

**Imposition of the death penalty on civilians by military tribunals or by tribunals whose composition includes one or more members of the armed forces**

**Sub-Commission resolution 2004/25**

*The Sub-Commission on the Promotion and Protection of Human Rights,*

*Reaffirming* that under customary international law the death penalty cannot be imposed except after proceedings that provide all the guarantees required for a fair trial, including a competent, independent and impartial tribunal,

*Mindful* of articles 3, 5, 8, 9 and 10 of the Universal Declaration of Human Rights and articles 2, 4, 7, 10, 14, 15 and 26 of the International Covenant on Civil and Political Rights,

*Recalling* the views of the human rights bodies that proceedings against civilians should not be conducted by a military tribunal or a tribunal whose composition includes one or more members of the armed forces because such a tribunal is not competent, independent and impartial in relation to civilians,

*Recalling* the concluding observations, comments and decisions of the Human Rights Committee, the recommendations of the Working Group on Arbitrary Detention, and the reports by thematic and country Special Rapporteurs that conclude that military tribunals and a tribunal whose composition includes one or more members of the armed forces are not competent, independent and impartial in relation to civilians,

*Recalling also,* at the regional level, the judgements and opinions of the African Commission on Human and Peoples' Rights, the Inter-American Court of Human Rights and the European Court of Human Rights that military tribunals and a tribunal whose composition includes one or more members of the armed forces are not competent, independent and impartial in relation to civilians,

*Recognizing* the general trend towards restricting the role of military tribunals and tribunals whose composition includes one or more members of the armed forces and that, where they do have a role, they must ensure that in their composition, functioning and rules of procedure and evidence they respect all the fair trial requirements of international law,

*Mindful* of the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors,

*Referring* to the specific safeguards for independent and impartial tribunals guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984,

1. *Confirms* that the imposition of the death penalty on a civilian tried by a military tribunal or a tribunal whose composition includes one or more members of the armed forces is contrary to customary international law;
2. *Calls upon* all States in which the death penalty has been imposed on a civilian tried by a military tribunal or a tribunal whose composition included one or more members of the armed forces to re-try the suspect before a competent, independent and impartial tribunal;
3. *Urges* all States that still maintain the death penalty to ensure that it cannot be imposed on civilians tried by military courts or by courts in which one or more of the judges is a member of the armed forces;
4. *Calls upon* States that no longer apply the death penalty but maintain it in their legislation as applicable to civilians tried by military courts, or by courts in which one or more of the judges is a member of the armed forces, to abolish in law such application;
5. *Calls upon* States that no longer apply the death penalty in peacetime, but which maintain it in their legislation in time of war or other public emergency as applicable to civilians tried by military courts or by courts in which one or more of the judges is a member of the armed forces, to abolish in law such application;
6. *Calls upon* States to refuse requests for extradition or other form of transfer to any State in which there is a risk that civilians can be tried by a military court or by a court in which one or more of the judges is a member of the armed forces in the absence of effective assurances from relevant authorities of the requesting State that civilians will not be tried by military courts or by courts in which one or more of the judges is a member of the armed forces;
7. *Decides* to continue the consideration of this matter at its fifty-seventh session under the same agenda item.

*24th meeting  
12 August 2004*

[Adopted by a roll-call vote of 20 votes to 1,  
with 3 abstentions. See chap. V.]