



**Economic and Social
Council**

UN LIBRARY

JAN 13 1989

UN/ISA COLLECTION

Distr.
GENERAL

E/CN.4/Sub.2/1988/SR.35
19 December 1988

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fortieth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC) */ OF THE 35TH MEETING

Held at the Palais des Nations, Geneva
on Thursday, 1 September 1988, at 9.30 a.m.

Chairman: Mr. BHANDARE

CONTENTS

Consideration of draft resolutions and decisions (continued)

*/ The summary record of the second part (closed) of the meeting
appears as document E/CN.4/Sub.2/1988/SR.35/Add.1

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 9.40 a.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid in all countries, with particular reference to colonial and other dependent countries and territories: Report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII) (agenda item 6) (continued) (E/CN.4/Sub.2/1988/L.26, L.27, L.28, L.29, L.33, L.34, L.35 and L.44)

Draft resolution E/CN.4/Sub.2/1988/L.26 (The situation in East Timor)

1. Mr. CISSE (Secretary of the Sub-Commission) informed the Sub-Commission that Mrs. Bautista and Mrs. Mbonu had requested that their names should be deleted from the list of sponsors.
2. Mrs. DAES, introducing draft resolution E/CN.4/Sub.2/1988/L.26 on behalf of the sponsors, said that its tone was very restrained. The sponsors had taken into account all those aspects that had been raised during the debate and had also taken into consideration the exchange of views that had taken place then between the administering Power and the Government of Indonesia, as well as the resolution adopted on that subject by the European Parliament. She hoped that the draft resolution, the wording of which had been carefully weighed, could be adopted without difficulty.
3. Mr. TREAT said that the problem of East Timor was an extremely sensitive one and that it was particularly difficult to form an accurate picture of the situation in that territory. Having had the opportunity to discuss the matter with the representatives of Portugal and Indonesia, he felt that the best way to promote a solution was to allow the parties directly involved to discuss it bilaterally. For that reason, although he did not object to the proposed draft resolution, he would abstain in the vote.
4. Mr. ILKAHANAF felt that the situation in East Timor was highly political. In fact, on the one hand, Portugal asserted that it was the de jure administering power of the territory. Indonesia, was the de facto, and might be the de jure administering Power. It was not the role of the Sub-Commission to reconcile those extreme positions and it should not concern itself with matters that did not fall within its competence. The Secretary-General was the person best qualified to try and bring the two parties together and to find a solution, and he had in fact been trying to do so for a long time, so that operative paragraph 2 of the draft resolution was completely superfluous. Furthermore Commission on Human Rights resolution 1988/43 had called upon the Sub-Commission to confine its activities as far as possible to areas that were not politicized and with which other United Nations agencies were not actively concerned. In the previous year, the Sub-Commission had adopted a resolution on East Timor which was very similar to the one now submitted. The Commission on Human Rights had neither considered it at its forty-fourth session nor even mentioned it in its report because it obviously considered that the Secretary-General was already dealing with the matter and that that was sufficient. Besides, the Government of Indonesia had shown that it was prepared to co-operate by allowing journalists, parliamentarians and humanitarian organizations to visit East Timor.

5. For all those reasons, he requested that in accordance with rule 65, paragraph 2, of the rules of procedure, the Sub-Commission should take no decision on draft resolution E/CN.4/Sub.2/1988/L.26.

6. Mr. EIDE opposed Mr. Ilkahanaf's motion, first because the Sub-Commission was a body that dealt with human rights and not with the political settlement of questions being dealt with and because the draft resolution under consideration dealt directly with human rights problems in the territory; second, because it was obvious that if the Indonesian authorities were co-operating to some extent with the United Nations, it was mainly because of the international pressure resulting, inter alia, from the resolutions adopted by the Sub-Commission, and third and last, because the Secretary-General's efforts, although entirely timely, did not address the question of human rights as such and focused first and foremost on the political settlement of the situation.

7. Mr. JOINET, responding to the objections raised by Mr. Ilkahanaf, said that every problem was necessarily political but that that had not prevented the Sub-Commission from adopting a highly political draft resolution on the previous day concerning the Arab territories occupied by Israel. The similarity between the draft resolution under consideration and the one adopted the previous year could be explained by the fact that the situation had unfortunately not evolved since then. Finally, if the Commission on Human Rights was no longer dealing with that question it was in fact all to the good for the Sub-Commission to do so, because during the discussion on the working methods it had decided that above all it should not deal with questions already being studied by the Commission, in order to avoid duplication of work. The present case was an instance of that. The solution would certainly have to be a political one, but the draft resolution itself was purely humanitarian, because the sponsors had avoided implicating the Sub-Commission in the complex problem of self-determination and had been careful not to mention it. He asked that a vote should be taken immediately on the draft resolution.

8. Mrs. WARZAZI said that she had read draft resolution E/CN.4/Sub.2/1988/L.26 very carefully and did not share the view just expressed by Mr. Joinet. On the contrary, she thought that the wording of the draft was based essentially on the issue of self-determination. The third preambular paragraph stated that the human rights violations to which the people of East Timor were subjected were caused by the "situation which persists in the territory" and operative paragraph 2 spoke of the administering "Power", an expression which had a very definite meaning of which everyone was aware. She therefore thought that that paragraph 2 was the focal point of the resolution, which was quite unrelated to that adopted on the previous day on the occupied territories.

9. Ms. PALLEY associated herself with what had been said by Mr. Eide and Mr. Joinet. She had carefully read and listened to the information transmitted to the Sub-Commission on the subject and it seemed obvious to her that massive and serious human rights violations continued to take place in the territory. The Sub-Commission, in its capacity as the competent human rights body could not therefore ignore it.

10. In that connection, she believed it might be a good idea to ask the secretariat to prepare and circulate to members of the Sub-Commission, before the next session, a summary of the case between Nicaragua and the United States of America that had been referred to the International Court of Justice in The Hague, accompanied by the relevant extracts. In fact, she felt that there was some confusion in the minds of the members of the Sub-Commission about the duties of a legal body or of a body competent in the field of human rights when questions with political connotations were referred to them. To be sure, in the case in point, a political process was under way, but the Sub-Commission nevertheless had the duty to deal with the gross human rights violations that were taking place in East Timor, even though such a process was under way. In fact, there were two processes taking place simultaneously, and it was what the International Court of Justice had laid down in principle on the subject of the mining of Nicaraguan ports, despite the Contadora negotiations. It was important for the Sub-Commission to take a very clear decision on that point, because it would be applicable to a large number of the decisions that it would be called upon to take in the course of the day.

11. In conclusion, she reaffirmed that the Sub-Commission could not relinquish its responsibilities in the field of human rights, on the pretext that a political process was under way, when human rights violations were continuing.

12. Mr. ILKAHANAF said that the members of the Sub-Commission were all experts and did not need to be told what to do. The draft resolution under consideration was, as Mr. Joinet himself had recognized, highly political and its main thrust was the question of self-determination. The Sub-Commission was wasting time by continuing to try and settle such an extremely complex political problem, and he therefore urged it once again not to take a decision on the draft resolution concerning East Timor.

13. Mrs. DAES opposed the motion put forward by Mr. Ilkahanaf. She thought it was improper to invoke rule 65, paragraph 2, of the rules of procedure simply because one was not in agreement with the draft resolution and she reaffirmed that the sponsors of the draft resolution on East Timor had been motivated by purely humanitarian considerations. She would transmit to the secretariat the text of the resolution adopted by the European Parliament, paragraph 1 of which expressed its deep concern over the human rights violations committed by the Government of Indonesia and over the absence of democracy, freedom of the press and freedom of association in Indonesia. On the point just raised by Mr. Ilkahanaf, she recalled that self-determination was a fundamental right established in the Covenants. Consequently, failure to respect that right constituted a violation which the Sub-Commission had a duty to denounce. Finally, she asked that a vote be taken.

14. Mr. AL KHASAWNEH supported the motion put by Mr. Ilkahanaf and pointed out that the resolution of the European Parliament dealt with Indonesia and therefore had no bearing on the subject under consideration.

15. Mr. van BOVEN supported the points of view expressed by Mr. Eide and Mr. Joinet and by Mrs. Daes and Ms. Palley. He added that he would vote in the present session against any motion requiring that no decision should be taken by the Sub-Commission on a resolution because he felt that such motions were destructive. At the previous session, the Sub-Commission had adopted several motions of that kind and he considered that those votes had tarnished its reputation.

16. Mr. YIMER did not share Mr. van Boven's view that any decision taken under rule 65, paragraph 2, was destructive. If that had been the case, the article would not have appeared in the rules of procedure and if it existed, it was so that it could be used.
17. Mr. JOINET, referring to Mr. Al Khasawneh's statement, pointed out that in the resolution of the European Parliament quoted by Mrs. Daes, paragraphs 3 to 6 dealt only with East Timor.
18. Mr. YIMER, speaking on a point of order, said that the Sub-Commission did not come under the jurisdiction of the European Parliament, and he asked members to refrain from quoting documents adopted by entities outside the United Nations system.
19. Mr. ASSOUMA supported Mr. Ilkahanaf's motion and Mrs. Warzazi's point of view.
20. Mr. DIACONU said that operative paragraphs 1 and 2 of the draft resolution under review obviously referred to the question of self-determination. Each person naturally had his own view on what was or was not constructive in the procedure followed by the Sub-Commission.
21. Ms. PALLEY asked for a vote to be taken by roll-call.
22. The CHAIRMAN said that, in conformity with rule 69 of the rules of procedure, if there were no objections, he would first give the floor to the observer from Indonesia who had asked to speak.
23. Mr. EIDE said that he strongly opposed giving the floor to observers at that stage of the debate.
24. Mr. YIMER said that it was not the Commission's practice to allow observers to take part in discussions on draft resolutions.
25. Mr. van BOVEN recalled that the question of whether States directly affected by a draft resolution should be given an opportunity to state their views had already been raised in several instances the year before. He thought that it would be fair if the countries directly implicated were allowed to express their views. However, in the case under review, Portugal was also directly involved in the matter and if the observer for Indonesia were given the floor, the observer for Portugal should also be allowed to speak.
26. The CHAIRMAN said that only the observer for Indonesia had asked for the floor but that, in any event, since objections had been raised by members of the Sub-Commission, he would not be allowed to speak.
27. The CHAIRMAN said that under rule 65, paragraph 2, he would put to the vote Mr. Ilkahanaf's motion requiring that no decision should be taken on draft resolution E/CN.4/Sub.2/1988/L.26.
28. At the request of Ms. Palley, a vote was taken by roll-call on Mr. Ilkahanaf's motion.

29. Mr. Treat, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mr. Türk, Mrs. Warzazi, Mr. Yimer, Mr. Assouma,
Mr. Al Khasawneh, Mrs. Mbonu, Mrs. Bautista, Mrs. Flores,
Mr. Diaconu, Mr. Ilkahanaf.

Against: Mr. Alfonso Martínez, Mrs. Daes, Mr. Eide, Mr. Joinet,
Ms. Palley, Mr. Sobarzo-Loaiza, Mr. Treat, Mr. van Boven,
Mr. Varela Quiros.

Abstaining: Mr. Chernichenko, Mr. Hatano, Mr. Tian Jin, Mrs. Ksentini
and Mr. Rivas Posada.

30. Mr. Ilkahanaf's motion was adopted by 10 votes to 9, with 5 abstentions.

Draft resolution E/CN.4/Sub.2/1988/L.27 (Compensation for victims of gross violations of human rights)

31. Mr. CISSE (Secretary of the Sub-Commission) said that Mrs. Mbonu had asked for her name to be added to the list of sponsors.

32. Mrs. DAES, introducing the draft resolution on behalf of the sponsors, said that the draft was non-controversial and hoped that it would be adopted without a vote. Its main purpose was to recognize that all victims of gross violations of human rights and fundamental freedoms should be entitled to restitution. She also hoped that consideration of the question would continue at the Sub-Commission's next session.

33. Mr. ALFONSO MARTÍNEZ paid a tribute to the sponsors of the draft resolution, which he supported unconditionally. He was confident that the draft and the Sub-Commission's discussions of the issue at the next session would help to ensure that national courts took account of those humanitarian concerns.

34. Draft resolution E/CN.4/Sub.2/1988/L.27 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1988/L.28 (Situation in Haiti)

35. Mr. CISSE (Secretary of the Commission) said that Mrs. Mbonu had requested that her name be removed from the list of sponsors.

36. Mr. JOINET, introducing draft resolution E/CN.4/Sub.2/1988/SR.35 on behalf of the sponsors, said that he hoped that the moderate text could be adopted without a vote. He recalled that the Commission on Human Rights resolution 1988/51 had renewed the mandate of the expert appointed in 1987 to assist the Government of Haiti to restore human rights in that country. But while the provision of advisory services should be encouraged in order to assist the development of a democratization process, the problem became a sensitive one when a civil Government was replaced by a military one, as had been the case in Haiti on 20 June 1988.

37. Consequently, the sponsors proposed that the Sub-Commission should express the hope in paragraph 3 of the draft that the Commission's expert would inform it on the extent to which the evolution of the situation had influenced his ability to carry out his mandate and that it should recommend to the Commission in paragraph 4 that it should consider the possibility of appointing a special rapporteur if the situation continued to deteriorate. In other words, the Sub-Commission was recommending to the Commission that, depending on how the situation developed in Haiti it should decide whether to maintain the advisory services provided by the expert or to appoint a special rapporteur. He personally very much hoped that the democratization process would be resumed in Haiti and that the second solution would not have to be considered.

38. Mr. CHERNICHENKO, invoking rule 39 of the rules of procedure, asked that the Commission should temporarily suspend the public meeting and reconvene in a closed meeting so that he could explain his position on the draft resolution under consideration. He would need to refer to certain confidential documents of which he could not speak in a public meeting.

39. Mr. AL KHASAWNEH supported Mr. Chernichenko's proposal because, in order to explain his position on draft resolution E/CN.4/Sub.2/1988/L.28, he would have to refer to a decision that the Sub-Commission had taken in the context of its confidential procedure.

40. Mrs. WARZAZI said that the situations prevailing in various countries, such as Chile, El Salvador and Guatemala, had been studied by the General Assembly and also by the Commission on Human Rights which had appointed special rapporteurs in some cases. She therefore did not think that the Commission could bring anything new to their debates by draft resolutions which led to exactly the kind of duplication of effort that Mr. Joinet was seeking to avoid and furthermore it did not make for speedy action. In fact, the Commission would not have the resolutions adopted by the Sub-Commission before February 1989 whereas the General Assembly would discuss those matters at the end of November 1988. She did not therefore see the point of the Sub-Commission adopting resolutions that trailed behind those of the General Assembly. It would be better for the Sub-Commission to leave those responsibilities to the General Assembly and to the Commission and to devote more time to matters that it had not discussed sufficiently and to certain substantive reports that members had not had time to examine properly.

41. Mr. ILKAHANAF supported Mr. Chernichenko's proposal.

42. Mr. van BOVEN thought it inappropriate for the Sub-Commission to be selective or to proceed differently than it had the previous day when it had adopted a draft resolution on the situation in the occupied Arab territories.

43. Mr. ALFONSO MARTINEZ, speaking on a point of order, said that the Sub-Committee should confine itself to its programme of work, namely, the consideration of draft resolution E/CN.4/Sub.2/1988/L.28.

44. Ms. PALLEY speaking on a point of order, said that Mrs. Warzazi had raised a question of principle relating to procedure. However, if the Sub-Commission decided to abide by the suggestion, it could not, for example, adopt a draft resolution on South Africa as she would like it to do.

45. Mr. EIDE, speaking on a point of order, said that the members of the Commission were aware that the same question arose for a draft resolution concerning the situation in another country. It would, therefore, seem more sensible to study both cases at the same time.

46. Mr. CHERNICHENKO, speaking on a point of order, asked Mr. Eide who was always in favour of freedom of expression, to give him a chance to express his point of view in a closed meeting.

47. Mr. JOINET, speaking on a point of order, said that the discussion was getting bogged down. He did not think that the draft resolution under consideration posed a problem of procedure. He therefore proposed that, as a way out of the impasse, the draft resolution should be changed to a simple technical draft decision, in which only operative paragraphs 3, 4 and 5 concerning the mandate of the expert would be retained. Given the way the situation in Haiti had evolved after the expert had been appointed and since the latter was scheduled to leave in a few weeks, it would be wise to spell out the terms of his mandate to avert any risk of deviation from the advisory services.

48. Mr. van BOVEN, speaking on a point of order, regretted that Mr. Joinet had not consulted the other sponsors of the draft resolution under consideration. While he did not object in principle to the Sub-Commission meeting in a closed session he would have liked to assess the implications of the proposed procedure which, as Mr. Eide had said, would also apply to another situation.

49. Mr. ALFONSO MARTINEZ thought that Mr. Joinet's suggestion to withdraw draft resolution E/CN.4/Sub.2/1988/L.28 and to replace it by a draft decision was very wise, if it was acceptable to all the sponsors. However, the debate should be continued in a closed meeting.

The first part (public) of the meeting was suspended at 10.50 a.m. and resumed at 11.50 a.m.

50. Mr. AL KHASAWNEH announced that he would not take part in a vote on the draft E/CN.4/Sub.2/1988/L.28, if it were put to the vote, nor would he join in any consensus on it.

51. Draft resolution E/CN.4/Sub.2/1988/L.28 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1988/L.35 (The situation in Iraq)

52. The CHAIRMAN invited the Sub-Commission to consider draft resolution E/CN.4/Sub.2/1988/L.35 as several members had said they wished to be present when it was discussed.

53. Mr. EIDE, speaking on a point of order, said that he would have preferred the draft resolutions to be considered in chronological order.

54. Mr. van BOVEN, while agreeing with Mr. Eide, nevertheless consented to introduce draft resolution E/CN.4/Sub.2/1988/L.35 on behalf of the sponsors. The draft reflected the Sub-Commission's concerns over the situation of human rights and fundamental freedoms in Iraq, and in particular, that country's use of chemical weapons. The Sub-Commission urged the Government of Iraq to ensure full respect for human rights and fundamental freedoms and to

immediately halt the use of prohibited chemical weapons. Having regard to the recent developments in the United Nations with respect to the war between Iraq and Iran, the sponsors of the draft resolution had agreed to delete the fifth preambular paragraph, whose usefulness had been questioned by a number of members. The Commission on Human Rights should, however, continue to study the human rights situation in Iraq and might consider appointing a special rapporteur to study it.

55. Ms. PALLEY said that it was unfortunate that the draft resolution was being submitted at a time when the settlement of a conflict between Iran and Iraq seemed imminent. However, she pointed out that the draft had nothing to do with the conflict because it dealt with the human rights violations committed in Iraq itself and in particular, against the Kurdish minorities. She was convinced that the situation prevailing in Kurdistan was very similar to genocide as defined in article II of the Convention on the Prevention and Punishment of the Crime of Genocide.

56. According to information from various sources, thousands of Kurdish refugees, some of them with wounds caused by chemical weapons had very recently arrived in Turkey. The Committee was therefore duty bound to consider that question urgently in the interests of the Kurds.

57. Mrs. WARZAZI said that the question of the elimination of chemical weapons in order to ensure respect for the right to life was the subject of draft resolution E/CN.4/Sub.2/1988/L.39 of which she was a sponsor and in which the Sub-Commission renewed its appeal to all States to observe strictly the principles and aims of the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating Poisonous or Other Gases, and of Bacteriological Methods of Warfare, and condemned all acts committed in violation of that obligation. Talks were currently being held in Geneva between both countries after years of a merciless fratricidal war that had claimed numerous victims. The negotiating process under way was extremely delicate and therefore, any blunder that might interfere with efforts made by the Secretary-General should be avoided. Consequently, she felt that draft resolution E/CN.4/Sub.2/1988/L.35 was inopportune because it might worsen a situation for which a solution was currently being sought. Consequently, she proposed, under rule 65, paragraph 2, of the rules of procedure, that the Sub-Commission should take no decision on that matter during the current year.

58. Mr. AL KHASAWNEH said that the use of chemical weapons by anyone was a totally reprehensible practice which should be categorically condemned. He was all the more sensitive to the suffering that those weapons caused as all the victims of that deplorable conflict were members of his faith, persons to whom he felt bound by very close ties regardless of nationality. The use of chemical weapons had been one of the aspects of the war between Iran and Iraq, which had also been marked by the fact that numerous humanitarian rules governing warfare had not been respected. The war, which had lasted eight years, had produced millions of casualties. Only 11 days earlier the efforts made by the Secretary-General and the Security Council had brought about a cease-fire between the parties. The latter had embarked on extremely arduous negotiations and he felt that, in view of those circumstances, the Sub-Commission should remain silent so as not to contribute even inadvertently in the slightest degree to anything that either one of the parties might interpret as an act of political symbolism that was not conducive to the promotion of human rights in the region. That was why he supported Mrs. Warzazi's motion and hoped that other members would do the same.

59. Mr. EIDE could not agree to any motion whereby the Sub-Commission would take no decision on the situation in Iraq. The draft resolution was concerned, not with political but humanitarian questions, which came entirely within the purview of the Sub-Commission. He failed to see what negative effects the adoption of that draft could have on the talks between Iran and Iraq because it should not be forgotten that the Sub-Commission had also been concerned for a long time with the human rights situation in Iran. In adopting the draft resolution, it would not be showing partiality towards either of the parties to the conflict. For all those reasons and also having regard to the fact that the Sub-Commission was concerned not with an armed conflict between Iran and Iraq but with an armed operation conducted against certain parts of Iraq by the Iraqi authorities who used horrendous methods against the civilian populations, it would in his view be odd to say the least, that the Sub-Commission did not concern itself with the matter.

60. Mr. JOINET said that draft resolution E/CN.4/Sub.2/1988/L.39 and draft resolution E/CN.4/1988/L.35 did not fully concord. The latter did not confine itself to the use of chemical weapons; it also referred to the human rights violations committed in Iraq. As Ms. Palley had said, chemical weapons were used mainly against the civilian populations in Iraqi Kurdistan and that was the issue that the Sub-Commission should address. The draft, therefore had no bearing on the conflict between Iran and Iraq or with the talks currently being held between the two countries.

61. Furthermore, it was not certain that the adoption of that draft would have a negative effect on the negotiations between Iran and Iraq. It might indeed, be one way of ensuring some kind of balance between the countries because, it should be remembered that the Sub-Commission had appointed a Special Rapporteur to examine the human rights situation in Iran. That was why he opposed the motion proposed by Mrs. Warzazi.

62. Mrs. KSENTINI said that the use of chemical weapons was an intolerable practice which should be condemned and she therefore welcomed the submission of a draft resolution (E/CN.4/Sub.2/1988/L.39) on that question. Concerning draft resolution E/CN.4/Sub.2/1988/L.35, she greatly feared that it would have a negative impact on the commendable efforts being made by the Secretary-General to restore peace between Iran and Iraq and it was in her view inappropriate for the Sub-Commission to take a decision on it. Consequently, she supported the motion put forward by Mrs. Warzazi.

63. The CHAIRMAN put Mrs. Warzazi's motion that the Sub-Commission should take no decision on draft resolution E/CN.4/Sub.2/1988/L.35 to the vote.

64. At the request of Mr. Alfonso Martínez and Mr. Al Khasawneh, a vote was taken by roll-call.

65. Mr. Al Khasawneh, having been drawn by lot by the Chairman, was called upon to vote first.

<u>In favour:</u>	Mr. Al Khasawneh, Mr. Alfonso Martínez, Mr. Assouma, Mr. Chernichenko, Mr. Diaconu, Mr. Hatano, Mr. Ilkahanaf, Mr. Tian Jin, Mrs. Ksentini, Mr. Türk and Mrs. Warzazi.
<u>Against:</u>	Mrs. Bautista, Mrs. Daes, Mr. Eide, Mr. Joinet, Ms. Palley, Mr. Rivas Posada, Mr. Treat, Mr. van Boven.
<u>Abstaining:</u>	Mrs. Mbonu, Mrs. Flores, Mr. Sobarzo Loaiza, Mr. Valera Quirós and Mr. Yimer.

66. The motion that the Sub-Commission should not take a decision on draft resolution E/CN.4/Sub.2/1988/L.35 was adopted by 11 votes to 8, with 5 abstentions.

67. Mrs. DAES, explaining her vote, said that on the one hand, she categorically condemned the extermination of any minority whatever, including the Kurdish minority, and the use of chemical weapons by anyone and that furthermore, as she had stated with respect to the draft resolution on the situation in East Timor, she was opposed to rule 65, paragraph 2, of the rules of procedure being applied to draft resolutions. Consequently, quite apart from her position on draft resolution E/CN.4/Sub.2/1988/L.35, logic dictated that she should vote against Mrs. Warzazi's motion.

68. Mr. ILKAHANAF, pointed out that he was completely opposed to the use of chemical weapons by anyone against anyone. He had voted in favour of the motion submitted by Mrs. Warzazi for procedural and not for substantive reasons.

69. Mrs. BAUTISTA said that one could not fail to condemn the use of chemical weapons and the violations of human rights of minorities which were tantamount to virtual extermination. The Sub-Committee was duty-bound to speak out about a situation which persisted even while peace talks between Iran and Iraq were taking place. Procedural questions should not, in her opinion, prevail over substantive ones and that was why she had voted against the motion put forward by Mrs. Warzazi.

70. Mr. JOINET said that he had voted against Mrs. Warzazi's motion, first, because he believed that the provisions of rule 65, paragraph 2, of the rules of procedure should not be invoked in the case of decisions concerning draft resolutions and second, because draft resolution E/CN.4/Sub.2/1988/L.35 had nothing to do with the peace talks being held between Iran and Iraq. It was absolutely vital to halt the use of chemical weapons throughout the world and he would have voted in favour of the draft resolution had it been put to the vote.

71. Mr. ALFONSO MARTÍNEZ said that he had voted in favour of the procedural motion first, because he was not sure that the adoption of a draft resolution of that type could have a deterrent effect on acts such as the very ones that had created the situation referred to and second, because of the reasons already stated by Mr. Al Khasawneh. He had also acted in keeping with certain general considerations which he had explained at the beginning of the meeting.

72. Mr. AL KHASAWNEH pointed out that no one could accuse the Sub-Commission of not being concerned over the human rights situation in Iraq. However, it had already taken a decision by consensus on the subject under the confidential procedure, thereby making a contribution to the respect for human rights, whereas the adoption of the present draft resolution would have been nothing more than a symbolic political act.

73. Ms. PALLEY drew the attention of the members of the Sub-Commission to the fact that draft resolution E/CN.4/Sub.2/1988/L.35 dealt not only with the question of the use of chemical weapons by Iraq but also with various human rights violations, mentioned in the preamble, such as enforced or involuntary disappearances, mass extrajudicial executions and arbitrary detention committed in Iraq, independently of the fact it was at war with Iran or with any other country.

74. Mr. EIDE said that the reasons why he had voted against the motion were quite obvious. The debate had in any case been useful because the comments and explanations of vote by members would be brought to the attention of the Commission and that in itself already constituted an important contribution to the cause of human rights.

75. Mr. TIAN JIN said that he had voted in favour of the motion put forward by Mrs. Warzazi, but pointed out that China had always spoken out against the use of chemical weapons because the Chinese people themselves had been victims of such weapons.

76. Mr. CHERNICHENKO said that the reasons why he had voted in favour of that procedural motion were the same as those why he had not taken part in the decision adopted by the Sub-Commission on the draft resolution on the situation in Haiti.

Draft resolution E/CN.4/Sub.2/1988/L.29 (Situation of human rights in El Salvador)

77. Mr. VARELA QUIROS, speaking on a point of order, said that if there were no objections, he would like the observer for El Salvador who was present, to have the floor before draft resolution E/CN.4/Sub.2/1988/L.29 was introduced.

78. Mr. EIDE said that for reasons of principle and of logic he objected to the observer from El Salvador making a statement.

79. Mr. SOBARZO LOAIZA, introducing draft resolution E/CN.4/Sub.2/1988/L.29 on behalf of the sponsors, said that the draft was submitted to the Sub-Commission because of the persistent human rights violations committed in El Salvador and because of the climate of violence and insecurity which prevailed in that country. The main victims of those violations were trade unionists, and he named several leaders or members of various trade unions who had been abducted and assassinated since the end of 1987. The death squads which were responsible for most of the human rights violations and the attacks against the population were composed essentially of army and police officers.

80. All those considerations had led the sponsors to submit draft resolution E/CN.4/Sub.2/1988/L.29. Nevertheless, they had decided in the interests of clarity on the one hand, and in order to stress the seriousness of the violation of the rights of workers on the other, to make the following amendments: in the second preambular paragraph, to replace the words "humanitarian norms" by "fundamental norms of humanitarian law"; in the third paragraph to insert after the word "and" in the third line the words "deeply concerned at"; in the fourth paragraph to delete the phrase after the words "impunity" and insert in their place the wording "which currently exists in El Salvador in respect of the human rights situation"; to replace operative paragraph 2 by the following text: "recommends that the Special Representative of the Commission develops in his next report the conclusions he has reached to the effect that the death squadrons are usually composed of members of the police and army wearing plain clothes but acting under the orders of high-level officials of the government forces, and that in addition these continue to carry out captures for political reasons"; in the second line of paragraph 5, to replace "its" by "the"; in the third line of paragraph 6, after the word "dialogue", to insert the words "in particular with a view to facilitating the evacuation of the wounded pursuant to the Panama Agreement of 26 January 1987". There were two further amendments relevant only to the Spanish language version, which he would give directly to the secretariat.

81. Mr. van BOVEN regretted the fact that the observer for El Salvador had not been allowed to speak on draft resolution E/CN.4/Sub.2/1988/L.29; that rule was being applied during the present session, but he felt it would be unwise to maintain it in the future.
82. Mr. ALFONSO MARTINEZ recalled that the observer for Indonesia had not been allowed to speak either on the draft resolution concerning his country; there should be no discrimination now.
83. Mrs. KSENTINI thought that the observer for El Salvador might be allowed to speak after the vote on the draft resolution.
84. Mr. EIDE pointed out that if an observer was allowed to speak before a vote was taken on a draft resolution, authors of communications, non-governmental organizations and others affected by the same issue should also be given the floor.
85. Mr. SOBARZO LOAIZA shared Mr. Eide's opinion. Only the members of the Sub-Commission could speak before a vote was taken on a draft resolution.
86. Draft resolution E/CN.4/Sub.2/1988/L.29 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1988/L.33

87. Mr. EIDE, introducing the draft resolution on Guatemala on behalf of the sponsors, noted that in Guatemala a constitutional Government had been established, in difficult circumstances, characterized by large-scale human rights violations. That was satisfactory progress, but it should be noted that serious human rights problems persisted; they arose primarily from the failure to co-operate on the part of some members of the military, an example of which had been an abortive coup d'Etat in the spring of 1988. The sponsors had therefore wished, on one hand, to indicate their satisfaction and on the other, to register the fact that the violations persisted. Furthermore, they were concerned about the situation of the indigenous populations.
88. After commenting briefly on the preambular paragraphs, he said that the draft resolution had been drawn up after discussions with representatives of the Government of Guatemala and the opposition, and that the authors had wanted to produce as constructive a text as possible. Last, he pointed out the following two amendments agreed on by the sponsors: the second preambular paragraph should be deleted because the resolutions mentioned in it preceded the constitutional Government; in the fourth preambular paragraph, "some sectors" should be replaced by "some elements", and the same amendment should be made to operative paragraph 7. In addition, the Spanish translation of operative paragraph 3 should be clarified in order to show clearly that the Government was being encouraged to continue its efforts. He hoped that the draft resolution would be adopted by consensus.
89. Mr. VARELA QUIROS said that the amendments proposed by Mr. Eide had followed upon the comments made by Latin American experts in the Sub-Commission. He also hoped that the draft would be adopted by consensus.
90. Draft resolution E/CN.4/Sub.2/1988/L.33 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1988/L.34 (Situation of human rights in Albania)

91. Mrs. DAES, introducing draft resolution E/CN.4/Sub.2/1988/L.34 on behalf of the sponsors, said that the text had arisen out of the debate on Albania which had taken place in the Sub-Commission, during which general concern had been expressed about the ethnic, religious and linguistic minorities in Albania. Many non-governmental organizations had highlighted the unacceptable situation of the various denominations of Muslim and Christian religious minorities. Of the ethnic minorities, the Greek minority was the largest. In operative paragraph 2 of the draft, the Commission was requested inter alia to urge the Government of Albania to provide constitutional and legal measures consistent with the Universal Declaration of Human Rights, the International Covenants and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief with a view to ensuring freedom of religion or belief in Albania. After commenting briefly on other operative paragraphs, in particular paragraph 3 (a) and (b), she said that in paragraph 1 the sponsors had refrained from saying that the Sub-Commission "condemns", preferring the words "strongly disapproves" which were more restrained. However, it should be recalled that Albania had been repeatedly requested to co-operate, and had so far refused.

92. Mrs. BAUTISTA said she wished to become a sponsor of the draft resolution.

93. Mr. ALFONSO MARTINEZ requested that the draft resolution should be put to the vote.

94. Draft resolution E/CN.4/Sub.2/1988/L.34 was adopted by 12 votes to 4, with 6 abstentions.

Draft resolution E/CN.4/Sub.2/1988/L.44 (Situation of human rights in Chile)

95. Mr. SOBARZO LOAIZA, introducing the draft resolution, said that there had been enough developments in Chile to justify a condemnatory resolution. Recent events further confirmed the need for one. Only a few days earlier, as part of the efforts by General Pinochet and the military to retain power, demonstrations had been brutally repressed; two persons had died and 120 had been wounded in Santiago, and 360 people had been arrested. It was to be hoped that the march from Valparaíso to Santiago planned for 4 September would not be banned or repressed in the same manner. At present, the situation in Chile fully justified the tenor of the draft resolution under consideration.

96. He indicated an amendment to operative paragraph 2: in the second line the words "to put an end to such situations and" should be deleted. He was the only sponsor named in the draft because there had not been enough time to add the other names. Mrs. Ksentini, Mr. Alfonso Martínez, Mr. Eide, Mr. van Boven and Mr. Yimer had informed him of their intention of becoming sponsors of the draft. Other members of the Sub-Commission had signified their agreement.

97. Mr. TURK and Mr. JOINET asked to be included among the sponsors of the draft resolution.

98. Draft resolution E/CN.4/Sub.2/1988/L.44 was adopted without a vote.

99. The CHAIRMAN said that the Sub-Commission had thus completed its consideration of the draft resolutions relating to agenda item 6. He pointed out that Mrs. Bautista, was the member of the Sub-Commission appointed in conformity with operative paragraph 3 of resolution E/CN.4/Sub.2/1988/L.18, adopted at the previous meeting. He invited those members who wished to explain their vote on the drafts relating to agenda item 6 to do so.

100. Mr. TREAT said that if draft resolution E/CN.4/Sub.2/1988/L.29 concerning El Salvador had been put to the vote, he would have abstained.

101. Mr. JOINET said that he had been absent during the voting on draft resolution E/CN.4/Sub.2/1988/L.34 concerning the human rights situation in Albania; if he had been present he would have voted in favour.

102. Mr. TÜRK welcomed the fact that, unlike previous sessions the Sub-Commission had adopted its resolutions on the Latin American countries without a vote and added that that was an encouraging sign for future debates. With respect to the resolution on Albania (E/CN.4/Sub.2/1988/L.34), consideration of that question under agenda item 6 had posed awkward problems because it was a matter concerning minorities and consideration under a more appropriate item might have been more comprehensive.

103. Mr. ILKAHANAF felt that in Albania one could not speak of the violations of the rights of religious minorities because religion was denied to the entire population. For that reason, he had found resolution E/CN.4/Sub.2/1988/L.34 unsatisfactory and had therefore abstained.

104. Mr. VARELA QUIROS, speaking on resolution E/CN.4/Sub.2/1988/L.29, said that the Government of El Salvador was confronted with a situation of extreme violence in which guerrillas also committed serious human rights violations, such as placing mines that caused considerable damage to the civilian population and to infrastructure. The appeal that had been launched for the resumption of negotiations, which had been temporarily broken off, seemed to him entirely appropriate, because it was in line with the peace process of the Esquipulas Accords, which he resolutely defended despite the scepticism of some persons. He had therefore joined in the consensus. He nevertheless regretted the fact that the observer for El Salvador had not had an opportunity to speak before the draft resolution was adopted, since that text had been addressed to his Government and his position was not the same as that of a non-governmental organization, for example. He hoped that in future Governments could speak before or after the votes taken on draft resolutions that affected them.

105. Mr. TREAT endorsed the comments made by Mr. Varela Quiros.

106. Mr. ALFONSO MARTÍNEZ said that he had voted against resolution E/CN.4/Sub.2/1988/L.34, concerning Albania, because it had seemed to him that the text created confusion. He agreed with the comment made by Mr. Türk and thought that it would have been better to deal with that situation under agenda item 15 rather than under agenda item 6, because the latter had more serious political connotations. Furthermore, the draft expressed disapproval of the entire organizational concept of the State concerned, and that appeared excessive.

107. Mr. AL KHASAWNEH said that he had abstained in the vote on resolution E/CN.4/Sub.2/1988/L.34 for reasons similar to those stated by Mr. Alfonso Martínez, and because in his opinion the text was too hasty in condemning a small and friendless country.

The administration of justice and the human rights of detainees (agenda item 9) (continued)

- (a) The question of human rights of persons subjected to any form of detention or imprisonment

Draft resolution E/CN.4/Sub.2/1988/L.19

108. Mr. CAREY, introducing draft resolution E/CN.4/Sub.2/1988/L.19 on behalf of the sponsors, said that the text had been approved by all the members of the Working Group on Detention. The draft declaration on the protection of all persons from enforced or involuntary disappearance, prepared by that Working Group could not be adopted immediately, but might be adopted next year, taking into account the comments and suggestions made in operative paragraph 2 (b). He hoped that the draft could be adopted quickly.

109. Mr. VARELA QUIROS said that he wished to become a sponsor of the draft resolution.

110. Draft resolution E/CN.4/Sub.2/1988/L.19 was adopted without a vote.

The meeting rose at 1.30 p.m.