



Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/1988/SR.9
23 November 1988

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Fortieth session

SUMMARY RECORD OF THE 9th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 15 August 1988, at 10 a.m.

Chairman: Mr. BHANDARE

CONTENTS

Review of the work of the Sub-Commission (continued)

Organization of work (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.6108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (continued)

1. Mr. AL KHASAWNEH said that item 3 dealt with an issue vital for the Sub-Commission's future work and it should receive very serious consideration. A regular review of the Sub-Commission's work was bound to be a salutary exercise, particularly at a time when the effectiveness of many United Nations bodies was being called into question; there was no reason why the Sub-Commission should be immune from criticism. In addition, the relationship between the Commission of Human Rights and the Sub-Commission, one that determined the latter's work, should not be overlooked. Although the Sub-Commission could not be completely subservient to the Commission, because it was composed of independent experts, neither could it be entirely autonomous.
2. There was no doubt that the Sub-Commission's working methods needed to be improved. Obviously, because of the scope of the questions it had to consider, there was not enough time for an in-depth study of each one of them, and some kind of order of priority had to be established; that was not an easy task, but it should be given some thought. It often happened that a draft resolution was adopted when there had been no discussion worthy of the name on the subject-matter of the decision. That had been the case the previous year with regard to the draft resolution concerning the United Nations war files. He also found it surprising that the majority of proposals were put to the vote, in view of the fact that the Sub-Commission was an expert body, which ought always to try to take decisions by consensus. That was simply a question of self-discipline. Another difficulty concerned the Sub-Commission's terms of reference, which were not sufficiently clear notably in relation to the terms of reference of the Human Rights Committee, so that its work often duplicated that of other bodies. The fact that the Commission on Human Rights and the Sub-Commission did not work along the same lines did not mean that they had necessarily to be in conflict. The search for an acceptable modus vivendi should continue, and he believed that it would not serve the cause of human rights to claim that the Sub-Commission was totally independent of the Commission.
3. With regard to the proposals made in the working paper presented by Mr. Eide and Mr. van Boven (no symbol number) and more particularly the proposal concerning the implementation of the provisions of paragraph 2 of Commission resolution 8 (XXIII), he pointed out that there was a difference between transmitting information and preparing a report. He doubted whether the secretariat would be capable, in practical terms, of preparing such a report; however, what he considered was more important was the effect that implementation of paragraph 2 of resolution 8 (XXIII) would have on the procedure provided for under Economic and Social Council resolution 1503 (XLVIII), and notably on its confidentiality. He stressed that resolution 8 (XXIII) had been adopted in 1967 in circumstances that were totally different from those of today, and at a time when the system of special rapporteurs was not yet in existence.
4. Mr. FLINTERMAN said the purpose of the paper submitted by Mr. van Boven and Mr. Eide, as they themselves had indicated, was to stimulate discussion on how the Sub-Commission could improve its working methods in regard to the public aspect of activities concerning the violation of human rights and

fundamental freedoms. It would seem that that purpose had been achieved. Mr. van Boven, whose long experience in the field of human rights was well known, had always endeavoured to preserve and enhance the distinctive character of the Sub-Commission as a body of independent experts. His first statement in the Sub-Commission in 1987 had focused specifically on that issue. His concerns in regard to the role of the Sub-Commission in considering the question of human rights were shared by a considerable number of non-governmental organizations. At the last session, 11 out of 37 meetings had been devoted to consideration of the agenda item "Question of the violation of human rights and fundamental freedoms, etc.". Ten draft resolutions had been submitted on that item, two had been withdrawn, and no decision taken on two others. The remaining draft resolutions had been adopted, but they had concerned situations already under scrutiny elsewhere in the United Nations system. That state of affairs had led Mr. van Boven and Mr. Eide to submit their working paper. The proposals it contained did not relate to the consideration of communications under the confidential procedure established by Economic and Social Council resolution 1503 (XLVIII), but rather the preparation by the Sub-Commission of a report such as the one called for under paragraph 2 of Commission resolution 8 (XXIII). It could be a brief report reviewing all the situations, both those already under scrutiny and new situations, which the Commission should continue to monitor, and containing a summary of the comments made by members of the Sub-Commission, observers of member States, and representatives of non-governmental organizations during the debates on the various problems. The report could also mention any documents received and considered by the Sub-Commission which the latter might consider appropriate for submission to the Commission on Human Rights. One of the advantages of the method proposed by Mr. Eide and Mr. van Boven would be that representatives of non-governmental organizations would speak only under agenda item 6, which related specifically to human rights violations. How the proposed method would work in practice would be borne out by experience, but he believed that the Sub-Commission should at least try out the suggestions made by Mr. Eide and Mr. van Boven. He himself would be willing to participate in such an effort.

5. Mr. TIAN Jin said that, as a newcomer to the Sub-Commission, he always listened very attentively to the many views expressed, not only by other members of the Sub-Commission, but also by representatives of non-governmental organizations. As far as improving the Sub-Commission's working methods was concerned, he considered that the recommendations made by the Commission in resolution 1988/43 were very much to the point. The Commission had requested the Chairman of the Sub-Commission to report to it on the implementation of the guidelines provided in that resolution, but in view of the fact that some of those guidelines were not easy to apply, it might be as well if, before taking a decision, the officers of the Sub-Commission considered at length the various issues on which the guidelines focused, and consulted Mr. Martenson, who was well aware of the situation.

6. However, he approved the recommendation that no new study should be embarked on until studies previously authorized had been completed. It was in effect impossible to carry several studies through to a successful conclusion concurrently. Not only the experts and special rapporteurs, but all the parties concerned would need to co-operate actively if the Sub-Commission was to be enabled to accomplish its task properly. The Sub-Commission should also pay particular attention to standard-setting activities. It should also be part of its role to stress the need for the special rapporteurs to meet the

deadlines fixed for submission of their reports. If reports and studies were not distributed in good time, they could not be considered in depth and discussed thoroughly in the course of the Sub-Commission's session.

7. With regard to the working paper submitted by Mr. Eide and Mr. van Boven (no symbol number), the suggestion that the debate on human rights violations should be confined to agenda item 6 seemed perfectly reasonable. However, in order to understand the way in which the Sub-Commission currently worked, one would need to become acquainted with all the documents before it and all the questions under consideration, some of them for 20 years. As a new member, he did not feel that he was in a position to assess the advantages and disadvantages of the new working methods proposed. The question of the report of the Sub-Commission was a sensitive and complex issue on which he could not give an opinion, particularly in view of the fact that the proposals had only been submitted a few days earlier. He would therefore prefer the Sub-Commission to postpone consideration of the matter until later.

8. Mr. ALFONSO MARTÍNEZ said that following the adoption of resolution 1988/43 by the Commission on Human Rights, it had become evident that the central issue in all the discussions was the relationship between the Commission and the Sub-Commission. However, it was clear that relationship did not involve any conflict. It was true that the two bodies had different approaches in that the Commission was an intergovernmental body and the Sub-Commission was a body of independent experts, but that difference was in fact advantageous in a field such as human rights, which produced widely differing points of view. It would be better to describe the relationship between the two bodies as one of complementarity and co-ordination.

9. With regard to the substance of Commission resolution 1988/43, he could agree that the three-year cycle established for the finalization of reports undertaken under the Sub-Commission's auspices was perhaps not entirely suitable. It seemed to him somewhat short, in view of the wide scope of the questions covered by the reports. He agreed with Mr. Al Khasawneh that the Sub-Commission should endeavour not to adopt draft resolutions unless such resolutions had already been given thorough consideration and a proper discussion had been held. The Sub-Commission did not normally take decisions lightly, but there were occasions when it had acted with undue haste.

10. Resolution 1988/43 also referred to working groups of the Sub-Commission. In that connection, he pointed out that heavy demands were made on the members of such working groups, because their activities required a great deal of time and commitment. It might lighten the burden on members if any of their alternates who were present in Geneva on the dates concerned could be authorized to participate as full members in intersessional meetings of such working groups.

11. Besides the question of the relationship between the Commission and the Sub-Commission, there was the question of the relationship between the Sub-Commission and the Centre for Human Rights. The success of the Sub-Commission's work largely depended on close co-operation with the Centre, and on the quality of the latter's activities. It was thus essential for the Centre to have sufficient resources available to it in terms both of manpower and material. It was to be hoped that the restructuring that had been announced by the Under-Secretary-General for Human Rights would lead to closer co-operation between the Centre and the Sub-Commission. However, he pointed

out that the Centre, if it were to operate effectively, needed the injection of new blood. In that connection, he referred to General Assembly resolution 32/130. It would appear that 50 per cent of the professional staff of the Centre came from the Western European region, and that there were only two from Latin American countries. If those figures were correct, it was clear that an effort should be made to diversify recruitment to the Centre for Human Rights, thus bringing a fresh view to bear on the Centre's activities.

12. His views on the working paper submitted by Mr. Eide and Mr. van Boven (no symbol number) and on Commission resolution 8 (XXIII) were in line with those of Mr. Al Khasawneh. That resolution predated Economic and Social Council resolution 1503 (XLVIII); although some people argued that the two texts were unconnected, he maintained that essentially they had much in common. If the suggestion contained in the working paper submitted by Mr. Eide and Mr. van Boven were adopted, the question would arise of whether it would then be justifiable to retain the procedure specified in resolution 1503 (XLVIII). There was also the question of whether it would be justifiable for the secretariat to continue to receive communications; however, Commission resolution 8 (XXIII) explicitly specified that the Sub-Commission was empowered to receive communications on individual cases.

13. In addition, if it were agreed to adopt the proposal for a report along the lines envisaged in paragraph 5 of the working paper submitted by Mr. Eide and Mr. van Boven, the Sub-Commission would no longer be adopting resolutions on specific cases, but would merely be transmitting information on those cases to the Commission in its report. He reminded members of what he had already said on the subject of working groups, and stressed that that proposal would involve setting up a new working group of five members - in other words, even greater demands would be made on the experts. In conclusion, he urged Mr. Eide and Mr. van Boven not to press for a decision on their working paper until the Committee had had time for thorough reflection and discussion.

14. Mr. VARELA QUIROS said that as he saw it the crucial point was that members of the Sub-Commission, unlike members of the Commission, were elected in their personal capacity.

15. He could accept the proposals in the working paper submitted by Mr. Eide and Mr. van Boven (no symbol number), although with some reservations. The intent of the proposals was to avoid duplication between the work of the Commission and the work of the Sub-Commission; however, the relationship of the Sub-Commission with other bodies dealing with human rights, notably with discrimination, should also be taken into account. The proposal in paragraph 5 of the paper would involve the setting up of a working group of five members to report on information received at each session; the group's report would be submitted first to the Sub-Commission in plenary meeting, and then to the Commission. The disadvantage of that procedure was that it would first of all involve a discussion by members of the group followed by another discussion in the Sub-Commission, which would be lengthy and repetitive. Generally speaking, it was best to avoid procedures which tended in the long run to prevent questions being dealt with in depth; that situation was common, and had in fact occurred at the beginning of the session. He also noted that paragraph 18 of Commission resolution 1988/43 emphasized that the contribution of non-governmental organizations was vital to the work of the

Sub-Commission. In short, he considered that there were some interesting ideas in the working paper submitted by Mr. Eide and Mr. van Boven, but that they needed to be developed further.

16. Mr. EIDE, replying to comments made on the working paper he had submitted jointly with Mr. van Boven, noted that the question raised by Mr. Chernichenko revealed a fundamental dilemma. However, that dilemma was caused by the fact that the Sub-Commission had failed to distinguish between operative paragraphs 2 and 6 of Commission resolution 8 (XXIII). Paragraph 2 called for the preparation of a report containing information on violations of human rights and fundamental freedoms from all available sources; such information need not necessarily concern gross or systematic violations. Paragraph 6, on the other hand, concerned "situations", in other words a consistent pattern of violations. It followed that only a few of the cases dealt with in the report called for under paragraph 2 would be covered by paragraph 6. Incidentally, paragraph 6 was similar to operative paragraph 1 of resolution 1503 (XLVIII) which referred to "a pattern of gross and reliably attested violations".

17. In reply to Mr. Al Khasawneh and Mr. Alfonso Martínez, there should not be any conflict between the confidential procedure outlined in resolution 1503 (XLVIII) and the preparation of the report called for under paragraph 2 of Commission resolution 8 (XXIII); however, there might be some overlapping between the confidential procedure and what was asked for under paragraph 6 of that same resolution 8 (XXIII). He pointed out that the non-governmental organizations did not know which countries had incurred the confidential procedure, and accordingly they could not be asked to refrain from submitting information on situations in those countries. However, the Sub-Commission, for its part, should avoid bringing those countries to the attention of the Commission both under the confidential procedure and under the procedure described in paragraph 6. If information had already been provided under resolution 1503 (XLVIII) any subsequent information - if reliably attested - should also be submitted under the confidential procedure.

18. The elements that were really confidential under the confidential procedure were: the list of countries involved, the communications, the comments made by Governments, and the deliberations of the Working Group on Communications, the Sub-Commission, the Working Group of the Commission, and the Commission itself. On the other hand, the basic facts relating to the violations could not remain confidential: they should be reviewed under paragraph 2, together with any explanations supplied by Governments.

19. The report submitted in accordance with paragraph 2 could be arranged either by country or by subject. He would prefer the latter solution: he would give the reasons for his choice at a later stage, once he was convinced that the Sub-Commission was interested in the new method. He emphasized that the overall purpose was to de-politicize the Sub-Commission's procedures; it was highly regrettable that experts should find themselves drawn into political confrontations. If the Sub-Commission was interested in the suggestions he and Mr. van Boven had put forward, he would be willing to undertake the preparation of a prototype report, in which he hoped he would have the collaboration of members of the Sub-Commission from all regions.

20. Mr. CHERNICHENKO agreed that the Sub-Commission was confronted by a dilemma. On the one hand, it could prepare a report in conformity with Commission resolution 8 (XXIII) with reference to various sources, notably to

information supplied by non-governmental organizations. However, if such a report was to have any value, the information received would have to be evaluated; if that were not done by the Sub-Commission, it would have to be done by the Commission. The information transmitted could refer to systematic violations as well as to individual cases. But if such a report was to be prepared in the way proposed by Mr. Eide, why then retain the confidential procedure provided for under resolution 1503 (XLVIII)? Would not transparency be preferable? Conversely, if the Sub-Commission retained the 1503 (XLVIII) procedure, the proposed report would be meaningless.

21. Reference had been made to the need to de-politicize situations. However, Council resolution 728 (XXVIII), which, as Mr. Carey had pointed out, was by no means obsolete, already enabled Governments to respond confidentially to allegations made in communications. The Sub-Commission had to resolve the dilemma he had just described, and should do so by going one step further than the ambiguities of the working paper submitted by Mr. Eide and Mr. van Boven. In any event, it should inform the Commission of its preferences.

22. Mr. TÜRK noted that the working paper submitted by Mr. Eide and Mr. van Boven had already given rise to a lively discussion. That led him to think that other members of the Sub-Commission ought to submit other working papers for the next session. It might even be possible to have the views of non-governmental organizations - he had in mind particularly the interesting suggestion made by the Four Directions Council.

23. Mr. CAREY noted that Mr. Eide's suggestion that the Sub-Commission should submit a report and should not adopt any resolutions was contrary to the practice followed hitherto. As had been pointed out by other members, paragraph 6 of Commission resolution 8 (XXIII) did in fact implicitly authorize the Sub-Commission to adopt resolutions.

24. Mrs. WARZAZI had the impression that Mr. Eide feared that the Sub-Commission might become politicized. It could be argued that some degree of politicization was inevitable, because it was difficult to take the questions dealt with by the Sub-Commission out of their political context. Indeed, there were those who held, like Mr. Joinet, that discussions in complete isolation from politics would be purely academic. On the other hand, it would be regrettable if the working paper submitted by Mr. Eide and Mr. van Boven implied that members of the Sub-Commission were politically motivated.

25. Although the working paper seemed to be motivated by good intentions, she had the impression that it was somewhat out of touch with reality. In regard to the suggestion made in paragraph 5 of the paper, she deplored the fact that certain non-governmental organizations did not defend the objectives for which the Economic and Social Council had granted them observer status. There had been occasions when opponents of Governments had spoken against them in their capacity as representatives of NGOs; that amounted to a political act.

26. Mr. EIDE assured Mrs. Warzazi that he certainly did not believe that the members of the Sub-Commission were politically motivated; what he feared was that the Sub-Commission's procedures might force them to adopt political positions.

27. Mr. JOINET, in reply to the comment made by Mrs. Warzazi, pointed out that it was for the Economic and Social Council to decide whether NGOs were keeping to their brief. There were occasions when complainants had to express their views through the medium of non-governmental organizations because they had no other means of doing so.

28. Mrs. WARZAZI said that in her view if a complainant wished to lodge a complaint against his country, it was not proper for him to speak on behalf of an NGO; it was for the NGO to lodge the complaint.

29. The CHAIRMAN noted that there had been a thorough debate on item 3; he particularly welcomed the contributions made by new members, who were less familiar with the Sub-Commission's working methods. He proposed that consideration of the item at the current session should be concluded, on the understanding that the proposals submitted would be reconsidered at the next session, together with any new proposals.

30. Consideration of agenda item 3 was thus concluded.

ORGANIZATION OF WORK (continued)

31. The CHAIRMAN reminded the Sub-Commission that a further telegram had been sent to Bucharest, and contact made by telephone with the Bucharest United Nations Information Centre. The last message received from the Centre read as follows: "I phoned repeatedly at Mr. Mazilu's home and nobody answered. From the previous talk with the Professor's mother-in-law, I understood that she does not live permanently in Mr. Mazilu's house. I will repeat the call during the following days". He noted that that new message told the Sub-Commission nothing new, since it was already aware that Mr. Mazilu, his wife and children had left Bucharest for a health resort where Mr. Mazilu was to have medical treatment, and that the latter's mother-in-law knew nothing about the health resort in question. He accordingly invited members of the Sub-Commission to give their views on that message, endeavouring to avoid political issues; the Sub-Commission's aim should be to ensure that the study entrusted to Mr. Mazilu was brought to a satisfactory conclusion, and also to try to ensure that he came to present it in person.

32. Mr. DIACONU said that the Sub-Commission ought to be concerning itself with the report on human rights and youth. Everyone had heard what the Romanian Government had had to say on the matter. The Government had expressed itself in clear and precise terms. Mr. Mazilu was ill: that fact had been confirmed by the information provided in the medical file communicated to the Sub-Commission in 1987, as well as by the United Nations Information Centre in Bucharest. Clearly, therefore, Mr. Mazilu would not be able to come to Geneva to present his report. He himself had been present when Mr. Mazilu had had to be taken to hospital. On two occasions the latter had tried to return to work at the Ministry, and each time he had had to abandon the attempt. It was an ordinary human story, and should not be made into anything else.

33. He noted that the draft decision before the Sub-Commission appeared to call in question the medical opinion on which the Romanian Government had relied, or at least to suggest that the facts that had given grounds for that opinion should be checked. The draft decision also implied that if Mr. Mazilu was in fact unable to complete his work and come to Geneva, the expert sent to

Bucharest would be able to complete it for him. He himself considered that in order to complete the report there was no need to go to Bucharest; that could be done in Geneva. For the present, the Sub-Commission should begin to tackle the basic question, namely human rights and youth, and should try to find the best possible way of doing it. He himself was ready to co-operate with the other experts on the Sub-Commission, both now and in the future. He did not think that adoption of the draft decision submitted to the Sub-Commission would help to advance work on the question. It would have no effect in practice and it might be detrimental to the prestige of the Sub-Commission and place the Chairman and experts in an awkward position. It would be better not to take a decision, but rather to tackle the substantive issue.

34. The CHAIRMAN pointed out that no one had questioned the competence of the doctors involved, or the fact that Mr. Diaconu had been present when Mr. Mazilu had had to be taken to hospital. In any event, the point at issue was not what the doctors had said but what Mr. Mazilu himself had to say. It was for him to inform the Commission about the progress of his report, and to say whether or not he was in a position to continue his task. He therefore requested Mr. Diaconu and the observer for Romania to help the Sub-Commission to make direct contact with Mr. Mazilu, so that the latter could state in person what his intentions were.

35. Mr. EIDE endorsed what the Chairman had said. As he himself had already pointed out a few days ago, special rapporteurs, once appointed, had an obligation to complete their tasks, either within the Sub-Commission or outside it, unless it proved impossible for them to do so. The question was not therefore one which could be decided by either a Government or by the Sub-Commission; in the circumstances, only Mr. Mazilu could say whether or not he was in a position to complete the mission entrusted to him. He was glad to see that there were two persons present who were closely acquainted with Mr. Mazilu and who had been present when the latter had suffered his heart attack. They should therefore be able to help the Sub-Commission to find out where he was. In any event, every State Member of the United Nations had an obligation to co-operate in the promotion and protection of human rights, and the least that a Government could do in that regard was to facilitate contacts between a United Nations body and its special rapporteur. He therefore repeated the question he had put to the observer for Romania at an earlier session, namely, whether it would be possible for the Romanian authorities to obtain Mr. Mazilu's present address, and if not, why not, so that the Sub-Commission could know and understand the reasons for Mr. Mazilu's absence.

36. Mr. JOINET found Mr. Diaconu's arguments unconvincing. It was not a matter of questioning the competence of any doctor in particular, or the steps taken by the United Nations Information Centre. It was a matter of allowing Mr. Mazilu to decide for himself whether or not he could accomplish the task that had been entrusted to him, and to inform the Sub-Commission accordingly, directly and in person. Mr. Diaconu seemed to be very concerned to make a positive contribution to the Sub-Commission's work on human rights and youth, and he understood he had already submitted a working paper on the subject. At the moment, however, the Sub-Commission was confronted with a difficulty of a constitutional nature, in view of the fact that a special rapporteur's mission ended only by his personal resignation or by his death. Accordingly, only Mr. Mazilu could decide whether he should continue his work or whether he

should be replaced. Mr. Diaconu had stated that there would be no point in an expert of the Sub-Commission, assisted by a member of the secretariat, going to Bucharest merely in order to do Mr. Mazilu's work for him. As he saw it, that was not the issue. The secretariat had always helped members of the Sub-Commission in their work, and it would be for that purpose that a member of the secretariat would be going to Bucharest. In addition, in view of the contradictory information transmitted to the Sub-Commission concerning Mr. Mazilu, the expert sent by the Sub-Commission would be instructed to obtain from Mr. Mazilu's own mouth a decision concerning his work. He did not think that sending an expert assisted by a member of the secretariat could be detrimental to the Sub-Commission. On the contrary, if it did not wish to lose prestige, it should take action when, after a year's efforts, it still had not succeeded in obtaining any reply to its questions regarding a situation which - if it were to continue - could be likened to a "disappearance".

37. Mrs. WARZAZI said the object of the measures taken by the Sub-Commission was to assist Mr. Mazilu in preparing his report. It was for the same reason that Mr. Fide and Mr. Joinet had submitted their draft decision. With the same object in mind, she proposed that the text should be amended as follows: in the penultimate line of the second paragraph, after the words "to accompany", delete the rest of the sentence and substitute the words "the member of the Sub-Commission thus designated and to assist Mr. Mazilu in accomplishing his task".

38. Mrs. DAES formally proposed that the Sub-Commission should decide to request the outgoing Chairman to travel to Bucharest on its behalf in order to assist Mr. Mazilu, and to request the Under-Secretary-General for Human Rights to designate Mr. McCarthy or Mr. Keilan, who were the members of the secretariat competent to deal with the matter, to accompany Mr. Despouy.

39. Mr. DIACOUNU said that the amendment proposed by Mrs. Warzazi and the explanations that had been given did not alter the situation and did not make the draft decision any more acceptable. Mr. Joinet seemed to have introduced a new element into the debate by suggesting that the Sub-Commission expert who was to be sent to Bucharest would be instructed to make contact personally with Mr. Mazilu in order to acquaint himself with the latter's decision regarding his work, and not to concern himself with the actual report. If that was so, the draft decision would even raise more difficulties. He would like to take the floor again, after all members of the Sub-Commission had expressed their views.

40. Mrs. ATTAH considered that the Chairman had made a very useful proposal, which, if adopted, would enable the Sub-Commission to make progress on the matter.

41. Mrs. KSENTINI asked the sponsors of the draft decision to explain what would be the practical effect of their proposal if, after the decision had been adopted, the Romanian Government refused to do what was requested of it.

42. Mr. JOINET replied that if - as he hoped - the reply of the Romanian Government was positive, the Sub-Commission expert sent to Bucharest could then ask Mr. Mazilu directly which of the two alternatives was correct. On the one hand, the Sub-Commission had been given to understand that Mr. Mazilu had resigned from all duties, including his duties as Special Rapporteur,

while on the other hand, according to the Under-Secretary-General, Mr. Mazilu had given the impression throughout all the negotiations that he would like to continue his activities as Special Rapporteur. Thus, if the Government's reply was positive, the secretariat official who was to accompany the Sub-Commission expert would be there to provide technical assistance. On the other hand, if the Romanian authorities were not prepared to comply with the Sub-Commission's request, they would refuse to issue the two visas required. Of course, it could be argued that if a refusal was anticipated it was not worth making the application, but he himself believed that those involved should accept their responsibilities, and that a refusal to issue visas was in a way an acceptance of responsibility. At that stage, it could be considered that the Sub-Commission too had accepted its responsibilities by making the request, and opinion would decide.

43. Mr. EIDE, in reply to Mrs. Ksentini, pointed out that the observer for Romania had not said that his Government was not willing to co-operate with the Sub-Commission. He had simply stated that Mr. Mazilu was ill and could not carry out his mission. That was the opinion of the Romanian authorities; however, the Sub-Commission had its own opinion, and for that reason it wished to make direct contact with Mr. Mazilu. He was confident that the Romanian authorities would not refuse to co-operate with the Sub-Commission on such an essentially practical matter.

44. Mr. DESPOUY shared the view expressed by Mr. Eide and Mr. Joinet, but said that before a decision was adopted he would like once again to ask the observer for Romania to indicate as clearly as possible whether his Government was prepared to co-operate with the Sub-Commission and whether it could agree, in principle, to the idea of a visit from an expert of the Sub-Commission accompanied by a member of the secretariat. The time had come for the Romanian authorities to say what they thought about the draft decision under consideration. He pointed out that he was making a formal request, and hoped that the reply would be clear and specific.

45. Mr. ASSOUMA noted that the case of Mr. Mazilu posed a difficult problem for the Sub-Commission. He endorsed what had been said by the Chairman. However, if certain experts were certain that they knew where Mr. Mazilu was, they should say so before the Sub-Commission began its consideration of the draft decision.

46. Ms. PALLEY welcomed the constructive statement made by the observer for Romania. She was convinced that the Romanian authorities had ways of making contact with all Romanian citizens, wherever they might be. In any event, it would seem to be in the Romanian Government's own interest to allow members of the Sub-Commission to go to Romania so that the debate might be concluded.

47. Mrs. BAUTISTA pointed out that until Mr. Mazilu was located, the Sub-Commission would have no way of knowing the seriousness of his condition. Accordingly, the first thing to do was to establish Mr. Mazilu's whereabouts, because if that should prove impossible, or if Mr. Mazilu was not in a condition to complete his study, the Sub-Commission's efforts would have been wasted. The Sub-Commission had first of all to establish whether or not Mr. Mazilu was in a position to complete his work.

48. Mr. JOINET suggested that the Sub-Commission might defer a decision on the draft text for two days, in order to give the Romanian authorities time to locate Mr. Mazilu.

49. Mr. EIDE said he could agree to defer consideration of the draft decision provided that the observer for Romania was in fact prepared to give a reply.

50. Mr. VARELA QUIRÓS thought that Mr. Joinet's suggestion, far from simplifying matters, would tend to hold everything up. The Sub-Commission should take a decision without delay on the text before it.

51. Mr. ALFONSO MARTINEZ, speaking on a point of order, said he would like to know whether the sponsors of the draft decision intended to invoke rule 51 (c) of the rules of procedure, which provided that motions for the adjournment of debate on the question under discussion had priority over all other proposals or motions (with the exception of those concerning the suspension or adjournment of the meeting itself).

52. Mr. EIDE said he would simply like to hear what the observer for Romania had to say to the Sub-Commission.

53. Mr. CHIRILA (Observer for Romania) said he had nothing to add to the statement he had made on Friday, 12 August, in regard to the view of the Romanian authorities as to the procedure to be adopted. He wished to reiterate, however, that any measure that might be regarded as a form of inspection or control would not be acceptable to his country's authorities.

54. Ms. PALLEY said that since Mr. Mazilu continued to be the Sub-Commission's Special Rapporteur until he resigned his office, it might be better to amend the end of the first paragraph of the draft decision by substituting the following wording for the last part of the sentence "and to ask the Special Rapporteur whether or not he wished to resign".

55. Mr. JOINET pointed out that that question had been put to Mr. Mazilu repeatedly throughout the whole of the past year in the course of his contacts with the secretariat and the outgoing Chairman, as Mr. Mazilu himself had indicated in a letter. Accordingly, the sole task of the Sub-Commission expert who was to go to Romania would be to find out whether or not Mr. Mazilu had or had not changed his mind. He thanked the observer for Romania for not having made the situation irreversible, and urged the Sub-Commission to decide that day, or within a reasonable time, on the draft decision he was co-sponsoring, as amended by Mrs. Warzazi.

56. Mr. EIDE said he was somewhat surprised at the statement made by the observer for Romania. In fact, the Sub-Commission had never implied that it could take any initiatives that resembled measures of inspection or control. While on the one hand it appeared that Mr. Mazilu wished to continue with his study, on the other hand, if his condition was sufficiently serious to warrant intensive treatment, the Romanian authorities would know where he was. In any event, Mr. Mazilu should be given the opportunity of stating whether or not he was able to complete his study, if need be with assistance.

57. Mr. VARELA QUIROS feared that if the Sub-Commission were to defer its decision on the draft text under consideration, a practical problem would arise, because the expert proposed by Mrs. Daes to go to Romania, Mr. Despouy, had to leave Geneva at the end of the week.

58. Mr. DESPOUY pointed out that no formal decision had been taken on his appointment. It might be advisable to allow the Romanian authorities a little time to consider the situation and to define their position. In fact, if the Sub-Commission were to adopt the draft decision at the present meeting, and if events subsequently proved that the initiative was viewed by the Romanian authorities as interference, the Sub-Commission's hopes would be dashed. Accordingly, he would like to have clarifications within two days both on the scope of the text in question and on the position of the Romanian authorities. In addition, he would like to know which of the Sub-Commission's rules of procedure Mr. Joinet intended to invoke in support of his proposal.

59. Mr. JOINET reminded the Sub-Commission that he had stated a week ago that he wished to avoid as much as possible recourse to procedural tactics, because he preferred consensus. Rules 49 and 51 of the rules of procedure did not seem to support consensus. It was therefore for the Sub-Commission to decide now whether to take a decision without vote on the text under consideration, under rule 57 of the rules of procedure, or to allow the Romanian authorities more time by deferring a decision for two days.

60. The CHAIRMAN wondered if it would not be better to request the Secretary-General to use his good offices in order to achieve the object sought by the Sub-Commission. That solution would avoid any confrontation, and would dispel any fears of interference or control.

61. Mrs. ATTAH was in favour of the idea of using the diplomatic channel.

62. In reply to a question by Mr. ILKAHANAF, the CHAIRMAN said that the Sub-Commission might request the Secretary-General to approach the Romanian authorities with a view to ascertaining Mr. Mazilu's whereabouts, and to establish through United Nations channels, the Special Rapporteur's wishes.

63. Mrs. WARZAZI considered that the Secretary-General's mission should not be confined simply to finding out where Mr. Mazilu was.

64. Mr. JOINET said he was not clear what was to be understood by "good offices" in the circumstances; it would be better to give the Secretary-General a clearly defined brief, with a fixed time-limit, without deferring the debate until the next session. Even if the Sub-Commission were to decide to request the Secretary-General to intervene, a reply would be needed within two days.

65. The CHAIRMAN feared that the Secretary-General would be far too busy for so close a deadline to be set.

66. Mr. EIDE did not see the point of the Sub-Commission calling on the good offices of the Secretary-General if it could not set a deadline. He would propose a text reading as follows:

"The Sub-Commission requests the Secretary-General to establish contacts with the Government of Romania informing the Government that the Sub-Commission is in urgent need of immediate contact with its Special Rapporteur, Mr. Mazilu, and therefore requests the Government of Romania to locate Mr. Mazilu and to facilitate a visit to him by the representatives of the Sub-Commission and of the secretariat to help him complete his study, if he so wishes. The Secretary-General is requested to report back to the Sub-Commission not later than Wednesday 17 August".

67. Mr. SADI pointed out that the Sub-Commission did not have the necessary authority to apply directly to the Secretary-General of the United Nations. It must always act through the Commission on Human Rights.

68. Mr. ALFONSO MARTINEZ did not see how the procedure proposed could involve any legal problems. The Sub-Commission was free to take any decision without consulting its superior bodies, provided that that decision had no financial implications.

69. The CHAIRMAN said that he saw no legal difficulties in the proposed procedure. It was based on a paragraph in an earlier report of the Sub-Commission which indicated that, in accordance with an opinion given by the Office of Legal Affairs in 1980, the Sub-Commission could rely on the services of the Secretary-General to obtain information from Governments, in view of the fact that every United Nations body had the right to be assisted by the Secretary-General in the accomplishment of its task. The Sub-Commission had thus addressed numerous requests for assistance directly to the Secretary-General. Although Article 98 of the Charter referred explicitly to the main organs of the United Nations, it did not imply that subsidiary organs did not enjoy similar assistance by the Secretary-General. In fact, the formulation of the first part of Article 98 was not only repeated in the rules of procedure of the General Assembly and of the Economic and Social Council, but was also included in the rules of procedure of the functional commissions of the Council, which governed the operation of the Sub-Commission. Rule 25 thereof provided that "the Secretary-General shall act in that capacity in all meetings of the Commission". In addition, rule 26 of the rules of procedure provided that the Secretariat should "generally perform all other work that may be required" (see document E/CN.4/Sub.2/1982/3 annex 1, para. 34).

70. Mr. JOINET said he took it the Sub-Commission would therefore be deciding to defer consideration of the draft decision in question until Friday, 19 August. He was not clear what was the purpose of that decision.

71. The CHAIRMAN said that the Sub-Commission would simply be required to take a decision on the proposal just made by Mr. Eide. Incidentally, it would seem preferable to set the deadline for Wednesday, 17 August and not Friday, 19 August.

72. Mr. MARTENSON (Under Secretary-General for Human Rights), replying to a question by Mr. EIDE, said that if the Sub-Commission adopted the decision proposed, the Centre for Human Rights would immediately get in touch with the Secretary-General, who would take the appropriate action.

73. Mr. DIACONU said that the inclusion, in the Secretary-General's brief, of the idea of a visit by a member of the Sub-Commission to Romania would certainly not ease the way for a dialogue with the Romanian authorities. It would therefore be better to delete that idea from the proposal.

74. The CHAIRMAN, in reply to a question from Mr. TIAN Jin, said that he intended to reformulate Mr. Eide's proposal taking into account the comment made by Mr. Diaconu, and would submit a revised text to the Sub-Commission at the next meeting.

75. Mr. JOINET said he understood the Under-Secretary-General had no objection to the deadline being set for Wednesday, 17 August at 3 p.m.

76. Mr. EIDE said he too would prefer the deadline to be set for Wednesday, 17 August. He would like to know whether Mr. Diaconu could suggest any better way of quickly establishing contact with Mr. Mazilu. Would he like Mr. Mazilu to be asked to appear before the Sub-Commission in person?

The meeting rose at 1 p.m.