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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
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Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by Human Rights Advocates,
a non-governmental organization in consultative status
(category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[14 August 1985]

HOW TO HELP PREVENT GENOCIDE

The thorough report on genocide that is now being examined testifies to continuing and alarming threats of mass killings. And among its many thoughtful recommendations are specific proposals for dealing with those threats. In this intervention we stress first, Mr. Whitaker's admirable concern with "prevention"; second, implied challenges that from now on will confront the 26 experts who comprise the Sub-Commission.

Here we do not discuss crime, criminal procedure, or imprisonment. Instead we ask, WHAT CAN BE DONE, NOW, TO HELP PEOPLE WHOSE LIVES ARE IN JEOPARDY BECAUSE OF GENOCIDAL POLICIES? It is true that officials who commit genocide - like officials who, for example, commit torture - should be punished as criminals. Yet, it is not true that imposition of punishment is generally the most effective means of helping people who suffer from grave violations of their human rights.

Arguably, this Sub-Commission is the world's most-experienced and best-informed body on what can and cannot be done to help people who suffer from grave human rights violations. It has established procedures, now well-recognized, whereby Governments that torture, that permit arbitrary executions and involuntary disappearances, that cause mass exoduses and other gross violations of human rights are called to account. Are genocidal Governments exempted from that kind of inquiry? The answer is, No!

Might use of Sub-Commission procedures be effective to help prevent genocide? Yes, for several reasons. One is that technicalities inherent in the Convention on the Prevention and Punishment of the Crime of Genocide would not be binding, and most of the juridical concerns that are noted by Mr. Whitaker in Part II of his report (pp. 11 to 36 of E/CN.4/Sub.2/1985/6) would be irrelevant, for example, reliably attested allegations of genocide can be dealt with even when the State involved is not a party to the Convention. Why? Because genocidal acts violate the Charter of the United Nations and also violate customary international law whether or not - under criminal law - penal sanctions might be imposed. Sanctions that may be indisputably imposed after action by the Sub-Commission and its parent bodies are listed in paragraph 84 of Mr. Whitaker's report (pp. 42 to 43 of E/CN.4/Sub.2/1985/6). Genocide is not only "the ultimate crime"; it is also "the gravest violation of human rights" (see E/CN.4/Sub.2/1985/6 para. 14). Regardless of legal rules that sometimes impede criminal prosecution, genocidal acts are demonstrably matters of great concern to the Sub-Commission and to the Commission on Human Rights, the Economic and Social Council and the General Assembly.

Mr. Whitaker's reminder that "Genocide is a constant threat to peace" may well be one of his most evocative statements. This year both the Commission on Human Rights and the experts now assembled to consider the Whitaker report have evidenced their revived interests in gross violations of human rights and international peace. Armed conflicts too often inspire genocide; genocide nearly always threatens war. Uniquely it merits attention as a regular item on the agenda of the Sub-Commission.

Understandably, Mr. Whitaker's references to crimes against humanity (among which genocide is preeminent) tend to be peripheral. Do not they suggest, however, (partly because those crimes are generally linked with armed conflict), that a next major report should be a supplement that describes how the other crimes against humanity fared during the initial four decades of the United Nations history?