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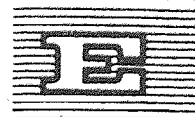


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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Thirty-eighth session

SUMMARY RECORD OF THE 36th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 29 August 1985, at 10 a.m.

Chairman: Mrs. DAES

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Consideration of draft resolutions and decisions (continued)

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

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Draft resolutions E/CN.4/Sub.2/1985/L.15 and E/CN.4/Sub.2/1985/L.16 (issued as E/CN.4/Sub.2/1985/L.16 and E/CN.4/Sub.2/1985/L.15 respectively)

Draft resolution E/CN.4/Sub.2/1985/L.15 (issued as L.16)

1. The CHAIRMAN invited the members of the Sub-Commission to resume consideration of the draft resolution, which was to be issued as E/CN.4/Sub.2/1985/L.15.

2. Mr. DESCHÊNES said that, of the sponsors of draft resolution E/CN.4/Sub.2/1985/L.15 (issued as L.16), he and Mr. Mubanga-Chipoya were able to accept the new operative paragraph 4 proposed the day before by Mr. Bossuyt but Mr. George could not. In addition, he proposed to revise the text of the draft resolution by adding a new operative paragraph 5 with exactly the same wording as operative paragraph 3 of the draft resolution that should have borne the symbol E/CN.4/Sub.2/1985/L.16 (issued as E/CN.4/Sub.2/1985/L.15) and would therefore read:

"5. Recommends to the Commission on Human Rights to authorize the Sub-Commission to request its Special Rapporteur, Mr. Benjamin Whitaker, to study the notions of 'cultural genocide', 'ethnocide' and 'ecocide' and to submit his report to the Sub-Commission at its fortieth session."

If that new paragraph 5 and the new paragraph 4 proposed by Mr. Bossuyt were accepted, draft resolution E/CN.4/Sub.2/1985/L.16 (issued as L.15) would be withdrawn by its sponsors.

3. Mr. DESPOUY said that he would try to clear up the confusion that had arisen in the discussion the day before largely as a result of the proposal to insert in the preamble of the draft resolution a new paragraph mentioning the discussions to which the presentation of Mr. Whitaker's study (E/CN.4/Sub.2/1985/6) had given rise. If the Sub-Commission were to adopt for the draft resolution currently under consideration language similar to that proposed by Mr. Al Khasawneh for draft resolution E/CN.4/Sub.2/1985/L.8, the amalgam might be a dangerous one. The two draft resolutions were quite different: draft resolution L.8 was of a standard-setting nature, whereas draft resolution L.15 was of a general character. If the Sub-Commission should decide to state explicitly that it had not approved a study by consensus, then he would be unable to participate in the vote on the draft resolution in question since he believed that such a statement would be tantamount to condemning it.

4. He therefore proposed that a new fifth preambular paragraph be added to read:

"Noting that different opinions have been expressed concerning the contents of and proposals in the report."

5. Mr. SOFINSKY said that it had seemed possible that a consensus might be reached on draft resolution L.15 as originally submitted by its sponsors. The difficulties had started with the amendment proposed by Mr. Bossuyt. Since then, Mr. Deschênes, one of the sponsors of the draft resolution, had also raised considerable difficulties by proposing to mention "cultural genocide", "ethnocide" and "ecocide" in a new paragraph. In his own view, the two new paragraphs proposed, which were partly drawn from another draft resolution, were quite artificial.

6. Mr. GEORGE said that his intention as a sponsor of draft resolution L.15 had merely been to ensure that the Sub-Commission recognized Mr. Whitaker's work on the question of genocide. Subsequently, however, it was proposed to introduce foreign elements into the draft resolution, and he found himself in a very difficult position. He would have to part company from his co-sponsors of the draft resolution if Mr. Bossuyt insisted on including a new operative paragraph to read:

"4. Requests the Secretary-General to transmit the recommendations of the Special Rapporteur to the Commission for consideration."

7. The CHAIRMAN said she noted with regret that the consultations that had taken place since the previous day, rather than having facilitated the consensus, seemed to have failed.

8. Mr. DESPOUY, speaking on a point of order, said that the Sub-Commission should logically begin by taking a decision on the new preambular paragraph that he had proposed.

9. Mr. JOINET said that, although he had been absent the previous day when draft resolution E/CN.4/Sub.2/1985/L.8 was put to the vote, he thought that it had been a question of making a judgement not on the work of a special rapporteur but on a standard-setting definition. However, it was a well-known fact that reports were seldom approved unanimously so he was prepared to endorse Mr. Despouy's proposal, to which Mr. Sofinsky did not seem to have objected either.

10. Mr. CEPEDA ULLOA said he agreed with Mr. Despouy and Mr. Joinet that the Sub-Commission should first of all take a decision on the preambular paragraphs of draft resolution L.15.

11. Mr. TÜRK said that he was unable to accept the new operative paragraphs 4 and 5 proposed by Mr. Bossuyt and Mr. Deschênes respectively. However, he agreed with the views of Mr. Despouy, Mr. Joinet and Mr. Cepeda Ulloa regarding the amendment of the preamble.

12. Mr. AL KHASAWNEH said he was surprised that Mr. Joinet and Mr. Despouy should object to language that had already been adopted in another draft resolution. However, in a spirit of compromise, he was prepared to accept the new paragraph proposed by Mr. Despouy, provided that the word "different" was replaced by the word "divergent". It would, however, be more difficult for him to accept the two proposed new operative paragraphs, which partly reflected draft resolution E/CN.4/Sub.2/1985/L.16.

13. Mr. DESPOUY said that he was able to accept Mr. Al Khasawneh's subamendment to the new fifth preambular paragraph.

14. The CHAIRMAN suggested that the Sub-Commission might take a decision on the amended preamble to draft resolution L.15.

15. Mr. AL KHASAWNEH said that the draft resolution was a whole and should not be divided by taking a separate decision on the preamble.

16. Mr. DESPOUY said he was surprised at Mr. Al Khasawneh's reaction. The previous day, the Sub-Commission had begun by discussing the amendments to draft resolution L.8 and had then taken a decision on the draft resolution as a whole, in accordance with the usual procedure.
17. Mr. BOSSUYT said that he would like to know the views of the sponsors of the draft resolution on the proposed amendments.
18. Mr. GEORGE repeated that he could not support the two proposed new operative paragraphs. He would therefore like the Sub-Commission to take a vote.
19. Mr. DESCHÊNES said that the three sponsors of draft resolution L.15 were able to accept the new preambular paragraph proposed by Mr. Despouy.
20. The CHAIRMAN said that, if she heard no objections, she would take it that the Sub-Commission agreed to add a further preambular paragraph to draft resolution E/CN.4/Sub.2/1985/L.15, to read as follows:
- "Noting that divergent opinions have been expressed about the content and proposals of the report."
21. It was so decided.
22. Mr. SOFINSKY stressed the need for the operative paragraphs of the draft resolution to be drafted in the same way in all languages. He also asked for the text of operative paragraph 2 to be clarified, since he had proposed that the Sub-Commission should express its thanks and congratulations to the Special Rapporteur for "some" of his proposals.
23. Mr. YIMER said that he had proposed that the words "the quality of", in operative paragraph 2, should be deleted.
24. Mr. BOSSUYT said that none of the three amendments proposed by Mr. Yimer, Mr. Al Khasawneh and Mr. Sofinsky respectively had been accepted by the sponsors of the draft resolution, notably Mr. Deschênes. The members of the Sub-Commission should therefore vote to decide which amendment should be selected.
25. Mr. DESPOUY said that he hoped that Mr. Yimer's amendment alone would be adopted. The Sub-Commission would thus merely express its thanks and congratulations to the Special Rapporteur for his proposals.
26. Mr. DESCHÊNES said that Mr. Yimer's proposed wording was too abrupt and he would thus not vote for that amendment. It was important that the Sub-Commission should face up to its responsibilities and express an opinion.
27. Mr. AL KHASAWNEH said that he would not insist on his amendment to delete the words "and congratulations".
28. Mr. MUBANGA-CHIPOYA said that, before the Sub-Commission took a vote on Mr. Yimer's amendment, its members should try hard to arrive at a consensus. He believed that all the Special Rapporteur's proposals were in fact acceptable, and

hoped that the other two sponsors of the draft resolution would agree with him. Mr. Yimer's proposed wording was rather abrupt, but the essential point was that the Sub-Commission should thank and congratulate the Special Rapporteur. If the Sub-Commission should decide to vote on the issue, he would thus vote for Mr. Yimer's amendment.

29. Mr. DESCHÊNES said he had come round to that opinion.

30. Mr. SOFINSKY said he supported Mr. Yimer's amendment but still wished to maintain his own one to the effect that the Sub-Commission should express its thanks and congratulations to the Special Rapporteur for "some" of his proposals. He could hardly thank the Special Rapporteur for proposals which he did not support.

31. The CHAIRMAN put to the vote the amendment proposed by Mr. Sofinsky to operative paragraph 2.

32. The amendment was rejected by 13 votes to 4, with 2 abstentions.

33. The CHAIRMAN invited the members of the Sub-Commission to decide on operative paragraph 2, as amended by Mr. Yimer's proposal.

34. The amended text of operative paragraph 2 of draft resolution E/CN.4/Sub.2/1985/L.15 (issued as L.16) was adopted by 16 votes to none, with 4 abstentions.

35. The CHAIRMAN said that, if she heard no objection, she would take it that the Sub-Commission wished to adopt operative paragraph 3 of the draft resolution by consensus.

36. It was so decided.

37. Mr. BOSSUYT recalled that he had proposed the addition of a new paragraph, which would be operative paragraph 4, and that most of the sponsors of the draft resolution had spoken in favour of his amendment. New operative paragraph 4 would read:

"Requests the Secretary-General to transmit the recommendations of the Special Rapporteur to the Commission on Human Rights for its consideration."

If that new paragraph and the new paragraph proposed by Mr. Deschênes were to be accepted, draft resolution L.16 (issued as L.15) could possibly be withdrawn.

38. Mr. GEORGE said that, if the Sub-Commission was thinking of adding new operative paragraphs to draft resolution L.15, he would withdraw his sponsorship of the draft resolution.

39. Mr. JOINET said that, while he approved of Mr. Bossuyt's desire to avoid a long discussion on draft resolution L.16, which would no longer be justified, it had always been the practice that when a special rapporteur put forward certain principles affecting the substance of an important question, there should be a debate on his proposals. He thus feared that Mr. Bossuyt's amendment would have the secondary effect of complicating matters, and hoped that he would withdraw it.

40. Mr. YIMER, speaking on a point of order, said that the Sub-Commission had already started the voting process and that Mr. Joinet's intervention, which was apparently not in explanation of vote, was out of order.
41. Mr. JOINET said that, as far as he knew, the Sub-Commission had not yet started the voting process and that he was therefore entitled to ask, as Mr. Mubanga-Chipoya had already done, for a proposed amendment to be withdrawn.
42. The CHAIRMAN, replying to a question by Mr. DAHAK, said that, if Mr. Bossuyt's amendment were adopted, draft resolution L.16 would be partly cancelled in consequence. She invited the members of the Sub-Commission to take a decision on the text of the new paragraph 4 proposed by Mr. Bossuyt.
43. Mr. CHOWDHURY, speaking in anticipated explanation of vote, recalled that when the Special Rapporteur's report was being considered many members of the Sub-Commission had said that they did not agree with certain parts of it. He himself was able to accept the report as a whole. However, the decision to transmit the Special Rapporteur's recommendations to the Commission on Human Rights was tantamount to a decision to transmit the report itself and the report, as presented, had not been approved by all the members of the Sub-Commission. He would therefore vote against Mr. Bossuyt's amendment.
44. Mr. BOSSUYT said that his amendment was in no way intended to transmit to the Commission the Special Rapporteur's study itself but solely the recommendations contained therein.
45. Mr. AL KHASAWNEH, speaking in anticipated explanation of vote, said that he would vote against the amendment proposed by Mr. Bossuyt. In the first place, he was against the partial transmission of the Special Rapporteur's study to the Commission on Human Rights, and secondly some of the recommendations it was proposed to transmit were at variance with the procedural aspects of international law.
46. Mr. JOINET, speaking on a point of order, drew attention to the provisions of rule 61 of the Sub-Commission's rules of procedure and pointed out that a vote could not be interrupted.
47. Mr. YIMER said that the members of the Sub-Commission were entitled to take the floor to explain their votes in advance.
48. Mr. BHANDARE remarked that the debate that was taking place in the Sub-Commission was a good illustration of the way in which freedom of expression could be exercised. In his view, it would be better to vote not on Mr. Bossuyt's amendment but on the draft resolution as a whole.
49. Mr. DAHAK said that he would vote against Mr. Bossuyt's amendment for two reasons: first, because some of the recommendations in the report were at variance with the rules of international law such as, for instance, the procedure for revising international conventions; and secondly, as Mr. Chowdhury had pointed out, the recommendations were clearly the conclusions of the report, and he did not necessarily support them all.
50. Mr. SOFINSKY considered that Mr. Bossuyt's proposed amendment would have the effect of nullifying the Genocide Convention whereas it should rather be strengthened. He would therefore vote against that amendment.

51. Mrs. GU Yijie, said that she had already mentioned her difficulties when Mr. Whitaker's report was being considered. The recommendations arising from the report itself were very significant ones and required longer discussion. She would therefore vote against Mr. Bossuyt's amendment.
52. The CHAIRMAN put to the vote the amendment proposed by Mr. Bossuyt that a new operative paragraph 4 be added to draft resolution E/CN.4/Sub.2/1985/L.15 (issued as L.16).
53. Mr. Bossuyt's amendment was rejected by 10 votes to 6, with 6 abstentions.
54. Mr. YIMER, speaking in explanation of vote, said that there was a difference between recommending and transmitting for consideration, and he had taken account of that distinction in casting his vote.
55. Mr. DESCHÊNES said that there was no longer any reason to maintain his proposal for a new paragraph 5, which he therefore withdrew.
56. The CHAIRMAN invited the Sub-Commission to vote on draft resolution E/CN.4/Sub.2/1985/L.15 (issued as L.16) as it had been amended.
57. The draft resolution, as amended, was adopted by 14 votes to 1, with 4 abstentions.
58. Mr. ALFONSO MARTINEZ, speaking in explanation of vote, said that he had abstained for the reasons he had given at the previous meeting; however, that did not mean that he was against the recommendation in paragraph 3.
59. Mr. SOFINSKY, speaking in explanation of vote, said that he would have been able to accept the draft resolution if he had not objected to some of the proposals of the Special Rapporteur which would have had the effect of nullifying the Convention on the Prevention and Punishment of the Crime of Genocide, to which 96 sovereign States were parties.

Draft resolution E/CN.4/Sub.2/1985/L.16 (issued as L.15)

60. The CHAIRMAN invited the Sub-Commission to consider that draft resolution, which had been submitted by Mr. Deschênes and Mr. Mubanga-Chipoya.
61. Mr. AL KHASAWNEH said that the amendment that had just been rejected by the Sub-Commission, (to add a new operative paragraph 4 to the draft resolution which had just been adopted) covered part of the substance of draft resolution E/CN.4/Sub.2/1985/L.16 (issued as L.15). Moreover, another amendment to the resolution just adopted, which had been withdrawn by Mr. Deschênes, was connected with the draft resolution currently under consideration. He wondered, therefore, what was left of draft resolution E/CN.4/Sub.2/1985/L.16 (issued as L.15) which had not already been covered by those two amendments.
62. Mr. DESCHÊNES, introducing the draft resolution, which he had co-sponsored with Mr. Mubanga-Chipoya, said that it would give the Sub-Commission an opportunity to consider the main recommendations of Mr. Whitaker's study on the question of the prevention and punishment of the crime of genocide (E/CN.4/Sub.2/1985/6). The resolution that had just been adopted did not deal with those recommendations in detail. In reply to Mr. Al Khasawneh, he said that the withdrawal of his own amendment and the rejection of Mr. Bossuyt's amendment had not rendered superfluous the draft resolution currently under consideration. On the other hand, the draft resolution would have become pointless if those amendments had in fact been adopted.

63. The draft resolution that he and Mr. Mubanga-Chipoya had submitted contained three parts. The first part repeated Mr. Whitaker's recommendations for improving the content of the Convention on the Prevention and Punishment of the Crime of Genocide. He then commented briefly on operative paragraph 1 (a) to (e), which listed the recommendations in question. The second part, corresponding to operative paragraph 2, recommended the establishment of a prevention programme, which was also based on ideas put forward by Mr. Whitaker in his study; prevention was indeed the weakest point of the Convention. He also commented briefly on paragraph 2 (a) to (d), which contained recommendations on the subject. The third part of the draft resolution was designed to ensure that Mr. Whitaker's work would be supplemented by a study on the notions of "cultural genocide", "ethnocide", and "ecocide", on which stress had been laid during the discussion.

64. Mr. YIMER proposed that the Sub-Commission should take no decision on the draft resolution submitted by Mr. Deschênes and Mr. Mubanga-Chipoya, in accordance with paragraph 1 of rule 65 of the rules of procedure, which read:

"If two or more proposals, other than amendments, relate to the same question, they shall, unless the [Sub-Commission] decides otherwise, be voted on in the order in which they were submitted. The [Sub-Commission] may, after each vote on a proposal, decide whether to vote on the next proposal."

65. Mr. BHANDARE objected that rule 65 of the rules of procedure, which Mr. Yimer had quoted, was applicable when the proposals related to "the same question"; but the draft resolution under consideration and the resolution just adopted dealt with different questions.

66. Mr. ALFONSO MARTÍNEZ said that "the same question" in rule 65 should be understood as meaning the same agenda item. The resolution just adopted and the draft resolution under discussion both related to item 4. Mr. Yimer had therefore been right, in quoting rule 65, to ask that the Sub-Commission should take no decision on the draft resolution under consideration.

67. Mr. BHANDARE said he doubted whether the words "the same question" in rule 65 meant the same agenda item. Some agenda items covered several quite different questions. It would be absurd for the Sub-Commission, having adopted a resolution on a question under a given agenda item, to decide not to take a decision on other draft resolutions concerning questions that were quite different, even though they came under the same agenda item.

68. Mr. YIMER said that he had submitted a formal proposal, which should be put to the vote after two members of the Sub-Commission had had the opportunity of speaking in its favour and two against it.

69. Mr. DAHAK and Mr. SOFINSKY supported Mr. Yimer's proposal.

70. Mr. DESPOUY said that he was unable to support them, because the draft resolution seemed to contain some good elements. It merely needed redrafting in certain respects.

71. The CHAIRMAN put to the vote the proposal by Mr. Yimer that the Sub-Commission should take no decision on draft resolution E/CN.4/Sub.2/1985/L.16 (issued as L.15)

72. The proposal was rejected by 9 votes to 7, with 5 abstentions.

73. The CHAIRMAN invited the Sub-Commission to revert to its consideration of draft resolution E/CN.4/Sub.2/1985/L.16 (issued as L.15).

74. Mr. SOFINSKY said he thought that the draft resolution was contrary to the interests of the Genocide Convention: it proposed that several articles of the Convention be amended, that new provisions be added, that a new international court be established and so forth, none of which were matters to be discussed in haste at the end of a session. He was unable therefore, to support it.

75. Mr. DAHAK, having read out articles XVI and XVII of the Convention, which set out the procedures for its revision, said that there were mechanisms in international treaty law for amending the Convention. It was therefore pointless for the Sub-Commission, which in any event had no competence in the matter, to make recommendations to the Commission on Human Rights and the Economic and Social Council, which had no competence either.

76. The provisions of operative paragraph 2 of the draft resolution responded to the desire often expressed by the international community to establish an international court of human rights. However, that had never been possible so far because of fears of conflicts of jurisdiction between a new court and the International Court of Justice. Operative paragraph 3 of the draft resolution was an interesting one that merited further discussion.

77. Mr. AL KHASAWNEH said that it was unfortunate that the draft resolution had so many serious flaws. On the one hand, as Mr. Dahak had pointed out, the Economic and Social Council was not competent in the matter. On the other, if the Convention was going to be amended, there might be other amendments which were needed. Furthermore, operative paragraph 1 (d) referred to article 8 of the Convention against Torture; he wondered why that article alone had been mentioned, rather than other articles of the same Convention or the conventions dealing with hostages or the protection of diplomats. Lastly, the reference to article VIII of the Genocide Convention in paragraph 1 (e) of the draft resolution seemed to be a mistake since that article simply provided that a Contracting Party might call upon the competent organs of the United Nations.

78. As for operative paragraph 3 of the draft resolution, it was noteworthy that, in his report, Mr. Whitaker had already dealt with "cultural genocide", "ethnocide", and "ecocide". Repetition of studies should be avoided, especially since Mr. Whitaker's report already duplicated some previous studies.

79. Mr. TAKEMOTO considered that because of the ambiguities and deficiencies of the Genocide Convention, many States were already reluctant to become parties thereto. However, an attempt to add new elements, as proposed in the draft resolution under consideration, would simply weaken it still further. Some of the concepts set forth by the Special Rapporteur had not been unanimously accepted, for example the idea of "advertent omission" and certain notions concerning sexual minorities. He considered, therefore, that it was premature to submit to the Commission on Human Rights the recommendations contained in paragraphs 1 and 2 of the draft resolution.

80. Mr. JOINET said that the draft resolution dealt with two matters: first, the follow-up to the recommendations in Mr. Whitaker's report; and, secondly, the new terms of reference that might be given to him. It was only one of those two aspects that required the Sub-Commission, for the sake of good order, to involve the Economic and Social Council. It would thus be better to separate the two aspects completely. Since Mr. Whitaker had submitted his final report, there was no reason why a separate draft resolution should not be adopted on the subject of a further study.

81. Once freed from the necessity of passing through the Economic and Social Council, the Sub-Commission would then be able to address itself to the Member States, and that would remove the objection concerning the lack of competence of the Council and the Commission. It would be sufficient to ask the latter to bring to the attention of the Member States the recommendations of the Special Rapporteur. If that solution were adopted, operative paragraphs 1 and 2 of the draft resolution could then be amended in consequence.

82. Mr. DESPOUY said he believed that the draft resolution should be decided upon paragraph by paragraph. The preamble should not involve any difficulties, since everybody, including the non-governmental organizations, seemed to have been in agreement during the discussion. A clause might, perhaps, be included to recall that convergence of views.

83. The provisions of operative paragraph 1 should either be rejected or - as Mr. Joinet had advised - be addressed to the Member States rather than to the Council through the Commission. Operative paragraph 2 contained four elements: the first two - subparagraphs (a) and (b) - deserved the support of all members of the Sub-Commission, but the second two - subparagraphs (c) and (d) - had given rise to so much controversy that it might be wondered whether it was not premature to include them in a resolution.

84. He agreed with Mr. Joinet that it would be better to make paragraph 3 into a separate draft resolution, which would also spell out the terms of reference of the special rapporteur, the scope of the study requested, and so on.

85. Mr. YIMER thought it a mistake to attribute the fact that acts of genocide had been committed since the Convention had entered into force to the deficiencies of the Convention itself. Moreover, the proposals in the draft resolution were too far-reaching to be acceptable to the parties to which it was addressed, whether organs of the United Nations or the Member States themselves, especially if the lengthy discussions in the Sixth Committee on the Genocide Convention were remembered. Lastly, a new study was proposed in paragraph 3 and he had never been in favour of the proliferation of reports.

86. The CHAIRMAN said that Mr. Whitaker had been given three years to prepare a report on genocide. Since he had submitted his final text at the end of two years - for which he should be congratulated - there remained a year of his mandate that could be devoted to the study of the concepts of cultural genocide, ethnocide and ecocide provided for in operative paragraph 3 of the draft resolution.