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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fiftieth session
Agenda item 14 (c)

CONCLUDING ITEMS:

ADOPTION OF THE REPORT ON THE FIFTIETH SESSION

Draft report of the Sub-Commission on Prevention of
Discrimination and Protection of Minorities

Rapporteur: Mr. Ioan MAXIM

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1998/24. Prevention of discrimination against
and protection of minorities

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Noting Commission on Human Rights resolution 1998/19 of 9 April 1998 on the rights of persons belonging to national or ethnic, religious and linguistic minorities, in which the Commission, inter alia, decided to renew the mandate of the Working Group on Minorities so that it would hold one session of five working days annually,

Having considered the report of the Working Group on its fourth session (E/CN.4/Sub.2/1998/18) and in particular the conclusions and recommendations contained in paragraph 108 thereof,

Welcoming the extensive progress made by the Working Group at its fourth session,

Disturbed at the widespread occurrence of violent conflicts in many parts of the world where ethnic or religious hostility is engendered and exploited by one or more of the parties to the conflict,

Reiterating the need for States, minorities and majorities to search for peaceful and constructive solutions to problems affecting minorities,

Emphasizing the need for system-wide cooperation within the United Nations to facilitate peaceful solutions to situations involving minorities,

Recalling Sub-Commission resolution 1982/31 of 10 September 1982 on the study of the problem of discrimination against indigenous populations, in which the Sub-Commission requested the establishment of a fund for the purpose of allowing representatives of indigenous populations to attend the Working Group on Indigenous Populations,

Recalling Sub-Commission resolution 1997/5 of 21 August 1997 in which the Working Group on Minorities was called upon to consider how the Sub-Commission in its future work might usefully address the continuing legal, political and economic legacies of the African slave trade as experienced by Black communities throughout the Americas,

1. Endorses the conclusions and recommendations of the Working Group on Minorities on its fourth session as contained in its report (E/CN.4/Sub.2/1998/18);

2. Welcomes the recommendation of the Working Group to request its members to prepare working papers on thematic issues;
3. Also welcomes the participation in the Working Group of representatives of treaty bodies, of other human rights mechanisms, and of relevant special rapporteurs;
4. Appeals to all States, specialized agencies, non-governmental organizations and scholars to continue to participate actively in the work of the Working Group;
5. Requests the Secretary-General to invite States, specialized agencies, other United Nations organs and bodies, non-governmental organizations and scholars to provide comments to the Working Group on the Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
6. Requests the Secretary-General to invite the specialized agencies and United Nations bodies, including the World Bank and the International Monetary Fund to provide information to the Working Group on their activities and programmes in the field of minority protection;
7. Welcomes the seminar held prior to the fourth session of the Working Group on the role of the media in protecting minorities and urges the Working Group to give due consideration to the recommendations thereof at its fifth session;
8. Urges the Working Group to include in its agenda an item on issues relating to the legacies of the slave trade on the Black communities throughout the Americas;
9. Recommends that the Commission consider the establishment of a voluntary fund to enable minorities to participate in the Working Group;
10. Recommends that the Office of the United Nations High Commissioner for Human Rights be strengthened to enable it to provide adequate services to the Working Group and to undertake relevant studies, evaluation and action;
11. Recommends the following draft decision to the Commission on Human Rights for adoption:

"The Commission on Human Rights, taking note of Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1998/24 of 26 August 1998, decides to recommend to the

Economic and Social Council the establishment of a voluntary fund for the purpose of enabling representatives of minorities to participate in the work of the Working Group on Minorities of the Sub-Commission."

35th meeting
26 August 1998

[Adopted without a vote. See chap. X.]

1998/25. Draft international convention on the protection of all persons from enforced disappearance

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling General Assembly resolution 47/133 of 18 December 1992 by which the Assembly proclaimed the Declaration on the Protection of All Persons from Enforced Disappearance as a body of principles for all States and urged that all efforts be made so that the Declaration became generally known and implemented,

Recalling also General Assembly resolution 41/120 of 4 December 1986 in which the Assembly recognized the value of continuing efforts to identify specific areas where further international action was required to develop the existing legal framework in the field of human rights,

Recalling further Commission on Human Rights resolution 1997/26 in which the Commission, deeply concerned, in particular, by the intensification of enforced or involuntary disappearances in various regions of the world and by the growing number of reports concerning harassment, ill-treatment and intimidation of witnesses, of disappearances or relatives of persons who have disappeared, took note of the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1997/34), which at paragraph 31, welcomed the efforts of the Sub-Commission's sessional working group on the administration of justice to prepare a draft international convention on the prevention and punishment of enforced disappearances,

Considering that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of enforced disappearance is of the nature of a crime against humanity,

Recalling that at the forty-seventh session of the Sub-Commission the sessional working group on the administration of justice, had asked its

Chairman-Rapporteur, Mr. Louis Joinet, to submit a preliminary draft "international convention on the prevention and punishment of enforced disappearances" which formed the basis for discussion at the working group at its 1996 and 1997 sessions,

Expressing its appreciation, to the Chairman-Rapporteur for having submitted, in time for the Sub-Commission's consideration at its fiftieth session, a text entitled "Draft international convention on the protection of all persons from enforced disappearance" (E/CN.4/Sub.2/1998/19, annex) which was revised by the working group at the current session,

1. Decides to transmit the draft international convention on the protection of all persons from enforced disappearance to the Commission on Human Rights for its consideration, together with the comments of the Sub-Commission thereon as well as those of the sessional working group on the administration of justice (E/CN.4/Sub.2/1998/19, paras. 9-64);

2. Requests the Commission to invite Governments, intergovernmental organizations and non-governmental organizations to provide comments on the draft convention.

35th meeting
26 August 1998

[Adopted without a vote. See chap. XI.]

1998/26. Housing and property restitution in the context of the return of refugees and internally displaced persons

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Conscious that human rights violations and breaches of international humanitarian law are among the reasons why refugees, as defined in relevant international legal instruments, and internally displaced persons flee their homes and places of habitual residence,

Recognizing that the right of refugees and internally displaced persons to return freely to their homes and places of habitual residence in safety and security forms an indispensable element of national reconciliation and reconstruction and that the recognition of such rights should be included within peace agreements ending armed conflicts,

Recognizing also the right of all returnees to the free exercise of their right to freedom of movement and to choose one's residence, including

the right to be officially registered in their homes and places of habitual residence, their right to privacy and respect for the home, their right to reside peacefully in the security of their own home and their right to enjoy access to all necessary social and economic services, in an environment free of any form of discrimination,

Conscious of the widespread constraint imposed on refugees and internally displaced persons in the exercise of their right to return to their homes and places of habitual residence,

Also conscious that the right to freedom of movement and the right to adequate housing include the right of protection for returning refugees and internally displaced persons against being compelled to return to their homes and places of habitual residence and that the right to return to their homes and places of habitual residence must be exercised in a voluntary and dignified manner,

Aware that intensified international, regional and national measures are required to ensure the full realization of the right of refugees and internally displaced persons to return to their homes and places of habitual residence and are indispensable elements of reintegration, reconstruction and reconciliation,

1. Reaffirms the right of all refugees, as defined in relevant international legal instruments, and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish;

2. Reaffirms also the universal applicability of the right to adequate housing, the right to freedom of movement and the right to privacy and respect for the home, and the particular importance of these rights for returning refugees and internally displaced persons wishing to return to their homes and places of habitual residence;

3. Confirms that the adoption or application of laws by States which are designed to or result in the loss or removal of tenancy, use, ownership or other rights connected with housing or property, the active retraction of the right to reside within a particular place, or laws of abandonment employed against refugees or internally displaced persons pose serious impediments to the return and reintegration of refugees and internally displaced persons and to reconstruction and reconciliation;

4. Urges all States to ensure the free and fair exercise of the right to return to one's home and place of habitual residence by all refugees and internally displaced persons and to develop effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms designed to resolve outstanding housing and property problems;

5. Invites the United Nations High Commissioner for Human Rights, in consultation with the United Nations High Commissioner for Refugees, within her mandate, to facilitate the full implementation of the present resolution;

6. Invites the United Nations High Commissioner for Refugees, in consultation with the United Nations High Commissioner for Human Rights, to develop policy guidelines to promote and facilitate the right of all refugees and, if appropriate to her mandate, internally displaced persons, to return freely, safely and voluntarily to their homes and places of habitual residence;

7. Decides to consider the issue of return to place of residence and housing for refugees and internally displaced persons at its fifty-first session, under the agenda item entitled "Freedom of movement" to determine how most effectively to continue its consideration of these issues.

35th meeting

26 August 1998

[Adopted without a vote. See chap. XII.]

1998/27. Forced population transfer

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Reaffirming the right of everyone lawfully within the territory of a State to liberty of movement and freedom to choose his or her residence and the prohibition of arbitrary deprivation of the right to enter one's own country as set out in article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights,

Recognizing that practices of forcible exile, mass expulsion and deportation, forced population transfer, forcible population exchange, unlawful evacuation, eviction and forcible relocation, "ethnic cleansing" and

other forms of forcible displacement of populations within a country or across borders not only deprive the affected populations of their rights to freedom of movement but also threaten the peace and security of States,

Noting the need to further rationalize and harmonize the various international standards in this complex and evolving area,

Recalling its resolution 1997/29 of 28 August 1997 in which it decided to continue its consideration of population displacement and to examine the legal standards applicable to different types of forced displacement and any lacunae between those standards,

Recalling also that in its resolution 1997/29 it decided that an expert seminar should be convened, if necessary without financial implications, to assist in and to make practical recommendations for the further work of the Sub-Commission on the right to freedom of movement,

1. Welcomes Economic and Social Council decision 1998/292 in which the Council approved the recommendation of the Commission on Human Rights that the report of the Special Rapporteur on human rights and population transfer, Mr. Awn Shakat Al-Khasawneh, be published and widely disseminated, as recommended by the Sub-Commission in its resolution 1997/29;

2. Decides to convene an expert seminar, in close cooperation with relevant intergovernmental and non-governmental organizations, if necessary without financial implications, to assist in and to make practical recommendations for the further work of the Sub-Commission on the right to freedom of movement, in particular with respect to a study on the legal standards applicable to different types of forced displacement and any lacunae between those standards, for submission to the Sub-Commission at its fifty-second session.

35th meeting

26 August 1998

[Adopted without a vote. See chap. XII.]

1998/28. Promotion of dialogue on human rights issues

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Reaffirming its commitment to promoting international cooperation, as set forth in the Charter of the United Nations, in particular in Article 1,

paragraph 3, as well as in relevant provisions of the Vienna Declaration and Programme of Action (A/CONF.157/23) adopted by the World Conference on Human Rights on 25 June 1993,

Noting General Assembly resolution 52/134 of 12 December 1997, entitled "Enhancement of international cooperation in the field of human rights",

Noting Commission on Human Rights resolution 1998/81 of 24 April 1998, entitled "Enhancement of international cooperation in the field of human rights",

Reaffirming its resolution 1997/38 of 28 August 1997,

Bearing in mind that the international community shall strive by teaching and education to promote respect for human rights and fundamental freedoms,

Emphasizing the importance of ensuring the universality, indivisibility, objectivity and non-selectivity of the consideration of human rights issues,

1. Reiterates its commitment to international cooperation in the field of human rights, and invites governmental and non-governmental observers of the Sub-Commission to carry out constructive dialogue and consultations on human rights issues, and to facilitate the formulation and adoption of resolutions and decisions;

2. Endorses the cooperative approach in search of common understanding and reasonable accommodation of divergent views, particularly in the discussion on the effectiveness of the Sub-Commission;

3. Decides to continue its consideration of this question at its fifty-first session.

35th meeting

26 August 1998

[Adopted without a vote. See chap. XIV.]

1998/29. Human rights and terrorism

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other relevant international instruments on human rights and humanitarian law,

Recalling that the Universal Declaration of Human Rights, which marks its fiftieth anniversary this year, states that every individual and every organ of society shall strive by teaching and education to promote respect for all rights and freedoms enshrined in the Declaration,

Reiterating that all States have an obligation to promote and protect human rights and fundamental freedoms, and that every individual should strive to secure their universal and effective recognition and observance,

Taking into account that acts of terrorism in all their forms and manifestations, aimed at the destruction of human rights, have continued despite national and international efforts,

Reiterating the importance of a study on human rights and terrorism,

Recalling its resolution 1997/39 of 28 August 1997 on human rights and terrorism,

Noting Commission on Human Rights resolution 1998/47 and decision 1998/107 of 17 April 1998 in which the Commission approved the appointment of Ms. Kalliopi K. Koufa as Special Rapporteur to conduct a comprehensive study on terrorism and human rights,

Having heard the oral statement by the Special Rapporteur concerning the basis and the orientation of the study,

Taking into account the working paper submitted by the Special Rapporteur at its forty-ninth session (E/CN.4/Sub.2/1997/28),

1. Requests the Special Rapporteur to elaborate a preliminary report based on her working paper and to submit it at its fifty-first session, a progress report at its fifty-second session and a final report at its fifty-third session;

2. Requests the Secretary-General to provide the Special Rapporteur with all the assistance necessary to enable her to accomplish her task.

35th meeting

26 August 1998

[Adopted without a vote. See chap. XIV.]

1998/30. Injurious effects of anti-personnel landmines

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Aware that anti-personnel landmines inflict harm on human beings and in the process cause grave violations of human rights, in particular the right to life,

Recalling its resolutions 1995/24 of 24 August 1995, 1996/15 of 23 August 1996 and 1997/33 of 23 August 1998 in which it declared itself in favour of a total ban of the production, marketing and use of these weapons, Stressing the importance of assisting the victims of such weapons as well as ensuring that those which have been deployed are completely destroyed, Stressing also the importance for the Sub-Commission to follow up this issue in order to guarantee the full respect and implementation of all relevant legal instruments,

Taking note with satisfaction of the establishment of zones free of anti-personnel landmines in the Mercosur countries (Argentina, Brazil, Paraguay, Uruguay) and in Bolivia and Chile,

Welcoming the award of the 1997 Nobel Peace Prize to the International Campaign to Ban Land Mines,

Welcoming also the adoption of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction in December 1997 and its signature by almost one hundred and thirty countries, and recalling that the Convention is to enter into force after forty countries have ratified it,

Noting with satisfaction that thirty-two countries have already ratified the Convention,

Regretting the new deployment of landmines in zones of armed conflict despite all warnings against their deployment and knowledge of the horror they cause to their innocent victims, especially children and other vulnerable groups,

Bearing in mind that landmines cause death, maiming and psychological damage to their victims, are a deterrent to development and harm the environment,

Underscoring the continuous threat that old and abandoned landmines pose to human lives as well as their detrimental effects for development efforts,

Stressing the urgency for mine clearance in the affected zones in order that civilians in such zones can fully enjoy their human rights,

Regretting the lack of sufficient financial resources to increase mine clearance and medical assistance for victims of anti-personnel landmines,

1. Reaffirms its support for a total ban on the production, stockpiling, transfer and use of landmines, as well as the destruction of the existing mines, as a means to protect basic human rights and in particular the right to life;

2. Urges States that have not yet done so to sign and ratify the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects and all the Protocols thereto, including Protocol II on Prohibitions and Restrictions on the Use of Mines, Booby-Traps and Other Devices as Amended on 3 May 1996;

3. Strongly urges all States that have not yet done so to sign and ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction adopted in Ottawa in December 1997;

4. Urges all States to modify their legislation where necessary in accordance with the wording of the Ottawa Convention, in full respect of its articles and spirit, including the clause prohibiting any reservations to the Convention;

5. Urges all countries responsible for the laying of anti-personnel landmines in foreign territories to assume full responsibility for the necessary mine-clearance operations and to cooperate with the host countries for this purpose in every possible way, in particular developing countries;

6. Underlines the importance for non-State actors also to renounce the use of anti-personnel landmines;

7. Encourages Member States to continue the process of establishing regional and subregional zones free of anti-personnel landmines;

8. Reiterates its request to Governments and the international community to pursue an overall policy of prevention, rehabilitation and reintegration of the victims of landmines as well as to multiply their efforts in mine-clearance programmes in the affected zones and their aid to victims of anti-personnel landmines;

9. Again encourages Governments, organizations and individuals that can do so to respond favourably to the request for voluntary contributions to the United Nations mine-clearance programme, or to increase existing contributions;

10. Requests the Secretary-General to reiterate to all Governments, in particular those of States which in the past have laid anti-personnel landmines in or sold them to other States, the Sub-Commission's appeal for contributions to the mine-clearance programme and the Voluntary Trust Fund for Assistance in Mine Clearance established in 1994;

11. Decides to consider this question at its fifty-first session under the same agenda item and to establish the necessary measures to ensure the follow-up and implementation of international humanitarian law and treaties in order that everyone may fully enjoy all their human rights.

35th meeting
26 August 1998

[Adopted without a vote. See chap. XIV.]
