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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Forty-second session

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

Held at the Palais des Nations, Geneva,
on Monday, 28 August 1990, at 8.25 p.m.

Chairman: Mr. TÚRK

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*/ The summary record of the first part (closed) of the meeting appears as document E/CN.4/Sub.2/1990/SR.30.

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The meeting was called to order at 8.25 p.m.

COMMUNICATIONS CONCERNING HUMAN RIGHTS: REPORT OF THE WORKING GROUP
ESTABLISHED UNDER SUB-COMMISSION RESOLUTION 2 (XXIV) IN ACCORDANCE WITH
ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1503 (XLVIII) (agenda item 9)
(continued)

1. Mr. HELLER said that although the mandate of the Sub-Commission in respect of communications was clearly defined by a number of resolutions, its limited possibilities in respect of making recommendations to Governments had become apparent to him. He was also concerned about cases in which the Sub-Commission had decided to drop the communications submitted to it. In the absence of any explanation, such a decision could be interpreted as indicating that no human rights violation had occurred in the cases in question whereas in fact many such decisions had been based on the particular circumstances of the cases. He wondered how the Sub-Commission could transmit recommendations or comments to Governments so as to avoid any erroneous interpretation of its decisions.
2. Mr. ILKAHANAF said that he was concerned about two issues involving questions of principle that it was difficult to mention or even more to agree on when discussing country situations: he believed it was inappropriate to keep communications that were already pending before the Sub-Commission also pending in the Working Group. Secondly, he sought a clear definition of the words "a consistent pattern of gross ... violations of human rights" which he found rather puzzling.
3. Mr. ALFONSO MARTINEZ said that after having listened to all the statements made in the course of the morning's debate, particularly those on the communications relating to Colombia and Syria, he had come to the conclusion that such situations required special attention. He had attempted to draft a decision that would enable the Sub-Commission to tackle that task. If his proposal seemed likely to give rise to a protracted debate, he was prepared to withdraw it in order to reintroduce it the following year. He specified that in drafting his proposal he had taken into account the views of Mr. Despouy, Mr. Rivas Posada and the Secretariat. He then read out the following proposal: "No communication shall remain pending either before the Sub-Commission or its Working Group on Communications for more than one session. In no circumstances shall the Working Group keep pending before it communications relating to a country in respect of which there is a pending file at the Sub-Commission level."
4. Mr. van BOVEN, Chairman/Rapporteur, Working Group on Communications, said that the previous year the Sub-Commission had adopted a decision that no communication should be considered by the Working Group on Communications unless the Government concerned had had five months to reply to it. In the light of experience and practice, as well as of the reactions in the Commission on Human Rights, it was clear that many people felt that the five-month period was too long. The decision effectively meant that no material less than one year old could reach the Commission on Human Rights under the 1503 procedure. While he appreciated the need for Governments to have adequate time to reply, he pointed out that they would always have an opportunity to make their views known. Accordingly, he made the following proposal: "At its 30th meeting (closed) of 28 August 1990, the Sub-Commission,

wishing to modify its decision 1989/102 of 25 August 1989, decided that the Working Group on Communications, acting under operative paragraph 1 of Economic and Social Council resolution 1503 (XLVIII), shall in the future consider only those communications that have been transmitted to the Governments concerned under Council resolution 728 (F) (XXVIII) not later than by the end of April each year, that is approximately 12 weeks prior to the meeting of the Working Group." He explained that the text assumed that the Working Group and the Sub-Commission would continue to meet from the last week of July to the end of August each year as in the previous 18 years. Should the calendar of meetings be changed, the decision would have to be altered to ensure Governments had at least 12 weeks to submit their replies.

5. The CHAIRMAN invited the members of the Sub-Commission to express their views on the proposals made by Mr. Alfonso Martínez and Mr. van Boven. He said that as there appeared to be some objections to Mr. Alfonso Martínez's proposal and in view of Mr. Alfonso Martínez's offer to withdraw his proposal if it were likely to give rise to an extensive debate, he assumed that the proposal was withdrawn and invited members of the Sub-Commission to express their views on Mr. van Boven's proposal.

6. Mr. ALFONSO MARTINEZ, speaking on a point of order, said that if members were going to speak on Mr. van Boven's proposal it was only right that they should also do so on his proposal as it was possible that the objections were only minor.

7. The CHAIRMAN said that he was willing to proceed with a debate, although he first of all wished to find out whether there were any objections to Mr. van Boven's proposal.

8. Mrs. WARZAZI wished to point out that the Commission on Human Rights had not been alone in making observations on the length of time allowed for government replies. At the beginning of the current session Amnesty International had, for example, also requested that the period should be shortened. She asked whether the Secretariat set a deadline for government replies and suggested that if such was the case the three-month deadline advanced by Mr. van Boven would in fact be shorter in view of the Secretariat requirements.

9. Mr. MOLLER (Chief, Communications Section, Centre for Human Rights) said that at every session since the introduction of the 1503 procedure, the Secretariat had been able to place before the Sub-Commission all governmental replies received, not only prior to the first day of the meeting of the Working Group on Communications, but also those received while the Working Group was in session. At the current session, the Sub-Commission had before it all the replies received to date; he specified that such would be the case in the future.

10. Mrs. WARZAZI said that in the interests of compromise she was prepared to accept the three-month deadline, provided it was uniformly applied to all Governments.

11. The CHAIRMAN invited those members who had any objections to Mr. Alfonso Martínez's proposal to explain them.

12. Mr. SABOIA said that as the current session was the first in which he had participated he was somewhat reluctant to express his views on procedural matters. However, he had observed that there was a certain advantage in maintaining flexibility in the Sub-Commission's procedure. He thought that the decision to keep communications pending depended on the nature of the communications concerned and on whether the Government had been able to respond fully to the information submitted. Consequently, in his view the Working Group on Communications should be able to keep a matter pending if it considered it appropriate.

13. The CHAIRMAN noted that there were no objections to Mr. van Boven's proposal and that there were a number of objections to that of Mr. Alfonso Martínez.

14. Mr. ALFONSO MARTINEZ said that he had no fundamental objection to Mr. van Boven's proposal, but would like to make a suggestion to obviate the possible need to alter the requirements for the submission of government replies should the calendar of meetings subsequently change. He suggested deleting the words "by the end of April each year, that is approximately" from the text, thus requiring replies to be submitted "not later than 12 weeks prior to the meeting of the Working Group".

15. The CHAIRMAN asked whether the members of the Sub-Commission wished to accept the proposal, as amended.

16. It was so decided.

17. Mr. ALFONSO MARTINEZ said he had listened attentively to the comments made by Mr. Saboia. He confirmed his willingness to withdraw his proposal at the current session and his intention of reintroducing it the following year.

18. Mrs. KSENTINI said that she wished to make a number of general remarks. First of all, regarding the problem of cases that remained pending before the Sub-Commission for many years, she endorsed the views of Mr. Alfonso Martínez; the Sub-Commission should either drop cases after a certain period or bring them to the attention of the Commission. Secondly, she pointed out the need to update the Sub-Commission's procedure on the basis of new developments. Among the problems that should be addressed was the possibility of offering advisory services other than in respect of cases of violations, without such an offer constituting a form of sanction. Thirdly, the issue of sources of information required close attention. She had noted that frequently the same non-governmental organizations made the same allegations year after year. Ways of disseminating information on the Sub-Commission's procedure should be examined in order to encourage other non-governmental organizations to participate in its work. She also suggested that the Sub-Commission should re-examine the aims of Economic and Social Council resolution 1503 (XLVIII) in view of the emergence of other mechanisms for considering human rights violations, such as the appointment of thematic special rapporteurs and the procedural machinery linked to the Covenants. She suggested that the Sub-Commission should perhaps only consider communications concerning countries that had not recognized any other form of procedure.

19. The CHAIRMAN said that the Sub-Commission had thus concluded its consideration of agenda item 9.

The meeting rose at 9 p.m.