



Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/1988/SR.10
18 August 1988

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Fortieth session

SUMMARY RECORD OF THE 10th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 15 August 1988, at 4 p.m.

Chairman: Mr. BHANDARE

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The meeting was called to order at 4.40 p.m.

ORGANIZATION OF WORK

1. Mr. EIDE said that, in view of the urgent need to establish contact with the Sub-Commission's Special Rapporteur on Human Rights and Youth, Mr. Mazilu, he and Mr. Joinet had drawn up the following draft decision:

"The Sub-Commission on Prevention of Discrimination and Protection of Minorities requests the Secretary-General to establish contact with the Government of Romania and to bring to the Government's attention the Sub-Commission's urgent need to establish personal contact with its Special Rapporteur, Mr. Dimitru Mazilu, and to convey the request that the Government assist in locating Mr. Mazilu and facilitate a visit to him by a member of the Sub-Commission and the Secretariat to help him in the completion of his study on human rights and youth if he so wishes. The Sub-Commission invites the Secretary-General to inform it on developments in this matter on Wednesday, 17 August 1988."

2. Various amendments had been suggested in an attempt to draft a text acceptable to Mr. Joinet and himself and to the expert from Romania, Mr. Diaconu. Those amendments had not achieved the desired result, so rather than accept any amendments, he and Mr. Joinet preferred to revert to their original proposal, which called for the immediate dispatch to Romania of a member of the Sub-Commission and a Secretariat official.

3. Mr. DIACONU proposed that no decision should be taken on the matter, in accordance with rule 65 (2) of the rules of procedure.

4. Mr. ALFONSO MARTINEZ said that, while the Sub-Commission had a right to expect the Special Rapporteur to fulfil the commitment he had undertaken, it also had the right to expect co-operation from Member States. He felt, however, that the draft decision before the Sub-Commission would not fulfil its primary purpose - to enable Mr. Mazilu to submit his report - and would destroy any further prospects of co-operation by the Government of Romania. He therefore supported the proposal that no decision should be taken on the matter.

5. The CHAIRMAN said that Mr. Eide and Mr. Joinet had been anxious that a member of the Sub-Commission should establish personal contact with Mr. Mazilu, a condition which Mr. Diaconu had been unable to accept. It had, therefore, been suggested that the exact terms for establishing contact with Mr. Mazilu should be left to the discretion of the Secretary-General. No further changes had been proposed. He suggested that the Sub-Commission should take up agenda item 7 pending the distribution of the text of the draft decision.

6. It was so decided.

HUMAN RIGHTS AND DISABILITY (agenda item 7) (E/CN.4/Sub.2/1988/11 and E/CN.4/Sub.2/1985/32)

7. Mr. DESPOUY (Special Rapporteur on Human Rights and Disability), introducing his progress report (E/CN.4/Sub.2/1988/11), said that an estimated 500 million people in the world suffered from some form of disability. The

international community had become more aware of the extent of the problem, and the period 1983-1992 had been declared the Decade for the Disabled, but the main impetus for action in the area came from non-governmental organizations. The report on human rights and disability had been authorized by the General Assembly in December 1984. He had submitted his preliminary report (E/CN.4/Sub.2/1985/32) at the Sub-Commission's thirty-eighth session; his final report would be submitted at the session in 1990.

8. In his preliminary report, he had discussed the large number of terms, many of which had pejorative connotations, used to describe disabled persons. He had eventually decided to use the more neutral terms "disabled" in English, "handicapé" in French and "discapacitado" in Spanish. It had also been difficult to find an overall definition of the concept of disability, which should cover not only clinical aspects, but also the social and cultural restrictions on persons who were not seriously disabled from a clinical standpoint.

9. He had attempted to describe the specific rights of disabled people and the factors which prevented them from exercising their human rights. He had considered disabilities which were themselves a consequence of human-rights violations, such as torture, malnutrition or poverty, and disabilities due to general factors, such as heredity or natural disaster. His progress report gave further information on the objectives of the study, multilateral activities, and national legislation and practices.

10. He agreed with the suggestions made for additions to the provisional list of instruments contained in his first report. The aim of the normative study was to produce a list of international instruments which set standards for Governments concerning discrimination against disabled persons in all spheres of private and public life.

11. Among the human rights violations and related factors leading to disability, he drew particular attention to underdevelopment and its consequences, as well as to double disability, in which disability was present in members of groups often subjected to discrimination, such as women, immigrant workers and refugees and their children. Because of its technical nature, human rights violations which might cause disability would be the subject of a separate study which might also cover a sinister new development, namely, the sale of organs of children in developing countries to scientific and commercial institutions in developed countries. On the basis of the information given in the report and replies from Governments, he intended to produce as detailed a list as possible of the various types of violations of human rights which resulted in disability. In addition to the many legal difficulties encountered by disabled persons, which were described in the report, the replies received showed a marked tendency on the part of the courts to refuse to recognize that the rights of the disabled were not mere abstract aspirations but actual rights which should be enforceable through specific legal norms.

12. He summarized the contents of the report on the Global Meeting of Experts held in Stockholm in August 1987, in compliance with General Assembly resolution 37/53, and particularly the reactions of States to the proposals made. One of the most important proposals made by the experts had been that the General Assembly should convene a special conference on the human rights of disabled persons with the specific task of drafting a convention on the

subject for signature by States. That was particularly necessary because existing international law did not consider disability separately, or did so in such general terms that it was difficult to deduce obligations for States. The Sub-Commission might be a suitable body to monitor compliance with such a convention. He would like to know its reactions to the proposals made by the experts.

13. The report then listed the relevant aspects of international activities relating to disabled persons, referring to inter-agency programmes and specific activities of international organizations.

14. The Experts had produced no satisfactory definition for disability and invalidity, but had merely criticized that devised by the World Health Organization (WHO) as being too "clinical". The United Nations voluntary fund for disabled persons had been allocated \$2 million, for 78 projects in the 1980s. The programme for advisory services concerning human rights might be used advantageously by all States in their efforts to implement strategies for the promotion and protection of the human rights of disabled persons, in harmony with the programme for co-operation of the Centre for Social Development and Humanitarian Affairs.

15. He then summarized the provisional results of the Meeting of Experts, the positive elements of which included the realization by the public in general of the rights of disabled persons and the increase in the number of organizations for disabled persons which could deal with their specific problems. On the other hand, the statistics available were very unsatisfactory. There was also a growing tendency to deny disabled persons access to services organized by various communities. Attention had already been drawn to other negative elements. The report then listed other bodies which carried out activities relating to disability.

16. A source of aid which was not included in his progress report, and would be referred to in the final report, was the very important work done by the international committees of the Red Cross with respect to disabled persons, especially those suffering from disabilities caused by national or international conflicts.

17. The national legislation and practices surveyed in part III of the progress report should be placed in their cultural context. There, too, positive aspects had emerged, especially growing moves to take account of the problem of disability. He was particularly encouraged by the number of countries which had submitted replies concerning their practices with respect to disabled persons.

18. He would like guidance from the Sub-Commission on the question of specialized institutions for disabled persons, concerning which he had only made very general comments.

19. He had studied national legislation and multilateral activities in order to devise a system for assessing the legal aspects of defining general and contractual rights. In the introduction to his final report he hoped to include a scientific evaluation of violation of human rights as a factor causing disability. He would also refer to political action to ensure the full enjoyment and exercise of human rights and to the role of the United Nations in the field of public information.

20. The present report was an interim one. He wished to continue with his task and hoped to achieve the goals he had been set, especially the objectives called for by organizations for disabled persons, some of whose suggestions he had taken into account. He looked to the Sub-Commission for co-operation in view of the complexity of the subject.

ORGANIZATION OF WORK (continued)

21. The CHAIRMAN invited the Sub-Commission to take action on the draft decision submitted by Mr. Eide and Mr. Joinet.

22. Mr. EIDE stressed that both he and Mr. Joinet were anxious that the Secretary-General should be requested to establish contact in the manner indicated in the draft decision.

23. Mr. DIACONU said that, if the draft decision was put to a vote, he would vote against it because the idea of a visit by a member of the Sub-Commission and the Secretariat was unacceptable. It would not even facilitate discussion, and in any case the Government of Romania had already made its attitude clear. In accordance with rule 65 (2) of the rules of procedure, he proposed that no decision should be taken.

24. In reply to a request by Mr. TÜRK for clarification, the CHAIRMAN explained that the draft decision circulated over his signature and subtitled "With suggested alterations from the Chairman" had been submitted in an unsuccessful attempt to achieve a consensus.

25. In reply to a question by Mr. CAREY, the CHAIRMAN said that Mr. Diaconu had agreed to most of the text but not to the idea of someone from the United Nations being sent to meet Mr. Mazilu.

26. Mr. SADI pointed out that there was not much difference between the two texts. However, he did not see how a member of the Sub-Commission could make contact with Mr. Mazilu when no one knew where to look for him; the only practicable course was to work through the Secretary-General. He suggested that a working group should be set up to deal with the texts; he was confident that the gap between them could be bridged.

27. A procedural discussion took place in which Mr. YIMER, supported by Mr. ILKAHANAF, suggested that the debate should be adjourned and an effort made to achieve a consensus on the lines suggested in the draft decision signed by the Chairman.

28. Mr. JOINET said that the suggestion in that draft contained practically the same request as the Sub-Commission had been making for a year and the answer had always been a negative one. If it was simply a question of sending another telegram, he could tell the answer in advance.

29. The CHAIRMAN, in accordance with rule 65 (2) of the rules of procedure, invited the Sub-Commission to vote on Mr. Diaconu's proposal that no action should be taken on the draft decision submitted by Mr. Eide and Mr. Joinet.

30. The proposal was rejected by 14 votes to 4, with 5 abstentions.

31. At the request of Mr. Alfonso Martínez, a vote was taken by roll-call on the draft decision submitted by Mr. Eide and Mr. Joinet.

32. Mr. Türk, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mr. Assouma, Mrs. Bautista, Mr. Carey, Mrs. Daes, Mr. Eide, Mr. Flinterman, Mr. Hatano, Mr. Ilkahanaf, Mr. Joinet, Ms. Palley, Mr. Varela Quirós, Mr. Sadi, Mr. Sobarzo Loaiza, Mr. Türk, Mrs. Warzazi

Against: Mr. Chernichenko, Mr. Diaconu.

Abstaining: Miss Attah, Mr. Jin, Mr. Rivas Posada, Mr. Yimer.

33. The draft decision submitted by Mr. Eide and Mr. Joinet was adopted by 15 votes to 2, with 4 abstentions. Three members did not participate in the vote and one was absent.

34. Mr. RIVAS POSADA said that he had abstained in the vote because he considered that the basic issue before the Sub-Commission was not fully reflected in the proposed text. He would have voted in favour of the text containing the Chairman's suggestions.

35. Mr. CHERNICHENKO said that he had voted against the proposal for practical and legal reasons. On the practical side, there was no point in voting in favour of a visit which everyone knew would not take place. On the legal side, in the first place, as a matter of principle, the Commission and the Sub-Commission should not take up individual cases. Secondly, the case in question had nothing to do with human rights but concerned the situation of a person vis-à-vis the completion of work in the United Nations and should be dealt with in the Sixth Committee of the General Assembly. Lastly, and most important in whatever terms it was couched, the matter was basically a question of giving diplomatic protection to a certain person. It might have something in common with a question raised in the International Court of Justice as to whether the United Nations could provide protection for persons working in Palestine. Members of the Court had said that the idea was good but the United Nations would require authority under a Convention to give such protection.

36. Mr. VARELA QUIROS said that he had voted against the procedural motion and in favour of the proposal by Mr. Eide and Mr. Joinet. It was the Sub-Commission's duty to ensure that studies by special rapporteurs were carried out.

The meeting rose at 6.25 p.m.