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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-first session

SUMMARY RECORD OF THE SECOND PART (CLOSED)* OF THE 28th MEETING**

Held at the Palais des Nations, Geneva,
on Friday, 25 August 1989, at 11.50 a.m.

Chairman: Mr. YIMER

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* The summary record of the first part (public) of the meeting appears as document E/CN.4/Sub.2/1989/SR.28.

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The closed meeting was called to order at 11.50 a.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 8) (E/CN.4/Sub.2/1989/R.1 and Add.1-17)

1. The CHAIRMAN, introducing the confidential report of the seventeenth session of the Working Group on Communications to the Sub-Commission (E/CN.4/Sub.2/1989/R.1 and Add.1-17), said that the Working Group had held eight meetings between 24 July and 4 August 1989 and had adopted its report unanimously.
2. The five members attending all the meetings had been Mr. Hatano, Mr. Ramishvili, Mr. Sobarzo Loaiza, Mr. van Boven and himself. The presence of all the members had greatly facilitated the deliberations of the Working Group, not only because of the workload but because it had permitted the Group to adopt its decisions with as broad a support as possible, which was important in view of the sensitive nature of the work. Most of the Group's decision that year had been adopted by consensus.
3. In accordance with the terms of Economic and Social Council resolution 1503 (XLVIII), the task of the Working Group on Communications was to examine communications relating to alleged violations of human rights, together with such Government replies as might have been received, and to bring to the attention of the Sub-Commission, together with the corresponding Government replies, those communications which appeared to reveal a consistent pattern of reliably attested gross violations of human rights and fundamental freedoms. In that selection process, the Working Group was guided by the rules of admissibility laid down in Sub-Commission resolution 1 (XXIV). Pursuant to the accepted understanding of paragraph 5 of Council resolution 1503 (XLVIII), no communication could be referred to the Sub-Commission unless the decision to do so had the support of at least three of the five members of the Working Group.
4. The Working Group had had before it for examination almost 200,000 communications relating to 70 countries and over 170 replies from 49 Governments in all geographical regions. That was the largest number of communications ever received by the Centre for Human Rights in a 12-month period. In addition, more replies had been received from a larger number of Governments than in any previous one-year period. Many of the replies received were very detailed and substantive. In paragraph 9 of its report the Working Group had noted with satisfaction the growing willingness of Governments to reply to communications forwarded to them under Council resolution 728 F (XXVIII). The Working Group welcomed that positive development and hoped that such a form of co-operation would become universal. In that connection, the Working Group stressed that co-operation by Governments was essential for its proper functioning and for that of other bodies entrusted with the implementation of the procedure governed by Council resolution 1503 (XLVIII). The Sub-Commission might wish to reflect that in its public report to the Commission.

5. Communications relating to 12 countries (Bahrain, Brazil, Brunei Daressalam, Chad, Colombia, Mauritania, Myanmar, Peru, the Philippines, Somalia, the Syrian Arab Republic and Turkey) were now placed before the Sub-Commission together with such replies and observations as had been received from Governments. As requested by the thirty-third session of the Sub-Commission, the Working Group had paid particular attention to communications which appeared to contain further information of relevance to situations which were under review by the Commission on Human Rights under the 1503 (XLVIII) procedure, and communications which were pending before the Sub-Commission. He recalled that the Sub-Commission had decided at its last session to defer to its present session action on certain communications concerning Bangladesh, Burma (now Myanmar), Colombia, Singapore, and Turkey. Altogether, therefore, communications relating to 14 countries were now before the Sub-Commission.

6. As mentioned in paragraph 7 of its report, the Working Group had also decided to keep certain communications pending before it until its next session. Those communications concerned China (in respect of Tibet), Pakistan, Panama, Qatar and Viet Nam. Authority to keep communications pending before the Working Group had been granted by the Sub-Commission at its thirty-third session in 1980. At that time the question did not arise as to whether a decision to keep a communication pending could be taken by the majority of the members present and voting as laid down in rule 58 of the normal rules of procedure, or whether such decisions required the support of three of the five members of the Working Group. That question had given rise to an exchange of divergent views in the Working Group and he had ruled that in order to keep the communication pending, the support of three members of the Working Group would be required.

7. The communications placed before the Sub-Commission by the Working Group, consisting of some 1,000 pages in the original language, had been issued in 17 separate addenda to the report. Since the secretariat had had only some 12 working days for the preparation, translation, typing and reproduction of the material in document form, he was confident that the members of the Sub-Commission would understand that it had not been possible to translate all the material into the working language of each member. That was a permanent logistical difficulty stemming from the fact that the Working Group met immediately before the Sub-Commission instead of several weeks before the session, a state of affairs unfortunately dictated by paragraph 1 of Council resolution 1503 (XLVIII). It was however praiseworthy that, despite a considerable reduction of staff, the Secretariat had been able to provide the Sub-Commission with more of the relevant material translated into the working languages than in any given year before.

8. He thanked the staff of the Centre for Human Rights which serviced the Working Group on Communications. During his seven years as a member of the Working Group he had been most favourably impressed by the efficiency, objectivity and professionalism shown by the members of the Communications Section assigned to the 1503 (XLVII) procedure.

9. It was now for the Sub-Commission to decide whether the Working Group's selection should be referred to the Commission on Human Rights or not.

10. Mr. TREAT recalled that two days earlier, he had announced that when the Sub-Commission took up the item on communications concerning human rights under the 1503 (XLVIII) procedure, he would request, under rule 78 of the rules of procedure, the suspension of rule 59. That rule provided that the Sub-Commission should normally vote by show of hands. Its suspension would allow the Sub-Commission to vote by secret ballot on the communications. He stressed that his proposal was limited to the Sub-Commission's discussions under the 1503 (XLVIII) procedure and to the present session. His proposal should not be construed as implying that any member of the Sub-Commission was subjected to any undue influence. The whole purpose of the 1503 (XLVIII) procedure was to maximize the independence of members.

11. Mr. JOINET endorsed the proposal of Mr. Treat.

12. Mr. FIX ZAMUDIO said that in his experience the general method of voting on confidential matters was by secret ballot. Moreover rule 59 of the rules of procedure seemed to apply rather to votes taken by States than to votes taken by the members of technical bodies like the Sub-Commission.

13. Mr. ALFONSO MARTINEZ said that he did not see how a secret ballot would make the Sub-Commission's proceedings more confidential. The Sub-Commission should not start from the premise that experts might be subject to pressures that affected their voting, but from the premise that if such pressures existed, each member of the Sub-Commission had sufficient integrity to vote according to his convictions whatever voting method was used.

14. Mrs. DAES, having thanked the Chairman and the Working Group for their work and recorded her deep appreciation to the Secretariat unit dealing with communications, endorsed Mr. Treat's proposal.

15. Mr. DIACONU observed that a secret ballot would entail double confidentiality since members would not know how their colleagues had voted. That, he considered, was going too far. The last sentence of rule 78 of the rules of procedure read: "Any such suspension shall be limited to a specific purpose ...". He inquired what that specific purpose was.

16. Mr. BHANDARE expressed his appreciation to the Chairman and Working Group for their report.

17. Rule 59 of the rules of procedure read: "1. Except as provided in rule 66, the commission shall normally vote by show of hands, except that a representative may request a roll-call". Rule 66, providing the exception, dealt only with elections. In adopting Mr. Treat's proposal the Sub-Commission would be bypassing rule 59 and would also lose the right to a roll-call vote. As to the arguments put forward in favour of the need for confidentiality, he felt that it was not worth being an expert if one could not preserve the confidentiality of one's colleagues. If the Sub-Commission had the courage to vote openly on agenda item 6 on violations he could not see why it could not do so under agenda item 8. The Sub-Commission should retain the open vote procedure.

18. Mrs. WARZAZI said that her attitude both to the rules of procedure and the proposal was flexible and she would go along with the majority decision.

19. Mr. VARELA QUIROS supported the idea of a secret ballot and agreed that, under rule 78 of the rules of procedure, rule 59 should be suspended for the duration of the present session.
20. Mr. ILKAHANAF congratulated the Chairman, the Working Group and the Secretariat on the report. He did not think that a secret ballot would affect his decisions. As a result of a question raised the previous year, the Sub-Commission had been provided with a legal opinion to the effect that the only time the Sub-Commission could vote in secret was in connection with rule 66, which dealt with elections. He realized that the Sub-Commission could interpret its rules of procedure but thought it better to abide by the legal opinion, as had been its custom in the past.
21. Mr. CHERNICHENKO asked Mr. Treat and Mr. Fix Zamudio, as judges, whether judges taking decisions behind closed doors did so by secret ballot. If so, a similar approach would be appropriate for the Sub-Commission.
22. Since some experts had raised objections, and since the proposal to suspend rule 59 of the rules of procedure had been made that day, under the terms of rule 78 the suspension could not come into effect until the Sub-Commission's next meeting on Monday, 28 August 1989, so that in any case the Sub-Commission could not take a secret ballot at its present meeting. To use two different methods of voting, one at today's meeting and another the next, would not be logical.
23. He also wished to know what was the "specific purpose" of the proposed suspension.
24. Mrs. BAUTISTA said that she would have been comfortable with the open ballot system since independence did not depend on a secret ballot. In her country's system, judges voted openly and explained their votes. She would, however, agree to the use of the secret ballot if the majority so desired.
25. Mr. ASSOUMA wondered why the question had been raised so forcefully that year. Since the experts had nothing to hide from each other and since the Sub-Commission's report did not make it clear how any expert voted, he believed that confidentiality was already assured. He would go along with the majority decision on the matter.
26. Mr. TIAN Jin said that he did not believe that a secret ballot would have any effect on the independence of the experts.
27. Mr. EIDE said that he was in favour of Mr. Treat's proposal, which would help to avoid unfortunate incidents such as had taken place in the past.
28. Mr. Treat had given notice of his proposal for suspension at an earlier meeting, so that the 24 hours' notice had in fact been given. He suggested that the Sub-Commission should now move to a vote on the proposal.
29. Mr. DESPOUY supported Mr. Treat's motion. Rule 59 referred to ordinary procedures and reflected usual practice, but allowed for exceptions. Under rule 78, the Sub-Commission was empowered to suspend a rule provided that sufficient notice had been given. A secret vote would safeguard members' independence as experts. But to say that a secret vote was the only way to

'safeguard their independence was tantamount to saying that members had not been independent heretofore. As an expert who was also a government delegate, he would feel happier if he were able to vote secretly.

30. The CHAIRMAN said that he would give the floor to Mr. Khalifa.

31. Mr. SADI, speaking on a point of order, asked why the Sub-Commission did not take up the proposal that had been made to put the motion to a vote.

32. The CHAIRMAN pointed out that the proposal must be a formal one, with a request for the closure of the debate.

33. Mr. EIDE, speaking on a point of order, said that it had been his intention formally to propose the closure of the debate and a vote.

34. The CHAIRMAN said that under rule 50 of the rules of procedure, only two members opposing the motion for a closure would be permitted to speak.

35. Mr. ALFONSO MARTINEZ said that he opposed the motion because, in his view, the matter had not yet been sufficiently discussed. Furthermore, not all participants had yet spoken, and it was evident that there was as yet no general agreement on the question. According to the advisory opinion recently delivered to the Sub-Commission at his request by the United Nations legal services, a secret ballot procedure was permissible only when there was general agreement within the body concerned, and, where the matter at issue was an election. If a vote was taken on the motion, he would vote against it.

36. Mr. KHALIFA said that the motion to close the debate had been moved when he had already been given the floor. For that reason, Mr. Eide's proposal had not been entirely legitimate.

37. Mr. EIDE said that it had not been his intention to prevent Mr. Khalifa from speaking. He wished Mr. Khalifa to have an opportunity to speak, but would like to insist on his point of order thereafter.

38. Mr. BHANDARE said that, since 19 members had already spoken, it would make little difference from the point of view of the time available if the remaining members spoke too. The Sub-Commission was about to take a very important decision which might involve its breaking with past traditions. He requested Mr. Eide to withdraw his motion.

39. The CHAIRMAN said that the motion had been withdrawn, and would have to be reintroduced.

40. Mr. KHALIFA said that, ever since the introduction of the 1503 (XLVIII) procedure, the Sub-Commission had always voted by show of hands. No events had occurred recently that would justify adopting a secret ballot procedure. The advantage of a secret ballot was that it would ensure that members were not subjected to pressure. However, it might also imply that members were not prepared to defend their views. Members of the Sub-Commission should be able to resist pressure.

41. Mr. JOINET supported the proposal on the grounds that the climate of mutual confidence within the Sub-Commission would be enhanced if no Government knew how individual members had voted.

42. Mrs. KSENTINI said that there were good arguments on both sides. The important point was that the Sub-Commission should improve its working methods. Consequently, while she did not support the motion, she would have no objection to voting by secret ballot.

43. Mrs. PALLEY said that she had been subjected to extremely great pressure the previous year, as a result of communications that had been made by a certain member of the Sub-Commission. Members should have a right to decide on their vote just as if they were in a polling booth: that was a fundamental aspect of democracy. Members were responsible individuals, and had consciences which they were capable of using in their capacity as experts.

44. Mr. van BOVEN said that the argument in favour of secret voting was that it safeguarded members' independence. He favoured a secret ballot, but only as provided for under rule 78.

45. Mrs. MBONU said that she had already decided to support Mr. Treat's proposal. But she wished to know why the proposal applied only to the current session. Would no pressure be exerted on members in future sessions? Was there any particular situation before the Sub-Commission at the present session?

46. Mr. DESPOUY said that the proposal to suspend a rule for the present session alone arose out of the rules of procedure, under which the Sub-Commission was not empowered to make permanent changes to its rules of procedure. Such changes required that a draft resolution should be submitted to the Economic and Social Council. However, a temporary procedure existed under rule 78.

47. Mr. EIDE, speaking on a point of order, proposed that the debate should be closed and a vote taken.

48. Mrs. PALLEY reverted to the question put by Mrs. Mbonu. She herself would have liked to see a permanent rule of that kind, but the fact remained that the Sub-Commission was not empowered to make such a permanent rule. She therefore favoured using the procedure under rule 78 every year, and to the maximum.

49. Mr. CHERNICHENKO, speaking on a point of order, said that the proposal had been officially made that same day. Consequently, it could not be implemented until 24 hours had elapsed.

50. Mr. JOINET said that Mr. Chernichenko was overlooking rule 52. That rule was not sacrosanct. If the Sub-Commission decided to waive the rule, it could do so immediately.

51. The CHAIRMAN said that there was a formal proposal for a vote. He asked whether any member wished to make an explanation of vote before the voting.

52. Mr. ALFONSO MARTINEZ, speaking in explanation of vote, referred to the reasons he had already given for voting against the motion. Furthermore, it was clear from Mrs. Palley's remarks that an attempt was being made to establish a precedent, thereby permanently circumventing rule 59. Only the Economic and Social Council was empowered to do that.

53. Mr. BHANDARE, speaking in explanation of vote, said that a very valuable right given to members under rule 60, to explain their vote every time a vote was taken, would now apparently be surrendered. Would it be permissible to explain one's vote in writing, on the secret ballot slip? It was not permissible for the Sub-Commission to do indirectly what it was not empowered to do directly. He would therefore vote against suspension of the rule.

54. Mrs. DAES, speaking in explanation of vote, said that, although she herself had never experienced problems as a consequence of voting by show of hands, she had always favoured a secret ballot as a means of protecting her colleagues. She would never forget the consequences for Mr. Pedromo, a former Colombian member of the Sub-Commission, who had been dismissed from his post in consequence of the way he had voted in the Sub-Commission.

55. Mrs. PALLEY, speaking in explanation of vote, stressed that she was voting for that specific resolution, on that specific occasion only. She dismissed the inference that had been drawn, that she was attempting to subvert ECOSOC. She herself would have liked to see a long-term measure introduced, but the introduction of such a measure was a question for the future.

56. Mr. TREAT, at the request of Mr. van Boven, read out his motion, that the rules pertaining to voting under rule 59 should be suspended for the resolution 1503 (XLVIII) procedure only, and for the current session of the Sub-Commission only with voting to be by secret ballot.

57. At the request of Mr. Alfonso Martínez, a vote was taken by roll call.

58. Mrs. Daes, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mr. Assouma, Mrs. Bautista, Mr. van Boven, Mrs. Daes, Mr. Despouy, Mr. Eide, Mr. Joinet, Mrs. Ksentini, Mrs. Palley, Mr. Suescon Monroy, Mr. Fix Zamudio, Mr. Treat, Mr. Varela Quirós, Mrs. Warzazi.

Against: Mr. Alfonso Martínez, Mr. Bhandare, Mr. Chernichenko, Mr. Diaconu, Mr. Tian Jin, Mr. Khalifa.

Abstaining: Mr. Sadi, Mrs. Mbonu, Mr. Hatano, Mr. Ilkahanaf.

59. The motion proposed by Mr. Treat was adopted by 14 votes to 6, with 4 abstentions.

60. Mr. ILKAHANAF, speaking in explanation of vote, said that Mr. Bhandare had been right to point to the problem of the procedure for explanation of vote under a secret ballot. There was also a legal problem regarding the temporary nature of the measure. For those reasons he had abstained from voting.

61. Mrs. KSENTINI, speaking in explanation of vote, said that she had voted in favour of the motion on the understanding that it did not constitute a precedent, and that the question of secret voting during the 1503 (XLVIII) procedure must be resolved once and for all by a draft resolution submitted to ECOSOC.

The closed meeting rose at 1.15 p.m.