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COMMISSION ON HUMAN RIGHTS

Sixty-first session

SUMMARY RECORD OF THE 61st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 21 April 2005, at 3 p.m.

Chairperson: Mr. WIBISONO (Indonesia)

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SPECIFIC GROUPS AND INDIVIDUALS:

- (a) MIGRANT WORKERS
- (b) MINORITIES

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Consideration of draft decisions

The meeting was called to order at 3.10 p.m.

SPECIFIC GROUPS AND INDIVIDUALS:

- (a) MIGRANT WORKERS
- (b) MINORITIES
- (c) MASS EXODUSES AND DISPLACED PERSONS
- (d) OTHER VULNERABLE GROUPS AND INDIVIDUALS

(agenda item 14) (continued) (E/CN.4/2005/L.59 and 100)

Draft resolution on the protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) (continued)

1. Ms. WHELAN (Ireland) said that, with a view to achieving consensus, which was especially important in the context of HIV/AIDS, and incorporating the proposals made by the delegations of China and Pakistan, the eleventh preambular paragraph of draft resolution E/CN.4/2005/L.59 had been amended to read: “*Recalling the Guidelines on HIV/AIDS and Human Rights, as summarized in paragraph 12 of document E/CN.4/1997/37, including the summary of Revised Guideline 6: Access to prevention, treatment, care and support (2002), which provide guidance to ensuring the respect, protection and fulfilment of human rights in the context of HIV/AIDS*”.
2. In the seventeenth preambular paragraph, the words “as summarized in paragraph 12 of document E/CN.4/1997/37” had been added after “Guidelines on HIV/AIDS and Human Rights”.
3. In paragraph 1, the phrase “as summarized in paragraph 12 of document E/CN.4/1997/37” had been inserted after “human rights”. Paragraph 6 had been modified by the insertion of the phrase “as understood in the previous international commitments such as ICPD¹ and the Beijing Declaration and Platform for Action² and their respective follow-ups” after the words “protection of reproductive rights”. Paragraph 14 had been supplemented with the phrase “as summarized in paragraph 12 of document E/CN.4/1997/37”, which had been placed between “Guidelines on HIV/AIDS and Human Rights” and “and the present resolution”. Two footnotes had been added. The first read: “United Nations International Conference on Population and Development (ICPD), Cairo, Egypt, 5 to 13 September 1994”. The second was worded: “Adopted by the 4th World Conference on Women: Action for Equality, Development and Peace, Beijing, 15 September 1995”.
4. Some delegations, including those of Canada, the Netherlands and the United Kingdom, had withdrawn their sponsorship for the sake of arriving at a version of the draft resolution on which there was consensus. The problem of human rights in the context of HIV/AIDS was indeed so universal that it should unite and not divide States.

5. Mr. CHENG Hong (China) said that his Government attached great importance to the protection of human rights in the context of HIV/AIDS and, for that reason, it had participated actively in international exchanges and cooperation aimed at the prevention and treatment of AIDS. Since the main points of the amendment his delegation had tabled had been incorporated in the revised text of the draft resolution, it withdrew its amendment (E/CN.4/2005/L.100) and joined the consensus on the revised version.

6. Ms. JANJUA (Pakistan), also speaking on behalf of the Organization of the Islamic Conference (OIC) member States that were members of the Commission, concurred with the representative of Ireland that it was necessary to unite on such an important issue and therefore expressed support for the revised version of the draft resolution.

7. The OIC took the view that any reference to the Guidelines on HIV/AIDS and Human Rights, as summarized in paragraph 12 of document E/CN.4/1997/37, should not be construed as acceptance of the concepts included in the commentary and recommendations for dissemination and implementation of the Guidelines as reflected in annex I of that document. The OIC accepted only the Guidelines in paragraph 12 and Revised Guideline 6. It was the sovereign right of Governments to interpret those Guidelines in accordance with their national legislation.

8. Mr. LEO (United States of America) said that the comments on the outcome of the conferences in Cairo and Beijing, which his delegation had made earlier in respect of the amendment presented by China, also applied to revised paragraph 6.

9. His Government further considered that any affirmation of ICPD+5, paragraph 63, did not detract from its firm support of the right to conscientious objection of health-care workers whose personal beliefs might dictate their refusal to perform, or be involved in, abortion or abortion-related activities. Its reaffirmation of the principles of Cairo, Beijing and their respective follow-on conferences did not constitute a change in the position of the United States with respect to treaties it had not ratified. On that understanding, his Government supported the amendments.

10. Ms. BU FIGUEROA (Honduras) said that, in the light of the amendments to the draft resolution, her Government would be rejoining the sponsors.

11. Mr. PIRA (Guatemala) said that, while his Government was committed to all action to reduce vulnerability to infection with HIV/AIDS, it held that the right to life from the moment of conception must be guaranteed in accordance with the Constitution of Guatemala.

12. The CHAIRPERSON stated that the draft resolution did not have any programme budget implications.

13. Mr. LEO (United States of America) said that his Government would join the consensus on the draft resolution on the explicit understanding that the resolution, as revised, referred only to the basic Guidelines on HIV/AIDS and Human Rights, as opposed to the broader elaboration and commentary alluded to in the Secretary-General's report (E/CN.4/1997/37). The elaboration of the Guidelines was fundamentally at odds with United States law. The exhortation to give

legal recognition to same-sex marriage and to decriminalize prostitution was unacceptable. The call to provide sterile injecting equipment failed to acknowledge that, in many countries, drug use was illegal. Moreover, because of the nature of the country's federal system, those issues were a matter of state and local law. Hence it would be inappropriate for his Government to ignore the principle of federalism by imposing such obligations. It was not the first time that reference had been made to the Guidelines on HIV/AIDS and Human Rights, but the attempt to bolster acceptance of those radical principles appeared to have intensified, since previous resolutions had merely invited States to "consider" the Guidelines.

14. Since some Member States had endeavoured to seek action on a number of deeply divisive issues relating to sexuality in the context of thematic resolutions concerning widely accepted goals, it was essential to limit references to the Guidelines in such a way as to focus attention on treating AIDS sufferers with the dignity they deserved. The provisions elaborating on the Guidelines had no bearing on the object of the draft resolution and so incorporating them would be out of place. States should heed paragraph 10 (d) of the 1997 report on the Guidelines (E/CN.4/1997/37). His Government would always resist any attempts to incorporate in Commission texts dubious references to documents which lacked wide acceptance.

15. Draft resolution E/CN.4/2005/L.59, as orally revised, was adopted without a vote.

16. The CHAIRPERSON announced that the Commission had concluded its consideration of agenda item 14. The United States delegation had, however, expressed a wish to clarify its position on an earlier resolution.

17. Ms. TAMLYN (United States of America), referring to resolution E/CN.4/2005/L.65 on the human rights of persons with disabilities, explained that, although her Government had joined the consensus on the text, it believed that the most effective way to protect the human rights of persons with disabilities was through the enactment and enforcement of strong domestic legislation.

ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS (agenda item 19) (continued) (E/CN.4/2005/L.38/Rev.1)

Draft resolution on technical cooperation and advisory services in the Democratic Republic of the Congo (E/CN.4/2005/L.38/Rev.1)

18. Mr. YIMER (Ethiopia), introducing the draft resolution on behalf of the African Group, said that the draft resolution contained many of the provisions that had been used in the Commission's previous resolution on the issue. Changes and new developments in the situation in the Democratic Republic of the Congo had been taken into account. The text had been drafted through open-ended consultations. He wished to draw attention to a revision to the text: operative paragraphs 1 (j) and (k) had become operative paragraphs 2 (a) and (b), and were preceded by the words "*takes note of*".

19. The CHAIRPERSON said that there were 11 additional sponsors to the draft resolution, which had programme budget implications, details of which had been circulated to all members.

20. Mr. GRIBBIN (United States of America) said that the position of the United States on the Rome Statute and the International Criminal Court was well known. His delegation could not join in positive statements in that regard, and opposed any efforts to encourage States to sign, ratify or accede to the Statute. Language regarding the International Criminal Court should be neutral and factual, as it had been in previous Commission resolutions that the United States had supported. The African Group had assured his delegation that the concerns of the United States would be taken into account in the text. That had not been the case, and he therefore wished to propose an amendment: the words “recognizing that States not party to the Rome Statute have no obligations under the Statute” should be added at the end of former paragraph 5 (f). The language of the amendment was taken from United Nations Security Council language on the same issue. The amendment was technical in nature, but important to the United States. It did not modify the call for the Transitional Government of the Democratic Republic of the Congo to cooperate with the International Criminal Court, but, rather, clarified the jurisdiction of the Court regarding its operations in the Congo.

21. Mr. DE JONG (Netherlands), speaking on behalf of the European Union (EU) countries members of the Commission and the acceding country Romania, said that the EU attached great importance to the International Criminal Court and the Rome Statute and therefore opposed the amendment submitted by the United States. He called for a vote on that amendment and said that the EU would vote against it.

22. At the request of the representative of the Netherlands, a recorded vote was taken on the amendment to the draft resolution proposed by the United States of America.

In favour: Eritrea, Ethiopia, United States of America.

Against: Argentina, Armenia, Australia, Brazil, Burkina Faso, Canada, Congo, Costa Rica, Dominican Republic, Ecuador, Egypt, Finland, France, Gabon, Germany, Guinea, Hungary, Ireland, Italy, Kenya, Mauritania, Mexico, Netherlands, Nigeria, Paraguay, Peru, Republic of Korea, Romania, Russian Federation, South Africa, Swaziland, Togo, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zimbabwe.

Abstaining: Bhutan, China, Cuba, Guatemala, Honduras, India, Indonesia, Japan, Malaysia, Nepal, Pakistan, Qatar, Saudi Arabia, Sri Lanka.

23. The amendment to draft resolution E/CN.4/2005/L.38/Rev.1, proposed by the United States of America, was rejected by 35 votes to 3, with 14 abstentions.

24. Draft resolution E/CN.4/2005/L.38/Rev.1, as orally revised, was adopted without a vote.

25. Mr. MINDUA KESIA-MBE (Observer for the Democratic Republic of the Congo) said that the promotion and protection of human rights was a priority for the authorities of the Democratic Republic of the Congo, which recognized that human rights were applicable *erga omnes*, and that as the most competent United Nations body for human rights, the Commission was the most appropriate forum for discussing them. However, his country, like the rest of the African Group, felt trapped by the Commission. On the one hand, his Government

must cooperate with the Commission because of the Commission's power and mandate, and on the other the Government was wary of the Commission because of its selectivity, and the fact that some of its past resolutions under agenda item 9 had been highly politicized and had pointed the finger at so-called barbaric African countries, while turning a blind eye to other States that were responsible for past and present violations. His Government did, however, recognize the Commission's authority, and had decided to cooperate with it under agenda item 19. The African Group had presented the draft resolution in a constructive spirit, and had discussed and negotiated the text with all partners, particularly with the EU.

26. The Democratic Republic of the Congo had made considerable progress and was emerging from five years of war, which had followed a vicious 32-year dictatorship. Despite the country's rich natural resources, the population was particularly poor. Thanks to the new Government, the country had found peace and unity. The population knew that only its own work could save the country. The Government had made great efforts in all areas, but the country's lack of financial resources meant that it was particularly difficult to implement fully all human rights, particularly economic and social rights, such as the right to development. Many people still suffered multiple violations of their rights, in certain areas in the east of the country, and many crimes had been committed without their perpetrators being brought to justice.

27. Many violations of human rights in the country were due to the illegal exploitation of natural resources and illegal trafficking in light weapons. His country did not manufacture arms, and was under a military embargo, but was strangely inundated with weapons, particularly by mafia networks. The Government had appealed to the international community on several occasions for assistance in addressing the issue, but thus far had received no response. The draft resolution did not provide much help in that respect. The Government had requested the establishment of a special international tribunal for the Democratic Republic of the Congo for the crimes committed before July 2002, but that issue had not been mentioned in the draft resolution, which therefore did not address all of the Government's concerns. However, the text had been negotiated, and was a compromise, which had been reached due to the constructive spirit in which the co-sponsors had worked. His delegation had thus accepted the draft, and he thanked the Commission for having adopted it by consensus.

ORGANIZATION OF THE WORK OF THE SESSION (agenda item 3) (continued)

Draft decision on the dates of the sixty-second session of the Commission on Human Rights

28. The CHAIRPERSON drew the Commission's attention to the following draft decision on the dates of the next session, which had no programme budget implications:

“At its ... meeting, on ... April 2005 the Commission on Human Rights, recalling Economic and Social Council decision 1994/297 of 29 July 1994 and taking into account Council decisions 1997/291 of 22 July 1997 and 2002/278 of 25 July 2002, decided, without a vote, that the first meeting of the Commission would be held on the third Monday in January with the sole purpose of electing its officers, and that the sixty-second session of the Commission would be held from 13 March to 21 April 2006.”

29. The draft decision was adopted without a vote.

Draft decision on the organization of work of the sixty-second session of the Commission on Human Rights

30. The CHAIRPERSON further drew the Commission's attention to the following draft decision on the organization of work of the next session that had programme budget implications, details of which had been circulated to all members:

“At its ... meeting on ... April 2005, the Commission on Human Rights, taking into account its heavy schedule of work as well as the need to give adequate consideration to all the items on its agenda, decided, without a vote:

(a) To recommend to the Economic and Social Council that it authorize six fully serviced additional meetings, including summary records, in accordance with rules 29 and 31 of the rules of procedure of the functional commissions of the Council, for the Commission's sixty-second session;

(b) To request the Chairperson of the sixty-second session of the Commission to make every effort to organize the work of the session within the time normally allotted so that the additional meetings that the Council might authorize would be utilized only if they proved to be absolutely necessary.”

31. The draft decision was adopted without a vote.

The meeting rose at 3.50 p.m.