New and emerging digital technologies and human rights	1st meeting 16 August 2021	Members: Buhm-Suk Baek (Rapporteur), Lazhari Bouzid, Nadia Amal Bernoussi Observer States: Cameroon (on behalf of the African Group), Cuba, India (video statement), China (video statement), Russian Federation (video statement) Non-governmental organizations: International Commission of Jurists, Institute for NGO Research, Maat for Peace, Development and Human Rights Association
Current levels of representation of women in human rights organs and mechanisms	1st meeting 16 August 2021	Members: Elizabeth Salmón (Rapporteur), Nadia Amal Bernoussi, Lazhari Bouzid, Dheerujlall Seetulsingh Observer States: Cameroon (on behalf of the African Group), Peru (video statement), Mexico, Russian Federation (video statement) Non-governmental organization: Maat for Peace, Development and Human Rights Association

<i>Agenda item</i>	<i>Meeting and date</i>	<i>Speakers</i>
Situation regarding racial equality in the world	2nd meeting 17 August 2021	Members: Milena Costas Trascasas (Rapporteur), Dheerujlall Seetulsingh, Nadia Amal Bernoussi, José Augusto Lindgren Alves, Elizabeth Salmón Observer States: Cameroon (on behalf of the African Group), Cuba, China, Venezuela (Bolivarian Republic of), Indonesia, India (video statement), Russian Federation (video statement) Non-governmental organizations: Organization for Defending Victims of Violence, Institute for NGO Research, Maat for Peace, Development and Human Rights Association
Negative effects of terrorism on the enjoyment of human rights	2nd meeting 17 August 2021	Members: Mona Omar (Rapporteur), Alessio Bruni, Lazhari Bouzid, Catherine Van de Heyning, Nadia Amal Bernoussi, José Augusto Lindgren Alves Observer States: Cameroon (on behalf of the African Group), Libya, Cuba, India (video statement), China, Venezuela (Bolivarian Republic of), Mexico, Russian Federation (video statement), Egypt Non-governmental organizations: International Human Rights Council, International Commission of Jurists, Institute for NGO Research, Maat for Peace, Development and Human Rights Association
(b) Recommendations contained in the reports of the Committee submitted to the Council: current levels of representation of women in human rights organs and mechanisms.	4th meeting 19 August 2021	Panellists: Margarida Rosa da Silva Izata (Ambassador of Angola and gender focal point of the Human Rights Council), a representative from the Women's Human Rights and Gender Section of OHCHR Members: Elizabeth Salmón (Rapporteur), Nadia Amal Bernoussi, Mona Omar, Milena Costas Trascasas, Javier Palummo, Catherine Van de Heyning Observer States: Peru, Mexico Non-governmental organization: International Human Rights Council
3. Implementation of sections III and IV of the annex to Human Rights Council resolution 5/1 and of section III of the annex to Council resolution 16/21		

<i>Agenda item</i>	<i>Meeting and date</i>	<i>Speakers</i>
(b) Agenda and annual programme of work, including new priorities	3rd meeting 18 August 2021	Members: Javier Palummo, Catherine Van de Heyning, Patrycja Sasnal, Milena Costas Trascasas, Buhm-Suk Baek, José Augusto Lindgren Alves, Lazhari Bouzid, Nadia Amal Bernoussi, Dheerujall Seetulsingh, Xinsheng Liu Observer States: Panama, Sri Lanka (video statement) Non-governmental organization: International Human Rights Council
(a) Review of methods of work	5th meeting 20 August 2021	Members: Milena Costas Trascasas, Buhm-Suk Baek
(c) Appointment of members of the Working Group on Communications	5th meeting 20 August 2021	Members: Ibrahim Abdulaziz Alsheddi, Catherine Van de Heyning, Alessio Bruni, Patrycja Sasnal, Elizabeth Salmón, Lazhari Bouzid, Xinsheng Liu, Mona Omar, Nadia Amal Bernoussi, Milena Costas Trascasas, José Augusto Lindgren Alves
4. Report of the Advisory Committee on its twenty-sixth session	5th meeting 20 August 2021	Members: Javier Palummo (Rapporteur), Lazhari Bouzid, José Augusto Lindgren Alves, Mona Omar, Buhm-Suk Baek, Alessio Bruni, Catherine Van de Heyning Non-governmental organization: International Human Rights Council

Annex III

Research proposals

I. Pandemics and human rights: lessons for the future

A. General approach

1. The coronavirus disease (COVID-19) pandemic has had a significant impact not only on access to economic, social and cultural rights, but also to justice for violations of those rights.

2. In the context of the pandemic, the possibility of disease transmission was found to be much higher in areas with poor sanitation and lack of essential public services. On the other hand, various measures have also been taken in different countries by judicial bodies, ostensibly to reduce the spread of COVID-19, that have had a major impact on the functioning of these bodies and, therefore, on access to justice as a whole. Measures taken include the suspension of jurisdictional and prosecutorial activity, measures that obstruct or prevent access to legal advice or judicial files, and the suspension of deadlines and procedural acts in extraordinary cases (except for certain cases considered urgent). Such measures may also affect judicial oversight of the implementation of emergency measures, which is essential to avoid the excessive use of emergency powers. In many cases, remote work, the use of digital platforms and the holding of hearings by videoconference, *inter alia*, have been imposed. According to some reports, these innovations have sometimes had a negative impact on access to justice for some sectors of the population as a result of the existing digital gap. The most vulnerable groups should therefore be given special protection.

3. Given the disproportionate negative impact that pandemics have proven to have on the poor and less privileged, and the possibility of other pandemics in the future, the Advisory Committee might conduct a broader and more comprehensive examination of this issue, while referring to, but going beyond, the studies conducted by thematic special procedures and by the Office of the United Nations High Commissioner for Human Rights (OHCHR) itself.

B. Purpose of the study

4. The Advisory Committee proposes to carry out an exploratory study to identify the main effects of the measures taken by the States to address the COVID-19 pandemic with respect to access to economic, social and cultural rights and to justice. This study will identify lessons learned and good practices in the management of the pandemic from a human rights perspective, while taking into account the challenges posed by the 2030 Agenda for Sustainable Development.

C. Timeline

5. In order to give effect to this proposal, the Human Rights Council could consider adopting a resolution thereon at its forty-eighth session. The study itself could be submitted to the Council for consideration at its fifty-fourth session. Such a timeline would enable the Advisory Committee to discuss the topic and to work on the content of the report at its twenty-seventh, twenty-eighth and twenty-ninth thirtieth sessions.

II. Protection of academic freedom and free flow of research: lessons learned from the pandemic

A. The challenge: transparent, trustworthy, and high-level research

1. The coronavirus disease (COVID-19) pandemic has reminded the world of the importance of research and scientific progress. Public policies, health services, industry, civil society and the general public have depended directly on the advice of researchers to quell the pandemic, to prevent its spread, and to treat patients. Policymakers have relied on the advice of medical scholars, virologists, behavioural scientists and other experts to develop guidelines, formulate measures and take action. We have witnessed the triumph of our scientific knowledge in vaccines that have been developed, tested and begun to be widely used in less than a year since the beginning of the outbreak. Information on breakthroughs in medicines and therapies to treat those affected by the virus has in the meantime been published.

2. Despite the many lives lost and the impact on our daily lives, the pandemic has highlighted the importance of high-level, trustworthy and transparent academic research, and how fundamental human rights, in particular the right to life, are better served when societies invest in it. The pandemic might be at the top of our minds, but future challenges such as climate change will depend on humankind's ability to overcome current crises through behavioural change and technological solutions founded on evidence-based science.

3. High-level research does not come about by accident; it requires certain prerequisites, such as high-quality, open-access education, an environment that fosters research, transparency to allow the sharing of findings, the freedom to publish results from research without fear of being silenced or persecuted, a global community where knowledge can be shared freely, and policymakers open to evidence-based advice. While the pandemic has encouraged academic cooperation among researchers globally and interaction with countries, industry and civil society, researchers have also been silenced, undermined and threatened, or results have been held back from the general public and the research community at large.

4. In addition, tackling the pandemic has been further complicated by deliberate misinformation about the virus, its spread and remedies. Evidence-based science findings and researchers have been openly attacked. Conspiracy theories undermine the global effort to save lives and restore the normal functioning of society and, therefore, the full enjoyment of human rights. Cooperation among researchers has often encountered obstacles. Important advice, remedies and information has been withheld from the public because of censorship, restrictive national rules on the exchange of information (such as the sharing of scientific information, biological data or data on genetic sequences relating to the virus) or certain patent regulations. Lastly, budget shortages and underfunding in research and higher education have also limited scientific progress.

B. Human rights framework

5. Academic freedom is protected under article 19 of the International Covenant on Civil and Political Rights, namely, under the right to freedom to seek, receive and impart information and ideas of all kinds. Academic freedom thus entails an individual right not only for researchers (i.e., to express their ideas and share results) but also for the general public (the right to be informed of the current state of research). Such rights can, however, be limited to protect national security, public order, public health or morals (if based on a legal norm), for a legitimate reason or if proportionate. The question therefore concerns the extent to which academic freedom can or may be limited for the sake of public order or health reasons in times of crisis, so as to prevent conflicting advice being provided to the general public, misinformation based on botched science, financial limitations, intellectual property and patents.

6. Some regional and national courts and scholars have identified three levels of academic freedom: (a) the protection of the individual researcher to research and impart

information and to associate with other researchers; (b) the autonomy and protection of academic and other research institutions as a safe haven for academic research; and (c) positive obligations of authorities to enable and encourage education and research, thereby enabling a vibrant research community. In her most recent report to the General Assembly (A/75/261), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression highlighted certain threats to the freedom of academic expression.

7. In addition to academic freedom based on the freedom of expression and information, other rights are relevant, such as the right to association, the right to education, the protection of health and the right to life, and the right to development. These rights, including the right to academic freedom, are further protected under other international treaties, such as the Universal Declaration of Human Rights, regional human rights documents and constitutions.

8. No special procedure currently addresses the issue of academic research from this broader perspective. Given the looming challenges to humankind (such as climate change), where research will be a vital element to their solution, and in the light of the lessons learned from the pandemic, the topic is highly relevant and urgent.

C. Purpose of the study

9. The present research proposal has the objective of scrutinizing the current state of the protection of academic freedom in the context of the COVID-19 pandemic, and suggests how to ensure high-level, transparent and trustworthy science in the future. The proposal is therefore not limited to the strict boundaries of academic freedom as a specific manifestation of the freedom of expression. It approaches academic freedom from a holistic perspective of human rights, considering also what is needed to ensure that academic freedom in practice results in qualitative research and deals with new threats, such as deliberate misinformation.

10. The study will culminate in practical recommendations for the Human Rights Council and Member States on addressing gaps in protection of academic freedom, and how to strengthen academic research from a human rights perspective. It will examine the prerequisites for autonomous and independent research, the institutional autonomy of research institutions and the free flow of research results. It will also consider the challenge that deliberate misinformation with regard to science poses to human rights, and make recommendations on potential action to counter it.

D. Timeline

11. The Human Rights Council could consider adopting a relevant resolution at its forty-eighth session, and the report could be submitted to the Council for consideration at its session fifty-fourth session. Such a timeline would allow the Advisory Committee to discuss the topic and to work on the report during its twenty-seventh, twenty-eighth and twenty-ninth sessions.

III. Climate protection technologies and human rights

1. The goal of the proposed study is to examine the extent to which and how current or developing technologies for climate protection can affect human rights. These technologies have not been extensively examined from the perspective of human rights; the study could therefore provide the Human Rights Council with an insight into an underresearched issue of great importance to societies and States.

A. New technologies for climate protection

2. The solutions to climate change currently under discussion include geoengineering, which comprises a set of deliberate, large-scale interventions in the Earth's climate system in order to prevent further climate change or even to reverse it. They aim either to reduce the amount of sunlight reaching the Earth's atmosphere and becoming trapped by greenhouse gases (solar radiation management) or to remove the greenhouse gases already released into the atmosphere by human activities. Such techniques may target either the atmosphere itself, the terrestrial ecosystems or marine ecosystems. The most commonly advocated ones are listed below.

1. Interventions in the atmosphere

- Stratospheric aerosol injection: releasing inorganic particles (e.g. sulfur dioxide) into the upper layer of the atmosphere to create a reflexive barrier that would reduce the amount of sunlight reaching the Earth
- Cloud seeding: spraying chemicals (such as silver iodide) into clouds to increase precipitation and cloud cover, which would reflect sunlight back into space
- Marine cloud brightening: spraying sea water droplets into marine clouds to make them whiter and thus able to reflect more sunlight
- Space mirrors: positioning man-made orbital mirror satellites on the outer layer of Earth's atmosphere to deflect sunlight

2. Land-based interventions

- Carbon capture technologies: capturing CO₂ from fossil power generation and industrial processes, and either transforming it into liquid and storing (e.g., in depleted oil and gas reservoirs) or using it in other industrial processes, such as for the production of concrete for construction through the reaction of CO₂ with calcifying minerals
- Direct air capture: capturing CO₂ directly from the ambient air (not in industrial processes), as in the case of carbon capture technologies, for storage or use
- Photosynthesis enhancement: genetic engineering of popular plants or crops, such as rice, to strengthen photosynthetic performance, increasing their yield and carbon sequestration effectiveness
- Enhanced terrestrial weathering: mining and spreading crushed silicate minerals able to naturally sequester atmospheric CO₂ (such as olivine) on the land surface
- Ground-based albedo modification: various means, such as painting rooftops white, covering part of deserts with white polyethylene film to better reflect sunlight, coating Arctic ice with small glass beads to insulate melting snowpack and glaciers, clearing remaining areas of boreal forests to boost reflectivity due to their snow cover

3. Interventions in the oceans

- Ocean fertilization: fertilising the ocean with for example iron or nutrients to increase growth of phytoplankton and algae, which would absorb and draw down atmospheric CO₂, acting as a carbon sink
- Artificial upwelling: pumping up cooler, nutrient-rich water from the sea depths to the surface to stimulate phytoplankton growth and carbon sink potential
- Enhanced marine weathering: adding carbonate minerals to ocean waters on a large scale to increase their alkalinity and carbon sequestration
- Sea foam enhancing: pumping chemical foaming agents or tiny microbubbles into the oceans to increase ocean surface reflectivity by thickening natural sea foams
- Ocean sequestration of crop residues: sinking biomass, such as crop waste, into the ocean, where it remains on the seabed, its carbon content sequestered
- Engineering oceanic heat flows: downwelling ocean currents, thereby carrying carbon to the ocean depths, to increase their carbon concentration or volume

B. Applicable international human rights norms

3. There are no treaties imposing specific binding obligations with respect to the use of new technologies for climate protection that would safeguard the human rights of those possibly affected. Nonetheless, some international instruments do recognize the need to take into account human rights in climate action in general. The most important instrument is the Paris Agreement of the United Nations Framework Convention on Climate Change. According to the preamble in the Agreement, States, when taking action on climate change, should “respect, promote and consider their respective obligations on human rights”, particularly of the groups most affected, such as indigenous peoples and local communities. There are also non-binding instruments, such as the Malé Declaration on the Human Dimension of Global Climate Change, adopted by the representatives of small island developing States in 2007, in which they called upon other States and organizations to take into account the effects of climate change on human rights. Arguably, such effects also encompass the human rights implications of actions taken to prevent or mitigate this process. Also pertinent is the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), according to which everyone has a fundamental right to live in an environment that permits a life of dignity and well-being. Although not explicitly mentioning climate, it draws a connection between the realization of human rights and the environment, of which climate is an integral part.

4. On the other hand, several treaties that are unrelated to human rights may be regarded as partly limiting geoengineering activities due to environmental considerations. One example is the United Nations Convention on the Law of the Sea, which requires parties to the Convention to protect and preserve the marine environment, control pollution and minimize the release of toxic and harmful substances. The Vienna Convention for the Protection of the Ozone Layer requires parties to the Convention to prevent adverse effects on human health and the environment caused by activities in the ozone layer, including the injection of substances into the atmosphere that might damage it. Lastly, the Convention on Biological Diversity is widely regarded as prohibiting climate-related geoengineering activities that may affect biodiversity when they are conducted without adequate science-based evidence. This is a direct consequence of the precautionary principle provided for in the Convention, which is based on the presumption that the use of new technologies comes with more risks than the maintenance of the status quo, and calls for adequate scientific justification for all actions.

C. Human rights potentially affected by the use of technologies

5. The impact of new technologies for climate protection on human rights varies, depending on the exact technology used. In general, however, the use of most technologies

may have potentially serious or even a grave impact on terrestrial and maritime ecosystems. The consequences most frequently cited are the reduction in biodiversity, disruptions to food chains and biogeochemical cycling, possible habitat destruction, the negative impact on soil caused by chemical agents, and drastic local changes in weather patterns that can result in natural disasters, such as flooding or droughts. In the case of maritime geoengineering, ocean acidification and localized excess alkalinity may well be relevant, as also the risk of eutrophication and anoxia, which are lethal to marine life.

6. Such consequences carry massive direct and indirect risks for the enjoyment of a number of human rights. Among those most likely to be affected is the right to life, interpreted in a holistic manner as including the rights to health, adequate nutrition, safe drinking water and a decent standard of living, as well as to a healthy and safe environment. This is due to the fact that the implementation of at least a number of indicated technologies may affect the availability of food and water, limit housing opportunities in certain areas or cause negative effects for people's health. The possible changes of weather patterns and the reduction in biodiversity can also negatively affect the human rights of certain vulnerable groups, such as peasant and local communities, or indigenous peoples. The latter may run the risk of being deprived of their territories or sources of livelihood, which would undermine their right to self-determination and other rights, such as those to their traditional lands and culture. Even the technologies considered to be the safest and already implemented by some countries or within the European Union (such as carbon capture schemes) pose risks for enjoyment of some rights, for example those to life and health, due to possible safety incidents.

7. Mention might also be made of the impact of new technologies for climate protection on environmental procedural rights, which are often perceived as falling within the human rights obligations of States. Geoengineering solutions are very technical and scientific, and may be pursued by some groups for commercial interest. There is therefore a need for meaningful public participation in the debate over their use and consequences, and their influence on decision-making processes, in order to satisfy the requirements of the rights to information, participation and access to environmental justice.

D. Conclusion: why a study on climate protection technologies has value

8. Regardless of their ownership (State or private), technologies for climate protection can work either way: they can both harm and strengthen human rights. The study could help to identify when and how rights may be violated and/or strengthened.

9. The study would be breaking new ground, given that little research has been conducted on these issues to date, as also reflected in scholarly literature. The Human Rights Council would therefore benefit from receiving expert information, particular in view of its discussions on establishing a special procedure mandate on the adverse impact of climate change on the full and effective enjoyment of human rights. Furthermore, the research is interdisciplinary: it requires advanced technical knowledge, legal expertise and a good level of imagination. By crosscutting various spheres of life, its added value is undeniable.

10. Climate protection technologies are a crucial part of mitigating the climate crisis, the most pertinent global threat today, regardless of national interests or geographical location. They are therefore of vital importance to all States Members of the United Nations.

11. The topic is of utmost interest to communities everywhere. Work on the report would entail several online seminars and panel discussions organized to obtain expert insights into the issue and to promote awareness-raising in the general public.

IV. Practices negatively affecting the human rights of migrants

A. Introduction

1. The situation of human rights of persons fleeing their country of origin constitutes one of the most pressing human rights issues today. Large movements of forced and irregular migrants in recent years have highlighted the precarious and vulnerable situation of those seeking shelter abroad, and the inadequacy of responses given to this challenge.⁸ The numbers reveal the magnitude of the problem. According to the Department of Economic and Social Affairs, forced international migration is growing faster than voluntary migration. In the period 2010–2017, the number of refugees and asylum seekers increased at an annual average rate of more than 8 per cent (13 million people) compared with less than 2 per cent for those who migrate voluntarily. As at 2017, more than 83 per cent of refugees and asylum seekers lived in the less developed regions of the Global South.⁹

2. In recent years, increasing numbers of people have sought to reach Europe through two main routes: the Eastern Mediterranean and Balkan land route, mainly used by migrants from Afghanistan, the Islamic Republic of Iran, Iraq, Pakistan and the Syrian Arab Republic; and the Central Mediterranean route, which reaches Europe by sea, crossing from Libya and mainly used by migrants from West Africa and the Horn of Africa. It is estimated that, of the 1.6 million people who have tried to cross the Mediterranean since 2015, some 16,000 have perished along the way. In 2015 and 2016 alone, 9,000 people died.¹⁰ In the same period, one million migrants arrived in Europe.

3. The sudden massive influx of irregular migrants clearly poses a challenge to States. The lack of a satisfactory solution to this tragedy, however, continues to shake the human conscience and the values upon which international human rights protection is built. Humanitarian organizations present in the field insist that the current set of policies implemented are wholly inadequate. They blame political leaders for turning a blind eye to such a dramatic situation while sending the message that the drowning of people is “an acceptable price to pay in order to stem the flow in the Central Mediterranean”.¹¹ The excessive securitization of borders has led to the normalization of restrictive measures and practices that are at best questionable from a human rights perspective. Likewise, the criminalization of irregular migration has had a profound impact on the work of humanitarian organizations, which find themselves unable to play their role as providers of assistance and monitors of public policies.

4. In fact, the critical situation in the Mediterranean Sea has brought to light existing protection gaps, not only in relation to people seeking asylum but most importantly in cases where migrants fall outside the specific legal category of “refugee”. Not in vain, human rights experts and monitoring bodies have repeatedly drawn attention to the serious concerns posed by the policies and practices that States are deploying on the ground.

5. In 2016, the Office of the United Nations High Commissioner for Human Rights (OHCHR) carried out a series of field missions to assess the policies followed by some States in response to the increasing migratory pressure on their borders. In its report on the global issue of unaccompanied migrant children and human rights (A/HRC/36/51), the Advisory

⁸ For the purposes of the present report, the term “migrant” includes refugees and asylum seekers, international migrants in an irregular situation, trafficked persons, smuggled migrants, and other categories of non-citizens, including stateless persons. It does not cover regular flows of migrants from one country to another.

⁹ A total of 3.5 per cent of the global population (more than 272 million people) are migrants. This number includes regular and irregular migration. See United Nations Department of Economic and Social Affairs, Population Facts, No. 2019/4, September 2019.

¹⁰ For more information, see International Organization for Migration (IOM), *Fatal Journeys: Missing Migrant Children*, Vol. 4, 2019, pp. vii and 10. IOM reports that more than 32,000 migrants around the world have lost their lives since 2014, while stressing that the true number of fatalities is unknown, since some bodies may never be found and many migrants may be never identified.

¹¹ Joanne Liu, “Europe must act now to end preventable deaths in Libya and at sea”, Médecins Sans Frontières, 6 August 2019.

Committee found important shortcomings in the assistance and protection provided to migrants, particularly the most vulnerable ones, namely, unaccompanied minors.¹² It shows how migration policies are mainly oriented to respond to the increasing migratory pressure from a security-oriented approach. States have implemented different measures, such as deterring the entry of migrants into their territory by the use of force and other dangerous border control practices, which implies reinforcing police and military powers in the context of migration; the criminalization of irregular entry or stay; arbitrary and prolonged immigration detention, in contravention of national and international law; and favouring the expulsion of those who have managed to enter the country (swift return proceedings). The joint application of these measures, particularly in border areas, exacerbates the already vulnerable situation of migrants, who are ultimately deprived of their rights and too often left with no meaningful means to claim them.

6. Particularly worrying is the extensive use by States of detention in border management as a deterrent against migrants, too often as a means of preventing their access to justice.¹³ The European Union, for example, is pursuing the policy of establishing reception and identification centres (“hotspots”) to assist Member States confronted by large numbers of irregular migrants.¹⁴ Human rights organizations and experts claim that the facilities, particularly those established on five Greek Aegean islands, are de facto detention centres, where people are basically kept in violation of their most fundamental right to liberty and deprived of a number of other human rights, including the rights to health, housing, and family, the prohibition of torture and ill-treatment, and the right to asylum or any other protection under international human rights law.¹⁵

7. Such measures constitute a barrier to the full enjoyment of human rights and hinder the access of migrants to protection, in blatant disregard of international human rights obligations and commitments.¹⁶ In the long run, ignoring the human rights approach to forced and irregular migration will further erode the sense of humanity and the systems of protection. Marginalization, unattended basic needs and a lack of accountability for human rights violations may also trigger a great sense of injustice and frustration: a fertile breeding ground for radicalization and terrorism.

B. Proposed study

8. Even if the causes of mass migrant movements (whether of refugees or migrant workers in regular or irregular situations) fall outside the scope of the study proposed, the main drivers pushing people to leave their home countries today have an impact on their protection and, therefore, cannot be completely ignored. International refugee law has traditionally provided protection to people fleeing from persecution and armed conflict (States have shown, however, a worrying trend towards the erosion of the fundamental principles underlying international refugee law). However, such protection cannot be extended to most present-day cases, which are the result of poverty and increasing economic inequalities. Human rights are at the core of such movements: people on the move are seeking

¹² OHCHR has identified a number of human rights concerns: (1) criminalization of irregular entry or stay; (2) procedures related to the prohibition of arbitrary or collective expulsion and non-refoulement; (3) identification of vulnerabilities; (4) access to services; (5) the right to information; (6) the rights to liberty, due process and a fair trial; (7) conditions in detention; (8) conditions in settlements, camps or other locations; (9) the protection of children; (10) xenophobia, incitement to hatred and violence against migrants; and (11) human rights monitoring. See “In Search of Dignity: Report on the human rights of migrants at Europe’s borders”, 2017.

¹³ See A/HRC/23/46, paras. 47–54 and 77, and A/HRC/35/25, para. 58.

¹⁴ The European Union “hotspot” approach was conceptualized in the European Agenda on Migration in April 2015 to assist frontline Member States confronted with large numbers of migrants in registering those who come, addressing initial reception needs, identifying vulnerabilities and undertaking security checks. It applies to all disembarkations of persons rescued at sea and to non-authorized landings in the eastern Aegean islands (Lesbos, Kios, Samos, Kos and Leros) and in certain areas of southern Italy. Asylum and return procedures are also implemented in hotspots.

¹⁵ OHCHR, “In Search of Dignity”, pp. 11–13.

¹⁶ *Ibid.*, p. 41.

a safe and dignified life, which also comprises at least minimum protection for their economic, social and cultural rights and greater respect for their most fundamental civil and political rights.

9. International standards aimed at strengthening the protection of the most vulnerable migrants, namely those who do not have the status of refugees, are still to be developed.¹⁷ The Special Rapporteur on the human rights of migrants is contributing to shape the scope of State obligations. In addition, OHCHR has drafted a series of principles and guidelines on the treatment of migrants aimed at fostering human rights-compliant practices.¹⁸ The situation on the ground reveals, however, the absence of a right-based approach in the implementation of national migration policies.¹⁹

10. The issue of the human rights of migrants has been on the agenda of the Human Rights Council for a number of years.²⁰ In this connection, the United Nations High Commissioner for Human Rights, during the Human Rights Council retreat on 21 October 2019, suggested that the Council should undertake a more systematic and proactive approach on this topic by, inter alia, requesting the Advisory Committee to undertake a global investigation of practices that cause or exacerbate violations and abuses against migrants.

11. The proposed study could therefore analyse, from a human rights perspective, some of the most worrying contemporary trends in order to assess the extent to which current laws, policies and practices may lead to or facilitate human rights violations. Some examples include:

(a) The criminalization of solidarity: some countries have introduced the offence of “solidarity” by means of which they seek to dissuade their nationals from helping irregular migrants by imposing fines in the event of the provision of any kind of help.²¹ The penalization of civil society organizations deploying rescue vessels in the central Mediterranean is an example of this.²²

(b) Pushback policies: measures used to force refugees and migrants back over a border, generally immediately after they have crossed it. This includes incidents of dangerous interception practices at sea.

(c) Collective expulsions: measures that ignore the prohibition of collective expulsions, since they do not take into account the individual circumstances of migrants left without any possibility of applying for asylum or putting forward their case against expulsion. The prospect of indefinite detention or detention in deplorable conditions may lead to coercive return processes that disregard any meaningful consent given.

(d) Bilateral agreements: agreements that undermine the principle of non-refoulement, allowing for the return of anyone to a country where they could be at risk of torture, cruel, inhuman and degrading treatment.²³

30. Given the importance of mixed migratory movements within and around the European Mediterranean region, it is important to examine the complex issues of border control and management within the European Union, as implemented by its Member States, from a global perspective. The study would therefore address the implications of European Union policies and practices in countries of transit of migrants en route to European Union countries, and

¹⁷ See for example E/C.12/2017/1; Committee against Torture general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 18 (g); OHCHR and Global Migration Group, *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations* (2014); and A/HRC/33/67.

¹⁸ See A/HRC/36/42; the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders (2018); the Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations; and A/HRC/33/67 and A/69/277.

¹⁹ See OHCHR, “In Search of Dignity”, and the Recommended Principles and Guidelines on Human Rights at International Borders.

²⁰ See Human Rights Council resolutions 32/14, 35/17 and 41/7.

²¹ Paul Hockenos, “Europe has criminalized humanitarianism”, *Foreign Policy*, 1 August 2018.

²² See Caritas Europa, “The ‘criminalisation’ of solidarity towards migrants”, 20 June 2019; and Solidar, “Italy is now formally criminalizing solidarity”, 6 August 2019.

²³ See A/HRC/29/36, para. 39.

more specifically the policy of setting up “hotspots” (see para. 24 above), even though such reception centres inside external border Member States have led to criticism due to the legal vacuum in which migrants are left.

12. Organizations present in the field consider unacceptable the generalization of situations of deprivation of freedom without a clear and precise legal basis, particularly when asylum procedures are extremely slow; migrants are often held against their will for months in hotspots while awaiting a decision from appeal committees.²⁴ The European Union Agency for Fundamental Rights recently concluded that the hotspot approach did not conform to the Charter of Fundamental Rights of the European Union. It found that shortcomings in the realization of human rights were not being addressed through concerted legislative, policy or operational responses at either the European Union or national level.²⁵

13. The progressive normalization of the above-mentioned measures leaves aside human rights considerations from legislative and policymaking processes. As a result, laws and policies instead prioritize security and other aspects, such as efficiency and fast-track returns.²⁶ In this regard, the Special Rapporteur on the human rights of migrants has called attention to the current difficulties to develop more efficient evidence- and human rights-based policies in a context where negative perceptions of migrants are prompted by a rise in nationalist populist parties and tragic terrorist attacks around the world (A/HRC/35/25, para. 22).

C. Methodology

14. The aim of the study is to identify policies, practices and national legislation of concern, as well as possible avenues to adequately address protection gaps. Host States must, by default, ensure that human rights are respected, protected and fulfilled; however, the capacity of receiving States to do so may be overstretched, particularly in cases of sudden or prolonged movements. With this view in mind, the question is how human rights-based approaches can be effectively promoted in emerging global migration governance policies, and the extent to which existing frameworks and mechanisms allow for a meaningful protection of migrants’ rights.

15. In this regard, the study must address the question of the effective access of migrants to justice. This requires an assessment of existing national mechanism and procedures in providing meaningful redress and remedies to migrants for violations, together with an analysis of the role and decisions of relevant human rights-monitoring bodies.²⁷

16. As a first step, it is envisaged to undertake a review of all the relevant reports published on the subject in recent years, including the work of the treaty bodies. Contact would be established with the Special Rapporteur on the human rights of migrants and OHCHR staff advising on this theme. Other relevant information would be systematically gathered from international organizations, including OHCHR, IOM, the African Union, the

²⁴ Non-governmental organizations in the field, international bodies (including OHCHR), the Special Rapporteur on the human rights of migrants and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment have often denounced human rights violations, overcrowding in reception centres, insecurity, insalubrity and lack of hygiene, sexual violence, repeated abuses of children’s rights, failure to take into account situations of vulnerability, limited or non-existent access to information and rights, and the denial of the right of asylum.

²⁵ In 2019, the Agency concluded that the situation in the hotspots set up in Greece and Italy had little improved, since most of the 21 recommendations made in 2016 had not been implemented. See European Union Agency for Fundamental Rights, “Update of the 2016 FRA Opinion on fundamental rights in the ‘hotspots’ set up in Greece and Italy”, 11 March 2019; and its Opinion 5/2016 of 29 November 2016.

²⁶ Allegedly, the fight against human smuggling and trafficking is used as a migration management tool for stricter migration regimes, the protection of victims often being only a secondary concern. See Caritas Europa, “The ‘criminalisation’ of solidarity”.

²⁷ In a recent case, for example, the European Court of Human Rights concluded that remedies proposed to detained migrants in emergency reception centres in Greece were neither accessible nor sufficient. See European Database of Asylum Law, “Kaak and others v Greece: lack of an effective remedy constitutes a violation under Article 5 § 4”, 3 October 2019.

Organization of American States and the European Union, as well as from States, non-governmental organizations and other stakeholders.

17. The applicable human rights framework must be read in line with the political commitments undertaken by States under the Global Compact for Safe, Orderly and Regular Migration, the first multilateral and non-legally binding cooperative framework on migration.²⁸ In the New York Declaration for Refugees and Migrants, adopted by the General Assembly in its resolution 71/1 on 19 September 2016, States reaffirmed their commitment to protect the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times. They would consider reviewing policies that criminalized cross-border movements, and would pursue alternatives to detention while assessing the legal status of the migrant. They also recalled that any type of return must be conducted in keeping with the best interests of children and with the right to a due process of law. More generally, States agreed to consider reviewing migration policies with a view to examining their possible unintended negative consequences.

18. The study will also foster interlinkages and synergies with the objectives of the Global Compact for Safe, Orderly and Regular Migration and targets 8.8 and 10.7 of the Sustainable Development Goals. Development strategies must ensure that migrants are not further marginalized, disempowered, excluded or left behind. They cannot be seen merely as commodities or instruments for the economic development of others (A/HRC/36/42, para. 23). This requires a reflection on ways to enhance international cooperation to ensure non-discriminatory access to economic, social and cultural rights and associated services (in particular education and health). It also requires regular pathways for safe and orderly migration and the protection of the labour rights of migrants, as well as support for reintegration policies and programmes, among other things. In this connection, the Special Rapporteur on the human rights of migrants has proposed the development of a human rights- and evidence-based governance framework for international migration and mobility (the “2035 agenda for facilitating human mobility”) that deserves to be analysed (see A/HRC/35/25).²⁹

D. Way forward and challenges

19. The Human Rights Council could give the Advisory Committee a mandate to draft a report on the above topic in the operative part of either a specific resolution on the protection of the human rights of migrants (or any other draft resolution connected with this topic), or its annual resolution renewing the mandate of the Special Rapporteur on the human rights of migrants.

20. The study will show how the integration of a human rights perspective is an essential aspect in the process towards achieving a sustainable global migration governance system. It will support States in shaping their migration policies in accordance with human rights standards, bearing in mind the difficulties they face in confronting an increasing influx of migrants. The aim is to provide a broader overview of shortcomings in protection and worrying trends, without overlooking the concerns of States hosting or having received the largest numbers of forced and irregular migrants in recent years.

E. Timeline

21. The Human Rights Council could consider giving the aforementioned mandate for a study in a resolution at its forty-eighth session. The Advisory Committee could then submit the study to the Council for consideration at its fifty-fourth session, in September 2023. In

²⁸ The compact was adopted at an intergovernmental conference in Marrakech on 11 December 2018 and adopted by the General Assembly on 19 December 2018 in its resolution 73/195. The United Nations High Commissioner for Refugees presented the global compact on refugees as part of his 2018 annual report to the General Assembly (A/73/12 (Part II)).

²⁹ The agenda would translate the 2030 Agenda for Sustainable Development into eight achievable human mobility goals, together with targets and indicators, aimed at facilitating human mobility over the next 15 years.

this way, the Committee could discuss the topic and work on the report during its twenty-seventh, twenty-eighth and twenty-ninth sessions.
