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Fifty-sixth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 12 August 2004, at 11.30 a.m.

Chairperson: Mr. SORABJEE

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CONSIDERATION OF A DRAFT RESOLUTION UNDER AGENDA ITEM 1

* The summary record of the first part (closed) of the meeting appears as document E/CN.4/Sub.2/2004/SR.23.

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The meeting was called to order at 11.45 a.m.

CONSIDERATION OF A DRAFT RESOLUTION UNDER AGENDA ITEM 4

Draft resolution on the effects of the working methods and activities of transnational corporations on the enjoyment of human rights (E/CN.4/Sub.2/2004/L.19).

1. Mr. GUISSÉ announced that the draft resolution had been amended. The co-sponsors had agreed to delete subparagraphs 3 (a), (b), (c), (d) and (e), which had given rise to objections, and to insert a final paragraph requesting the working group to submit its report to the Sub-Commission at its fifty-seventh session.
2. Ms. HAMPSON said that, in view of the amendments made to draft resolution L.19, the sponsors of draft resolution L.7 had decided to withdraw that document.
3. Mr. CHEN, Mr. KARTASHKIN and Ms. CHUNG announced their wish to co-sponsor draft resolution L.19.
4. Mr. ALFREDSSON, referring to the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, said that he would not have joined the consensus on that document if he had been present at the previous session of the Sub-Commission. He had explained his position on the matter to the working group on transnational corporations, of which he was a member, and that position was recorded in the report of the working group (document E/CN.4/Sub.2/2004/21). That was why he had co-sponsored the amendments contained in document L.7, before the withdrawal of that document on account of the amendments to document L.19 just announced by Mr. Guissé. However, he still had reservations regarding the amended version, specifically regarding operative paragraph 2 which referred to the Declaration on the Right to Development, of which he was not in favour. He had explained his position on the right to development during the consideration of agenda item 4 and expressed regret that the compromise formula he had proposed for paragraph 2 had not been accepted.
5. He questioned the justification for terms used in that paragraph, such as the “dynamic character” of the right to development. In his view there was nothing dynamic about that “right”. The Declaration on the Right to Development had been adopted 18 years ago at the conclusion of a 10-year drafting process. In other words, there had been 30 years of uninterrupted debate, hundreds of meetings and dozens of reports on the subject, which represented an expenditure by the United Nations of tens of millions of dollars, and still people did not know exactly what the right to development meant.
6. In that same paragraph, the right was referred to as “integrated”. In Mr. Alfredsson’s opinion, the right to development was not integrated in any operational activity. It would even be fair to say that the issue had produced division and had led to more conflicts than solutions.
7. Finally, the word “multidimensional”, which was also applied to that “right”, was open to various and sometimes contradictory interpretations.

8. Despite those reservations, Mr. Alfredsson supported some of the ideas underlying the debate on the right to development. In particular, he was entirely in favour of strengthening economic, social and cultural rights, which was why he had enthusiastically participated in the Social Forum, the objectives of which he fully shared. In his opinion, however, those objectives had more chance of being attained without reference to the right to development. Nevertheless, despite his serious reservations and in view of the appeals made to him by his colleagues and his personal desire to preserve harmony within the Sub-Commission, he would not oppose the adoption of the draft resolution without a vote.

9. Mr. CASEY said that he fully shared Mr. Alfredsson's views, agreeing that the right to development was a concept that provoked discord. Nevertheless, in view of the amendments made to the draft resolution, he would not oppose its adoption by consensus.

10. Ms. HAMPSON said that further issues concerning the activities of transnational corporations needed to be examined, as she had clearly stated to the working group on transnational corporations in which she had taken an active part during the current year. Nevertheless, she was not in favour of extending the mandate of the working group, as provided for in operative paragraph 3 of the draft resolution. There was a very serious risk that such an extension would imperil the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, which were currently being considered by the Commission on Human Rights. In her view, it would have been preferable to consider the outstanding issues in plenary under agenda item 4. She hoped that the Sub-Commission would not come to regret its adoption of the draft resolution and asked for her explanation of her position on the draft resolution to be placed on record. Nevertheless, in the light of the amendments made to the text and in order to maintain good relations within the Sub-Commission, she would not oppose the adoption of the draft resolution by consensus.

11. The draft resolution, as orally revised, was adopted without a vote.

CONSIDERATION OF A DRAFT RESOLUTION UNDER AGENDA ITEM 5

Draft resolution on discrimination based on work and descent (E/CN.4/Sub.2/2004/L.8)

12. Mr. ALFONSO MARTÍNEZ said he had some misgivings concerning the draft resolution, as he had told the co-sponsors. He did not consider the method of entrusting two experts, whoever they might be, to pursue the study for the next three years, to be appropriate.

13. Mr. BÍRÓ said that he shared Mr. Alfonso Martínez's views.

14. Under rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, Mr. COMBA (Office of the High Commissioner for Human Rights) read out an estimate of the financial implications of the draft resolution in the event of its adoption. Since the amounts to be provided came within the core expenditure of the United Nations, adoption of the draft resolution would not require any additional appropriations under the Organization's programme budget.

15. The draft resolution was adopted without a vote.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS UNDER
AGENDA ITEM 6

Draft decision on guidelines and principles for the promotion and protection of human rights
when combating terrorism (E/CN.4/Sub.2/2004/L.13)

16. Ms. KOUFA, presenting the draft decision, stated that the basic intention was to establish a sessional working group to consider the question of the protection of human rights within the framework of counter terrorism.

17. Mr. GUISSÉ and Ms. WARZAZI said that they wished to co-sponsor the draft decision.

18. The draft decision was adopted without a vote.

Draft resolution on a world programme for human rights education (E/CN.4/Sub.2/2004/L.26)

19. Mr. YOKOTA said that the draft resolution had been prepared pursuant to the decision taken by the Commission on Human Rights, at its latest session, to recommend to the General Assembly, through the Economic and Social Council, to launch a world programme on human rights education to be prepared in cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO). A slight amendment had been made to the text. It had been pointed out that the reference to primary and secondary education only was too limited, and the sponsors of the draft resolution had reworded the latter part of paragraph 2 as follows: “and consider proposing that Human Rights Day be commemorated every year worldwide in all education and training institutions, including primary and secondary schools, as well as in tertiary institutions and universities, as of 2005”.

20. Mr. ALFONSO MARTÍNEZ expressed concern at the very short deadline given in paragraph 1. When reading the text he had not realized that, if in November or December 2004 the General Assembly approved the idea of launching the world programme, the programme would have to begin in January 2005. It would have been desirable for the Sub-Commission to be informed of the content of the programme in advance, but unfortunately that would be very difficult. He suggested rewording paragraph 1 to respond to that concern.

21. Mr. YOKOTA said that he fully shared Mr. Alfonso Martínez’s concerns regarding the timetable for the introduction of the world programme, if it were to be adopted by the General Assembly. However, the wording of the draft resolution was identical to that of the resolution adopted by the Commission on Human Rights at its sixtieth session. He was convinced that preparations for launching the programme had already begun within the Office of the High Commissioner for Human Rights, which would no doubt keep the Sub-Commission informed.

22. Mr. ALFONSO MARTÍNEZ urged that, at the Sub-Commission’s next session, the Office of the High Commissioner for Human Rights should present a summary of the content of the programme prepared in cooperation with UNESCO. He hoped that the sponsors of the draft resolution would take that request into account.

23. Mr. YOKOTA assured Mr. Alfonso Martínez that that would be done.

24. Mr. BOSSUYT said that he wished to co-sponsor the draft resolution.

25. The draft resolution was adopted without a vote.

Draft resolution on the report of the Working Group on Contemporary Forms of Slavery
(E/CN.4/Sub.2/2004/L.29)

26. Mr. PINHEIRO drew attention to the fact that in 2005 the Working Group would celebrate 30 years of existence. The text of the draft resolution was a routine text concerning the Working Group's continuing activities.

27. Mr. BÍRÓ, Mr. ALFONSO MARTÍNEZ, Ms. KOUFA, Ms. RAKOTAORISOA, Mr. CASEY, Mr. TUÑON VEILLES, Mr. CHEN, Mr. CHERIF, Mr. KARTASHKIN and Mr. ALFREDSSON said that they wished to co-sponsor the draft resolution.

28. The draft resolution was adopted without a vote.

Draft resolution on United Nations Voluntary Trust Fund on Contemporary Forms of Slavery
(E/CN.4/Sub.2/2004/L.30)

29. Mr. PINHEIRO said that he recommended States to contribute to the Fund, which was performing outstanding work.

30. Mr. BÍRÓ, Mr. CHERIF, Mr. ALFONSO MARTÍNEZ, Mr. KARTASHKIN, Ms. KOUFA, Ms. CHUNG and Mr. TUÑON VEILLES said that they wished to co-sponsor the draft resolution.

31. The draft resolution was adopted without a vote.

Draft resolution on terrorism and human rights (E/CN.4/Sub.2/2004/L.33)

32. Ms. MOTOC said that, in the draft resolution, the Sub-Commission acknowledged the range of the studies carried out by Ms. Koufa on the issue of terrorism and proposed the publication of a comprehensive document containing all those studies.

33. Mr. ALFONSO MARTÍNEZ said that he wished to co-sponsor the draft resolution.

34. Mr. COMBA (Office of the High Commissioner for Human Rights) read out an estimate of the financial implications of the draft resolution. Although the publication of the comprehensive document referred to in the draft resolution was not provided for in the United Nations programme budget for the current biennium, it should be possible to absorb the costs incurred by that publication from within existing resources, since the activities of the Special Rapporteurs came under the core expenditure of the Organization. It would not therefore be necessary to make any additional appropriations as a result of the adoption of the draft resolution.

35. The draft resolution was adopted without a vote.

Draft decision on reservations to human rights treaties (E/CN.4/Sub.2/2004/L.36)

36. Mr. KARTASHKIN, Mr. GUISSÉ, Mr. CHERIF, Mr. ALFONSO MARTÍNEZ and Mr. TUÑON VEILLES said that they wished to co-sponsor the draft decision.

37. The draft decision was adopted without a vote.

Draft decision on human rights and international solidarity (E/CN.4/Sub.2/2004/L.43)

38. Mr. ALFONSO MARTÍNEZ said that he wished to co-sponsor the draft decision.

39. The draft decision was adopted without a vote.

Draft resolution on systematic rape, sexual slavery and slavery-like practices (E/CN.4/Sub.2/2004/L.44)

40. Ms. CHUNG said that the main purpose of the draft resolution was to request the High Commissioner for Human Rights to submit an updated report on the issues of systematic rape, sexual slavery and slavery-like practices during armed conflicts.

41. The draft resolution was adopted without a vote.

Draft decision on the preliminary report on the study of human rights and the human genome (E/CN.4/Sub.2/2004/L.46)

42. Mr. ALFONSO MARTÍNEZ, Mr. GUISSÉ, Mr. BOSSUYT, Mr. CHERIF, Ms. WARZAZI and Mr. KARTASHKIN said that they wished to co-sponsor the draft decision.

43. Mr. KOUFA announced an amendment to subparagraph (c). After the words “international, governmental and non-governmental organizations”, the following should be added: “and by enabling her to send them a questionnaire at the appropriate time to help in the preparation of her progress report”.

44. Mr. COMBA (Office of the High Commissioner for Human Rights) read out an estimate of the financial implications of the draft decision, in the event of its adoption. Although no funds were included in the programme budget for funding activities associated with the mandate of the Special Rapporteur, the expenditure relating to those activities could be absorbed from within existing resources, in view of the fact that the activities of the Special Rapporteurs came within the category of the core expenditure of the United Nations. It would therefore not be necessary to make any additional appropriations if the draft decision were adopted.

45. The draft decision, as orally revised, was adopted without a vote.

Draft decision on recognition of meritorious work done by Dr. Erica-Irene A. Daes as member of the Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/2004/L.47)

46. Mr. YOKOTA said that he had not had time to consult all the co-sponsors of the draft decision. However, he gathered that a number of them intended, at the fifty-seventh session, to consider the appropriate way to celebrate the sixtieth anniversary of the Sub-Commission and, on that occasion, to honour the memory of those of its former members who had made major contributions to its work. Those co-sponsors had agreed to the withdrawal of the draft decision for the time being, on the understanding that it would be reconsidered in the context of the Sub-Commission’s anniversary. Mr. Yokota expressed the hope that the other co-sponsors would support that proposal.

47. Mr. GUISSÉ pointed out that Mr. Yokota's proposal did not take into account the objections of those, like himself, who believed that all the members had contributed to the promotion of human rights within the Sub-Commission and that honouring some members rather than others amounted to discrimination.

48. Ms. WARZAZI, speaking on a point of order, said that there was no point in commenting on the draft decision since its consideration had been postponed until the following year. She urged the Chairperson to close the debate.

49. Mr. ALFONSO MARTÍNEZ thanked Mr. Yokota for his constructive suggestion, which had his full support.

50. It was decided, without a vote, to postpone consideration of the draft decision until the fifty-seventh session.

Draft resolution on harmful traditional practices affecting the health of women and the girl child (E/CN.4/Sub.2/2004/L.48)

51. Ms. WARZAZI noted that the Secretariat had reported on the financial implications of activities to be carried out by the Special Rapporteurs. She herself had been a Special Rapporteur for many years and the Secretariat had never mentioned financial implications in respect of her activities. She herself defrayed all her expenses and she accepted that situation. Nevertheless, she asked why other Special Rapporteurs were treated differently and suggested that a form of discrimination might be involved.

52. Ms. MOTOC said that the draft resolution took note with satisfaction of the eighth report of Ms. Warzazi and requested her to continue her work with the assistance of the United Nations High Commissioner for Human Rights.

53. Mr. GUISSÉ thanked Ms. Warzazi for raising the problem of expenses. He himself had for years been a Special Rapporteur on economic, social and cultural rights and had never received any assistance, financial or material, from the Office of the High Commissioner. All expenses were met by him.

54. Mr. COMBA (Office of the High Commissioner for Human Rights), replying to Ms. Warzazi and Mr. Guissé, said that in the first place a draft resolution might or might not have financial implications. Secondly, it was only when a new mandate was established or an existing mandate was renewed that the Secretariat announced the financial implications of that measure. When a mandate was renewed, there was in fact no need to indicate its financial implications again because they had already been announced when the mandate had been established. Thirdly, the Special Rapporteurs received assistance from the Office of the High Commissioner in various forms. Some of the Secretariat staff were assigned to assisting the experts and Special Rapporteurs of the Commission and Sub-Commission. Moreover, the travel expenses of experts and Special Rapporteurs to attend meetings of United Nations bodies were met by the Office of the High Commissioner. There were standardized procedures for establishing the costs relating to mandates. For the Sub-Commission experts, the Secretariat made provision for the cost of an annual stay of five working days in Geneva and the cost of the necessary support staff calculated on the basis of three months' work per annum.

55. Ms. WARZAZI said that she did not need the financial assistance of the Office of the High Commissioner. On the other hand, she asked to be provided with the services of a competent assistant to collaborate in preparing her report. She stressed that, in all the years that she had served as a Special Rapporteur, she had made only one journey at the expense of the Office of the High Commissioner.

56. Mr. COMBA (Office of the High Commissioner for Human Rights) said he regretted that there had been a misunderstanding regarding financial implications, and suggested adopting a different practice in future. Whenever a draft decision or draft resolution with financial implications was adopted, the holder of the corresponding mandate would be informed in writing of the cost of his or her future activities and the amounts to which he or she was entitled for that purpose. He was perfectly willing to introduce that practice.

57. Mr. ALFONSO MARTÍNEZ, Mr. CHERIF, Mr. KARTASHKIN, Ms. KOUFA, Mr. CASEY, Ms. WADIBIA-ANYANWU, Mr. CHEN and Mr. PINHEIRO said that they wished to co-sponsor the draft resolution.

58. The draft resolution was adopted without a vote.

Draft decision on human rights and non-State actors (E/CN.4/Sub.2/2004/L.49)

59. Mr. BÍRÓ proposed amending the draft decision by the insertion, after the words “non-State actors”, of the words “in order to approach in a systematic way the question of accountability under international human rights law”.

60. Mr. ALFONSO MARTÍNEZ welcomed the amendment, which specified the purpose of the draft decision. He said he wished to become a co-sponsor of the draft decision.

61. Mr. CHERIF, Mr. KARTASHKIN, Ms. WARZAZI and Mr. SATTAR also said they wished to co-sponsor the draft decision.

62. Mr. GUISSÉ expressed concern at the reference to the accountability of non-State actors. He stressed that the attribution of responsibility to non-State actors must in no way diminish the accountability of States, inasmuch as States alone were subject to international law.

63. Ms. WARZAZI expressed her satisfaction with the draft decision. For years the Sub-Commission had constantly drawn attention to the accountability of States, but that accountability was an established fact that no one disputed. On the other hand, it had never adopted an official position on human rights violations committed by non-State actors. The time had come to speak of such violations.

64. Mr. GUISSÉ said that he would not oppose the adoption of the draft decision by consensus. He simply wished his reservations to be recorded in the Sub-Commission’s report.

65. The draft decision, as orally revised, was adopted without a vote.

66. Ms. KOUFA, speaking on a procedural matter, asked for the expression “adopted unanimously” to be used in respect of draft decision L.13 instead of the expression “without a vote”, which the Chairperson had used in reference to the adoption of that draft decision.

67. Mr. DECAUX said it was necessary to distinguish between the various expressions used when a proposal was adopted. If there were no vote, the adoption should be recorded as “without a vote” or “by consensus”. The expressions “without a vote” or “by consensus” did not mean “unanimously”. There were occasions when some members would have voted against a draft resolution or decision if it had been put to the vote. The fact that those members had not opposed the consensus did not mean that there was unanimity. Only a vote could determine whether unanimity really existed. Similarly, the fact that some members did not take the floor did not necessarily make them co-sponsors. Nor was being a co-sponsor the same thing as approving a proposal.

68. Following an intervention by Ms. WARZAZI on the same topic, the CHAIRPERSON said that, according to rule 57 of the rules of procedure of the functional commissions of the Economic and Social Council, there were only two methods for the adoption of a proposal: with a vote and without a vote.

Draft decision on technical cooperation (E/CN.4/Sub.2/2004/L.34)

69. Mr. ALFREDSSON stated that it had been decided to include the draft decision under agenda item 6 (c). The time had now come to reach a verdict.

70. Mr. DECAUX said that, according to rule 12 of the rules of procedure, the submission of a draft decision or resolution required at least four co-sponsors.

71. Ms. WARZAZI pointed out that the Sub-Commission had already adopted a draft resolution that had had only two co-sponsors, so a precedent existed.

72. Mr. ALFONSO MARTÍNEZ said that he did not believe that the rule mentioned by Mr. Decaux existed. During consideration of the rules of procedure it had been decided that everyone was entitled to take an initiative. A draft resolution might well have only a single sponsor.

73. The CHAIRPERSON, after reading out the relevant provisions of the rules of procedure, said that Mr. Alfonso Martínez’s interpretation was correct.

CONSIDERATION OF A DRAFT RESOLUTION UNDER AGENDA ITEM 1

74. Ms. HAMPSON, referring to draft resolution L.52, drew attention to the new version of that document, which unfortunately was available only in English. She hoped to receive her colleagues’ comments on the new version before the start of the afternoon meeting.

Draft resolution under item 1 with regard to item 2 of the agenda (E/CN.4/Sub.2/2004/L.52)

75. In reply to a query from the CHAIRPERSON, Ms. HAMPSON said that, subject to the consent of the co-sponsors of the new version, that text would replace the old version.

The meeting rose at 1 p.m.