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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-first session

SUMMARY RECORD OF THE 38th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 31 August 1989, at 9 p.m.

Chairman: Mr. YIMER

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Sub-Commission at this session will be consolidated in a single corrigendum,
to be issued shortly after the end of the session.

The meeting was called to order at 9.10 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Consideration of draft resolutions and decisions relating to agenda item 4 (continued) (E/CN.4/Sub.2/1989/L.6, L.8, L.9/Rev.1, L.12, L.15, L.23, L.25, L.51, L.52, L.54)

Draft decision E/CN.4/Sub.2/1989/L.6

1. Draft decision E/CN.4/Sub.2/1989/L.6 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1989/L.8

2. Mr. TREAT proposed that, since the problems referred to in the draft resolution were of concern to all countries and not only to the countries mentioned, the following last preambular paragraph should be added: "Bearing in mind the leading role of the United Nations Environment Programme within the United Nations system on all environmental matters".

3. Draft resolution E/CN.4/Sub.2/1989/L.8, as amended, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1989/L.9/Rev.1

4. Mrs. DAES said that she had consulted the sponsors of the draft resolution, who had accepted her proposal that the following new third preambular paragraph should be added: "Bearing in mind the co-operation in this area between the United Nations Centre for Human Rights and the United Nations crime prevention and criminal justice programme".

5. Mrs. KSENTINI proposed that the words "and any other relevant provision contained in other international instruments" should be added at the end of the second preambular paragraph and that in operative paragraph 4, the words "and peoples" should be added after the word "communities" in the second preambular paragraph of the draft resolution recommended to the Commission on Human Rights.

6. Mr. ILKAHANAF requested that his name should be added to the list of sponsors.

7. Draft resolution E/CN.4/Sub.2/1989/L.9/Rev.1, as amended, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1989/L.12

8. Mr. NYAMEKYE (Deputy Director of the Centre for Human Rights) said that the financial implications of draft resolution E/CN.4/Sub.2/1989/L.12 were contained in document E/CN.4/Sub.2/1989/L.18.

9. Draft resolution E/CN.4/Sub.2/1989/L.12 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1989/L.15

10. Draft resolution E/CN.4/Sub.2/1989/L.15 was adopted without a vote.

Draft decision E/CN.4/Sub.2/1989/L.23

11. Mrs. DAES requested that her name should be added to the list of sponsors.
12. Draft decision E/CN.4/Sub.2/1989/L.23 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1989/L.25

13. The CHAIRMAN said that the administrative and programme budget implications of draft resolution E/CN.4/Sub.2/1989/L.25 were contained in document E/CN.4/Sub.2/1989/L.66.

14. Mr. CISSE (Secretary of the Sub-Commission) said that the title of document E/CN.4/Sub.2/1989/L.66 should be amended to read: "Traditional practices".

15. Mr. DESPOUY requested that his name should be added to the list of sponsors.

16. The CHAIRMAN said that Mr. Bhandare and Mr. Alfonso Martínez had also requested that their names should be added to the list of sponsors.

17. Draft resolution E/CN.4/Sub.2/1989/L.25 was adopted without a vote.

Draft decision E/CN.4/Sub.2/1989/L.51

18. Mr. CISSE (Secretary of the Sub-Commission) said that the draft decision should be amended to read: "At its ... meeting on ... August 1989, the Sub-Commission, bearing in mind the positive developments in Bangladesh, decided to thank the Government of Bangladesh for its co-operation and express its satisfaction with the progress made in respect of the treatment of its tribal populations".

19. Mrs. DAES, Mrs. PALLEY, Mrs. KSENTINI, Mr. ILKAHANAF and Mr. VARELA QUIROS requested that their names should be added to the list of sponsors.

20. Mr. EIDE said that the draft decision was too sweeping and should refer only to the question of co-operation and progress in the treatment of the tribal populations. If the Sub-Commission wished to make a general statement on developments in Bangladesh, it should include more information on other issues which had not yet been properly discussed.

21. Mr. ILKAHANAF said that the situation in Bangladesh had been discussed from a particular point of view and it was known that improvements had been made.

22. Mrs. PALLEY said that it was wrong to infer that the Sub-Commission was concerned with anything but the tribal populations. It was an excellent

development that, when Governments co-operated with the Sub-Commission, the latter said so and should not always be seen to be complaining about the former.

23. Mr. DESPOUY said that, if any further changes were made in the draft decision, it would not serve the purpose for which it had originally been intended.

24. Mr. EIDE said that the text seemed to make a general statement about developments in Bangladesh in all respects. A technical formulation could probably be found to solve the problem, but he would not insist on that solution if it was understood that the Sub-Commission was referring only to positive developments with regard to the tribal populations.

25. Draft decision E/CN.4/Sub.2/1989/L.51, as amended, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1989/L.4

26. Mr. JOINET said that the last preambular paragraph referring to Commission on Human Rights resolution 1989/11 related only to the problem of discrimination against HIV-infected people or people with AIDS. The amendment proposed by Mr. Sadi at the preceding meeting had been intended to expand the scope of the study to include other forms of discrimination.

27. Mr. CISSE (Secretary of the Sub-Commission) said that the paragraph in question had been amended to read: "Welcoming resolution 1989/11 of the Commission on Human Rights".

28. The CHAIRMAN said that the financial implications of the draft resolution were contained in document E/CN.4/Sub.2/1989/L.16.

29. Draft resolution E/CN.4/Sub.2/1989/L.4, as amended, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1989/L.52

30. Mrs. PALLEY said that she had submitted draft resolution E/CN.4/Sub.2/1989/L.54, which was more comprehensive than draft resolution E/CN.4/Sub.2/1989/L.52. She proposed that her draft resolution should be considered first so that she would not have to make major amendments to draft resolution E/CN.4/Sub.2/1989/L.52.

31. Mr. CHERNICHENKO said he agreed that Mrs. Palley's draft resolution was more comprehensive, but it might be too comprehensive. He could see no contradiction between the two draft resolutions, which should be considered in chronological order. He requested that his name should be added to the list of sponsors of draft resolution E/CN.4/Sub.2/1989/L.52.

32. Mr. ALFONSO MARTINEZ proposed that the members of the Sub-Commission should first consider Mrs. Palley's amendments. He could not agree that priority should be given to her draft resolution.

33. Mr. DESPOUY said that any change in the order in which the draft resolutions were considered might set an undesirable precedent and that the situation should be resolved through discussion.

34. Mr. EIDE said that, in his opinion, draft resolution E/CN.4/Sub.2/1989/L.52 could be added to draft resolution E/CN.4/Sub.2/1989/L.54 without any difficulty.

35. Mrs. PALLEY proposed that the following two new operative paragraphs 3 and 4 should be added to draft resolution E/CN.4/Sub.2/1989/L.52:

"3. Requests the Secretary-General to transmit his report to the Commission on Human Rights for consideration together with any further information to be submitted by Governments and non-governmental organizations in consultative status;

4. Decides to give further consideration to this matter at its forty-second and future sessions under item 4 of its agenda entitled 'Review of further developments with which the Sub-Commission has been concerned'."

36. She also proposed that the entire preamble of draft resolution E/CN.4/Sub.2/1989/L.54 should be added at the beginning of the preamble of the draft resolution E/CN.4/Sub.2/1989/L.52.

37. Mr. ALFONSO MARTINEZ said that the amendments Mrs. Palley had suggested were not amendments in the usual technical sense. The problem the Sub-Commission had to solve was how to continue to show concern about the question of the elimination of chemical weapons without adding another item to its agenda, as requested in the new operative paragraph 4 proposed by Mrs. Palley.

38. After a procedural discussion, Mr. EIDE proposed that the Sub-Commission should give priority to the consideration of draft resolution E/CN.4/Sub.2/1989/L.54.

39. The proposal by Mr. Eide was rejected by 10 votes to 7, with 2 abstentions.

40. Mr. DESPOUY proposed that a decision on draft resolutions E/CN.4/Sub.2/1989/L.52 and L.54 should be postponed pending consultations.

41. It was so decided.

Consideration of draft resolutions relating to agenda item 5 (continued)
(E/CN.4/Sub.2/1989/L.5, L.41)

Draft resolution E/CN.4/Sub.2/1989/L.5

42. The CHAIRMAN said that the financial implications of draft resolution E/CN.4/Sub.2/1989/L.5 were contained in document E/CN.4/Sub.2/1989/L.17.

43. Draft resolution E/CN.4/Sub.2/1989/L.5 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1989/L.41

44. The CHAIRMAN said that the financial implications of draft resolution E/CN.4/Sub.2/1989/L.41 were contained in document E/CN.4/Sub.2/1989/L.55.

45. Draft resolution E/CN.4/Sub.2/1989/L.41 was adopted without a vote.

Consideration of draft resolutions relating to agenda item 7 (continued)
(E/CN.4/Sub.2/1989/L.42, L.50)

Draft resolution E/CN.4/Sub.2/1989/L.42

46. Mr. DIACONU suggested that the Special Rapporteur should be requested to submit a programme of future activities relating to a wide range of problems with regard to economic, social and cultural rights.

47. Mr. CISSE (Secretary of the Sub-Commission) said that the following new paragraph should be added after the fourth preambular paragraph: "Also aware of the fact that the implementation of effective measures to promote the enjoyment of all human rights and all fundamental freedoms requires fuller understanding of extreme poverty and its effects on the exercise of human rights".

48. Draft resolution E/CN.4/Sub.2/1989/L.42, as amended, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1989/L.50

49. Mrs. WARZAZI, referring to operative paragraph 2, said it was not clear who was responsible for reviving the economic growth and development of developing countries and for reducing the political and social costs of structural adjustment programmes.

50. Mr. DIACONU said that the sponsors had not wanted responsibility to be placed on the developing countries. The purpose of the draft resolution was not, however, to discuss questions of responsibility.

51. Mr. TREAT said he regretted that the draft resolution dealt with matters which were of concern to other United Nations bodies and in respect of which the Sub-Commission had no expertise.

52. Mr. ALFONSO MARTINEZ proposed that the following new fourth preambular paragraph should be added: "Bearing in mind also resolution 1989/15 adopted by the Commission on Human Rights at its forty-fifth session".

53. Mr. SUESCUN said the reason for that proposal was that human rights could not be realized without a foundation on which to build the economic security of peoples. The developing countries did not find it easy to foster democracy when they were faced with trade and foreign debt problems and the lack of solidarity on the part of the international community.

54. Mr. DIACONU said that the Sub-Commission was concerned not with economic problems, but with their effects on human rights.

55. Mrs. BAUTISTA requested that her name should be added to the list of sponsors.

56. Mr. TREAT said that he recognized that the enjoyment of human rights depended on economic success. He did not believe, however, that the Sub-Commission should adopt a draft resolution which made countries appear indifferent to other aspects of financial aid. He proposed that operative paragraph 2 should be amended to read: "Recognizes that all financial aid to developing countries, whether from the public or private sectors, must take into consideration the economic, financial and political stability of the receiving countries".

57. Mrs. WARZAZI referring to operative paragraph 2, proposed that the word "and" in the second line should be replaced by a comma and that the words "so that they might" in the third line should be replaced by the word "and".

58. Mr. DIACONU proposed that the amendment by Mr. Treat should be amended to read: "Recognizes that all financial aid to developing countries, whether from the public or private sectors, must take into consideration the economic, financial and political stability, as well as the social and economic programmes and needs, of the receiving countries".

59. Mrs. KSENTINI said that the amendment proposed by Mr. Treat related to financial matters on which the members of the Sub-Commission were not experts, whereas the draft resolution as it stood established a link between human rights and structural development problems.

60. Mr. TURK said that, as Special Rapporteur, the discussion was of concern to him. If the draft resolution could not be adopted by consensus, he would abstain in the vote on it. He did not want to be associated with any particular approach to the problems that had to be analysed.

61. Mr. DIACONU withdrew his amendment to the original amendment proposed by Mr. Treat.

62. Mrs. KSENTINI, speaking in explanation of vote before the vote, said that she would vote against the draft resolution because the Sub-Commission was not the appropriate body to consider financial problems and operative paragraph 2 would serve as a justification for donor countries that would also refuse to give financial assistance to certain developing countries. In her opinion, international stability was based on co-operation, not on the fact that some countries considered that they were entitled to decide how and when they would provide financial assistance.

63. The CHAIRMAN invited the members of the Sub-Commission to vote on the amendment to operative paragraph 2 proposed by Mr. Treat.

64. The amendment proposed by Mr. Treat was rejected by 9 votes to 1, with 8 abstentions.

65. The CHAIRMAN invited the members of the Sub-Commission to vote on draft resolution E/CN.4/Sub.2/1989/L.50.

66. Draft resolution E/CN.4/Sub.2/1989/L.50 was adopted by 17 votes to 1, with 1 abstention.

67. Mr. TURK, speaking in explanation of vote, said that he had not taken part in the vote because the problems dealt with in the draft resolution needed to be studied in greater detail in a progress report to be submitted at a later stage.

68. Mrs. WARZAZI, speaking in explanation of vote, said that the purpose of her amendment had been to make it clear that, regardless of their debt problems, all developing countries had to guarantee full respect for human rights.

69. Mr. JOINET, speaking in explanation of vote, said that, since he fully agreed with Mr. Türk, he had not taken part in the vote.

Consideration of draft resolutions relating to agenda item 10 (continued)
(E/CN.4/Sub.2/1989/L.13)

Draft resolution E/CN.4/Sub.2/1989/L.13

70. Mrs. BAUTISTA, Mr. TREAT and Mr. ILKAHANAF requested that their names should be added to the list of sponsors.

71. The CHAIRMAN said that Mr. Valera Quirós had also requested that his name should be added to the list of sponsors.

72. Mr. van BOVEN said that co-operation and co-ordination between United Nations bodies were to be commended. He therefore proposed that the following last preambular paragraph should be added: "Bearing in mind the co-operation in this area between the United Nations Centre for Human Rights and the United Nations crime prevention and criminal justice programme".

73. Mrs. DAES, referring to operative paragraph 4, asked what other kind of assistance the Secretary-General could give Mr. Joinet, since operative paragraph 3 invited him to prepare a working paper without financial implications.

74. Mr. NYAMEKYE (Deputy Director of the Centre for Human Rights) said it was the Centre's understanding that, while Mr. Joinet would prepare a working paper without financial implications, any other assistance which could be managed within the Centre's resources would be provided.

75. Mr. van BOVEN said that what was at issue was what Commission on Human Rights resolution 1989/32 had wanted the Sub-Commission to do when it had requested it to "consider effective means of monitoring the implementation of the United Nations Basic Principles on the Independence of the Judiciary and the Protection of Practising Lawyers". That monitoring aspect meant that Mr. Joinet was invited to prepare a working paper on means by which the Sub-Commission could assist in ensuring respect for the independence of the judiciary. That aspect had not been covered in the earlier study prepared by Mr. Singhvi.

76. Mrs. KSENTINI said that she had some doubts about the request made in operative paragraph 4, since other draft resolutions that had been adopted did not contain such a request. All special rapporteurs should nevertheless be given the same assistance.

77. Mr. NYAMEKYE (Deputy Director of the Centre for Human Rights) said that the assistance provided by the secretariat depended on the nature of the mandate in question. When no specific financial statement had been prepared in order to provide funds for temporary assistance, for example, efforts were none the less made to give the rapporteur concerned any assistance he might need.

78. Mrs. DAES proposed that the second line of operative paragraph 3 should be amended to read: "... on means in the area of monitoring by which ...". That would make Mr. Joinet's mandate clearer. She also requested that her name should be added to the list of sponsors of the draft resolution.

79. Draft resolution E/CN.4/Sub.2/1989/L.13, as amended, was adopted without a vote.

Consideration of draft resolutions relating to agenda item 11 (continued)
(E/CN.4/Sub.2/1989/L.19)

Draft resolution E/CN.4/Sub.2/1989/L.19

80. Mrs. KSENTINI proposed that operative paragraph 3 (b) should be amended to read: "The possibility of drafting any new binding instrument should be considered in the light of the complexity of the subject-matter, which requires sound research and analysis, along the lines of General Assembly resolution 41/120 of 4 December 1986."

81. In operative paragraph 4, she proposed that the words "including the question of any further standard-setting" should be deleted.

82. Mr. VALERA QUIROS requested that his name should be added to the list of sponsors.

83. Draft resolution E/CN.4/Sub.2/1989/L.19, as amended, was adopted without a vote.

Consideration of draft resolutions relating to agenda item 12 (continued)
(E/CN.4/Sub.2/1989/L.14, L.22)

Draft resolution E/CN.4/Sub.2/1989/L.14

84. Mr. DIACONU said that the emphasis in operative paragraph 1 on "the international law of human rights" was unacceptable, since there was only one international law which had many chapters.

85. Draft resolution E/CN.4/Sub.2/1989/L.14 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1989/L.22

86. Mr. EIDE said that the question of the relationship between international peace and human rights was a very complex one. He therefore recommended that

a study without financial implications should be prepared as a basis for a fuller discussion of the question at the Sub-Commission's next session.

87. Mr. DESPOUY considered that the draft resolution under consideration was related to two other draft resolutions, concerning chemical weapons on which decisions had been postponed by the Sub-Commission at its preceding session. It might be possible to combine the draft resolutions on war, chemical weapons and human rights. He therefore proposed that a decision on draft resolution E/CN.4/Sub.2/1989/L.22 should be postponed until the following day.

88. It was so decided.

Consideration of draft resolutions relating to agenda item 16 (continued)
(E/CN.4/Sub.2/1989/L.30)

Draft resolution E/CN.4/Sub.2/1989/L.30

89. Mrs. KSENTINI proposed that operative paragraphs 3 and 4 should be combined as a single paragraph, which would read: "Decides to establish, at its forty-second session, a working group representing the different regional groups with a view to preparing a revised version of the Draft Declaration on the Right of Everyone to Leave Any Country, including His Own, and to Return to His Country".

90. In addition, the title of the Draft Declaration should be brought into line with that of Mr. Singhvi's draft.

91. Mr. DIACONU proposed that the working group should be described as "an open-ended sessional working group".

92. Draft resolution E/CN.4/Sub.2/1989/L.30, as amended, was adopted without a vote.

93. The CHAIRMAN said that the Sub-Commission had completed its consideration of draft resolutions relating to items on which there had been a general debate.

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS (agenda item 15) (continued)

(d) PROTECTION OF MINORITIES (continued) (E/CN.4/Sub.2/1989/43)

94. Mrs. BAILEY-WIEBECKE (International Commission of Jurists) said that article 27 of the International Covenant on Civil and Political Rights seemed to be the only provision of an international instrument that conferred rights on minorities as such. It was worth noting that it did not suggest that they should have any civil or political rights as minorities, any right to education in their own language or any other collective rights. The Sub-Commission's experience of the drafting of a declaration on minorities had again shown that States were reluctant to recognize group rights and Mrs. Palley's proposal for a survey "identifying positive examples of achieving or surpassing the requirements of article 27, which can serve as models" (E/CN.4/Sub.2/1989/43, para. 25 (a)) was therefore welcome. More information on ethnic conflicts was also needed in order to identify patterns

and structures in the resolution of such conflicts. It might turn out that the inadequacy or absence of political institutions had led to discriminatory practices and ethnic violence.

95. State policies towards minorities could be classified as policies aimed at assimilation, integration, fusion, pluralism or segregation; the concept of pluralism seemed to have been the most successful. In the context of a study of majority-minority group relations, as suggested by Mrs. Palley, pluralism might be a useful starting point, since it involved efforts to maintain group differences. A report issued by the Minority Rights Group in 1986 showed that classical divisions between formerly hostile majorities and minorities were bridgeable. Minority groups might then be allowed to establish institutions in which they could express their own traditions and culture. Although there were many examples of prolonged conflicts which had been settled in Europe, violent struggles were still going on, as in the case of the Basques in Spain and the Protestants and Catholics in Northern Ireland. The study should, however, deal with cases in all parts of the world.

(a) THE STATUS OF THE INDIVIDUAL AND CONTEMPORARY INTERNATIONAL LAW
(continued) (E/CN.4/Sub.2/1989/40)

96. Mr. EYA-NCHAMA (International Movement for Fraternal Union between Races and Peoples) congratulated Mrs. Daes on her report (E/CN.4/Sub.2/1989/40), which stressed that the main objective of contemporary international law was the protection of the individual against all types of abuses and violations of his rights and that no consensus would ever be reached in the debate on the status of the individual as a subject of international law.

97. In the circumstances, the only means of protecting the individual would be to carry out an objective analysis of each State to determine whether it protected individuals or not. If a State systematically violated human rights and fundamental freedoms, the international community should withdraw its recognition of that State as a subject of international law. That should be the case of South Africa, which was the very antithesis of human rights and fundamental freedoms. By adopting apartheid as a system of government, it had shown its true colours. However, there were other States which also practised what amounted to apartheid.

98. The subjects of international law could be classified either as active or as passive depending on whether or not they took part in the process of developing the rules of international law. Consequently, writers on law had come to consider that the individual had only a small role to play in international law and, in practice, that view had had adverse effects, the most serious of which was that the individual had no direct access to international courts. Under the American and European Conventions on Human Rights, for example, an individual might not be allowed to bring a case before the relevant international court and, even when he was allowed to do so, he could not be a party to the case. It was thus a matter of priority to give the individual the status of a party in cases before international courts, particularly those involving human rights.

The meeting rose at 12 midnight.