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Sixty-first session

SUMMARY RECORD OF THE 62nd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 22 April 2005, at 10 a.m.

Chairperson: Mr. WIBISONO (Indonesia)

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CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Consideration of draft resolutions and decisions under agenda item 3 (continued)

(E/CN.4/2005/L.101, 102 and 103)

Draft decision E/CN.4/2005/L.101 (Proposed reform of the Secretary-General in the area of human rights) (continued)

1. Mr. YIMER (Ethiopia), introducing the draft decision on behalf of the African Group, said that the various proposed measures to reform the United Nations should be treated as a package, and that replacing the Commission with the proposed Human Rights Council would not suffice to resolve all the existing problems. The root causes of those problems should be addressed in a comprehensive manner, and all States and regional groups should be prepared to make sacrifices. As the draft under consideration would allow the Commission to contribute to the outcome of the ongoing reform process, his delegation appealed to Commission members to adopt it by consensus.
2. Ms. WHELAN (Ireland), speaking on a point of order, said that due to the crucial importance of the issue under consideration, her delegation asked the Chairperson to suspend the meeting to allow members to confer before making a decision.
3. The CHAIRPERSON recalled that under rule 48 of the rules of procedure any motion to suspend or adjourn a meeting must be put to the vote. However, if there was no objection, he would take it that the members of the Commission agreed to the request for suspension of the meeting without a vote.

The meeting was suspended at 10.20 a.m. and resumed at 11.45 a.m.

4. Ms. MABANDLA (South Africa) considered the Commission should have an opportunity to examine the issue of its reform within the context of an official meeting organized transparently and with the involvement of all parties concerned. She did not see how the establishment of an open-ended working group would hinder the deliberation process currently taking place in New York. The working group could, on the contrary, strengthen Headquarters efforts. Her delegation therefore supported the proposal made by the African Group and encouraged all members of the Commission to do likewise.
5. Mr. CHIPAZIWA (Zimbabwe) said the members of the Commission should be able to voice their opinion on reforms both of the Commission and of other United Nations bodies. He was not therefore in favour of organizing informal meetings and believed the outcome of the Commission's discussions should be officially communicated to the Secretary-General and the General Assembly. In short, the Commission should neither agree to be buried alive, nor be forced to attend its own funeral.

6. Mr. REYES RODRIGUEZ (Cuba), announcing that Cuba had joined the sponsors of draft decision E/CN.4/2005/L.101, said it was regrettable that the cost of organizing the Commission on Human Rights was exploited as an argument to demand its abolition. It was essential for a discussion on the reform to be officially organized in Geneva to enable members to make their views on the issue known to the competent services in New York.
7. He added that he was particularly concerned to learn from media reports that certain delegations were already starting to prepare measures for implementing the Secretary-General's proposed reforms even before a discussion among States had taken place and the General Assembly had made a decision on the subject. He therefore expressed his delegation's full support for the draft decision under consideration and rejected any potential amendment aimed at weakening the proposal made by the African Group.
8. Ms. WADIBIA-ANYANWU (Nigeria) said that Secretary-General's proposed reform came at a critical point in the history of the Commission when distressed people around the world, and indeed members themselves, expected much more from it. Despite its flaws, the Commission had managed to forge partnerships reinforcing the promotion and protection of human rights.
9. The Commission should welcome the opportunity for positive change held out by the Secretary-General's proposal, which would permit assessment of the fulfilment by all States of all their human rights obligations. In that respect, the recommendation of the African Group for the establishment of an open-ended working group constituted a step in the right direction, as it was crucial that a platform for dialogue among all States and bodies concerned should take place in Geneva. The time had come to demonstrate their capacity to eschew the politicization and selectivity pointed to by the Secretary-General as undermining the work of the Commission. The draft decision in no way ran counter to the ongoing initiative; on the contrary, it complemented and reinforced it. Her delegation therefore fully endorsed the draft decision and urged all States to do likewise so that it could be adopted without a vote.
10. Mr. BOSCHWITZ (United States of America), while commending the African Group's commitment to reform of the Commission, announced that his Government would not endorse the draft decision under consideration as it maintained that the discussion of Commission reform should be held in New York, where there already existed a coherent process for discussion on the reform of the United Nations in general in which all States members of the Commission participated. The establishment of an open-ended working group would only make an already complicated process more confused, as well as having budget implications. The Commission, a subsidiary body of the Economic and Social Council, had been given no mandate either by the Council or by the General Assembly to discuss its own reform. Such discussions therefore did not have any formal status.
11. Mr. DE JONG (Netherlands), speaking on behalf of the European Union (EU), considered it inappropriate to organize meetings in Geneva on the reform in parallel to work already under way on the same issue in New York with the approval of all Member States. He therefore proposed to amend the draft decision by replacing the phrase beginning in the eighth line, with "to establish an open-ended working group" by the following: "to hold informal consultations for two days in June 2005 under its current Chairperson to reflect on the

recommendations on human rights contained in the report of the Secretary-General and to invite the relevant facilitator of the President of the General Assembly". He added that all States of the EU were in favour of the amendment, and expressed the hope it would be adopted without a vote.

12. Mr. YIMER (Ethiopia), quoting rule 63 of the rules of procedure, said the text submitted by the EU did not conform to the definition of an amendment, which was "a proposal that does no more than add to, delete from or revise part of another proposal". The changes presented did much more than that, as they altered the substance of the draft under consideration, notably by changing the status of the consultations from official to informal. The proposed text of the EU therefore was not an amendment but a new proposal and, as such, should be examined by the Commission after draft decision E/CN.4/2005/L.101.

13. Mr. SHA Zukang (China) said that even if everyone agreed that the Commission required reform, it was also important to state it was not dying yet. Whether the discussions on reform were official - which China would prefer - or unofficial was not of crucial importance as long as they indeed took place and their outcome was officially adopted before being submitted to the Secretary-General, since the Commission's credibility as a responsible body was at stake. If the expression "formally" bothered some members, another formulation could be found, but the result reached would be the same. Whether the Commission was totally or partially in favour or against the reform, it would have to officially inform the Secretary-General of its position. His Government therefore supported the draft decision submitted by the African Group.

14. He asked why, under the EU's proposed amendment, a facilitator mandated by the General Assembly had to be invited if the Commission's two days of consultations were to be informal. Finally, referring to comments of the United States delegation on the complexity and difficulty of the situation, he said it was precisely because the situation was complex and difficult that those discussions had to be held within the Commission.

15. Mr. REYES RODRIGUEZ (Cuba) said that only the Commission could decide which form the discussions on reform should take. Contrary to what the EU claimed, its proposed amendment would not facilitate consensus; it would in fact deprive the Commission of an opportunity to reach an agreement. Instead, draft decision E/CN.4/2005/L.101 allowed for a more democratic and participatory process. The Cuban delegation considered that the text submitted by the EU constituted a new proposal and not an amendment to the draft under consideration. It also noted with regret that the text had been submitted only in English, despite the EU's linguistic pluralism, and had not been circulated at least 24 hours before its consideration, which was contrary to rule 52 of the rules of procedure pertaining to the submission of proposals and substantive amendments. He therefore called for the rejection of the EU's proposal.

16. Mr. DE JONG (Netherlands) said he had read out the amendment presented by the EU in accordance with the established procedure, and that members of the Commission had been able to hear a simultaneous interpretation of it. He believed it was inaccurate to call it a new proposal. What the EU had tried to do was incorporate all the key points of the draft decision. Also, did the nature of the proposal not change depending on whether or not it would be an intersessional meeting, lasting two or five days? As for inviting a General Assembly facilitator, it was a way of conveying ideas to the Secretary-General. The EU could be flexible on the

length of the proposed meeting, depending on the Secretariat's estimate of its cost. To address China's concern about the transmission of the decision to be taken to New York, he proposed to add at the end of the text the following phrase: "and invites the Secretariat to produce a summary report of the consultations". He added that the EU was not opposed to the discussions; on the contrary, it wanted to exchange ideas and concepts, while keeping in mind that it was a privilege for the 53 members of the Commission to be able to be heard in New York.

17. He therefore called for a vote on the proposed amendment, with the addition of the last phrase. He reiterated that although the consultations could last five days instead of two, they would have to remain informal.

18. The CHAIRPERSON said that before voting on the substance of the proposed amendment, the Commission would have to determine whether it was indeed an amendment within the meaning of rule 63 of the rules of procedure. If it was, the Commission would have to put it to a vote immediately; if it was a new proposal, it should be considered at a later stage.

19. Mr. YIMER (Ethiopia) said he believed it was indeed a new proposal but that it was up to the Commission to decide.

20. At the Chairperson's suggestion, a recorded vote was taken on the question of whether the text presented by the European Union was an amendment or a new proposal.

In favour: Australia, Canada, Finland, France, Germany, Guatemala, Honduras, Hungary, Ireland, Italy, Japan, Mexico, Netherlands, Peru, Republic of Korea, Romania, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

Against: Bhutan, Brazil, Burkina Faso, China, Congo, Cuba, Egypt, Eritrea, Ethiopia, Gabon, Guinea, India, Indonesia, Kenya, Malaysia, Mauritania, Nepal, Nigeria, Pakistan, Qatar, Russian Federation, Saudi Arabia, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Zimbabwe.

Abstaining: Argentina, Armenia, Costa Rica, Dominican Republic, Ecuador, Paraguay.

21. By 28 votes to 19, with 6 abstentions, it was decided that the text presented by the European Union was a new proposal, not an amendment.

22. The CHAIRPERSON invited the Commission to resume discussion of draft decision E/CN.4/2005/L.101.

23. Mr. NORMANDIN (Canada) said all participants were in favour of an open, transparent, democratic, in-depth discussion involving all stakeholders. The goal was to allow everyone to express their opinion with a view to the formulation of possible proposals and comments useful to the reform of the United Nations in the area of human rights. It would be desirable to concentrate more on that objective and its content rather than on form; in that respect, informal discussions would be much more productive.

24. Mr. DE ALBA (Mexico) said his delegation would have preferred a consensus agreement. Discussions could first have been informal and then been officialized when the time was ripe. The priority now was to reconcile the different points of view on reform, find common ground and moderate expectations about change without becoming polarized regarding the already complicated situation in respect of human rights and the organization of the United Nations.

25. Although his delegation would abstain from voting on the draft decision, it would openly and constructively participate in the proposed process, since it endorsed the objectives of transparency, openness and inclusion, and was convinced that the Commission could make proposals on reform. It was, however, against establishing a distinction between the “Geneva” and “New York” positions, given that the process was a governmental one and the positions, national. Under those circumstances, Mexico would have the same stance in Geneva as in New York.

Explanations of vote before the vote

26. Mr. CERDA (Argentina) said his delegation would vote in favour of the draft decision under consideration. He regretted, however, that the proposed working group would not submit its conclusions directly to the Secretary-General and that the Commission would have to meet for that purpose. What was at stake in the draft was the impact the consultation process might have on the discussions and on the negotiations currently under way in New York.

27. Mr. DE JONG (Netherlands), speaking on behalf of EU countries members of the Commission and the acceding country Romania, said the EU was glad the informal meeting of the Commission on 12 April 2005 had permitted the emergence of a specifically Geneva-based point of view on the discussions about the reform. The EU believed that ideas for reform in regard to the protection of human rights had to be expressed within the framework already established for United Nations reform as a whole, within a transparent and inclusive process.

28. The EU could not subscribe to the idea of establishing a working group whose outcome would be endorsed by a one-day session of the Commission, and he was not convinced the working group would be able to reach substantial results on the reform issue. All countries, whether or not they were members of the Commission, had to be able to take part in decisions on an equal footing - a principle that the draft decision under consideration called into question. The draft also raised great concern about procedure. For the envisaged working group to be able to meet and for the Commission to be able to hold its one-day session, the Economic and Social Council would have to approve the financial implications of those meetings; but it would not be able to do so in time. Moreover, holding such a session would be a departure from the Commission’s current procedures. Finally, the EU regretted that the draft decision, which concerned all regional groups, had been submitted only shortly before the closure of the Commission’s current session without any interregional consultation. For all those reasons, the EU would vote against that text. He added that the acceding country Bulgaria and the applicant countries Turkey and Croatia also subscribed to his statement.

29. Mr. VARELA QUIROS (Costa Rica) said that, while he regretted the failure to reach a consensus on the draft decision under consideration, he would vote in favour of it since all discussions pertaining to the reform of the Commission should take into consideration

everyone's opinion. He did not think the decision to be adopted in Geneva would be binding on anybody or that it would encroach on the powers of the competent bodies in New York; it would simply reflect the opinion of Member States, as expressed by their representatives, and not the personal opinion of those representatives.

30. Ms. ASTETE RODRÍGUEZ (Peru) expressed her delegation's disappointment that the members of the Commission were incapable of treating an issue as fundamental as the one addressed by the draft under consideration otherwise than in an antagonistic manner. It regretted there had not been any interregional consultations on the subject, as they could have spared the Commission some stormy discussions. Considering it was essential for Geneva to participate in the reform process currently taking place in New York, her delegation would vote in favour of the draft decision submitted by the African Group.

31. Mr. MNATSAKANIAN (Armenia) said his delegation, too, had hoped consensus could be reached and regretted in particular the way in which the draft had been considered. While he respected the work done by the sponsors of the draft, he had not had a chance to examine it properly or to participate in any consultations, hence his inability to formulate an opinion. Had a dialogue been established, a consensus could have emerged. For those reasons, his delegation would abstain in the vote, even though it intended to continue collaborating with all its partners, regardless of the final decision.

32. Mr. BOSCHWITZ (United States of America) requested that, for the reasons he had already mentioned, the draft decision under consideration be put to the vote, and stated that his delegation would vote against the text.

33. At the request of the representative of the United States of America, a recorded vote was taken on draft decision E/CN.4/2005/L.101.

In favour: Argentina, Bhutan, Brazil, Burkina Faso, China, Congo, Costa Rica, Cuba, Dominican Republic, Egypt, Ecuador, Eritrea, Ethiopia, Guinea, Honduras, India, Indonesia, Kenya, Malaysia, Mauritania, Nepal, Nigeria, Pakistan, Paraguay, Peru, Qatar, Russian Federation, Saudi Arabia, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Zimbabwe.

Against: Australia, Canada, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Netherlands, Republic of Korea, Romania, Ukraine, United Kingdom, United States of America.

Abstaining: Armenia, Gabon, Guatemala, Mexico.

34. Draft decision E/CN.4/2005/L.101 was adopted by 34 votes to 15, with 4 abstentions.

Draft decision E/CN.4/2005/L.102 (Situation of human rights in Liberia)

35. Mr. BERNIS (Observer for Luxembourg), introducing the draft decision on behalf of the EU, said the decision would acknowledge the excellent work accomplished by the independent expert on the situation of human rights in Liberia. The EU considered it important for the Commission to have a chance to examine the issue during its sixty-second session under agenda item 19, and not item 3, as had been indicated by mistake in the order of the day. It was

in the interest of the Commission as a whole to examine the question of technical cooperation with Liberia in the area of human rights. The EU therefore believed that the draft decision could be adopted by consensus.

36. Draft decision E/CN.4/2005/L.102 was adopted without a vote.

Draft decision E/CN.4/2005/L.103 (Technical cooperation and advisory services in the field of human rights in Chad)

37. Mr. BERNIS (Observer for Luxembourg), introducing the draft decision on behalf of the EU, said that in the text the Commission commended the excellent work accomplished by the independent expert on the situation of human rights in Chad and her report. It also welcomed with satisfaction the readiness of the Government of Chad to accept the opening in the country of an office of the Office of the United Nations High Commissioner for Human Rights (OHCHR), and encouraged OHCHR and the Chadian Government to cooperate. He expressed the hope, on behalf of the EU, that the draft decision would be adopted by consensus.

38. Draft decision E/CN.4/2005/L.103 was adopted without a vote.

39. The CHAIRPERSON drew the Commission's attention to a draft statement by the Chair entitled, "Situation of human rights in Colombia", which had already been circulated and which he would not read out, in order to save time. If there were no objections, he would take it that the Commission wished to adopt the draft statement, which did not have any financial implications.

40. It was so decided.

Explanations of vote after the vote

41. Mr. CERDA (Argentina), referring to draft resolution E/CN.4/2005/L.94/Rev.1, submitted under agenda item 3, said that his Government had always supported all initiatives of the international community aimed at ensuring that the fight against terrorism was conducted in observance of human rights and the standards of international humanitarian law. That was why Argentina was following closely the situation of detainees at the naval base in Guantánamo. He noted the progress in regard to some detainees and encouraged the adoption of further such measures. He expressed his satisfaction at the United States delegation's commitment to transparency during the session and the judicial decisions taken by the United States that had helped clarify the situation of several detainees. He particularly commended the United States' willingness to maintain a dialogue with the Special Rapporteurs of the Commission with a view to preparing their possible visit to Guantánamo. He reaffirmed Argentina's deep respect for human rights and fundamental freedoms and its total support of the universal system for the promotion and protection of human rights. He reiterated his regret that a number of Member States used the Commission to discredit others or to evade the criticism aimed at them, which undermined the effectiveness of the Commission's contribution to the progressive realization of human rights.

42. Mr. LOUTFY (Egypt) said that legal protection had to be guaranteed for all detainees, in accordance with international law. His Government had joined the consensus on draft resolution E/CN.4/2005/L.88 adopted by the Commission to reaffirm the need to respect human rights while countering terrorism. The Egyptian delegation had abstained during the vote on draft resolution E/CN.4/2005/L.94/Rev.1 pertaining to the persons detained in Guantánamo in the light of complementary information it had received showing that intensive efforts were being made to correct the current situation within an acceptable legal framework. Encouraged by the recent release of numerous Guantánamo detainees who had been returned to their home countries, Egypt hoped the issue could be definitively resolved as soon as possible, in accordance with the standards of international law.

43. Mr. VLASOV (Russian Federation), on behalf of his delegation, approved of the general thrust of draft resolution E/CN.4/2005/L.94/Rev.1 presented by Cuba. Some aspects of the draft, however, went beyond its title. As it had already stressed during its statement under agenda item 9, his Government was a strong believer in the uncompromising fight against terrorism insofar as it was conducted in a manner respectful of human rights. The Russian Federation was firmly convinced that nothing could justify practices such as torture and considered that any proofs obtained through such methods were inadmissible. Detention without trial, prolonged police custody and the detention of foreigners were also practices that the international community should not tolerate. The Russian Federation was particularly concerned by the United States' practice of what was known as "extraordinary rendition" and the violation of international humanitarian law it represented. Those issues would have to be addressed by the new Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The fact that operative paragraph 1 of draft resolution E/CN.4/2005/L.94/Rev.1 called for a "fact-finding mission" rather than an "investigation", as was the case in the initial draft, did not change the fact that the mission went beyond the mandate of the special procedures of the Commission. The Russian Federation had therefore abstained during the vote on that draft. It encouraged the United States to collaborate as fully as possible with the Special Rapporteurs of the Commission and to take as soon as possible the necessary steps to allow them to visit the detention centres in Guantánamo.

44. Mr. ARAI (Japan) expressed his delegation's concern about the growing financial implications of many drafts adopted during the session. Japan noted that the document setting out the financial implications of the draft resolution adopted the previous day on the organization of work of the Commission's sixty-second session had only been distributed shortly before the draft had been put to the vote. It therefore asked the secretariat of the Commission to improve its working methods to ensure that Member States had enough time to study the programme budget implications of drafts in order to take them into account during their vote. Japan attached great importance to efficient resource management by the Commission and welcomed the forthcoming discussions on that issue.

45. The CHAIRPERSON announced that the Commission had completed its consideration of agenda items 3 and 19. Before closing the meeting, he conveyed on behalf of the Commission his sincere condolences to the Permanent Mission of Senegal on the death of Mr. Alioune Sene, former Permanent Representative of Senegal and Chairperson of the forty-fourth session of the Commission on Human Rights.

The meeting rose at 1.05 p.m.