



## Economic and Social Council

Distr.: Limited  
22 March 2002  
English  
Original: French

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### Commission on Crime Prevention and Criminal Justice

Eleventh session

Vienna, 16-25 April 2002

Item 5 of the provisional agenda\*\*

#### **International cooperation in combating transnational crime**

#### **Belgium: draft resolution\*\*\***

### **Promoting effective measures to deal with problems relating to missing children, child prostitution, the treatment of perpetrators of crimes of a sexual nature and the dissemination of information about such crimes**

*The Commission on Crime Prevention and Criminal Justice,*

*Recalling* the Convention on the Rights of the Child,<sup>1</sup> the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and pornography,<sup>2</sup> the United Nations Convention against Transnational Organized Crime<sup>3</sup> and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,<sup>4</sup>

*Recalling* the Universal Declaration of Human Rights,<sup>5</sup>

*Recalling* General Assembly resolution 50/145, of 21 December 1995, on the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in which the Assembly endorsed the resolutions adopted by the Ninth

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\* Reissued for technical reasons.

\*\* E/CN.15/2002/1.

\*\*\* Notes on the issues covered in the present draft resolution are attached hereto.

<sup>1</sup> General Assembly resolution 44/25, annex.

<sup>2</sup> General Assembly resolution 54/263, annex II.

<sup>3</sup> General Assembly resolution 55/25, annex I.

<sup>4</sup> General Assembly resolution 55/25.

<sup>5</sup> General Assembly resolution 217 A (III).



Congress, including resolution 7 on children as victims and perpetrators of crime and the United Nations criminal justice programme,<sup>6</sup>

*Recalling* the first World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the declaration and programme of action adopted by the World Congress to promote the protection of the rights of the child and end the commercial sexual exploitation of children, in particular by applying the Convention on the Rights of the Child and other relevant instruments,

*Recalling* the second World Congress against Commercial Sexual Exploitation of Children, held in Yokohama, Japan, from 17 to 20 December 2001, at which the promotion of the interests and the rights of the child and the protection of children from all forms of sexual exploitation and abuse were reaffirmed and emphasized,

*Recalling* International Labour Organisation Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, of 17 June 1999, which prohibits forced or obligatory labour of all people under the age of eighteen,

## I

### Action to promote the recovery of missing children

*Convinced* that civil society can play a role in the fight against the disappearance and the sexual exploitation of children,

*Convinced* that in every country, a central body or a structured network of associations can be a useful tool for finding missing or sexually exploited children, as well as for preventing and countering those problems,

1. *Requests* Member States to encourage cooperation between the competent authorities and the organizations of civil society involved in tracing missing or sexually exploited children;

2. *Emphasizes* that such cooperation does not relieve the competent authorities of their responsibility for the conduct of investigations and proceedings;

3. *Requests* Member States to examine the possibility, taking into account the internal resources available, of providing a hotline for the use of a central body or network dealing with missing children, or encouraging arrangements whereby such bodies could make a hotline available, twenty-four hours a day;

4. *Requests* Member States to establish appropriate regulations, in accordance with their legislation pertaining to investigations and proceedings, to facilitate the mutual exchange, between the central body or network and the competent authorities, of relevant information concerning the tracing of missing or sexually exploited children.

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<sup>6</sup> See *Report of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cairo, 29 April-8 May 1995*, chap. I (A/CONF.169/16).

## II

### Action against child prostitution

*Recalling* the Convention on the Rights of the Child, which, in article 34, paragraph (a), called for the prevention of the inducement or coercion of a child to engage in any unlawful sexual activity,

*Noting* that the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and pornography,<sup>7</sup> in article 3, paragraph (b), calls upon States parties to ensure that the act of “offering, obtaining, procuring or providing a child for prostitution” is fully covered under their criminal or penal law,

*Considering* that, irrespective of the age of sexual consent, the experience of prostitution by a child under the age of eighteen is undeniably a traumatic event,

*Reaffirming* the need to make customers responsible for their actions, which violate the minimum rights of the child and encourage the supply of prostitutes to meet the demand,

*Requests* Member States to take immediate steps to provide for the effective punishment, under their criminal or penal law, of customers of a child under the age of eighteen who prostitutes himself or herself.

## III

### Setting time limits for penal proceedings in cases of sexual exploitation

*Emphasizing* that sexual exploitation provokes traumas among children who are the victims of exploitation, that such actions may affect them throughout their life,

*Emphasizing* that the perpetrators are often to be found among the acquaintances or friends of the family of the victim, or even within the family itself,

*Considering* that the victims of sexual exploitation generally need time to reach the level of maturity required to perceive the abusive nature of the events that they have experienced, to express their opinion about those events and to dare to denounce them,

*Requests* Member States to make every effort to ensure that the time limit for bringing criminal proceedings in cases of sexual exploitation be set during the period after the victim has reached eighteen years of age.

## IV

### Treating perpetrators of crimes of a sexual nature

*Recognizing* within the framework of the protection of human rights that the physical castration of sexual delinquents is not only cruel and barbaric, but also an outdated method of dealing with offenders,

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<sup>7</sup> Resolution 54/263, annex II.

*Noting* that the possible consent of the perpetrator to a surgical operation is not to be admitted in such cases, in view of the context in which it may be given,

*Emphasizing* that the effects of physical castration cannot be cancelled by the use of medicinal substances,

*Recalling* that the availability of medication that inhibits the sexual drive makes it possible to obtain the same effects without damaging human dignity,

1. *Urges* Member States to impose a complete ban on the practice of physical castration, except when such a procedure is considered appropriate on medical or psychological grounds exclusively related to the well-being of the person involved;

2. *Calls on* Member States to develop a rigorous framework for so-called medicinal therapies;

3. *Emphasizes* that a therapy inhibiting the sexual drive shall only be prescribed by a doctor and following serious evaluation;

4. *Recommends* that such medicinal therapies be used only in association with other methods of treatment and care of the delinquent.

## V

### **Providing information about sexual delinquents to the public**

*Recalling* that the presumption of innocence is a basic principle within the framework for the protection of human rights,

*Emphasizing* that the aim of the present resolution is not to encourage or prohibit the notification of information to the public, but to ensure that, should such a process of notification be undertaken, all necessary safeguards would be applied,

*Considering* the need to resort to the principles of proportionality and subsidiarity, in such a way that notification would be envisaged only if no other method could reasonably produce the same results,

*Confirming* that only certain categories of sexual delinquents may possibly be subject to such a notification measure, on the condition that:

(a) They are sexual delinquents who have the highest risk of committing the same offence again;

(b) The evaluation of risk is based on the prior development of scientific tools of proven reliability,

*Emphasizing* that those who are likely to have access to such information must have a high level of concern, maturity and experience,

*Also emphasizing* that only qualified personnel who can provide guarantees of their complete independence may be allowed to perform such a delicate task,

*Deeply concerned* about the possible consequences of such notifications, should they prove to be inadequate,

1. *Requests* Member States to ensure that the victims of sexual abuse cannot be identified in any way;
2. *Invites* Member States, before deciding whether or not notification is required, to consider the negative impact on the members of the delinquent's family as a result of the provision of such information;
3. *Urges* Member States to examine, in cases involving the notification of data relating to minors who have committed sexual offences, the justification of using the notification procedure, in order to prevent the harmful effects of such a measure on the social development of those minors;
4. *Calls upon* Member States, before proceeding with notification, to study the feasibility, relevance, impact and cost and benefits of such a measure.

## **Notes on the issues covered in the draft resolution submitted by Belgium**

1. During the second World Congress against Commercial Sexual Exploitation of Children, held in Yokohama, Japan, from 17 to 20 December 2001, it was stated that a great deal still needed to be done to protect children throughout the world against commercial sexual abuse. Despite the fact that much has been accomplished since the first World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, the number of children that have fallen victim to that form of crime seems to be increasing, probably as a result of the Internet and globalization, including the growth of the pornography industry and sex tourism worldwide. The United Nations Children's Fund estimates that every year about 1 million children (mainly girls) are victims of sexual exploitation. Actual figures are hard to find, because such a crime remains largely concealed. Studies and victimization surveys have been carried out, but determining the frequency of sexual incidents is extremely difficult.

2. Since 1996, most Governments have tightened their laws against child prostitution, child pornography and child labour. Other initiatives that have been taken include the foundation of shelters and helplines, as well as information campaigns to increase public awareness of the problem. There has also been a noticeable increase in the contribution made by children and young people themselves to the promotion and protection of their rights. However, the various initiatives are still too limited and require further development.

3. The General Conference of the International Labour Organisation (ILO) set out a new global course as regards child labour with the adoption, on 17 June 1999, of ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. The Convention came into force in 2000. It commits the States parties to combat and eliminate, inter alia, forced child labour, including child prostitution and child pornography. In 2000, the United Nations also took a number of important steps. The optional Protocol to the Convention on the Rights of the Child on the sale of children, prostitution and child pornography (resolution 54/263, annex II, of 26 June 2000) has led to significant improvements as regards, inter alia, judicial responses in this field.

4. It can be stated that an important part of cases of trafficking in human beings is usually related to prostitution. Under the United Nations Convention against Transnational Organized Crime (resolution 55/25, annex I, of 15 November 2000), States parties are required to promote cooperation in the prevention of, and the fight against, transnational organized crime. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (resolution 55/25, annex II) is regarded as the first legal instrument that deals with all aspects of trafficking in human beings.

5. On the other hand, certain measures and practices that have been pursued in the fight against sexual exploitation have to be assessed as regards their agreement with human rights. It is important to avoid a situation in which a number of measures, applied on the assumption that the end justifies the means, jeopardize the proper functioning of the legal system. The measures adopted should result in a just

balance between the rights of the victim, fair prosecution and punishment of the perpetrator, while at the same time showing respect for human dignity and focusing on rehabilitation.

6. The purpose of the draft resolution contained in E/CN.15/2002/L.5 to help provide children with better protection against sexual abuse, as well as to establish a number of criteria to be applied in dealing with the perpetrators of such crimes.

7. Given the increasing number of cases of sexual exploitation and their impact on the victims, it seems appropriate, within the framework of the above-mentioned conventions, to provide a brief overview of the topics covered in the resolution contained in E/CN.15/2002/L.5, presented in the order followed in the resolution.

8. Economic and Social Council resolution 1996/31, of 25 July 1996, refers to the competencies and the resources of non-governmental organizations that support the United Nations in its tasks. The experience from many countries has already shown that those organizations have an important role to play in protecting children effectively. The establishment in each country of a centre as mentioned in the resolution could usefully assist the competent authorities in looking for missing and sexually exploited children. The network of private organizations should complement the sometimes difficult collaboration between authorities and citizens. In that respect, a resolution of the European Union concerning the contribution of civil society in the tracing of missing or sexually exploited children was approved in 2001.

9. The legislation of many countries still does not penalize the customers of under age prostitutes after the age of sexual consent of the children. Nevertheless, it is fairly clear that if the demand for young girls, for instance, were not so great, the supply would not be so great either. The clients are accessory to what is happening. The States members of the European Union have agreed to ratify a framework decision that makes punishable the behaviour of a client of a prostitute who is under age. Article 2 (b) of the optional Protocol supplementing the Convention on the Rights of the Child with regard to the sale of children, child prostitution and child pornography has to be interpreted in such a way that the clients of underage prostitutes should be held responsible for their reprehensible acts.

10. A distinction is frequently made between the age of sexual consent and the age of majority under civil or criminal law. As regards the age of sexual consent, there is usually confusion about the age at which sexual relations would not have a harmful effect on personal development, if the person involved was under 18, whereas sexual relations in the context of prostitution would have a harmful effect. In that connection, reference has to be made to the definition of "child" in ILO Convention 182 concerning the worst forms of child labour, which states unambiguously that it concerns persons under the age of 18.

11. Sexual exploitation is an extreme form of violence that leaves victims with lifelong traumas. Sometimes they need years before they are able to reveal, to their family and subsequently to the court, their distress, shame, possible feelings of guilt and the suffering that they had to endure. In addition, in many cases, the perpetrators of such violence belong to the family or immediate social network of the victim. That is why victims have to be given the necessary time to reveal their sad and painful experiences. The problem, however, is that the claim against the perpetrators is already statute-barred by the time the victims have found the courage

to take action. That is why it is crucial that the starting point for determining the time limit for the claim should be the day on which the victim reaches 18 years of age. In 2001, that was accepted as a compromise in Council of Europe recommendation R (2001) 16 concerning the protection of children against sexual exploitation.

12. The proposals in sections IV and V, which are discussed below, were inspired by studies carried out by the Association for the Treatment of Sexual Abusers, which have resulted in the formulation of a number of statements. The Association is the main international body that specializes in such issues, while paying close attention to the need to protect society. In that connection, respect for human rights must remain a central concern in both the prevention of sexual offences and the treatment of sexual offenders.

13. In the twenty-first century, it should be clear that the practice of physical castration of sexual offenders needs to be abolished. It is certainly an effective method of curbing sexual desire, but the same effects can be achieved by means of medication, which encroaches less on the personal life of the perpetrator. The ban on physical castration should also apply even when the perpetrator gives his consent to the surgical operation. The direct or indirect pressure applied in such cases (such as holding out hopes for a reduction of sentence or for conditional release) is too great to be ignored, and the consequences of physical castration are irreversible, unlike those of chemical castration. In the resolution contained in document E/CN.15/2002/L.5, there is no question of an absolute ban on physical castration, because, in some cases, the method can be allowed in the personal interest of the individual (for example, in cases involving transsexualism and cancer of the prostate). With regard to the medication method, experts recommend using it in combination with a therapeutic approach.

14. A number of countries have developed extensive legislation for the protection of society against reoffending by legally confirmed sexual delinquents. One preventive measure is notification, sometimes of a public nature, that is, informing certain persons or institutions of the presence of a known paedophile or perpetrator of sexual violence within a local community. The resolution in document E/CN.15/2002/L.5 does not formulate arguments in favour of or against the introduction of such a measure. But if notification measures were to be introduced, Member States are requested to consider the possible consequences for the person concerned, and to provide adequate protection for that person. On the one hand, the identity of the victims has to be strictly confidential in order to prevent the occurrence of secondary victimization. On the other hand, the negative impact that such notification can have on the family of the perpetrator should not be underestimated. Finally, such disclosure can have far-reaching and detrimental consequences for the integration and rehabilitation of the perpetrator, who may be a minor.