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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fiftieth session

SUMMARY RECORD OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 20 August 1998, at 10 a.m.

Chairman: Mr. GUISSÉ

later: Mr. ALFONSO MARTÍNEZ

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The meeting was called to order at 10 a.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Draft resolutions relating to agenda item 2

Draft resolution E/CN.4/Sub.2/1998/L.13 (Violations of the rights of human rights defenders in all countries)

1. Mr. BENGEOA said that the text incorporating the amendments to draft resolution E/CN.4/Sub.2/1998/L.13, which had been distributed to members of the Sub-Commission, was the result of a joint effort. Judging from consultations with his colleagues, it seemed that the revised text would have to be put to the vote. The list of names in paragraph 4 was extremely important since it constituted the thrust of the draft resolution. Since the persons listed were all very well known in the human rights community it would have been logical to believe that a consensus on the matter was possible. The list had been carefully checked and he apologized if it gave the appearance of being rather selective; that had not been the intention of the sponsors.

2. Mr. MAXIM said that, since Mr. Bengoa suggested that the list of names in paragraph 4 might still contain errors, consideration of the matter should be deferred, as proposed by Mr. Joinet, to the Sub-Commission's fifty-first session; that would leave time to prepare a definitive list.

3. Mr. KARTASHKIN said he had been surprised to find that Kosovo had been referred to in paragraphs 2 and 4 since it had been stated the previous day that, unlike all the other places referred to in those paragraphs which were towns or countries, Kosovo was not a country.

4. Mr. SIK YUEN hoped that flexibility would be shown in applying the rule under which an expert was unable to submit an amendment to a text he had sponsored. Although he supported efforts to curb violations of the rights of human rights defenders, he was unable to subscribe to paragraph 4 and would withdraw his name from the list of sponsors if it was retained in its present form.

5. Mr. JOINET said he had never proposed that the adoption of the draft resolution should be deferred to the fifty-first session but had simply requested Mr. Bengoa to consider ways of improving the way in which the list was drawn up before the next session. The draft resolution would be pointless without paragraphs 2 and 4. It was inconceivable that the reaction of States should be a consideration in the matter of protecting the rights of many persons who had never enjoyed such protection. On the question of Kosovo, he pointed out that, although Timor and Tibet were not States, it was current United Nations practice to refer to them in connection with the examination of specific situations.

6. Mr. KARTASHKIN said that he would be obliged to withdraw as a sponsor if the words "Federal Republic of Yugoslavia" were not included in paragraphs 2 and 4 following, or instead of, "Kosovo".

7. Mr. FAN was of the view that the draft resolution had not been sufficiently thought through. In the first place, the term "human rights defenders" was not official. The draft declaration to be submitted to the General Assembly at its next session did not concern the rights of human rights defenders but "the right and responsibility of the individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms". Nor did he think that the names of persons and countries should be listed. Although certain persons were genuinely working to defend human rights, others were using the cause of human rights to pursue different goals. The question was complex and he supported Mr. Maxim's proposal to defer consideration of the draft resolution to the Sub-Commission's fifty-first session, since discussions in the General Assembly might well clarify the "human rights defenders" concept.

8. Mrs. WARZAZI said there was no doubt in her mind that the persons referred to were human rights defenders but, as a compromise solution, proposed that paragraph 4 should be amended by placing a full stop after the words "the world" in the third line and adding, before paragraph 6, a new paragraph reading as follows: "Requests the Secretary-General to inquire into the status, situation and security of the persons whose names appear on the list annexed to this resolution and to inform the Sub-Commission accordingly at its fifty-first session".

9. Mr. JOINET noted that the request should be addressed to the High Commissioner for Human Rights rather than to the Secretary-General.

10. Mr. ALFONSO MARTÍNEZ pointed out that the problem would not be solved by annexing the list of persons in question to the draft resolution. Since it was important to avoid votes that divided the Sub-Commission, he supported Mr. Maxim's judicious suggestion to defer consideration of the draft resolution. If his suggestion was not adopted he would request a separate vote on paragraphs 2, 4 and 5.

11. Ms. HAMPSON was not in favour of deferring consideration of the draft nor of deleting the names in paragraphs 2, 4 and 5. She would, however, be prepared to go along with the text if Mr. Bengoa took Mrs. Warzazi's suggestion into account. Moreover, Mr. Fan's concern could be met by referring to the draft declaration in question by replacing the words "human rights defenders" in paragraph 4 by "those concerned by the draft declaration".

12. Mr. BENGEOA said that Mrs. Warzazi's proposal was quite acceptable. Moreover, he agreed that the "Federal Republic of Yugoslavia" should be mentioned after "Kosovo".

13. Mrs. WARZAZI read out paragraph 4 and the new paragraph 6 with the various amendments that had been proposed.

14. Mr. ALFONSO MARTÍNEZ repeated his request for a separate vote on paragraphs 2, 5 and 6. He would also like the title of the draft resolution to be amended in accordance with Ms. Hampson's suggestion in order to meet Mr. Fan's concerns.

15. Mr. BENGEOA pointed out that, in general, the titles of draft resolutions were given in shortened form. However, he would not object to the amendment of the title in order to avoid a vote.

16. Mr. FAN and Mr. ALFONSO MARTÍNEZ requested a separate vote on the title as well as on paragraphs 2, 5 and 6.

17. The CHAIRMAN invited observers for States wishing to make statements to do so before the draft resolution was put to the vote.

18. Mr. Alfonso Martínez took the Chair.

19. Mr. MERIC (Observer for Turkey) said that his Government regarded human rights defenders, not only in Turkey but throughout the world, as an important pillar of the international system for the protection and promotion of human rights. For that reason his delegation had participated actively in the preparation of the draft declaration on human rights defenders and was in favour of a resolution on violations of their rights.

20. However, his delegation would prefer the draft resolution to evaluate each and every case on its own merits rather than adopt a general approach to the question. For example, he explained that the vicious assassination attempt against Mr. Birdal, who was referred to in paragraph 4 of the draft resolution, had been condemned in very strong terms by the President of the Republic, the Prime Minister, ministers and all political party leaders, that the culprits had been arrested and brought to justice, and that Mr. Birdal himself had expressed his appreciation for the swift action taken by the Turkish police. He was at present recuperating in enhanced security conditions. For those reasons, the Turkish Government would not like Mr. Birdal's name referred to in the draft resolution.

21. Ms. POSADA (Observer for Colombia) said that Colombia's judiciary and police were doing everything possible to identify and arrest the person responsible for the assassination of the lawyer Eduardo Umaña Mendoza, and that the Government intended to offer a reward of \$50,000 to any person providing information likely to throw light on the matter.

22. Moreover, at a meeting held on 23 April 1998, the Government had promised NGO human rights defenders that the Office of the Procurator-General of the Nation would correct the information provided on human rights defenders in the secret files of the Administrative Security Department (DAS) of the national army and judicial police, since the NGOs considered that human rights defenders were listed as auxiliaries or members of subversive armed groups.

23. Moreover, urgent measures had been taken to protect the lives of human rights militants, who would be escorted by bodyguards they themselves selected; they would be trained and paid by the State security services, however. Representatives of the Ministry of the Interior and NGOs had already met to draw up the list of human rights militants needing immediate preventive protection.

24. Lastly, sanctions would be taken against officials who failed to comply with the presidential directive ordering them to abstain from making insinuations about NGOs.

25. His Government was firmly determined to do whatever was necessary to protect human rights defenders, and she would inform the Commission of the progress made in ongoing investigations.

26. Mr. Guissé resumed the Chair.

27. Mr. MORJANE (Observer for Tunisia) endorsed the reservations expressed by certain experts concerning the term "human rights defenders". It was all a matter of deciding to whom that term should be applied.

28. There was a danger that, by referring to certain names and consequently pinpointing certain States and omitting others, the Sub-Commission might be accused of lacking objectivity. It would therefore be better, in order to avoid any danger of selectivity, for the Sub-Commission to appeal to all States and all members of the international community to implement and respect the declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights.

29. Ms. BAUTISTA (Observer for the Philippines), noting that paragraph 4 of the draft resolution contained a reference to a "Judicial Centre of Public Interest of the Philippines", said that there was no group of that name in the Philippines. Her delegation was of the view that groups whose existence was not recognized or whose names were misleading should not be referred to in a Sub-Commission draft resolution.

30. Mr. AYE (Myanmar) was surprised that one of the operative paragraphs of the draft resolution contained a reference to Myanmar, which had already been the subject of a resolution of the Commission on Human Rights; it was his delegation's understanding that the Sub-Commission and Commission had decided to ensure that the work of one did not duplicate that of the other.

31. His delegation also wished to inform the Sub-Commission of recent developments in the situation in Myanmar. Two days previously, the responsible authorities of the Government of Myanmar had had a meeting with the National League for Democracy. The meeting had been fruitful and the Government hoped it would be the first in a series of confidence-building talks between the Government and the League.

32. In conclusion, his delegation invited the Sub-Commission to demonstrate its support for the positive turn of events in Myanmar by deleting operative paragraph 5.

33. Ms. BU FIGUEROA (Observer for Honduras) said it was surprising that the countries referred to in paragraph 4 were all developing countries. Honduras, for its part, had achieved considerable progress in human rights matters during the past few years. An investigation was carried out whenever a human

rights defender was harassed and the National Human Rights Commission had been established to ensure respect for the rights and freedoms embodied in the Constitution as well as in the international instruments ratified by Honduras.

34. It would appear premature to adopt the draft resolution in its present form and might be preferable to pursue consultations with the countries mentioned in paragraph 4.

35. Mr. HASSAN (Observer for Nigeria) said that, to his knowledge, Mr. Clément Nwankwo, Director of the Constitutional Rights Project of Nigeria, who was referred to in paragraph 4, had never been in trouble with the Government. On the other hand, he had certainly had a brush with the Swiss Government which had expelled him the previous year to Nigeria.

36. The CHAIRMAN recalled that Mr. Alfonso Martínez and Mr. Fan Guoxiang had requested a separate vote on the title of the draft resolution as well as on paragraphs 2, 5 and 6. A vote had also been requested on the draft resolution as a whole.

37. A vote was taken by secret ballot.

Title of the draft resolution

38. At the invitation of the Chairman, Mr. Boutkevitch and Mr. Mehedi acted as tellers.

39. The title of the draft resolution was adopted by 20 votes to 4.

Paragraph 2

40. At the invitation of the Chairman, Ms. Hampson and Mr. Khalil acted as tellers.

41. Paragraph 2, as amended, was adopted by 17 votes to 6 with 1 abstention.

Paragraph 5

42. At the invitation of the Chairman, Ms. Koufa and Mr. Genot acted as tellers.

43. Paragraph 5 was adopted by 19 votes to 5.

Paragraph 6

44. At the invitation of the Chairman, Mr. Sorabjee and Mr. Sik Yuen acted as tellers.

45. Paragraph 6, as amended, was adopted by 22 votes to 2.

Draft resolution as a whole

46. At the invitation of the Chairman, Mr. Gomez-Robledo Veduzco and Mr. Oloka-Onyango acted as tellers.

47. The draft resolution as a whole (E/CN.4/Sub.2/1998/L.13), as amended, was adopted by 21 votes to 3.

48. Mr. WEISSBRODT, speaking on a point of order, said that in order to avoid interminable discussions in future, the Sub-Commission should make sure that extensive consultations took place on any draft resolution before it was tabled.

Draft resolution E/CN.4/Sub.2/1998/L.18 (Developments in the situation in Mexico)

49. Mr. BENGUA, noting that the draft resolution dealt with an extremely delicate question on which extensive consultations had taken place, asked that it be put to the vote.

50. Mr. ALFONSO MARTÍNEZ questioned the preventive approach adopted by the Sub-Commission. In his view, the Sub-Commission was not competent to decide on proactive action in a human rights situation. It should take action when specific and systematic events were noted, namely, when it had points of reference on which it could base its action and not vague criteria as in the present case. A preventive approach would lead the Sub-Commission to adopt questionable and therefore dangerous decisions. He would vote accordingly.

51. Mr. JOINET explained that the draft resolution had not been discussed with the Mexican Government.

52. Mr. DE ICAZA (Observer for Mexico) pointed out that no systematic violations of human rights took place in Mexico and that the violations committed were not associated with any State policy. On the contrary, the Mexican Government had made, and was still making, a major effort to introduce a culture that was respectful of human rights. For example, steps had been taken to improve legal instruments. At the judicial level, the Government had prosecuted perpetrators of human rights violations, even if they were State agents, and investigations had been carried out rapidly where complaints were based on specific evidence. At the political level, the Government had displayed a desire for conciliation by inviting the National Zapatista Liberation Army to engage in dialogue and negotiations and by seeking to establish a new relationship with the indigenous peoples present in its territory. At the economic level, efforts had been made to improve the situation of the peoples living in Chiapas. At the legislative level, constitutional reforms would be carried out to ensure the application of all those measures. Lastly, at the international level, his Government was cooperating fully with international bodies and was discharging its human rights obligations. Furthermore, it was considering the possibility of ratifying the international instruments to which Mexico was not yet a party.

53. For all those reasons, his Government failed to see why the Sub-Commission had to adopt the draft resolution.

54. A vote was taken by secret ballot.

55. At the invitation of the Chairman, Mr. Kartashkin and Mr. Yokota acted as tellers.

56. Draft resolution E/CN.4/Sub.2/1998/L.18 was adopted by 12 votes to 6 with 6 abstentions.

Draft resolutions and decisions relating to agenda item 3
(E/CN.4/Sub.2/1998/L.4, L.6, L.24 and L.25)

Draft resolution E/CN.4/Sub.2/1998/L.4 (The concept and practice of affirmative action)

57. Mr. WEISSBRODT hoped that, since a broad consensus had been achieved in the Sub-Commission, the draft resolution would be adopted without being put to the vote.

58. Draft resolution E/CN.4/Sub.2/1998/L.4 was adopted without a vote.

Draft decision E/CN.4/Sub.2/1998/L.6 (The rights of non-citizens)

59. Mr. WEISSBRODT said that the draft decision was sponsored by all members who had participated in the discussion on the rights of non-citizens.

60. Mr. ALFONSO MARTÍNEZ said that, in his view, Mr. Weissbrodt should, in preparing the document referred to in the draft decision, take into account the work being done by other United Nations bodies on migrant workers, for it was probably that specific category of non-citizens that raised the most problems. A good part of the work involved would consist in making a compilation of all the measures taken to protect the rights of non-citizens so that the study would provide a true picture of all aspects of the problem. In his opinion, the draft could be adopted without being put to the vote.

61. Mr. JOINET, referring to his previous statement on agenda item 3, requested Mr. Weissbrodt to take into account in his working paper the fact that nationality was an essential element of legal personality.

62. Draft decision E/CN.4/Sub.2/1998/L.6 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1998/L.24 (World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance)

63. Mr. WEISSBRODT said that the draft resolution had been considerably revised as a result of the many consultations that had taken place and added the revised text had been distributed to experts. One of the main changes consisted in the deletion of paragraph 10. In paragraph 7 the Sub-Commission decided to request one of its members to prepare a paper containing thematic suggestions for the World Conference to be examined at the Sub-Commission's fifty-first session; Mr. Pinheiro had kindly agreed to undertake that task. He hoped that the draft resolution could be adopted without being put to the vote.

64. The CHAIRMAN announced that Mr. Joinet wished to become a sponsor.

65. Draft resolution E/CN.4/Sub.2/1998/L.24, as revised, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1998/L.25 (World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance)

66. Mr. ALFONSO MARTÍNEZ proposed that draft resolution L.25 should be replaced by a text which reflected its main idea, namely, a draft decision entitled "Globalization in the context of the increase in incidents of racism, racial discrimination and xenophobia" in which Mr. Oloka-Onyango was requested to prepare, without financial implications, a working paper on the topic as a contribution to the preparation of the World Conference against Racism. He read out the draft decision, the text of which had been distributed the previous day, and expressed the hope that it would be adopted without a vote.

67. The draft decision submitted by Mr. Alfonso Martínez to replace draft resolution E/CN.4/Sub.2/1998/L.25 was adopted without a vote.

Draft resolutions relating to agenda item 4

Draft resolution E/CN.4/Sub.2/1998/L.2 (Promotion of the realization of the right to drinking water supply and sanitation)

68. Mrs. WARZAZI expressed the hope that, as the draft resolution was obviously uncontroversial, it could be adopted without a vote.

69. Mr. ALFONSO MARTÍNEZ expressed a reservation concerning the wording of paragraph 7 where it was stated that the Commission on Human Rights approved the decision of the Sub-Commission to appoint Mr. Guissé as Special Rapporteur to conduct a detailed study on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation. In his opinion, it was for the Economic and Social Council to approve the recommendation of the Commission on Human Rights concerning that appointment. The secretariat should therefore change the wording of the paragraph to reflect its normal procedure.

70. Mr. JOINET, referring to the Sub-Commission's methods of work, recalled that the maximum number of reports it was authorized to undertake during any given period was 13. He wondered whether that number was likely to be exceeded by the study entrusted to Mr. Guissé.

71. Mr. ALFONSO MARTÍNEZ, supported by Mr. WEISSBRODT, said that the Sub-Commission was far from the figure in question.

72. The CHAIRMAN said that the secretariat would make the corrections suggested by Mr. Alfonso Martínez.

73. Draft resolution E/CN.4/Sub.2/1998/L.2 was adopted.

Draft resolution E/CN.4/Sub.2/1998/L.3 (The relationship between the enjoyment of economic, social and cultural rights and the right to development, and the working methods and activities of transnational corporations)

74. Mrs. WARZAZI noted that a preliminary study of the question had been undertaken by Mr. Guissé and added that if the Sub-Commission adopted the draft resolution it would establish a sessional working group to examine the effects of the working methods and activities of transnational corporations on the enjoyment of economic, social and cultural rights and the right to development. She hoped that the text would be adopted by consensus.

75. Ms. HAMPSON drew attention to the amendment she had submitted in document E/CN.4/Sub.2/1998/L.20 which consisted in adding a new subparagraph (f) to the end of paragraph 4 of the draft resolution in order to extend the mandate of the working group in question. According to her amendment, the working group would also be responsible for considering the scope of the obligation of States to regulate the activities of transnational corporations, where their activities had or were likely to have a significant impact on the enjoyment of human rights, both civil and political rights and economic, social and cultural rights, of all persons within their jurisdiction. The reason for that amendment was, as Mr. Khalifa and Mr. Eide had pointed out, that States had a tendency to evade their responsibilities in that field. That tendency was revealed by the privatization of prisons, for example.

76. Mr. JOINET, raising a problem of a practical nature, said it was difficult to see how two sessional working groups could meet at the same time should the Sub-Commission establish another sessional working group pursuant to the draft resolution. As Chairman-Rapporteur of the sessional Working Group on the Administration of Justice, he was personally familiar with the material difficulties encountered when even one working group met during the Sub-Commission's session.

77. As for the substance of the matter, it would have been well had the proposed working group also been entrusted with the task of collecting information on violations of the economic and social rights of population groups as well as their leaders, and especially trade union leaders.

78. Mr. SORABJEE wholeheartedly supported the amendment submitted by Ms. Hampson and said he wished to sponsor the draft resolution.

79. Mr. ALFONSO MARTÍNEZ also supported the most useful amendment submitted by Ms. Hampson. As for Mr. Joinet's observation, he pointed out that the Sub-Commission had already had two sessional working groups in the past.

80. Mr. WEISSBRODT proposed that, in view of the consensus reached on the amendment proposed by Ms. Hampson, it should be adopted.

81. Personally he found Mr. Joinet's observations concerning the practical problems raised by the establishment of another sessional working group to be most pertinent. He recalled that the Sub-Commission had not only two but three sessional working groups, if account was taken of the establishment

of the social forum to which Mr. Bengoa would refer shortly. The Sub-Commission's timetable for its next session should therefore be examined very carefully.

82. Mr. YOKOTA wholeheartedly supported the amendment proposed by Ms. Hampson, but requested that the right to development mentioned in various paragraphs of document L.3 should also be referred to in her amendment.

83. Mr. JOINET and Mr. ALFONSO MARTÍNEZ said that they too wished to sponsor draft resolution L.3, together with the amendment proposed by Ms. Hampson.

84. Mr. BENGEOA supported draft resolution L.3 but said that it should also include international financial institutions, for it was they that had the greatest impact at the international level. He failed to see the purpose of paragraph 4 (d); would the recommendations and proposals referred to be addressed to the transnational corporations?

85. Mr. ALFONSO MARTÍNEZ, replying to Mr. Bengoa, explained that the working group itself would decide how it would proceed and make recommendations which, in its view, were appropriate as its work progressed.

86. The CHAIRMAN suggested that the Sub-Commission should adopt draft resolution L.3 as well as the amendment proposed Ms. Hampson in document L.20, together with the change proposed by Mr. Yokota.

87. Draft resolution E/CN.4/Sub.2/1998/L.3 was adopted together with the amendments proposed.

Draft decision E/CN.4/Sub.2/1998/L.8 (Transmission of Sub-Commission resolution 1996/22 to the Secretary-General)

88. Draft decision E/CN.4/Sub.2/1998/L.8 was adopted.

Draft decision E/CN.4/Sub.2/1998/L.16 (The right to food)

89. Mr. ALFONSO MARTÍNEZ and Mr. KHALIL said they wished to sponsor the draft decision.

Draft decision E/CN.4/Sub.2/1998/L.16 was adopted unanimously.

90. Draft resolution E/CN.4/Sub.2/1998/L.17 (Forced evictions)

91. Mr. ALFONSO MARTÍNEZ said he was fully in favour of the draft resolution and noted that paragraph 3 was particularly timely in view of certain situations where indigenous groups were forced to leave their land. That paragraph provided a legal basis for the negotiations which were taking place at that very moment between such groups and the authorities of the country in which they lived.

92. However, it would have been better if paragraph 4, which recommended that all Governments should provide immediate restitution and compensation, had been worded more flexibly. In some cases, restitution of land to the persons or groups concerned was not feasible.

93. Draft decision E/CN.4/Sub.2/1998/L.17 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1998/L.19 (Situation of migrant workers and members of their families)

94. Mrs. WARZAZI said that the situation of migrant workers and members of their families was a subject very dear to her heart, and noted that it was thanks to the Sub-Commission that the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families had been drawn up. She informed the Sub-Commission that Mr. Joinet and Mr. Khalil had expressed a desire to sponsor the text.

95. Draft resolution E/CN.4/Sub.2/1998/L.19 was adopted unanimously.

The meeting rose at 1 p.m.