

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/Sub.2/1985/SR.22
23 August 1985

ENGLISH
Original: FRENCH



COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Thirty-eighth session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 August 1985, at 11 a.m.

Chairman:

Mrs. DAES

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GE.85-13028

The meeting was called to order at 10.35 a.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1985/3-6; E/CN.4/Sub.2/1984/4 and 40)

1. Mr. CAREY said he welcomed the invitation extended to the Sub-Commission by the Observer for Burundi to send a fact-finding mission to his country in connection with the genocide said by Mr. Whitaker to have occurred there over 10 years previously. It might be too late for such a mission to be effective, but the invitation itself showed that Burundi was willing to contribute to the campaign by the world community against the horror of mass killings.
2. At the previous meeting, the murders and massacres committed in Lebanon had been termed "genocide" by Mrs. Daes, whose words nevertheless had remained imprecise. He wondered whether the term used included the truck-bombing which had caused the deaths of hundreds of United States soldiers and the brutalities undergone by the TWA passengers or whether it applied only to the Muslims killed by Christians at Sabra and Chatila. It would be interesting to know whether it was directed against all the acts of violence in which it was common knowledge that the Israelis had played no part. It was disturbing that the term "genocide" should be applied in so casual a way. That complaint could also be made about paragraphs 20, 21 and 24 of Mr. Whitaker's report. As for the statement by the last governmental observer who had spoken at the 21st meeting, the term "casualness" was inadequate to describe its reckless abandon.
3. Mr. Sofinsky had complained that only a handful of guards of the Majdanek concentration camp had been punished for the slaughter of hundreds of thousands of victims, including Chinese and Americans, in 1944. Since it was the Red Army which had liberated that camp and had tried the guards, the complaint should, perhaps, be referred to the Red Army itself.
4. Mr. Khalifa had quoted a statement by Mr. Hatch, a United States Senator, on the Genocide Convention. It was difficult, however, to infer from the article published on 23 April 1985 in The New York Times that Mr. Hatch believed that genocide had actually been committed against the Palestinians.
5. For his own part, he had long supported ratification by the United States of the 1948 Convention; all United States Presidents since Truman had called upon the Senate to approve that ratification. However that might be, the laws of the United States already prohibited and punished acts covered by the Convention. United States society was distinguished by a foreign policy which paid the greatest heed to human rights. Those rights were at the core of its foreign policy because they were also central to its national heritage.
6. Mr. KHALIFA, speaking in exercise of the right of reply, said he would like to clarify what seemed to have been misunderstood by Mr. Carey in his statement; he said that, if Senator Hatch did not wish the United States Senate to ratify the Convention, it was because he envisaged the concrete instance of Israelis being lawfully arrested in the streets of New York under suspicion of having committed acts of genocide in the Middle East. The relative article in The New York Times was perfectly clear.

7. Mr. SOFINSKY said he thought that the statements by some members of the Sub-Commission had taken a political turn and had departed from historical truth. One of them, for instance, had referred to the massacre in the forest of Katyn, seeming to justify the Nazi criminals.

8. Furthermore, the observer for Pakistan had made gross insinuations by arguing that outside interference had been at the origin of the Armenian genocide, which was totally alien to the truth. In any case, even if foreigners had been at work in Turkey, that could not possibly justify the events that had occurred in that country.

9. Mr. WHITAKER said he wished to thank all the experts who had made constructive comments on his report. Mr. Türk had rightly stressed the importance of the prevention of genocide. Since the Sub-Commission met for only four weeks each year, it was time to think of forming within the United Nations, as he had advocated, a body which could keep a permanent watch. Mr. Türk had also come out in favour of the idea of fact-finding missions. All men of goodwill would join with Mr. Despouy in paying tribute to the progress of democracy in Latin America. Mr. Bossuyt had supplied some welcome clarifications, particularly with regard to the situation in Burundi. Mr. Joinet had supported the idea of an early-warning mechanism and had reminded the Sub-Commission that the United Nations could act effectively, as it had done recently concerning disappearances or torture and that there was thus no reason for the Sub-Commission not to make progress on the road towards the prevention of genocide. He had also pointed out that it should not be forgotten that the Nazi crimes were not unique in the twentieth century. Mrs. Gu Yije, Mr. Türk and Mr. Mazilu had rightly pointed out that, far from diminishing, the risks of genocide were increasing as a result of the nuclear arms race. He himself could not but agree with Mr. Deschênes, who was as ever anxious to be practical and was concerned at the risk of "the paralysis of analysis". Mr. Carey had supported the idea of endowing the United Nations with a body capable of meeting urgently in case of a human rights crisis. Unlike Mr. Bossuyt and Mr. Khalifa, who did not approve the idea of undertaking historical studies, Mr. Carey had proposed that the Special Rapporteur should devote some additional years of study to his subject, with the aid of several assistants. He himself, however, did not readily see how such work could be funded. He wished to remind Mr. Khalifa that the mandate given to the Special Rapporteur was to revise as well as update the report on genocide. As for the text of the questionnaire used for that updating, it had been examined the previous year by the Sub-Commission, which had made no criticism thereof. Nevertheless, he had to thank Mr. Khalifa for having defended the principle of the independence of special rapporteurs. Mr. Martínez Baéz had eloquently reminded the Sub-Commission that what was called the verdict of history was very often merely the opinion of the victors. There was no doubt that every attempt had to be made to ferret out objective truth in order to be sure of following in the direction of justice. The comments by Mr. Sofinsky, seemed to indicate that he had forgotten that the Special Rapporteur had been asked to deal not with the Convention of 1948 as such but with the question of the prevention and repression of the crime of

genocide. He would carefully examine the constructive comments by Mr. Al Khasawneh on the jurisdiction for offences committed on board aircraft. Mr. Dahak, in his detailed comments, had referred especially to the problem of acts of omission. It was essential in that regard to make clear that certain kinds of negligence could, in fact, amount to crime, and he cited the example of someone who, through negligence, triggered off the explosion of a nuclear weapon. In such a case, however, the question of intent would still have to be determined. Mr. Dahak had also judiciously analysed the existing weaknesses of the Convention.

10. In reply to Mr. Chowdhury, and to all those who had asked questions about the examples quoted in paragraph 24 of the report (E/CN.4/Sub.2/1985/6), it could be said that those examples were intended only to show the many faces of genocide and to try to understand the origin of the phenomenon. The historical cases cited in that paragraph were obviously not exhaustive. Mr. Mubanga-Chipoya had, very rightly, reminded the members of the Sub-Commission never to yield to political pressures. Lastly, Mr. Bhandare had spoken movingly of the absolute genocide, namely, nuclear genocide. The Chairman had also made some welcome observations. He would consider all the comments that had been made on his report, including those by the representatives of non-governmental organizations and by governmental observers. Some would have preferred the report to include less historical data while others, on the contrary, thought that a greater number of examples of genocide should have been mentioned therein. There was no doubt that the martyrdom of the Palestinians and the successive massacres of which they had been victims should never be forgotten.

11. The question of the massacre of the Armenians by the Ottomans had to be approached with caution just because it was so important. He had been studying that question for over eight years, and had discussed it with Turkish diplomats, intellectuals and research workers, as well as with many persons of other nationalities. Out of courtesy towards the observer for Turkey and in order to comply with the wishes of Mr. Carey, he felt obliged to make some detailed observations on the subject.

12. The observer for Turkey had said that the most convincing reports were first-hand ones, and he, the Special Rapporteur, had in fact gone directly to Turkish sources as well as to German and Austrian sources, since Germany and Austria had been allies of Turkey at the time of the massacre in question.

13. In July 1915, a German Consul in Turkey had informed his Government that the Armenian people was being the subject of "deliberate" destruction and "extermination". Another German Consul in Turkey considered himself to be witnessing "nothing less than the elimination of an entire people". The German Ambassador to Turkey had informed his Government that the Ottoman Minister of the Interior had said that he intended to finish off the domestic enemies once and for all. According to that diplomat, it was evident that the Ottoman Government intended to exterminate the Armenians. In the opinion of another German Ambassador in Turkey, a systematic slaughter of Armenians was in progress, openly promoted by the Turkish Government. According to the German consular authorities, the denial of those massacres by the Turkish Government was a "downright lie".

14. Those who were unable to accept such evidence might perhaps be more readily convinced by the legal proceedings taken by the Turkish authorities themselves against some of those responsible for the massacre of the Armenians and, most importantly, against the Turkish Minister of the Interior of the period. At the conclusion of the trial, the Turkish courts had sentenced a number of those responsible to death for "the crime of massacre". In his report, therefore, he had not used the term genocide lightly.

15. Everyone deplored terrorism, but there were many people who thought that it was providing an excuse for terrorists not to admit frankly the facts of history. Lessons should be drawn from what the two Germanies had done after the Second World War in not hesitating to admit and condemn events that were still recent. Since the current Turkish Government was not the Ottoman Government which had been in power at the time of the Armenian massacre, it should be all the more easy for it to display objectivity. To be able to close that chapter of history, as everyone desired, it had to be closed with honour. If experts did not have the courage to speak the truth, there was no point in their participation in the work of the Sub-Commission, which had the duty to protect not Governments but victims. Mr. Despouy had rightly stressed that wounds should be healed and not reopened, but that implied precisely that justice and truth had to be respected. No one was unaware that it was high time to improve the effectiveness of the United Nations system, with regard not only to genocide but also to all other crimes against humanity or human rights. However, the very magnitude of that task should not serve as an excuse to do nothing about genocide, which was indeed the gravest of all violations of human rights. The moment had thus come to move forward and, as various speakers had said, the Commission would show the way to go.

16. The CHAIRMAN said that the Sub-Commission had thus concluded its consideration of agenda item 4. She pointed out to the observer for Turkey, who wished to take the floor, that the discussion was closed.

17. Mr. JOINET said he thought it would be preferable to leave it to the Special Rapporteur to decide whether or not the observer for Turkey could take the floor.

18. Mr. MUBANGA-CHIPOYA said that the discussion was over. The observer for Turkey could, of course, submit comments in writing, but it was too late for him to make a statement before the Sub-Commission.

19. Mr. YAVUZALP (Observer for Turkey) said he would comply with the Chairman's decision, but deplored the fact that the Sub-Commission should base itself simply on the statements of a Special Rapporteur to accuse a country of a crime it had not committed.

HUMAN RIGHTS AND DISABILITY (agenda item 17) (E/CN.4/Sub.2/1985/32;
E/CN.4/Sub.2/1985/NGO/3; E/CN.4/Sub.2/1985/NGO/10)

20. Mr. HERNDL (Assistant Secretary-General for Human Rights), introducing agenda item 17, referred to resolution 1983/15 in which the Sub-Commission, recalling General Assembly resolution 37/52 on the World Programme of Action concerning Disabled Persons and its own resolution 1982/1, drew attention to the relationship between human rights and disability. The Sub-Commission had also requested the Secretary-General to invite relevant non-governmental organizations to investigate the human-rights problems of disabled persons and to submit their findings to him for his report to the Sub-Commission at its thirty-seventh session.

It had further urged the Secretary-General to continue his efforts to obtain the views of United Nations organs, specialized agencies, regional intergovernmental organizations, the International Committee of the Red Cross and concerned non-governmental organizations on ways and means of preventing violations, especially gross violations, of the human rights of disabled persons, especially those caused by violations of the humanitarian norms governing armed conflicts. The Sub-Commission had also requested the Commission on Human Rights to invite Governments, in consultation with disabled persons, to identify the human-rights problems of disabled persons in their jurisdictions and to provide descriptions of those problems, along with plans to alleviate them. According to those requests, the Sub-Commission had, at its thirty-seventh session, considered the information received and paid attention to ways and means of strengthening procedures whereby disabled persons might address human-rights problems.

21. In its resolution 1984/31, adopted on 12 March 1984, the Commission on Human Rights had recommended that the Economic and Social Council should request the Sub-Commission to appoint a Special Rapporteur to undertake a thorough study, in consultation with the Centre for Social Development and Humanitarian Affairs, of the causal connection between serious violations of human rights and fundamental freedoms and disability, as well as of the progress made in alleviating problems, and to submit its views and recommendations, through the Commission on Human Rights and the Commission on Social Development, to the Economic and Social Council at its first regular session in 1986.

22. By its resolution 1984/20 of 29 August 1984, the Sub-Commission had decided to appoint Mr. Leandro Despouy as Special Rapporteur to undertake the comprehensive study requested by the Economic and Social Council in its resolution 1984/26. The Sub-Commission had requested the Special Rapporteur to consider a number of specific aspects and to present his report to the Sub-Commission for consideration at its thirty-eighth session and for forwarding to the Commission on Human Rights at its forty-second session. In addition, the Sub-Commission had decided to include in the agenda for its thirty-eighth session an item entitled "Human rights and disability".

23. It might also be recalled that, by its resolution 1984/37 entitled "Review of the work of the Sub-Commission", the Sub-Commission had endorsed a long-term plan of studies for 1985-1989, under which the Special Rapporteur was expected to submit a preliminary report in 1985, a progress report in 1986 and a final report in 1987.

24. A preliminary report (E/CN.4/Sub.2/1985/32) had thus been submitted to the Sub-Commission at its current session and would be presented by the Special Rapporteur himself.

25. Mr. DESPOUY, introducing his preliminary report on item 17 of the Sub-Commission's agenda (E/CN.4/Sub.2/1985/32), said that he had based his study on human rights and disability on the institutional and legal sources which were mentioned in paragraphs 5 and 6 of his report. The names of the States Members, United Nations organs and specialized agencies of the United Nations system which had provided answers and information were also shown in paragraph 7 of the report. In that regard, Canada, Colombia and Cuba had made particularly valuable contributions to his study, but he regretted, on the other hand, that Spain and Portugal had not provided any information.

26. With regard to the important question of terminology and definitions, mentioned in paragraphs 8 to 12 of his report, he laid special emphasis on the necessity of dispelling any ambiguity and of avoiding the use of pejorative terms to describe disabled persons. The definition of the concept of disability given in paragraph 6 of the World Programme of Action Concerning Disabled Persons should not be an exclusive one; he urged the members of the Sub-Commission to express their opinions and submit their suggestions on the matter.

27. Concerning the objectives of the study and its legal basis, the aim was to make clear the rights of disabled persons and their special situation from the point of view of the exercise of human rights in general.

28. As for the causes of disability, the Special Rapporteur drew a distinction between general and specific causes; the former did not necessarily imply any violation of human rights whereas the expression "specific" cause signified the existence of a direct or indirect link between the disability and, for example, torture, cruel, inhuman or degrading treatment, war or armed conflicts, and so forth.

29. In a later part of his report he would study human rights violations committed against persons already disabled. Discrimination in all its forms was involved, especially in the fields of education, employment and medical and social assistance. Special attention would be given to problems confronting disabled women, children and refugees. The question of apartheid, as well as that of abuses arising from institutional treatment, would also be considered. The Special Rapporteur would next study the above-mentioned problems in the context of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights.

30. The members of the Sub-Commission were perhaps surprised to find him already presenting conclusions and recommendations in part VI of his preliminary report. His conclusions were provisional only and aimed at securing a minimum of agreement from the start. He had stressed, in those provisional conclusions, the precariousness of the material and legal position of disabled persons and the uncertainty under which many of them laboured with respect to the extent to which the rights that had already been established were guaranteed. To remedy that state of affairs, the legal instruments had to be strengthened and control mechanisms had to be set up or rendered more effective.

31. It was also stressed in the provisional conclusions that legal or religious penalties which had the deliberate effect of disabling the individual should be regarded as contrary to international law. In particular, they were inconsistent with article 4 of the International Covenant on Civil and Political Rights, with article 15 of the European Convention on Human Rights and with article 27 of the American Convention on Human Rights.

32. The recommendations he was submitting showed that his study was not solely critical in its purpose: it was also directed towards the search for concrete solutions. It was suggested that the subject of disabled persons should be included in the Optional Protocol to the American Convention on Human Rights

concerning economic, social and cultural rights, and that the competent United Nations bodies responsible for the implementation of international human rights instruments should be called upon to request Governments to provide information at regular intervals on the subject of disabled persons. In particular, the Human Rights Committee could be asked to furnish precise information on Government replies regarding the exercise of civil and political rights by disabled persons. Having drawn attention to the other recommendations appearing at the end of his preliminary report, he thanked the Secretariat for its assistance and announced his intention to continue to consult the organizations concerned with disabled persons in order to broaden the information and thinking on which his final report would be based.

33. The CHAIRMAN thanked the Special Rapporteur for introducing his preliminary report. She was convinced that the final report would be a precious contribution to the defence of the rights of disabled persons.

34. Mrs. CADIEUX said that Mr. Despouy's preliminary report already gave a glimpse of the important points that would be dealt with in the more thorough study he was preparing, and that it was fully in keeping with the mandate which had been entrusted to him by the Sub-Commission in conformity with resolution 1984/26 of the Economic and Social Council. She mentioned that in her own country, Canada, the rights of disabled persons were set forth in a Charter which had been issued on 17 April 1985 and which had become an integral part of the Canadian Constitution. Article 15 of that Charter of Rights stipulated: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

35. She supported the suggestion made in paragraph 8 of Mr. Despouy's report regarding the pejorative connotations of certain terms used to designate disabled persons. Those connotations reflected the attitude of society, which often neglected disabled persons or pushed them to the sidelines. Another harmful habit was to define disabled persons solely in terms of their disabilities, as in saying when not technically necessary "an epileptic" or "a blind man". Another point, mentioned in paragraph 21 of the report, concerned cultural obstacles such as myths and prejudices. In that regard, she pointed out that in implementing a law to prevent discrimination against disabled persons it had been observed in her country that such prejudices and myths were the worst obstacles to the integration of the persons concerned. For example, some firms would refuse to hire disabled persons without checking whether their disabilities prevented them from effectively filling the posts offered.

36. In paragraph 11 of his report, Mr. Despouy had tried to define disability by referring to article 2 of Argentine Act No.22431. She would prefer to replace the second part of the definition mentioned - "entails considerable disadvantages for the purpose of his family, social ... integration" - by more positive terms that would reflect instead the responsibility of society to eliminate as far as possible the obstacles to the integration of disabled persons. Lastly, she too thought it very important to consult disabled persons and the organizations devoted to their welfare or defence, as Mr. Despouy proposed to do.

37. Mr. CEPEDA ULLOA said he wished to inform the Special Rapporteur that the private and public organizations of his country, Colombia, which were working on behalf of those currently called "minusválidos", would like to invite him to visit Colombia to study the policies being applied there. Mr. Despouy had already shown convincingly in his preliminary report, that he was on the right path and that the final report would have a favourable impact on the formulation of policies in the area being considered.

38. The terminology used regarding disabled persons was indeed important, and terms with pejorative connotations had to be avoided. However, it was not enough to change the vocabulary; underlying attitudes and their expression in laws and institutions had also to be changed.

ORGANIZATION OF WORK (continued)

39. The CHAIRMAN said that Mr. Eide, Special Rapporteur, would not be present when the Sub-Commission examined his preliminary report, "Study on the achievements made and obstacles encountered during the first Decade to Combat Racism and Racial Discrimination" (E/CN.4/Sub.2/1985/7) and his "Progress report on the right to adequate food as a human right" (E/CN.4/Sub.2/1985/23). Mr. Eide would, however, be invited to attend the forthcoming session to present to the Sub-Commission his final reports on those questions. In that connection, it should be recalled that, according to the normal practice of the Sub-Commission, special rapporteurs did not attend to present their preliminary and progress reports in person; their presence was required only for final reports.

40. Mr. CAREY asked that Mr. Eide be kept informed of the comments made in the Sub-Commission on his studies, so that he could take them into account in the final version.

41. Mr. HERNDL (Assistant Secretary-General for Human Rights) assured Mr. Carey and the Sub-Commission that Mr. Eide would be fully informed concerning the discussions of his studies at the current session.

The meeting rose at 1.05 p.m.