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COMMISSION ON HUMAN RIGHTS

Fifty-ninth session

SUMMARY RECORD OF THE 63rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 25 April 2003, at 2.30 p.m.

Chairperson: Ms. AL-HAJJAJI (Libyan Arab Jamahiriya)

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The meeting was called to order at 2.35 p.m.

THE RIGHT TO DEVELOPMENT (agenda item 7) (continued) (E/CN.4/2003/L.14/Rev.1)

Draft resolution on the right to development (E/CN.4/2003/L.14/Rev.1)

1. Mr. TISTOUNET (Secretary to the Commission) said he apologized for some technical errors in the text of the draft resolution for which the Secretariat was responsible: the text was being submitted by Malaysia on behalf of the Non-Aligned Movement and China. In the third preambular paragraph, the phrase “conclusions adopted by” had been revised to “conclusions of” and in the eighth preambular paragraph and paragraph 3 the phrase “conclusions agreed at” had been altered to “conclusions of”. Paragraph 10 had been revised to read: “Decides to review the progress of the implementation of the present resolution as a matter of priority at its sixtieth session.”
2. Ms. RAJMAH (Malaysia), introducing the draft resolution, said that it represented an attempt to address the concerns of all Member States since it presented a long-term vision for the operationalization of the right to development and sought to address the concerns some States had regarding that right. It also requested the Sub-Commission to present to the Commission for its consideration a concept document establishing options for the implementation of the right to development, as a follow-up to broad consultations with relevant actors from the human rights, trade, financial and development fields, and called for the convening of a high-level seminar prior to the next session of the Working Group on the Right to Development, at which all the relevant actors could review strategies for mainstreaming the right to development.
3. Mr. VEGAS TORRES (Peru) asked for his delegation to be added to the list of sponsors.
4. Mr. ADIYIA (Office of the High Commissioner for Human Rights), speaking in accordance with rule 28 of the rules of procedure, said that the total full cost of the activities envisaged in paragraph 5 of the draft resolution would amount to US\$ 63,000 in the current biennium, on the assumption that the seminar would be held during the forthcoming session of the Working Group on the Right to Development, and US\$ 63,200 in the biennium 2004-2005. It was not possible to determine whether those costs would be covered from available resources. The Secretariat would review the situation and bring the outcome to the attention of the Economic and Social Council. The total full cost of the activities envisaged under paragraph 9 would amount to US\$ 267,800 under Section 2, General Assembly and Conference Services Affairs, and US\$ 4,400 under Section 29E, Administration Geneva. Provisions for the extension of the Working Group’s mandate had already been included in the proposed programme budget for the biennium 2004-2005.
5. Mr. DANIES (United States of America), speaking in explanation of the vote before the voting, said that his delegation remained concerned that paragraph 2 contained a reference to a concept document establishing options for the implementation of the right to development including, inter alia, an international legal standard of a binding nature. His delegation still maintained that the subject had never been discussed during the Working Group’s session. He therefore proposed the deletion of paragraph 2 and requested a recorded vote on the issue.

6. Ms. WHELAN (Ireland), speaking on behalf of the member States of the European Union that were members of the Commission and of Poland, said that, while the Union was firmly committed to the realization of the right to development, it had serious doubts as to whether the option of a legally-binding instrument was the appropriate way forward and preferred to see a thorough stocktaking take place of existing development programmes and activities at the national, regional and international levels. Moreover, the work of the Sub-Commission should build on, and not duplicate, substitute or renegotiate, the relevant existing consensus documents. The Union was in favour of the holding of a two-day high level seminar within the next session of the Working Group, provided that the seminar was held prior to and within the 10 working days allocated to the Group, without prejudice to the 10 working days normally allocated to it.

7. Mr. MATSUURA (Japan) said that his Government was firmly committed to the realization of the right to development, but such a right was the right of individuals and should not be misunderstood as the right of a group or of a State - in fact, States had an obligation to promote and realize the right to development for their citizens. To attempt to impose that right through legally-binding documents would belie the obligation of States to their citizens which was a core foundation of human rights. If international development cooperation became a legal obligation, interest in it would evaporate and a legally-binding document would thus prove self-defeating. Consequently his delegation would vote against paragraph 2.

8. Ms. MÅRTENSSON (Sweden) said that her Government had a long-standing commitment to poverty eradication and international development cooperation. Indeed, Sweden was one of the very few countries which lived up to the target of spending at least 0.7 per cent of its gross national product (GNP) on official development assistance (ODA). The issue of a legally-binding instrument on the right to development or its appropriateness had never been discussed in the Working Group. Her delegation considered that there was still a need for genuine stocktaking of ongoing activities in the field of development and human rights at the national, bilateral, regional and international levels before such issues could be addressed. It therefore objected to the request in paragraph 2 for a concept document on, inter alia, a legally-binding instrument.

9. Mr. PURI (India) said that several representatives had mentioned a legally-binding instrument. Although a reference to such an instrument had appeared in paragraph 3 of the text of the original draft resolution, there was no reference to it in the current version (E/CN.4/2003/L.14/Rev.1) which mentioned only a concept document establishing options for the implementation of the right to development. The idea of preparing a concept document reflected the need to create an international environment that would make the right to development an operative one. He appealed to delegations, before calling for a vote, to look carefully at the language of paragraph 2, which was already sufficiently diluted to accommodate all points of view.

10. Mr. I. KHAN (Pakistan) said that the text of the draft resolution had been achieved after protracted negotiations during which the Non-Aligned Movement had attempted to eliminate conceptual differences on the issue. In an increasingly globalized world, there was an international environment which prevented developing countries from achieving the right to development or other human rights, a fact that needed to be addressed. The way in which the

Non-Aligned Movement had proposed the option of an international legal instrument, as one of a number of possible measures, provided sufficient space for all delegations to find common ground on the promotion of the right to development.

11. Mr. MONTWEDI (South Africa) said that he fully endorsed the statement by the representative of Ireland on behalf of the European Union regarding the arrangements for the proposed two-day high-level seminar and agreed that the Working Group on the Right to Development would not be creating a precedent and that it would retain its 10-day session in the future. He also fully endorsed the statement by the representative of India, urged the members of the Commission to take another look at paragraph 2 and called upon the delegation of the United States of America to withdraw its request for a vote on that paragraph.

12. Mr. SOUALEM (Algeria) said that, since the adoption by the General Assembly of the Declaration on the Right to Development, the human rights community had made considerable progress in recognizing the right to development. It was entirely appropriate therefore to move on to the next stage and to call for the observance of rights which were legitimate and justiciable. That was why the sponsors of the draft resolution were urging a more rigorous implementation of the right to development in the form of legislation at the national and international levels.

13. At the request of the representative of the United States of America, a recorded vote was taken on paragraph 2 of the draft resolution.

In favour: Algeria, Argentina, Armenia, Austria, Bahrain, Belgium, Burkina Faso, Cameroon, Chile, China, Costa Rica, Cuba, Democratic Republic of the Congo, France, Gabon, Germany, Guatemala, India, Kenya, Libyan Arab Jamahiriya, Malaysia, Pakistan, Paraguay, Peru, Russian Federation, Saudi Arabia, Senegal, Sierra Leone, South Africa, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic, Thailand, Togo, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Against: Australia, Canada, Japan, Sweden, United States of America.

Abstaining: Brazil, Croatia, Ireland, Mexico, Poland, Republic of Korea.

14. Paragraph 2 of the draft resolution was retained by 42 votes to 5, with 6 abstentions.

15. Mr. DANIES (United States of America), speaking in explanation of vote before the voting, said that his delegation opposed the draft resolution as a whole because it continued to present the concept that lack of development justified the denial of internationally recognized human rights. The key factor affecting whether or not nations developed was the extent to which they enjoyed good governance and whether Governments afforded their people basic human rights. His delegation opposed the proposal that the Sub-Commission should prepare a concept document on a legally-binding instrument on the right to development because it would devote scarce resources to a project that would be unlikely ever to garner significant support. His delegation therefore called for a vote on the draft resolution and would vote against it.

16. Mr. PURI (India) reiterated that the reference to a legally-binding instrument had appeared only in paragraph 3 of the original text of the draft resolution (E/CN.4/2003/L.14) which had been superseded in paragraph 2 of the revised text (E/CN.4/2003/L.14/Rev.1) by a reference to a concept document establishing options for the implementation of the right to development and their feasibility.

17. At the request of the representative of the United States of America, a recorded vote was taken on the draft resolution.

In favour: Algeria, Argentina, Armenia, Austria, Bahrain, Belgium, Brazil, Burkina Faso, Cameroon, Chile, China, Costa Rica, Croatia, Cuba, Democratic Republic of the Congo, France, Gabon, Germany, Guatemala, India, Ireland, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Pakistan, Paraguay, Peru, Poland, Russian Federation, Saudi Arabia, Senegal, Sierra Leone, South Africa, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic Thailand, Togo, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Against: Australia, Japan, United States of America.

Abstaining: Canada, Republic of Korea, Sweden.

18. The draft resolution was adopted by 47 votes to 3, with 3 abstentions.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, INCLUDING:

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS

(agenda item 9) (continued) (E/CN.4/2003/L.2, L.6/Rev.1, L.13/Rev.1, L.35, L.38, L.74 and L.77)

Draft resolution on the situation of human rights in Iraq (E/CN.4/2003/L.6/Rev.1)

19. Mr. KRIEKOUKIS (Observer for Greece), introducing the draft resolution on behalf of the European Union, the acceding countries and the other sponsors, said that it called upon all parties in the conflict to observe their obligations under international humanitarian law and to address the major humanitarian needs of the Iraqi people as a matter of urgency. It also called for the extension of the Special Rapporteur's mandate by one year and requested him to submit an interim report to the General Assembly at its fifty-eighth session and to report to the Commission at its sixtieth session, focusing on newly available information on violations of human rights by the former Government of Iraq over many years. That was not aimed at limiting the Special Rapporteur's mandate but it was necessary to confront the reality of the past in Iraq in order to help develop free and democratic institutions in the country.

20. Mr. KHABBAZ HAMOUI (Syrian Arab Republic), speaking on a point of order, said that there was an important error in paragraph 1 of the draft resolution in that the original English version was in the past tense while, in the Arabic text, all the verbs were in the present tense. The text in Arabic should be corrected to bring it into line with the other language versions.
21. Mr. TISTOUNET (Secretary of the Commission) said that the error had been noted and would be corrected.
22. Mr. I. KHAN (Pakistan), speaking in explanation of vote before the voting, said that the draft resolution failed to address the current and future situation of Iraq. It contained no reference to Iraq's sovereignty, political independence and territorial integrity, its people's right to self-determination and the use of natural resources, all of which were included in Security Council resolution 1472 (2003). He also pointed out that, in his renewed mandate, the Special Rapporteur was being asked to focus on what had happened in the past. If that became a precedent, it would generally reduce or restrict the mandates of special rapporteurs. If the draft resolution was put to the vote, his delegation would abstain.
23. Mr. FERRER RODRÍGUEZ (Cuba) said that the Commission ought to have held a debate on the aggression against Iraq and the draft resolution should have been submitted under agenda item 5, as a case of foreign occupation, rather than under agenda item 9. The text contained no condemnation of the aggression against Iraq and its consequences and no call for an immediate end to the occupation of the country. There was no reference to the Iraqi people's right to control their natural resources or to the issue of compensation being paid to them by the occupying Powers and the occupying Powers were not called upon to account for their actions. If the draft resolution were put to the vote, his delegation would vote against it and, in any case, it wished to disassociate itself completely therefrom.
24. Mr. DEMBRI (Algeria) said that the draft resolution did not reflect reality. It failed to take into account the fact that the war in Iraq had taken place without the authorization of the United Nations and did not outline the responsibilities of the occupying forces. Furthermore, his delegation had not been given an opportunity to participate in the consultations on the draft resolution, which had not taken place according to the established procedures. It would, perhaps, be more appropriate to consider the draft resolution under agenda item 5.
25. His delegation would have liked to stress the need for territorial integrity and the right of the Iraqi people to self-determination, as well as their right to control their natural resources. It would have also liked to make an unambiguous reference to international humanitarian law, under which an occupying Power had obligations but no rights. Furthermore, the mandate of the Special Rapporteur on the situation of human rights in Iraq should be extended to cover all incidents whereby human rights and international humanitarian law were violated, including the destruction and theft of Iraq's cultural and historic heritage.

26. Ms. RAJMAH (Malaysia) said that her Government was deeply concerned about the current situation in Iraq and regretted the fact that the Commission had rejected the proposal to convene a special sitting to address the humanitarian implications of the war. It was saddened by the tragic loss of life and by the suffering and destruction caused by the military action launched by the United States and its allies. It had, therefore, set up a fund to provide humanitarian assistance to the people of Iraq.

27. The United Nations must play a leading role in the future of Iraq, which should be undertaken on the basis of respect for the sovereignty, territorial integrity, political independence and security of the country and of due regard for the well-being of the Iraqi people.

28. The draft resolution failed to reflect the current situation. The occupying Powers were responsible under the Geneva Conventions for the maintenance of law and order in Baghdad and other locations where looting and lawlessness had prevailed since they had taken control. Therefore, her delegation would not be a party to the draft resolution.

29. Mr. PURI (India) said that, a few weeks previously, his delegation had abstained from voting on the proposal to hold a special sitting to discuss the situation in Iraq, preferring to wait and see how the situation evolved. Much had happened since then and, consequently, his Government had announced that it would make an initial contribution of US\$ 20 million to provide humanitarian assistance for the people of Iraq.

30. His delegation had consistently urged the High Commissioner for Human Rights to assume a greater role in the promotion and protection of human rights through technical cooperation with Member States. It called on the High Commissioner to extend such cooperation to Iraq, to facilitate the building of democratic and human rights institutions. Measures should be adopted to put an end to the human suffering in Iraq.

31. Although the document was dated 23 April 2003, it contained language (in paragraphs 2 and 3) that belonged to a bygone era. However, his delegation was satisfied with the language contained in paragraph 6, subparagraph (a), which had been carefully negotiated. If the draft resolution was brought to a vote, his delegation would thus abstain.

32. Mr. KHABBAZ HAMOUI (Syrian Arab Republic) said that, despite the changes that had been made, the draft resolution still lacked balance. The identity of “the parties to the current conflict”, referred to in paragraph 2 was unclear. No mention was made of the negative humanitarian consequences of the siege imposed on Iraq for over 12 years and nothing was said about the humanitarian crisis resulting from the recent military invasion of Iraq, both of which had led to clear violations of human rights. For example, humanitarian convoys had been denied access and journalists had been prevented from doing their work. The situation in the health sector was particularly grave. He noted with satisfaction, however, that reference was made to the need to release all Kuwaiti and third-State nationals detained by Iraq.

33. His delegation objected, in principle, to the adoption of country-specific resolutions under agenda item 9. Under the current circumstances, however, it endorsed the proposal to extend the mandate of the Special Rapporteur on the situation of human rights in Iraq, on condition that it involved monitoring the situation on the ground and submitting a report to the Commission. If the draft resolution was adopted without a vote, his delegation would not be a party thereto.

34. Mr. SHA Zukang (China) said that his Government was deeply concerned about the human rights situation in Iraq. The parties involved had a responsibility to stabilize the situation, guarantee the enjoyment of human rights and avert a humanitarian crisis. The draft resolution had a number of shortcomings. It failed to take into account, for instance, the fact that the Iraqi Government no longer existed. Under the Geneva Conventions, the responsibility for the administration of the country lay with the occupying Powers. It was essential to prevent the emergence of a situation whereby the human rights of the people of Iraq were seriously violated.

35. It was difficult for his delegation to assess the current situation and prospects, especially since the Chinese embassy in Iraq had been looted, and it was not clear what situation would prevail until a democratically elected Government was established. Under the circumstances, it would be irresponsible to adopt a position on the draft resolution. His delegation would thus abstain if the draft resolution was put to a vote.

36. Mr. NENE (South Africa) said that the people of Iraq had just experienced the tragedy of war. War invariably brought with it suffering and loss of life which, as the Secretary-General of the United Nations had recently pointed out, was the most basic of all human rights.

37. The language used in the draft resolution was confusing, as it blamed an authority that was clearly no longer in power and could not be held accountable for the current human rights situation. Only an administration accountable to its citizens could provide a functional relationship with the human rights mechanisms of the Commission. Furthermore, the main thrust of the draft resolution was being prematurely imposed on the Commission. It would be preferable to defer consideration of the text until the political situation in Iraq had stabilized and until a legitimate authority approved by the United Nations was in place. His delegation, therefore, found itself in an untenable position, exacerbated by the lack of consultations. It did not wish to be a party to any action that resulted in the adoption of the draft resolution.

38. Mr. BREBESH (Libyan Arab Jamahiriya) said it was regrettable that all delegations had not been given the opportunity to participate in open consultations on the draft resolution. The sponsors of the text had refused to consider the humanitarian consequences of the war waged against Iraq and, consequently, the draft resolution failed to take into account the tragic humanitarian situation resulting from the invasion of the country. Furthermore, it made reference to a Government that no longer existed and neglected to identify "the parties to the conflict". It also failed to mention the central role of the United Nations in the reconstruction of Iraq and in protecting the right of the Iraqi people to self-determination. It was regrettable that the Special Rapporteur on the situation of human rights in Iraq was requested to focus only on past violations of human rights. The aims and objectives of the draft resolution were unclear. Therefore, his delegation would not join a consensus and would vote against the draft resolution if it was put to a vote.

39. Mr. SIDDIG (Sudan) said that the draft resolution was one-sided and failed to reflect the real situation. It neglected, for example, to mention the excessive violations of human rights and international humanitarian law resulting from the military invasion of Iraq and did not refer to the responsibilities of the occupying Powers. It was regrettable that his delegation had not been given the opportunity to participate in the consultations on the text. Moreover, it limited the mandate of the Special Rapporteur to the investigation of past human rights violations. For all those reasons, his delegation would not be a party to the adoption of the draft resolution.

40. Mr. ADIYIA (Office of the High Commissioner for Human Rights) said that the total full cost of the activities envisaged under paragraph 6, subparagraph (a), of the draft resolution, if adopted, would amount to US\$ 42,900 in the biennium 2002-2003. As the mandate of the Special Rapporteur fell under the category of activities considered to be of a perennial nature, and as provisions had already been included in the programme budget for the biennium 2002-2003 for activities of that nature, no additional appropriation would be required.

41. The CHAIRPERSON asked whether the Commission wished to adopt the draft resolution, since there had been no request for a vote.

42. Mr. DEMBRI (Algeria) said that the Commission had clearly not reached a consensus and should not, therefore, adopt the draft resolution. If the draft resolution were adopted without a vote, the Chairperson should mention the delegations that had disassociated themselves from it.

43. Following a procedural discussion in which the CHAIRPERSON, Mr. DEMBRI (Algeria), Ms. WHELAN (Ireland), Mr. NENE (South Africa), Mr. FERNÁNDEZ PALACIOS (Cuba), Mr. PURI (India) and Mr. UMER (Pakistan) took part, Mr. SMITH (Australia) suggested that the draft resolution be put to the vote.

44. At the request of the representative of Australia, a recorded vote was taken on the draft resolution.

In favour: Argentina, Armenia, Australia, Austria, Bahrain, Belgium, Brazil, Canada, Chile, Costa Rica, Croatia, France, Germany, Guatemala, Ireland, Japan, Kenya, Mexico, Paraguay, Peru, Poland, Republic of Korea, Saudi Arabia, Sri Lanka, Sweden, Thailand, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Against: Cuba, Malaysia, Zimbabwe.

Abstaining: Cameroon, Democratic Republic of the Congo, Gabon, India, Pakistan, Russian Federation, Senegal, Swaziland, Syrian Arab Republic, Togo, Venezuela, Viet Nam.

45. The draft resolution was adopted by 31 votes to 3, with 12 abstentions.

46. The CHAIRPERSON invited delegations to make statements in explanation of vote on any of the draft resolutions considered under agenda item 9.

47. Ms. ASSUMPCÃO DO VALLE PEREIRA (Brazil) said that her delegation had abstained from voting on the draft resolution on the situation of human rights in Cuba (E/CN.4/2003/L.2) and the amendments thereto since it took the view that the Commission should avoid selectivity and politicization of its work. Measures that led to the isolation of a country, such as the economic embargo unilaterally imposed against Cuba, were not productive. Her Government attached great importance to human rights and firmly believed that the key to their promotion and protection was the universal implementation of multilateral instruments and dialogue with civil society and international mechanisms, especially the Commission.
48. Her Government was deeply concerned at the summary prosecutions that had taken place in Cuba, especially those involving the use of capital punishment. In its ongoing dialogue with the Government of Cuba, it had reaffirmed its position against the death penalty and had reiterated the need for all countries to respect the right to a fair trial and to a proper defence.
49. Her delegation had voted in favour of the draft resolution on the situation of human rights in the Republic of Chechnya of the Russian Federation (E/CN.4/2003/L.13/Rev.1) despite certain positive developments, such as the willingness shown by the Government of the Russian Federation to host a visit by the High Commissioner for Human Rights and the recent referendum that had taken place in Chechnya which, while by no means totally satisfactory, was a step in the right direction. It hoped that the Government of the Russian Federation would soon be in a position also to receive a visit from the High Commissioner for Refugees.
50. Lastly, her delegation had voted in favour of the draft resolution on the situation of human rights in the Sudan (E/CN.4/2003/L.35) because it had ongoing concerns about issues such as the restrictions on the freedom of thought, expression, religion and association as well as the occurrence of arbitrary detention, violations of the rights of women and children, and the use of the death penalty. However, it had noted the recent developments outlined in the text, particularly the commitments made by the Government of the Sudan to fund the work of the Committee for the Eradication of Abduction of Women and Children and to demobilize and repatriate child soldiers. It hoped that those developments, together with the progress made in the peace process, would render it unnecessary to introduce a draft resolution on the issue at the Commission's next session.
51. Mr. GRIBBIN (United States of America) said that his delegation had voted in favour of the draft resolution on the situation of human rights in the Sudan (E/CN.4/2003/L.35) and was disappointed that it had not been adopted. Although the Government of the Sudan had made some limited progress since the adoption by the Commission of the previous resolution on the situation of human rights in the Sudan, it continued to implement and pursue policies that undermined and denied the basic human rights of its citizens. His Government took every opportunity to press the Government of the Sudan on the issue.
52. It was important to adopt a resolution that provided a realistic description of the human rights violations committed in the Sudan and his delegation acknowledged the efforts of the sponsors of the draft text to that end. It remained deeply concerned, however, that relevant details had been omitted concerning the continued abrogation of religious freedom, the deliberate military attacks against innocent civilians, the continued support for tribal militias that enslaved women and children and the frequent denial of humanitarian access to citizens in need.

53. His delegation welcomed and supported the ongoing peace process and saw the talks as an historic opportunity to bring peace through cooperation, close counsel and trust building. However, the Commission should not ignore reality and persistent human rights violations. His Government was increasingly concerned that the Commission had become a venue for shielding regimes from censure rather than an agency for vigorously protecting human rights.

54. Ms. NASCIMBENE DE DUMONT (Argentina) said that her delegation had abstained from voting on the draft resolution on the situation of human rights in Belarus (E/CN.4/2003/L.38) because it had not had sufficient evidence at its disposal to pass judgement on the text.

55. Mr. KHABBAZ HAMOUI (Syrian Arab Republic) said that his delegation had abstained from voting on the draft resolution on the situation of human rights in Iraq (E/CN.4/2003/L.6/Rev.1) because, although it was one-sided, its preamble included an important reference to the Kuwaiti and third-State nationals detained by Iraq. The current occupying Powers had a responsibility to act on that issue.

RIGHTS OF THE CHILD (agenda item 13) (continued) (E/CN.4/2003/L.46 and L.105)

Draft resolution on the abduction of children in Africa (E/CN.4/2003/L.46)

56. Mr. MONTWEDI (South Africa), introducing the draft resolution on behalf of the African Group and other sponsors, said that, after several years of submitting a draft resolution on the abduction of children in Northern Uganda, the African Group had decided to broaden the scope of the resolution to cover all African countries, which were those most affected by the scourge of child abduction for the purposes of armed conflict or trafficking. Several changes had been made to the text of the draft resolution and a revised version thereof had been circulated. He drew attention, in particular, to the decision to delete the words “by guerrilla groups” from the end of paragraph 5, subparagraph (b).

57. The draft resolution, as revised, was adopted.

Draft resolution on the rights of the child (E/CN.4/2003/L.105)

58. Mr. KRIEKOUKIS (Observer for Greece), introducing the draft resolution on behalf of the European Union, the acceding countries to the European Union, the Group of Latin American and Caribbean States (GRULAC) and the other sponsors, said that it had been negotiated in a constructive and cooperative atmosphere. As was the case with the resolution adopted the previous year, the draft resolution came in an “omnibus” format, providing comprehensive coverage of all issues relating to the rights of the child.

59. The fifth preambular paragraph had been revised to read: “*Recalling* all its previous resolutions related to the rights of the child, particularly resolution 2000/85, 2001/75 and 2002/92; and taking note of General Assembly resolution 57/190 of 18 December 2002”. There was also a small correction to make in paragraph 16: the phrase “affordable by all” should be replaced by the phrase “affordable to all”.

60. The draft resolution welcomed the integration of child rights issues into the outcome documents of all major United Nations conferences, special sessions and summits. It also welcomed the work of the Committee on the Rights of the Child and the entry into force of the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child allowing for an increase in the membership of the Committee from 10 to 18. It was hoped that the change would allow the Committee to deal efficiently with the new challenges imposed by the introduction of the two Optional Protocols to the Convention and would ease its backlog of work.

61. It also welcomed the appointment by the Secretary-General of the independent expert for the United Nations study on violence against children and requested the Secretary-General to submit to the Commission, at its sixtieth session, a report on the rights of the child, with information on the status of the Convention and on the problems addressed in the current resolution. It called for the question to be further considered at the Commission's sixtieth session. The sponsors attached great importance to the rights of the child and hoped that the draft resolution could be adopted without a vote.

62. Ms. SANDERS (United States of America) said that her delegation appreciated the efforts that had been made to achieve a document that met each delegation's objectives and concerns. Nevertheless, it had some reservations about the language used in the first preambular paragraph and in paragraph 35, subparagraph (a), and would like those paragraphs deleted from the text. A single recorded vote should be taken on them.

63. In the case of the first preambular paragraph, the existing language acknowledged other relevant human rights instruments but her delegation could not accept the overemphasis given to the Convention on the Rights of the Child and the assertion that the Convention was the standard in the promotion and protection of the rights of the child. Although the Convention touched on most issues confronting children, other international instruments addressed particular problems in a far more comprehensive and effective manner. Moreover, the Convention conflicted with the rights of parents and United States sovereignty. It also conflicted with State and local law in the United States, which generally placed greater emphasis on the duties of parents to protect and care for their children and apportioned rights between parents and children in a manner different from the Convention.

64. With regard to paragraph 35, subparagraph (a), her delegation flatly rejected the call for the abolition of the death penalty for juvenile offenders and believed that all parties would be well served to return to the consensus formula that called on States to comply with the treaty obligations that they had assumed on that issue.

65. Ms. NASCIMBENE DE DUMONT (Argentina), speaking in explanation of vote before the voting, said that her delegation was in favour of adopting the draft resolution, as it stood, for the reasons outlined in a statement it had made during the general discussion on agenda item 13 at the 45th meeting.

66. Ms. WHELAN (Ireland), speaking on behalf of the member State of the European Union that were members of the Commission and of Poland, expressed disappointment that a request had been made for a vote on the first preambular paragraph and paragraph 35, subparagraph (a), of the draft resolution. The Union was not in a position to accept any changes to the paragraphs in question and urged the Commission to support the text as it stood.

67. Ms. DE BELLIS (Uruguay), speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), said that she fully agreed with the statement made by the representative of Ireland on behalf of the European Union. Her Group attached great importance to the adoption by consensus of the draft resolution on the rights of the child. Referring to the first preambular paragraph, she said that the Convention on the Rights of the Child did in fact constitute the standard in the promotion and protection of the rights of the child; its principles and provisions guided over 190 States in child-related issues.

68. With regard to paragraph 35, subparagraph (a), she said that the Convention - which had achieved almost universal ratification - clearly prohibited the use of capital punishment on persons who were under the age of 18 at the time of the crime. Furthermore, for many delegations, the practice was contrary to customary international law. She urged delegations to vote in favour of retaining the two paragraphs in question. It was to be hoped that the draft resolution could then be adopted without a vote.

69. Ms. ABBAS (Syrian Arab Republic) said that the text was extremely important for the promotion and protection of the rights of the child. Her delegation would, therefore, vote in favour of it, if it was put to the vote, and could not agree to any amendments to the text.

70. Mr. ADIYIA (Office of the High Commissioner for Human Rights) said that a written statement had been distributed in the meeting room outlining the financial implications of the adoption of the draft resolution.

71. At the request of the representative of the United States of America, a recorded vote was taken on its proposal to delete the first preambular paragraph and paragraph 35, subparagraph (a), of the draft resolution.

In favour: Algeria, Argentina, Armenia, Australia, Austria, Bahrain, Belgium, Brazil, Burkina Faso, Cameroon, Canada, Chile, China, Costa Rica, Croatia, Cuba, Democratic Republic of the Congo, France, Gabon, Germany, Guatemala, India, Ireland, Japan, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Pakistan, Paraguay, Peru, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Sierra Leone, South Africa, Sri Lanka, Sudan, Sweden, Syrian Arab Republic, Thailand, Togo, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Against: United States of America.

Abstaining: None.

72. The United States proposal was rejected by 51 votes to 1.

73. The draft resolution was adopted without a vote.

74. Ms. SANDERS (United States of America) said that her delegation welcomed the interest of the United Nations in general and the Commission in particular with regard to child-related issues. Her Government was constructively engaged in a wide variety of multilateral and bilateral activities that benefited children around the world. It respected and appreciated the interests and contributions of other nations and organizations in promoting and protecting the rights of children, and enhancing the quality of their lives in direct ways.

75. Her delegation believed that the text was an improvement on its predecessors, and appreciated the receptiveness of its sponsors to address certain issues of importance to it. Nevertheless, it could not agree with all of the provisions of the resolution. As previously noted, it disagreed with the language used in the first preambular paragraph and in paragraph 35, subparagraph (a). Furthermore, it had concerns about the “rights-based approach” identified in paragraph 10 and did not agree with paragraph 22, to the extent that it included capital punishment.

76. There should be no doubt that her Government was committed to ensuring that the protection of the rights of the child was fully integrated into its domestic and foreign policy. However, given the concerns her delegation had with the resolution in its current form, it was obliged to disassociate itself from the consensus.

INDIGENOUS ISSUES (agenda item 15) (continued) (E/CN.4/2003/2-E/CN.4/Sub.2/2002/46, chapter I, draft decision 6)

Draft decision on the International Decade of the World’s Indigenous People, recommended to the Commission by the Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/2003/2-E/CN.4/Sub.2/2002/46, chapter I, draft decision 6)

77. Mr. ADIYIA (Office of the High Commissioner for Human Rights), speaking in accordance with rule 28 of the rules of procedure, said that the total full cost of the activities envisaged under the draft decision would amount to US\$ 88,400. It was anticipated that voluntary contributions would be sought to cover those costs from extrabudgetary resources available to the Office of the High Commissioner for Human Rights (OHCHR). Hence, no additional appropriation would be required. However, the seminar mentioned in the decision could be held only at dates when conference servicing would be available.

78. Ms. GOROVE (United States of America) said that the Sub-Commission had yet to provide additional information to the Commission regarding a possible seminar on treaties, agreements and other constructive arrangements between States and indigenous peoples to be held - if the draft decision was adopted - before the end of the International Decade of the World’s Indigenous People on the basis of a report by the Special Rapporteur of the Sub-Commission. Moreover, the Commission had not received the working paper by the Special Rapporteur, identifying the themes and possible outputs of the seminar (E/CN.4/2003/93). The Commission thus did not have sufficient information to take action on the draft decision as it

stood. Since her delegation had not been given time to propose amendments, it simply wished to disassociate itself from the draft decision. The issue could be addressed more fully by the Economic and Social Council, once the Commission had received the working paper.

79. Mr. FERRER RODRIGUEZ (Cuba) urged the Special Rapporteur to make his report available as soon as possible, so that delegations could take up a clear position on the issue. However, all delegations should show flexibility and understanding, given the importance of the seminar, and he hoped that the draft decision would be adopted without a vote.

80. Mr. SMITH (Australia) said that his delegation fully endorsed the comments made by the representative of the United States of America.

81. Ms. JANJUA (Pakistan) said that her delegation fully supported the statement by the representative of Cuba.

82. The draft decision was adopted without a vote.

PROMOTION AND PROTECTION OF HUMAN RIGHTS:

- (a) STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS
- (b) HUMAN RIGHTS DEFENDERS
- (c) INFORMATION AND EDUCATION
- (d) SCIENCE AND ENVIRONMENT

(agenda item 17) (continued) (E/CN.4/2002/L.92, L.106, L.107, L.108, L.109 and L.110)

Draft resolution on human rights and sexual orientation (continued) (E/CN.4/2002/L.92)

83. The CHAIRPERSON reminded members that, following an extensive debate at its 61st meeting, the Commission had decided to postpone consideration of the draft resolution to allow for further consultations. A motion of no-action, proposed by Pakistan on behalf of the Organization of the Islamic Conference (OIC), had been rejected by a recorded vote.

84. Ms. ASSUMPCÃO DO VALLE PEREIRA (Brazil) said that, although the sponsors of the draft resolution had been approached by the delegation of Pakistan, no consensus had been reached. Her delegation considered that the Commission should take action on the draft resolution.

85. Mr. UMER (Pakistan), speaking on behalf of OIC, said that his delegation had made a genuine effort to bridge the differences between the sponsors of the draft resolution and the countries that did not subscribe to its contents. Unfortunately, no agreement had been reached. That was hardly surprising, given that the issues raised touched on the fundamental value systems of various delegations.

86. The draft resolution attempted to impose a single set of values on States that did not agree with those values. OIC would never take such an approach. While it respected certain value systems, it would not wish those systems to be imposed on all countries. Lastly, he wondered whether the members of the Commission would be given the opportunity to make general comments on the draft resolution.
87. The CHAIRPERSON said that, before giving the floor to any delegation wishing to make a general comment, delegations should be allowed to introduce their proposed amendments (E/CN.4/2003/L.106-L.110).
88. Mr. PEÑA GHISLENI (Brazil), speaking on a point of order, said that the changes proposed in documents E/CN.4/2003/L.106-L.110 were not amendments in the sense defined by rule 63 of the rules of procedure. They did far more than add to, delete from or revise part of the original proposal; in fact, they changed the focus and content of every single paragraph. Most importantly, they called for the deletion throughout the text of the issue of sexual orientation, which formed the very core of the original draft resolution. The texts in question constituted new proposals rather than amendments and should be treated as such. He urged the Chairperson to apply rule 65 of the rules of procedure, which stated that, if two or more proposals related to the same question, they should be voted on in the order in which they were submitted.
89. Mr. UMER (Pakistan) said that he totally disagreed with the representative of Brazil. In the case of its own proposed amendments, his delegation had endeavoured, to the best of its abilities, to retain the structure of the original text and to accommodate the concerns of the Brazilian delegation. The proposed changes should be treated as amendments according to the rules of procedure. He beseeched the delegation of Brazil to refrain from raising the fundamental issue of sexual orientation before the Commission. That was a question that had no place in the Commission.
90. Mr. LEWALTER (Germany), speaking on a point of order on behalf of the Group of Western European and Other States, said that his delegation supported the proposal by the representative of Brazil. He then invoked rule 50 of the rules of procedure and moved that the debate on the agenda item be closed and the question of whether the proposed amendments to the draft resolution were actually amendments or rather new proposals be put to the vote immediately.
91. Mr. UMER (Pakistan), objecting to the motion and supported by Mr. AL-FAIHANI (Bahrain), said that the representative of Germany, who had taken the floor to support the proposal by the representative of Brazil, not to speak on a point of order, should observe the rules of procedure more carefully. The various amendments had been tabled by five different delegations and needed to be taken on their merits separately.

92. After a procedural discussion in which Ms. SUNDBERG (Sweden), Mr. MHANGO (Zimbabwe), Mr. JAKUBOWSKI (Poland), Ms. RODRÍGUEZ MANCIA (Guatemala), Mr. AL-FAIHANI (Bahrain), Mr. UMER (Pakistan), Mr. AL MADI (Saudi Arabia), Mr. PEÑA GHISLENI (Brazil), Mr. RAMCHARAN (Deputy High Commissioner for Human Rights), Mr. ACEMAH (Uganda), Ms. WHELAN (Ireland), Mr. LEWALTER (Germany), Mr. ADAM (Belgium), Ms. ASTANAH (Malaysia) and Mr. BIGGAR (Ireland) took part, the Chairperson suggested that the meeting be briefly suspended.

The meeting was suspended at 5.45 p.m. and resumed at 6 p.m.

93. The CHAIRPERSON invited the Commission to vote on the motion tabled by the representative of Germany to close the debate on the procedural aspects relating to the draft resolution and the proposed amendments thereto. It had been agreed that if that motion was adopted, their consideration would be postponed until the sixtieth session of the Commission.

94. At the request of the representative of Germany, a recorded vote was taken on the closure motion.

In favour: Algeria, Argentina, Bahrain, Burkina Faso, Cameroon, China, Democratic Republic of the Congo, Gabon, India, Kenya, Libyan Arab Jamahiriya, Malaysia, Pakistan, Saudi Arabia, Senegal, Sierra Leone, Sri Lanka, Sudan, Syrian Arab Republic, Thailand, Togo, Uganda, Viet Nam, Zimbabwe.

Against: Austria, Belgium, Brazil, Canada, Croatia, France, Germany, Guatemala, Japan, Mexico, Poland, Republic of Korea, Sweden, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela.

Abstaining: Armenia, Australia, Chile, Costa Rica, Ireland, Paraguay, Peru, Russian Federation, South Africa, United States of America.

95. The closure motion was adopted by 24 votes to 17, with 10 abstentions.

DRAFT PROVISIONAL AGENDA FOR THE SIXTIETH SESSION OF THE COMMISSION
(agenda item 21 (a)) (E/CN.4/2003/L.1)

96. The CHAIRPERSON said she presumed that members had examined the draft provisional agenda for the sixtieth session of the Commission (E/CN.4/2003/L.1) which had been circulated to them in English only and which reflected the decisions and resolutions adopted up to 6 p.m. on Thursday, 24 April 2003.

97. The Commission took note of the draft agenda for its sixtieth session.

REPORT TO THE ECONOMIC AND SOCIAL COUNCIL ON THE FIFTY-NINTH SESSION OF THE COMMISSION (agenda item 21 (b)) (E/CN.4/2003/L.10 and Addenda and L.11 and Addenda)

98. Mr. SOČANAC (Croatia), Rapporteur, introducing the draft report, said that it consisted of two parts: document E/CN.4/2003/L.11 and Addenda 1-8, representing a compilation of all 86 resolutions and 18 decisions adopted by the Commission, and document E/CN.4/2003/L.10 and Addenda 1-17, which represented the chapters of the report on the organization of the session, various agenda items and statements by the Chair on behalf of the Commission. Only the results of the voting on agenda items 5, 8 and 12 were currently available; the remainder would be made available as soon as it had been edited and translated. He asked delegations to send any comments or corrections to him care of the Secretariat by Friday, 16 May 2003. The draft resolutions and decisions recommended to the Economic and Social Council for adoption and any proposals relating to new special procedures and mandates would appear in a separate report, so as to enable the Council to take action on them as soon as possible.

99. The CHAIRPERSON said she took it that the Commission wished to adopt the draft report ad referendum and entrust the Rapporteur with its finalization.

100. It was so decided.

101. The CHAIRPERSON said that, due to time constraints, it had not been possible to give the floor to delegations wishing to speak in explanation of vote after the voting under agenda item 17. Concerned delegations were consequently authorized to provide their explanations in writing to be circulated as official documents of the session.

CLOSURE OF THE SESSION

102. Mr. VIERA DE MELLO (High Commissioner for Human Rights) said that, as part of his work to reform the secretariat of his Office, he had created a dedicated Special Procedures Branch to provide the special rapporteurs and other special procedures with better support in the exercise of their mandates. He suggested that the special procedures and national institutions should be brought into the Commission's schedule of deliberations somewhat earlier so as to accord them the attention they deserved.

103. Experience at the Commission's current session had shown that advance preparation led to more successful resolutions and less divisive debates. He therefore urged delegations to consider holding more discussions prior to the opening the session. Similarly, there was a need for improved follow-up on resolutions at the end of the session and his Office would be looking for ways to improve the implementation of resolutions.

104. One major cause for concern at the session had been the lack of directness and openness and the excessive use of charges of politicization. He therefore advocated plainer speaking to help the Commission move beyond politics to the strengthening of human rights in all countries. In some instances, the Commission had not succeeded in finding consensus language, a failure which ran the risk of weakening its purpose. He therefore appealed to the Commission not to lose sight of its main goal of the protection of human rights.

105. He was optimistic that the structural problems of the Commission were surmountable. Results were improving and acceptance of the importance of human rights continued to grow. The responsibility of States and the international community to protect human rights was increasingly seen as a central aspect of the rule of law, human rights instruments were gaining more and more acceptance and the Commission had become the premier global forum for developing the human rights consensus.

106. Mr. DUQUE ESTRADA MEYER (Brazil), speaking as Rapporteur of the Commission on Human Rights at its fifty-eighth session, said that, in accordance with his proposal at the end of that session, a CD-ROM had been compiled in English of the documentation and outcomes of the session and was being distributed to the Members of the Commission. He would welcome any comments on the CD-ROM which could assist in its future development.

107. The CHAIRPERSON said that the session had been held against the background of difficult international circumstances. The Commission had also suffered from serious time constraints, especially since the number of Member States had multiplied and the list of participating non-governmental organizations (NGOs) had increased. She intended to work with the Expanded Bureau during the intersessional period to try to find ways to use the time allocated to the work of the session more effectively. She thanked the High Commissioner for Human Rights and the Deputy High Commissioner for their attendance and the members of the Expanded Bureau, and the Secretariat, for their support.

108. After the customary exchange of courtesies in which Mr. NENE (South Africa), Ms. RAJMAH (Malaysia), Mr. SKURATOVASKYI (Ukraine), Mr. GONZÁLEZ SANZ (Costa Rica), Mr. LEWALTER (Germany) and Mr. AL ABOODI (Observer for the United Arab Emirates) spoke on behalf of the regional groups of States, the CHAIRPERSON declared the fifty-ninth session of the Commission on Human Rights closed.

The meeting rose at 7.15 p.m.