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COMMISSION ON HUMAN RIGHTS  
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of Minorities  
Forty-fifth session  
Agenda item 21

DRAFT REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION  
AND PROTECTION OF MINORITIES ON ITS FORTY-FIFTH SESSION

Rapporteur: Mr. Ioan Maxim

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\* E/CN.4/Sub.2/1993/L.10 and addenda contain the draft chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Sub-Commission, as well as draft resolutions and decisions for action by, and other matters and concern to, the Commission on Human Rights will be contained in document E/CN.4/Sub.2/1993/L.11 and addenda.

XI. THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

- (a) Question of human rights of persons subjected to any form of detention or imprisonment;
- (b) Question of human rights and states of emergency;
- (c) Individualization of prosecution and penalties, and repercussions of violations of human rights on families;
- (d) The right to a fair trial.

1. The Sub-Commission considered item 10 together with item 11 (see chapter XII), at its 17th to 25th and 33rd meetings, on 13 to 19 and on 25 August 1993.

2. The Sub-Commission had before it the following documents in connection with its consideration of the item:

Note by the Secretary-General concerning the submission of information pursuant to Sub-Commission resolution 7 (XXVII) of 20 August 1974 (E/CN.4/Sub.2/19);

Note by the Secretary-General pursuant to Sub-Commission resolution 1992/25 and Commission on Human Rights resolution 1993/80 (E/CN.4/Sub.2/1993/20);

Outline prepared by Ms. Palley pursuant to Sub-Commission decision 1992/107 dealing with the possible utility, scope and structure of a special study on the issue of privatization of prisons (E/CN.4/Sub.2/1993/21);

Sixth annual report and list of States which, since 1 January 1985, have proclaimed extended or determined a state of emergency, presented by Mr. L. Despouy, Special Rapporteur appointed pursuant to Economic and Social Council resolution 1985/37 (E/CN.4/Sub.2/1993/23);

Fourth report prepared by Mr. Chernichenko and Mr. Treat concerning the right to a fair trial: current recognition and measures necessary for its strengthening (E/CN.4/Sub.2/1993/24 and Add.1-2);

Letter dated 18 August 1993 from the Chairman of the forty-fifth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities addressed to the Chargé d'Affaires, Permanent Mission of the United States of America to the United Nations Office at Geneva (E/CN.4/Sub.2/1993/40);

Letter dated 20 August 1993 from the Chargé d'Affaires, Permanent Mission of the United States of America to the United Nations Office at Geneva addressed to the Chairman of the forty-fifth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1993/41);

Written statement submitted by the American Association of Jurists, a non-governmental organization in consultative status (category II) (E/CN.4/Sub.2/1993/NGO/2);

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II) (E/CN.4/Sub.2/1993/NGO/9);

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II) (E/CN.4/Sub.2/1993/NGO/11);

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II) (E/CN.4/Sub.2/1993/NGO/14);

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II) (E/CN.4/Sub.2/1993/NGO/15).

3. At the 19th meeting on 16 August 1993, The Special Rapporteur, Mr. Despouy, introduced his report (E/CN.4/Sub.2/23/1993).
4. At the 20th meeting, on 17 August 1993, Ms. Palley introduced her outline of the possible utility, scope and structure of a special study on the issue of privatization of prisons (E/CN.4/Sub.2/1993/21).
5. At the 21st meeting, on 17 August 1993, Mr. S. Chernichenko and Mr. W. Treat introduced their report (E/CN.4/Sub.2/1993/24 and Add.1-2). Mr. F. Yimer, in his function as commentator gave his observations.
6. At the 22nd meeting on 18 August 1993, Ms. Chavez, Rapporteur of the Working Group on Detention, introduced the report of the Working Group on Detention (E/CN.4/Sub.2/1993/22).
7. In the general debate on the item, statements were made by the following members of the Sub-Commission: Mr. Alfonso Martínez (17th, 23rd, 25th), Ms. Attah (21st, 22nd), Mr. V. Boutkevitch (23rd), Ms. Chavez (22nd), Mr. Chernichenko (24th), Mr. Despouy (20th, 24th),

Mr. Eide (22nd), Mr. Guissé (17th, 18th, 23rd), Mr. Heller (23rd), Mr. Joinet (21st), Mr. Khalil (22nd), Ms. Ksentini (24th), Ms. Palley (20th), Mr. Sachar (22nd).

8. Statements were made by the observers for Colombia (24th), Ethiopia (24th), Honduras (24th), Myanmar (24th), Philippines (24th), Romania (24th), Sri Lanka (24th), Turkey (24th).

9. The representative of the Crime Prevention and Criminal Justice Branch of the United Nations Office at Vienna made a statement (18th).

10. The Sub-Commission also heard statements by the representatives of the following non-governmental organizations: American Association of Jurists (18th), Amnesty International (17th), Andean Commission of Jurists (20th), Centre Europe-Tiers Monde (20th), Commission of the Churches on International Affairs of the World Council of Churches (17th), France-Libertés: Fondation Danielle Mitterrand (18th), International Association against Torture (19th), International Association of Educators for World Peace (18th), International Educational Development, Inc. (19th), International Falcon Movement-Socialist Educational International (18th), International Federation of Human Rights (18th), International Indian Treaty Council (18th), International League for the Rights and Liberation of Peoples (20th), International PEN (19th), International Movement against All Forms of Discrimination and Racism (20th), International Progress Organization (18th), Latin American Federation of Associations of Relatives of Disappeared Detainees (22nd), Liberation (18th), Movement against Racism and for Friendship among Peoples (18th), National Aboriginal and Islander Legal Service Secretariat (18th), Pax Christi International (19th), Pax Romana (20th), Robert F. Kennedy Memorial Centre for Human Rights (17th), Service Peace and Justice in Latin America (19th), World Organization against Torture (20th).

11. Statements equivalent to a right of reply were made by the observers for: Indonesia (22nd), Japan (25th), Malaysia (22nd), Mauritania (25th), Morocco (23rd), Syrian Arab Republic (23rd), Turkey (20th).

12. At the 19th meeting, on 16 August 1993, Mr. Alfonso Martínez, proposed a draft decision concerning the situation of a group of hunger strikers in the United States of America.

13. With regard to the proposal made by Mr. Alfonso Martínez, the following experts made statements: Ms. Chavez, Mr. Joinet, Ms. Palley, Mr. Guissé.

14. Ms. Chavez proposed amending the draft decision by adding the following paragraph to the existing text:

"The Sub-Commission equally requests its Chairman to request the competent authorities of Cuba to provide official information concerning the status and condition of the following persons: Sebastian Arcos Bergnes, José Luis Pujol Irizar, Elizardo Sanchez Santa Cruz, Lazaro Loreto Perea, Rodolfo Gonzalez, Marco Antonio Abad Flamand, Jorge Crespo Diaz, Michael Pérez Pérez, Yndamiro Restano Diaz, Martinez Bustamante, Luis Alberto Pita Santos, Arturo Suarez Ramos."

15. Ms. Palley moved under rule 65, paragraph 2 of the rules of procedure of the functional commissions of the Economic and Social Council, not to take action on either the draft decision or on the amendment thereto.

16. At the request of Mr. Alfonso Martínez, a roll-call vote was taken on the motion, which was rejected by 6 votes to 6, with 4 abstentions. The voting was as follows:

In favour: Mr. Bossuyt, Ms. Chavez, Mr. Eide, Mr. Hatano, Mr. Khalil, Ms. Palley

Against: Mr. Alfonso Martínez, Mr. Chernichenko, Mr. Heller, Mr. Joinet, Mr. Ramadhane, Mr. Tian Jin

Abstaining: Mr. Despouy, Mr. Hakim, Mr. Maxim, Mr. Saboia

16. At the request of Ms. Palley, a roll-call vote was taken on the amendment proposed by Ms. Chavez, which was rejected by 6 votes to 5, with 7 abstentions. The voting was as follows:

In favour: Mr. Bossuyt, Ms. Chavez, Mr. Eide, Mr. Hakim, Ms. Palley

Against: Mr. Alfonso Martínez, Mr. Heller, Ms. Ksentini, Mr. Ramadhane, Mr. Sachar, Mr. Tian Jin

Abstaining: Mr. Chernichenko, Mr. Despouy, Mr. Yokota, Mr. Joinet, Mr. Khalil, Mr. Maxim, Mr. Saboia

17. At the request of Mr. Alfonso Martínez, a roll-call vote was taken on the draft decision as originally proposed, which was adopted by 6 votes to 4, with 7 abstentions. The voting was as follows:

In favour: Mr. Alfonso Martínez, Mr. Hakim, Mr. Heller, Mr. Ramadhane, Mr. Sachar, Mr. Tian Jin.

Against: Mr. Bossuyt, Ms. Chavez, Mr. Eide, Ms. Palley.

Abstaining: Mr. Chernichenko, Mr. Despouy, Mr. Yokota, Mr. Joinet, Mr. Khalil, Mr. Maxim, Mr. Saboia.

18. Explanations of vote after the vote were made by: Mr. Alfonso Martínez, Ms. Chavez, Mr. Chernichenko, Mr. Despouy, Mr. Eide, Mr. Joinet, Mr. Khalil, Ms. Ksentini, Mr. Saboia, Mr. Yokota.

19. For the text of the decision see chapter II, decision 1993/104.

20. Subsequently, by letter of 18 August 1993, the Chairman transmitted the text of the decision to the Chargé d'Affaires, Permanent Mission of the United States of America to the United Nations Office at Geneva (see E/CN.4/Sub.2/1993/40).

21. At its 29th meeting, on 23 August 1993, the Chairman informed the Sub-Commission that he had received a reply to the letter (see E/CN.4/Sub.2/1993/41).

Questions of human rights of persons subjected to any form of detention and imprisonment

22. At the 33rd meeting, on 25 August 1993, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1993/L.8, sponsored by Ms. Attah, Mr. Bossuyt, Mr. Boutkevich, Ms. Chavez, Ms. Daes, Mr. Despouy, Mr. Eide, Mr. Guissé, Mr. Hatano, Mr. Heller, Mr. Joinet, Mr. Maxim, Ms. Palley, Mr. Sachar and Mr. Yimer.

23. Statements relating to the draft resolution were made by Mr. Boutkevich, Mr. Joinet and Ms. Ksentini.

24. The draft resolution was adopted without a vote.

25. For the text as adopted, see chapter II, section A, resolution 1993/25.

Question of human rights and states of emergency

26. At the same meeting, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1993/L.46, sponsored by Mr. Alfonso Martínez, Mr. Bossuyt, Ms. Daes, Mr. Despouy, Mr. Eide, Ms. Forero Ucros, Mr. Guissé, Mr. Hatano, Mr. Hakim, Mr. Joinet, Mr. Khalil, Mr. Ramadhane, Mr. Saboia, Mr. Sachar, Ms. Ksentini, Mr. Maxim, Ms. Palley, and Ms. Warzazi .

27. The draft resolution was adopted without a vote.

28. For the text as adopted, see chapter II, section A, resolution 1993/28.

Right to a fair trial

29. At the same meeting, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1993/L.33, sponsored by Mr. Alfonso Martínez, Ms. Attah, Mr. Boutkevich, Ms. Chavez, Ms. Daes, Mr. Despouy, Mr. Eide, Mr. Guissé, Mr. Hatano, Mr. Khalil, Ms. Palley, Mr. Saboia, Mr. Sachar, Ms. Warzazi and Mr. Yimer.

30. Ms. Ksentini proposed the following amendments to the draft resolution:
- (a) Delete operative paragraph 5 and renumber the remaining operative paragraphs accordingly;
  - (b) Insert in new operative paragraph 5 the words "the advisability of elaborating a third optional protocol to the International Covenant on Civil and Political Rights and" before the words "the other recommendations";
  - (c) Delete in new paragraph 6 the words "aimed, inter alia, at developing a draft third optional protocol to the International Covenant on Civil and Political Rights", after the words "a set of recommendations and conclusions".
31. The proposed amendments were accepted by the sponsors.
32. Statements in connection with the draft resolution and the proposed amendments were made by Mr. Bossuyt and Mr. Joinet.
33. The draft resolution, as amended, was adopted without a vote.
34. For the text, as adopted, see chapter II, section A, resolution 1993/26.  
Arbitrary and summary executions
35. At the same meeting, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1993/L.21, sponsored by Mr. Boutkevich, Ms. Chavez, Mr. Eide and Ms. Palley. Ms. Daes subsequently joined the sponsors. Draft resolution E/CN.4/Sub.2/1993/L.21 read as follows:
- The Sub-Commission on Prevention of Discrimination and Protection of Minorities,
- Guided by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and resolution 1993/71 of 10 March 1993 of the Commission on Human Rights,
- Deeply concerned at reports of the occurrence of arbitrary and summary executions in Aceh, Indonesia since 1989,
- Concerned also at the failure of the authorities to investigate these reports,
- Regretting that the Special Rapporteur of the Commission on Human Rights on the question of torture was prevented from visiting Aceh when visiting Indonesia and East Timor in November 1991,
1. Expresses its deep concern at the reports of arbitrary and summary executions in Aceh;

2. Regrets that the Special Rapporteur of the Commission on Human Rights on the question of torture was prevented from visiting Aceh when visiting East Timor and Indonesia in November 1991;

3. Encourages the Indonesian authorities to invite the Special Rapporteurs of the Commission on Human Rights on the question of torture and on extrajudicial, summary and arbitrary executions to visit Aceh and other parts of Indonesia with a view to ascertaining the situation pertaining to torture and arbitrary and summary executions;

4. Recommends to the Commission that it consider at its fiftieth session, the reports of the Special Rapporteurs on the question of torture and on extrajudicial, summary and arbitrary executions on the situation in Indonesia, particularly in Aceh, and to this purpose requests the secretariat to transmit to the Commission all information received;

5. Decides to consider at its forty-sixth session the questions of torture and extrajudicial, summary and arbitrary executions and related human rights violations in Indonesia, in particular in Aceh.

36. Statements relating to the draft resolution were made by Mr. Alfonso Martínez, Ms. Forero Ucros, Mr. Hakim, Mr. Heller, Mr. Joinet, Ms. Palley and Mr. Tian Jin.

37. Mr. Alfonso Martínez moved under rule 65, paragraph 2 of the rules of procedure of the functional commissions of the Economic and Social Council, that the Sub-Commission take no decision on the draft resolution.

38. A vote was taken on the motion, by secret ballot.

39. The motion that the Sub-Commission take no decision on draft resolution E/CN.4/Sub.2/1993/L.21 was adopted by 17 against 7 with 1 abstention.

40. For the text of the decision as adopted see chapter II, section B, 1993/107.

41. Statements after the vote were made by Mr. Alfonso Martínez and Mr. Despouy.

The application of international standards concerning the human rights of detained juveniles

42. At the same meeting, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1993/L.35, sponsored by Mr. Despouy, Mr. Joinet

and Ms. Ksentini. Mr. Alfonso Martínez, Ms. Daes, Ms. Forero Ucros, Mr. Guissé, Mr. Heller, Mr. Maxim, Mr. Sachar, Mr. Tian Jin and Ms. Ksentini subsequently joined the sponsors.

43. The draft resolution was adopted without a vote.

44. For the text as adopted, see chapter II, section A, resolution 1993/27.  
Study of the issue of the privatization of prisons

45. At the 33rd meeting, on 25 August 1993, the Sub-Commission considered draft decision E/CN.4/Sub.2/1993/L.44, sponsored by Mr. Alfonso Martínez, Mr. Boutkevitch, Ms. Chavez, Mr. Guissé and Mr. Sachar.

46. Statements relating to the draft decision were made by Mr. Alfonso Martínez, Mr. Despouy, Mr. Guissé, Mr. Joinet, Ms. Ksentini and Ms. Palley.

47. The draft decision was adopted without a vote.

48. For the text as adopted, see chapter II, section B, decision 1993/108.

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