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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Fortieth session

SUMMARY RECORD OF THE FIRST PART (CLOSED) * OF THE 30th MEETING **

Held at the Palais des Nations, Geneva,
on Monday, 29 August 1988, at 3.35 p.m.

Chairman: Mr. BHANDARE

CONTENTS

Communications concerning human rights: Report of the Working Group established under Sub-Commission resolution 2 (XXIV) in accordance with Economic and Social Council resolution 1503 (XLVIII) (continued)

Organization of work (continued)

* The summary record of the second part (public) of the meeting appears as document E/CN.4/Sub.2/1988/SR.30/Add.1

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The meeting was called to order at 3.35 p.m.

COMMUNICATIONS CONCERNING HUMAN RIGHTS: REPORT OF THE WORKING GROUP
ESTABLISHED UNDER SUB-COMMISSION RESOLUTION 2 (XXIV) IN ACCORDANCE WITH
ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1503 (XLVIII) (continued)

Communication concerning Zaire (E/CN.4/Sub.2/1988/R.1/Add.21)

1. Mrs. WARZAZI, referring to communication No. 88/5/2,313 from Amnesty International dated 17 May 1988, said that there was no indication of the source of the information contained in the penultimate paragraph. The summary of the communication referred to refugees from the eastern Kivu region and gave details of abuses by soldiers, which indicated the existence of armed opposition in that region and a situation that would inevitably involve serious incidents.
2. In its communication, Amnesty International recognized that people had been detained for political reasons and not because of their opinions, and that the arrested belonged to the opposition party whose activities were not authorized. Contrary to what some members of the Sub-Commission said, the Sub-Commission was not competent to legalize a political party in a given country, especially a third world country.
3. She noted that the measures against those people had been lifted, a fact not appreciated by Amnesty International which, unlike certain other non-governmental organizations, often seemed reluctant to give due regard to events in an accused country. The reply from the Government of Zaire - whose President had appointed a High Commissioner for Citizens' Rights and Freedoms - stated that the detainees had been arrested for breaking the law. Every country had to endeavour to maintain order and respect for the law.
4. The High Commissioner's invitation to Amnesty International to visit Kinshasa was evidence of the Government's will to remedy a situation that was far from satisfactory. The communication from Amnesty International recognized that the High Commissioner had no means as yet to investigate violations committed outside Zaire. It also recognized that the Government had taken certain measures to emphasize the importance of human rights, although it had not dealt with some more serious problems.
5. Considering the vast extent of the territory of Zaire, the Government's very limited means and its will to improve the situation, as reflected in its reply, it would be wiser for Amnesty International to respond to the Government's wish as expressed in the penultimate paragraph of its reply and thus give real encouragement to the promotion of human rights. As for the Sub-Commission, it would certainly be advisable, instead of condemning Zaire, to ask the United Nations and human rights bodies to give Zaire the material assistance it needed to achieve the observance of human rights in that country. The Sub-Commission should therefore give the Government of Zaire the benefit of the doubt and above all find the means of meeting its request for assistance.
6. Mr. EIDE said that Zaire had an exceptionally bad human rights record on the African continent. There were some signs of increasing concern in Zaire about the situation, but very little had happened so far.

7. With regard to possible action, in connection with the penultimate paragraph of the Government's reply, there were different tasks for different institutions. Amnesty International, for example, could not equip Zaire or any other country with wireless telegraphy, radio communication, cross-country vehicles and so forth. There was a difference between commitments and reality; and the reality unfortunately was that there were still alleged extra-judicial executions and torture. Even though it was an internal conflict, human rights continued to apply - at least those from which there could be no derogation in any circumstances. He proposed that the communication should be transmitted to the Commission on Human Rights which was already studying the situation in Zaire.

8. The CHAIRMAN invited the Sub-Commission to vote on the proposal to transmit the communication on Zaire to the Commission on Human Rights.

9. The proposal was adopted by 13 votes to none, with 9 abstentions.

ORGANIZATION OF WORK (continued)

10. The CHAIRMAN invited members of the Sub-Commission to discuss the 1503 procedure. A number of points had been raised during the debate on communications: for example double jeopardy, the possibility of secret voting, the advisability of allowing representatives of Governments to attend meetings. He reminded members that the Sub-Commission had no power to change the procedure: that was for the Council or other bodies. The Sub-Commission could only express its views.

11. Mr. ALFONSO MARTINEZ, referring to the confidential list of communications concerning human rights issued each month, in which reference was made under each communication to the relevant articles of the Universal Declaration of Human Rights, suggested that it might be useful if the references also included other relevant international instruments, such as the Charter of the United Nations, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid and various ILO Conventions.

12. He noted in paragraph 2 (b) of Council resolution 728 F (XXVIII) that the Secretary-General was requested to provide the Commission before each session with a confidential list, with a brief indication of the substance, of other communications concerning human rights - presumably those not covered by subparagraph (a). That resolution had been adopted at a time when the Commission had no other means of obtaining information on complaints concerning human rights. Now, a whole system of machinery was available, including the 1503 procedure. He wondered therefore whether the list was still necessary, since the Commission received full information on violations of human rights from the Working Group on Communications, and he questioned the need to maintain the flow of information on cases not accepted by the Working Group or not referred to the Sub-Commission.

13. With regard to the 1503 procedure, Mr. Eide and Mr. van Boven had put forward some ideas under agenda item 3 for consideration at the Sub-Commission's forty-first session. On the question of whether there were other ways of conducting the debate, in his opinion the present method was the normal one, with 26 equal representatives expressing their views.

14. This idea that a secret vote might make for more independence and less pressure, had been discussed before. He himself was in favour of open, even roll-call votes, with all members explaining their votes without subterfuge.

15. The suggestion that governmental representatives might be allowed to attend meetings was an extremely important one, it would be better to revert to it at the forty-first session.

16. Lastly, the failure of Governments to reply to communications did not, in his opinion imply lack of interest. There was no point in trying to interpret silence.

17. Mrs. SENTINI agreed with the suggestion made by Mr. Alfonso Martinez concerning the annotations to the confidential list of communications.

18. She noted in paragraph 7 of the report of the Working Group on Communications (E/CN.4/Sub.2/1988/R.1) that the Working Group had decided to postpone consideration of communications relating to Chad, Malaysia and Tunisia until its subsequent session. In that connection, she pointed out that there had been interesting developments in Tunisia and the communication had in effect been publicly withdrawn. She therefore suggested that there was no need to review the situation in Tunisia at the forty-first session.

19. Mr. YIMER, Chairman/Rapporteur of the Working Group on Communications, pointed out that the communications on Tunisia were not before the Sub-Commission and presumably could not be discussed by it.

20. The Working Group had decided to postpone consideration of the communications concerning Tunisia because of the favourable developments in that country, in order to give the Government time to improve the situation. After that decision, new information had been received, to the effect that the non-governmental organization which had submitted the case to the United Nations had withdrawn its communication. If that were so, the Working Group would be duly informed at its 1989 session and would then automatically drop the item.

21. With regard to the comments of Mr. Alfonso Martinez on the confidential list of communications, the problem was that, although the Universal Declaration of Human Rights was not legally binding, it had attained such stature that it was applicable to all peoples, whereas the Covenants were not. It was therefore appropriate to refer to the Universal Declaration, whereas other instruments could be referred to only where the country concerned was a party to them, and the secretariat would have to check whether such was the case.

22. Mr. TÜRK pointed out that earlier proposals to introduce secret voting had applied to all the Sub-Commission's debates, whereas the present proposal covered only debates under the 1503 procedure. He would support secret voting in that situation. As for the problem of double jeopardy, he considered that the Sub-Commission should try to avoid discussing the situation in a single country under both the confidential and the public procedures. The attendance of governmental observers at the private meetings called for careful consideration. In his own view, the Sub-Commission's debate under the 1503 procedure was a preliminary stage in the consideration of a country situation, and Governments should not be involved until their case had reached the level of the Commission on Human Rights.

23. Mrs. WARZAZI said that she supported the proposal to introduce secret voting. She considered that the need for confidentiality in the Sub-Commission's proceedings was clearly laid down in resolution 1503 and could therefore not support the proposal that governmental observers should be admitted. It was important to ensure that countries were not condemned both under the confidential procedure as well as in public session.

24. Mr. DIACONU agreed that a country situation should not be taken up in public session if it was already being discussed under the confidential procedure. Governmental observers might usefully attend private meetings to submit the Government's case and answer any questions, but they should not stay to hear the subsequent debate. He saw no need to change the present voting system within the Sub-Commission.

25. He had been rather surprised that the Secretariat should think it necessary to provide each communication with a reference to relevant articles of the Universal Declaration of Human Rights. Surely it could be left to the members of the Working Group to decide on the legal foundation for the communications. The Working Group should introduce strict criteria to exclude communications which were based solely on press reports. Valuable as they were, such reports could not provide a legal basis for serious allegations.

26. Mr. AL-KHASAWNEH suggested that the Sub-Commission could adopt the practice of secret voting for a trial period before making a final decision.

27. He had raised the problem of double jeopardy in the cases of Haiti and Iraq. There was no real reason why a country should be subjected to two different procedures: the only disadvantage of a confidential procedure was that public opinion was not made aware of the situation in the country concerned, but that, after all, was not the Sub-Commission's main aim. He saw no reason why a decision should not be taken on the matter at the current session.

28. Mr. van BOVEN said that the Working Group had noticed an increasing willingness to co-operate on the part of Governments. It was important to obtain their views at every stage of the Sub-Commission's debate, particularly since most of the communications considered under the 1503 procedure came from human rights groups, which did not require the same degree of anonymity and protection as individuals. Perhaps the Sub-Commission could give a public indication of its satisfaction at the growing response from Governments when the public meetings resumed.

29. Mr. CHERNICHENKO said that, while the issues of secret voting and the admission of governmental observers to confidential meetings required further consideration, he felt that the issue of double jeopardy could - and should - be resolved at the current session. He did not feel that the introduction of secret voting was desirable. On the question of attendance by governmental observers at confidential meetings, resolution 1503 clearly provided for confidential meetings, at which Governments should not be allowed to participate. However, the Commission on Human Rights allowed Governments to attend the debates on their own cases without loss of confidentiality, and a similar system might be worked out for the Sub-Commission.

30. On the question of double jeopardy, he could see no logic in taking two decisions on the same situation or the same country. The purpose of a closed

meeting was to exert humanitarian pressure on a Government, without publicity. There was no point in holding a closed meeting on subjects such as the apartheid régime in South Africa or the situation in Haiti, where the subsequent decision was to be made public. It must surely be possible to find a formula at the current session which would prevent public decisions being issued on situations which had been discussed under the 1503 procedure.

31. Mr. JOINET said that he supported the proposal to introduce voting by secret ballot. Open voting was essential for an elected body which must be seen to fulfil its mandate; however, the Sub-Commission consisted of independent experts who were answerable only to their consciences. He did not, however, support the proposal to admit governmental observers to the confidential meetings since, for the sake of fairness, it would also be necessary to invite the authors of the communications. In a case where a Government failed to reply to a communication, the Inter-American Commission on Human Rights had ruled that, if it was obvious that a State had deliberately failed to reply to an allegation, that allegation was deemed to be upheld. He saw no reason why the Sub-Commission should not adopt a similar procedure.

32. On the question of double jeopardy, he considered that the Sub-Commission was justified in examining two different situations under different procedures, even if they referred to the same country. For instance, in the case of Paraguay, a resolution had been adopted calling upon the Government to lift the state of emergency - a positive measure aimed at the promotion of human rights - while a confidential decision had been taken condemning the Government for its ill-treatment of prisoners of conscience. The 1503 procedure entailed a substantial amount of work both for the Secretariat and for the Working Group, but only once had the Sub-Commission taken the drastic step of discussing a country situation in public. He considered that communications concerning a particular country should be made public if the Government concerned did not reply to the allegations for two consecutive years.

33. Ms. PALLEY said that the members of the Sub-Commission clearly valued their independence. However, guaranteeing that independence was a lengthy process, and she agreed with Mr. Chernichenko that a decision could not be taken immediately. She felt that members would be bound to make their views known to one another, even if the actual voting process was secret. Greater independence might be achieved by giving members a fixed term of office for a longer period, rather than allowing Governments to submit them for re-election, as was the case at present.

34. The problem of double jeopardy might be solved by making a clear distinction between resolutions which called for the promotion of human rights in a positive spirit and those which condemned human rights violations. It might then be possible to ensure that a country was not made the subject of condemnation in both a public and a confidential resolution. She could not agree with Mr. Al-Khasawneh that the Sub-Commission was not concerned with public opinion; it was essential that the Sub-Commission should not remain silent about the most flagrant offenders against human rights. Since resolutions under the 1503 procedure merely referred the situation in a particular country to the attention of the Commission on Human Rights, she suggested that the same request - which would not constitute a condemnation of the Government concerned - might be made in a public resolution.

35. Mr. EIDE said that the listing of communications under the relevant articles of the Universal Declaration of Human Rights was a practical tool to assist the Working Group.

36. He was in favour of voting by secret ballot, at least under the confidential procedure, and fully supported Mr. Joinet's and Ms. Palley's remarks on the subject.

37. He was not opposed to the Governments concerned attending closed meetings of the Sub-Commission, provided that the non-governmental organization which had provided the information was also invited. If their presence was not considered advisable, perhaps the relevant information and decision could be provided in writing, taking care to communicate the Government's response to the complainant. In that connection, he noted an increasing number of cases were being kept pending and hoped that that would have positive results. It was a signal to the Government concerned that although the developments reported were promising, improvements were still necessary.

38. The question of double jeopardy was a difficult and important problem which was related to the discussion on the implementation of Economic and Social Council resolution 8 (XXIII), and in principle should be avoided. Violations of human rights could be dealt with at three levels. The first concerned extreme cases of systematic and gross violations which should be dealt with publicly. The confidential procedure should be reserved for cases where violations were somewhat less severe and where the Government demonstrated, both in practice and in its response to the Sub-Commission, that it took the complaint seriously. If the action taken was still unsatisfactory, under the confidential procedure the co-operation with the Government could be strengthened and perhaps improved by technical assistance. The third level was one in which allegations were made of violations which did not appear too serious and in that case the report called for in Commission on Human Rights resolution 8 (XXIII), paragraph 2 was appropriate. There was, however, one problem to which the Sub-Commission must find a solution, that of cases being dealt with under the confidential procedures which were found to be so serious that they should be made public, such as the current cases of Haiti and Iraq. He hoped that some solution could be worked out, at the Sub-Commission's next session.

39. Mr. ILKAHANAF said that he had an open mind on the question of secret ballots. He was against inviting the Governments concerned to attend meetings of the Sub-Commission, but if that was done, those who had provided the information must also be invited. With respect to double jeopardy, no one should be punished twice for the same offence. He did not think that the Sub-Commission should keep questions pending, since the Commission kept communications from Governments under review. The Sub-Commission's role was merely to examine the facts and then to take a decision. The only time a communication should be kept pending was when additional information or clarification was required from either side.

40. Mr. TREAT expressed surprise at the lack of recognized standards and criteria upon which to base decisions. Without such criteria, decisions were bound to be subjective and probably political. In order to make them more judicial, he wondered if it might not be advisable to set up a working group to propose standards and criteria for discussion by the Sub-Commission. Long-standing members of course had precedents and experience on which to base their judgements, but fixed criteria would certainly be useful to new members.

41. Further discussion would be needed on whether or not to invite the Governments and non-governmental organizations concerned to meetings. He had no strong views on the matter of secret ballots but wondered if there might be fewer abstentions, if there was a secret ballot.

42. The question of double jeopardy had been fully covered and a consensus seemed to be emerging. It affected the non-governmental organizations and should therefore be the subject of a public discussion.

43. Mr. SOBARZO LOAIZA pointed out that only those directly affected could refute the arguments of Governments accused of violating human rights. Consequently, if Governments were invited to attend meetings of the Sub-Commission, those who had provided the information on which the complaint was based must also be invited.

44. Mrs. DAES reminded the Sub-Commission that it had discussed the question of secret ballots a few years earlier, but that the resolution recommending that procedure had been rejected by the Commission on Human Rights. The question of inviting Governments and petitioners to attend relevant meetings had also been discussed at previous sessions, but the Sub-Commission had decided against it.

45. Mr. MÖLLER (Chief, Communications Section, United Nations Centre for Human Rights) explained that when the Working Group on Communications met for the first time in 1972, it had been confronted with over 20,000 communications. In order to share them out among its members, it had asked the Secretariat if it would be possible to classify them under the respective article or articles of the Universal Declaration of Human Rights which had been infringed. That difficult task had been accomplished, and the following year preparations had been made to do the same. Moreover, Commission on Human Rights resolution 14 (XV) had requested the Secretary-General to prepare for each session of the Commission a statistical list of all communications received classified under the articles of the Universal Declaration, so that the work had to be performed in any case. Technically, it would not be difficult to refer to articles of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. It would be difficult, however, to refer also to the various other international human rights instruments, including those adopted by the specialized agencies, and he was not sure that it would be very useful for the Working Group.

46. He reminded the Sub-Commission that a number of the procedural changes, which had been made since the implementation of the procedures set forth in Economic and Social Council resolution 1503 (XLVIII) started in 1972, were listed in paragraphs 78 to 81 of the annotations to the provisional agenda for the current session (E/CN.4/Sub.2/1988/1/Add.1).

47. Mr. ALFONSO MARTINEZ suggested that in future instead of referring to all the international instruments concerned with human rights, the Sub-Commission should refer only to those mentioned in the International Bill of Human Rights, namely the Universal Declaration of Human Rights and the Covenants on Civil and Political Rights and Economic, Social and Cultural Rights.

48. Mr. AL-KHASAWNEH expressed agreement with Ms. Palley that the term "double jeopardy" was being somewhat loosely used, doubtless for want of a better expression. The transmission of communications to the Commission on Human

Rights and the adoption of resolutions, even when concern rather than condemnation was expressed, did constitute some sort of punishment. He was not convinced that once the Sub-Commission had taken a decision under the confidential procedures, there was any need to take a decision relating to the same country and the same facts under public procedures. Satisfying public opinion despite its importance was not always the best way of ensuring respect for human rights. The Sub-Commission should bring pressure to bear on Governments in a tactful way. He suggested that it should adopt a resolution on the subject at the current session.

49. The CHAIRMAN recalled that it had been suggested that the question should be discussed in an open meeting since it also affected non-governmental organizations.

50. Mr. EIDE, supported by Mr. CHERNICHENKO, said that the discussion should be pursued at the next session.

51. Mrs. WARZAZI asked the Under-Secretary-General for Human Rights if it would be possible for the Sub-Commission to request an advisory opinion from the Legal Counsel as to whether or not the Sub-Commission could take a decision on voting by secret ballot without referring the matter to the Commission on Human Rights.

52. Mr. MARTENSON (Under-Secretary-General for Human Rights) undertook to transmit the request to the Legal Counsel.

53. Mr. JOINET pointed out that the Commission on Human Rights had said at its 1984 session that a country might be dealt with in public as well as confidential procedures provided that the same facts were not involved.

54. Mr. AL-KHASAWNEH reminded the Sub-Commission that the preceding year it had postponed its discussion of a certain country under public procedures because it was already being discussed under confidential procedures.

The closed meeting rose at 5.30 p.m.