UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1990/SR.25
6 November 1990

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 25th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 24 August 1990, at 10 a.m.

Chairman: Mr. TURK

CONTENTS

---

* The summary record of the second part (closed) of the meeting appears as document E/CN.4/Sub.2/1990/SR.25/Add.1.

GE.90-13232/2559B

The meeting was called to order at 10.25 a.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (agenda item 10) (E/CN.4/Sub.2/1990/20 and Add.1, 21, 22, 23, 25, 26 and Add.1 and 2, 27, 29, 33 and Add.1 and 2; E/CN.4/Sub.2/1990/NGO/1, 4, 18; E/CN.4/1990/14; E/CN.4/Sub.20/1989/23, 27, 28, 29 and 30/Rev.1) (continued)

THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (E/CN.4/Sub.2/1990/35; E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1) (continued)

1. Mr. SUESCUN observed that the reports submitted at the previous meeting on different aspects of the administration of justice by Mr. Joinet, Mr. Despouy, Mr. Chernichenko, Mr. Treat and Mrs. Bautista highlighted the importance of that question to the safeguarding of human rights. Without justice, there could be no rule of law. Systematic and thorough study of the functioning of the judicial system was therefore essential, particularly at a time of crisis when its authority tended to be challenged in developing and the developed countries alike. The primacy of law was based on State justice, and experience showed that any attempt to set up a private system of justice was fraught with danger.

2. Regarding the report submitted by Mr. Joinet (E/CN.4/Sub.2/1990/29) on administrative detention, he felt that every possible means should be sought to protect the individual against arbitrary detention. He cited the example of persons such as hostages who were abruptly deprived of their freedom and referred to Commission on Human Rights resolution 1990/36 concerning them. In his opinion, it was important for the Sub-Commission to continue its consideration of all cases of unlawful restraint without exception and to define specific measures for dealing with them.

3. With respect to the report submitted by Mr. Chernichenko and Mr. Treat (E/CN.4/Sub.2/1990/34) on the right to a fair trial, he noted that the subject raised the question of the impartiality not only of the judge but also of the trial. He noted that the rapporteurs recommended the establishment of basic principles to determine the procedures for guaranteeing fairness. What could be done to ensure that an accused person was never denied the right to defence, that the principle of a full hearing was applied in all cases, and that a convicted person always had the possibility of bringing an appeal before a higher court? There were, unfortunately, many countries which still did not provide fair procedures.

4. He was glad to see that the experts wished to codify international procedures applicable both in civil and in penal cases. He referred in that connection to the activities of ILO which, through persistent effort in another area, had succeeded in giving an international dimension to labour law.

5. Mrs. WARZAZI, speaking on a point of order, said she was very concerned about the backlog in the work of the Sub-Commission. She proposed that the public meeting should be suspended for one hour so that members could reach agreement in closed session on immediate measures to enable the Sub-Commission to complete consideration of the items on its agenda.

6. The CHAIRMAN said that, in accordance with rule 49 of the rules of procedure, he would first give the floor to two members in favour of Mrs. Warzazi's proposal and then to two members opposing it, before putting it to the vote.

7. Mr. SADI said he feared that if the meeting was suspended, the discussion would be delayed even further. He proposed that members should meet in closed session early in the afternoon.

8. Mr. JOINET shared Mr. Sadi's opinion and felt that certain decisions could already be taken in public session. He agreed that the time allotted to speakers should be reduced, both for members and for observers for States and non-governmental organizations. The NGOs could, for example, be invited to choose between speaking for 10 minutes on the reports or 7 minutes on a situation of their choosing; members themselves should exercise self-discipline and keep their statements short so that there would be no need for a debate on the re-organization of the work.

9. Mr. SUESCUN seconded Mrs. Warzazi's motion. He felt that members should very quickly be able to adopt specific and effective rules governing the time allotted to speakers.

10. Mr. YIMER supported Mrs. Warzazi's proposal but felt that a one-hour break would be too long. Half an hour should be enough to find an adequate solution.

11. The CHAIRMAN said that if he heard no objections he would take it that the members supported Mrs. Warzazi's proposal to suspend the public meeting so that it would not need to be put to the vote.

12. It was so decided.

The meeting was suspended at 10.45 a.m. and resumed at 11.35 a.m.

13. The CHAIRMAN informed all the participants of the decision taken in closed session by the members of the Sub-Commission in view of the fact that it was behindhand in the consideration of the agenda. The decision concerned the length of statements in the Sub-Commission: the time allocated to all observers for States and non-governmental organizations to speak on any of the remaining agenda items was reduced to five minutes, but could be increased to seven minutes if the statement covered two agenda items taken together. Observers for non-governmental organizations were to give an oral summary of their statements and then distribute the full text to the members of the Sub-Commission. In addition, for the remainder of the session, statements made in exercise of the right to reply should not exceed three minutes. As regards experts, they were invited to speak not more than once on each agenda item and not for longer than 10 minutes. The decision had been adopted without a vote, was effective immediately and would be enforced until the end of the session. He invited the Sub-Commission to continue consideration of agenda items 10 and 11.

14. Mr. TARDU (International Centre of Sociological, Penal and Penitentiary Research and Studies) drew the Sub-Commission's attention to the problem of some 150 United Nations staff members who had been arrested, had disappeared or had been murdered. Such acts threatened the very independence of

United Nations staff members and thus undermined the effectiveness of the Organization at a time when it was being assigned increasingly important peace-keeping tasks. The most frequent victims of such wrongful acts were local staff members recruited on the spot and mistakenly believed by the State of which they were nationals to owe it allegiance. All United Nations staff members, whether local or international, owed loyalty first of all to the United Nations and States should respect their rights. World opinion should be sensitized to the problem and it should be more widely publicized because people were often unaware of it. Deliberative bodies should also give greater support to the actions of the Secretary-General and the Special Rapporteur in that area. The International Centre of Sociological, Penal and Penitentiary Research and Studies suggested that the Sub-Commission should authorize it to visit the countries concerned and look into the situation on the spot, with the consent of the Governments of those countries and in co-operation with the Secretary-General's representatives.

15. Lack of co-ordination within the United Nations system itself between the various bodies and agencies was also a problem that must be solved. For example, there existed seven or eight international procedures for hearing complaints and for investigating cases of torture and arbitrary detention. It would perhaps be useful if the deliberative bodies could agree to work together in that area. Thus, a member of the Vienna Committee on Crime Prevention and Control should be able to take part in the work of the Sub-Commission's Working Group on Detention and vice versa.

16. Lastly, the importance, underlined in Commission on Human Rights resolution 1990/37 of holding seminars and workshops and other forms of technical assistance for training judiciary and police personnel should be re-affirmed. The Centre which he represented had acquired considerable experience in that field, having already organized 11 annual international human rights training courses for magistrates and senior police officials which had brought out the importance of a practical teaching approach with case studies. Police officers should be enabled to benefit from national training programmes in that field and provision should be made for a "human rights" component to be included in systems for the professional rating of police officers, so as to ensure that the provisions adopted by the United Nations on the subject were implemented.

17. Mr. BRODY (International Commission of Jurists), speaking on agenda item 11, congratulated Mr. Joinet on the excellent working paper (E/CN.4/Sub.2/1990/35) which he had submitted to the Sub-Commission and in which it was noted that the Sub-Commission had been given a monitoring task that consisted in drawing attention both to measures that served to strengthen the independence of the judiciary and the protection of lawyers and to those which had the opposite effect. In that connection, the International Commission of Jurists had that same day issued a report which listed the cases of 430 judges and lawyers in 45 countries who had been murdered, arrested, threatened or harassed since June 1989, by interest groups or by the actual Governments of some countries. The situation was particularly critical in Colombia, Sudan, Sri Lanka, Peru, Cameroon, Ghana, Turkey, Argentina, the United States, the Central African Republic, the territories occupied by Israel, Nepal, Somalia, Kenya, Brazil and the Philippines.

18. The conclusions of the report clearly showed the need for the Sub-Commission to study without delay the initiatives advocated by Mr. Joinet, adopt his recommendations and actively follow through with the measures taken to promote the independence of the judiciary and the protection of practising lawyers.

19. Mrs. ROUSSO-LENOIR (International Federation of Human Rights), speaking on agenda item 10, took issue with the statement by the representative of the United States justifying the application of the death penalty to persons under 18 years old on the grounds that his country had not ratified the International Covenant on Civil and Political Rights and that such action was not forbidden either by general or by customary international law. In fact, the non-applicability of the death penalty to persons under 18 was most definitely a rule of customary international law and even a binding rule of jus cogens.

20. Concerning the right to a fair trial, which was the subject of document E/CN.4/Sub.2/1990/34, the International Federation of Human Rights could provide information on the situation in Romania. Nearly 200 persons there, including many adolescents, were being detained in conditions that violated the rules of international law. The period of detention in police custody exceeded the maximum duration of 60 days provided for in the code of penal procedure and the granting of requests for permission to be visited by lawyers was constantly being postponed through dilatory procedures.

21. In China, the obligation to accord those concerned the genuine possibility of a prompt hearing before the judicial authorities after their arrest and of being assisted by counsel was not being fulfilled and situations assimilable to administrative detention had arisen, with all the attendant risks.

22. The International Federation of Human Rights considered there was an urgent need for the Sub-Commission to appoint during the current year a special rapporteur on all forms of pre-trial detention, whether judicial or administrative.

23. Mrs. SALAZAR (International Federation of Human Rights), speaking on agenda item 11, stressed the importance of Mr. Joinet's working paper on the independence of the judiciary and the protection of lawyers (E/CN.4/Sub.2/1990/35). The Sub-Commission had the task of ensuring that the rules guaranteeing such independence were actually applied. It was because of the wide divergence between theoretical standards and their practical application that human rights violations occurred. Guatemala was a case in point. While both the Constitution and the Amparo Act established a proper procedure for filing writs of habeas corpus, matters were unfortunately quite different in practice, as was clearly shown in the report on Guatemala submitted by Mr. Gros Espiell to the Commission on Human Rights (E/CN.4/1990/45).

24. Mrs. SEMSI (World Trade Union Federation) said that the policy pursued by the Turkish colonizing State in Kurdistan was one of genocide. To claim Kurdish identity, speak the Kurdish language, or say that one came from Kurdistan was enough to provoke arbitrary arrest, torture and massacre. Those who resisted deportation were arrested and their houses burnt. Kurdish

peasants and shepherds were murdered, their wives raped and the areas around their villages mined. Thousands had disappeared and the bodies of those who had died under torture were thrown into mass graves.

25. The situation in the prisons was pitiable, for the prisoners had no means of defending themselves and those who objected to the cruel and degrading treatment inflicted on them were subjected to torture. So far, despite all its promises, Turkey had done nothing to improve prison conditions, which were particularly tragic in the case of women, who often had with them young children some of whom had never known freedom. The Sub-Commission and the international community as a whole must, therefore, as a matter of urgency, bring pressure to bear on Turkey to allow commissions of inquiry access to all places of detention in Kurdistan, including those in the military areas or sectors to which entry was prohibited for security reasons. It was particularly important for prisoners held in solitary confinement to be permitted regular visits by representatives of organizations such as the Red Cross. In short, the international community must prevail upon Turkey to respect the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, that it had signed and ratified.

26. Mrs. FARHI (International Council of Jewish Women) observed that the previous year the Sub-Commission had adopted resolution 1989/26 condemning hostage-taking together with the torture and murder which often accompanied it. She hoped that at the present session the Sub-Commission would reiterate in stronger terms its recommendations to Governments on that subject.

27. Her organization wished to draw attention to the responsibility incurred by all Governments which, implicitly, encouraged hostage-takers by agreeing to negotiate with them if States yielded to hostage-takers' demands, there was no reason why the latter should cease their hateful practice when it could be profitable for them.

28. As to the role and responsibility of the media, a thorough scrutiny was called for because it was through them that blackmail operated, anguish was intensified and the hostage-takers thus achieved their ends, whereas silence or discretion on the part of the media might very often foil their evil machinations. Self-censorship by the media was perhaps a utopian dream; their real responsibility consisted not so much in deciding whether or not to talk about hostage-taking as in reporting on it accurately. The right to information was a fundamental one, but a responsible press was in duty bound to assess what was at stake and help democracy defend itself, and not to contribute to weakening it. There was no doubt whatever that modern terrorism was State terrorism and a form of war against the democracies, which it sought to destabilize from within. It was therefore regrettable that it had not been possible to establish genuine international co-operation for combating that scourge effectively.

29. The problem was today more topical than ever because millions of innocent human beings were being used as "human shields" in a country run by a dictator. It should, therefore, be realized urgently that only collective and concerted action could be effective in that regard.

30. Mr. BALIAN (Human Rights Advocates) noted with appreciation Mr. Joinet's report on the practice of administrative detention (E/CN.4/Sub.2/1990/29), especially the administrative detention of refugees and asylum seekers.

31. In the specific case of the Kurdish refugees from Iraq, who were in temporary reception centres in Turkey, the restrictions on their freedom of movement were such that those camps were in effect detention centres. Turkey, which had ratified the 1951 Convention relating to the Status of Refugees and adhered to its 1967 Protocol, had reserved the right to apply those instruments only to persons who had become refugees as a result of events occurring in Europe. Over 55,000 Iraqi Kurds who had sought refuge in Turkey were thus in danger of being turned back or expelled into Iraq, where they faced violations of their rights and fundamental freedoms, including torture, execution or disappearance following arrest. It was therefore regrettable that Mr. Joinet's conclusions and recommendations did not deal with that matter adequately.

32. As far as the Kurdish refugees were concerned, a further complicating factor had been the refusal of the Iraqi and Turkish Governments to allow the Office of the United Nations High Commissioner for Refugees or any other international humanitarian organization to give material and legal assistance to the asylum seekers or to supervise the conditions of their repatriation to Iraq. Whereas Turkish officials denied that there was any forced repatriation, reliable sources attested otherwise. Some "limited" visits by UNHCR had been authorized, but the last had taken place more than six months previously. Furthermore, the time and place of such visits and the contacts made during them were strictly controlled, which prevented UNHCR from performing its humanitarian role.

33. Mr. Joinet's recommendation that a report should be made on all forms of administrative detention could afford some slight protection for Kurdish asylum seekers. Nevertheless, such protection would be possible only if an international humanitarian organization such as UNHCR or ICRC monitored the situation on site, in order to supply the Special Rapporteur with information and thus reduce the risk of refugees being turned back.

34. He invited the Special Rapporteur to consider the possibility of measures being taken to provide protection for asylum seekers and refugees under administrative detention to whom the Convention relating to the Status of Refugees was not applied. Such measures could include supervision by UNHCR, under its extended mandate, of assistance to displaced persons and de facto refugees as well as to refugees under the terms of the Convention, or mandatory surveillance by other competent international humanitarian organizations, including ICRC.

35. Mr. CUSTODIO (Service for Peace and Justice in Latin America), speaking first on agenda item 10, said that the inadequate administration of justice in Honduras was clearly reflected in the lack of respect for the United Nations body of principles for the protection of detainees. Thus, the use of torture was common there and reported instances of it were never investigated, even in case of the death or disappearance of the persons concerned. In 1981, 58.4 per cent of the prison population had not been brought to trial; in August 1986, 84 per cent had not been sentenced; and in 1990, 80 per cent were still awaiting trial. The use of torture by the police force was a common practice, and he was therefore asking the Sub-Commission to examine the question and request the Honduran Government to invite the Special Rapporteur on arbitrary and summary executions to visit the country as soon as possible. He also requested the Sub-Commission to instruct the Group on Enforced and

Involuntary Disappearances to request the Minister of Justice of Honduras to complete his report on the investigation carried out in 1985 into disappearances imputed to the armed forces.

36. With respect to agenda item 11, he said that although it was considered that democracy was expressed through the freedom to vote, that was not the case in Honduras, firstly because of the politicization of the judiciary, as was noted in the study on the administration of justice in Honduras carried out by the Latin American Institute for the Prevention of Crime and the Treatment of Offenders. It was the National Congress which appointed judges to the Supreme Court and therefore the majority party which had control over the judiciary. Secondly, the police were politicized and militarized and the economic corruption of the system lent itself to political pressure, not to speak of the absence of any single, coherent body of law on the organization of the judiciary, the lack of support services, especially in the statistical field, an unfair economic system, dishonesty and staff incompetence, and the lack of any mechanism to ensure the soundness of judicial decisions where the higher courts exercised no formal control over the lower ones. All that was compounded by the impunity stigmatized by the International Commission of Jurists in the June 1990 issue of "The Review".

37. The supremacy of the military authority over the civil authority and the powerlessness of the latter to enforce legality were other major factors in the poor administration of justice and the lack of independence of the judiciary in Honduras. He therefore requested that studies such as the one carried out by the Latin American Institute for the Prevention of Crime and the Treatment of Offenders should be circulated in other Latin American countries, where they could provide food for thought and the subject matter for resolutions, so that positive lessons could be learnt from those experiences. He also asked that similar studies should be carried out on other continents and widely circulated and discussed for the benefit of all if that had not already been done.

STATEMENT BY MRS. QUISUMBING (CHAIRMAN OF THE FORTY-SIXTH SESSION OF THE COMMISSION ON HUMAN RIGHTS)

38. Mrs. QUISUMBING (Chairman of the Forty-sixth Session of the Commission on Human Rights) felt that closer co-ordination and dialogue was needed between the Commission on Human Rights and the Sub-Commission, in order to help identify the issues clearly and find solutions to them. It was with that in mind that the Commission had adopted resolution 1990/64, in which it had also reminded the Sub-Commission of certain principles that should guide its conduct, such as: the impartiality, objectivity and independence of the members of the Sub-Commission and their alternates; genuine expertise of the specialists in the field of human rights as a guarantee of the credibility and effectiveness of the Sub-Commission; systematic preparation of well-researched studies, reports and draft international instruments; consideration by the Sub-Commission, as a body of independent experts, of any new developments in the field of human rights; the importance of the contribution of non-governmental organizations to the work of the Sub-Commission; the importance of the guidance given by the Commission to the Sub-Commission for ensuring the complementarity of their respective activities; and, finally, the obligation of the Sub-Commission to be guided by the relevant resolutions of the Commission and the Economic and Social Council.

39. Commission resolution 1990/64 also reflected members' comments during the forty-sixth session on the report of the Sub-Commission; those comments had been neither all appreciative nor all critical. On the one hand, the Sub-Commission had been praised for its extremely important contribution to setting standards concerning the protection and promotion of human rights. A number of studies carried out by the special rapporteurs had been cited in that connection, including those on the administration of justice, on economic, social and cultural rights, and on the right to leave and return to any country. Other speakers had commended the Sub-Commission's working groups whose efforts had resulted in the development of various international instruments on human rights, such as the Convention on the Rights of the Child.

40. However, some members of the Commission had expressed concern about certain trends in the Sub-Commission. They felt, for example, that the Sub-Commission appeared to be interpreting its mandate increasingly broadly and tended to go beyond it, with consequent overloading of its agenda and duplication of the work of the Commission; also that it spent too much time on politicized debates and adopted a large number of resolutions and decisions on human rights abuse situations. Consequently, the Commission had welcomed as a positive step the Sub-Commission's decision 1989/104 to establish a sessional working group to develop ideas on the means by which the Sub-Commission could better address human rights violations.

41. The Sub-Commission had also been criticized for instructing some of its members to prepare reports and studies not directly relevant to the protection and promotion of human rights and without the participation of all the experts. In that respect, Sub-Commission decision 1990/103 had been well received because it provided for the formulation of a medium-term programme that would ensure the participation of as many as possible of the Sub-Commission's members in those studies.

42. Lastly, with respect to the independence of experts, some members of the Commission had expressed doubts about the decision taken by the Sub-Commission at its forty-first session to suspend rule 59 of the rules of procedure so that voting by secret ballot could take place on certain matters because of the mounting pressure exerted on certain members of the Commission. The Sub-Commission would do well to refer to the summary records of the Commission's discussions in order to see how those various opinions should be interpreted.

43. The Sub-Commission had already taken some positive steps to respond to those criticisms but there was no doubt that, given the growing sensitivity of public opinion in every corner of the world, the constant changes in political, economic and social conditions, and the emergence of new needs, the Commission and Sub-Commission must engage in serious analysis and study to address the new developments in the area of human rights.

44. While, however, the United Nations bodies dealing with human rights were thus called upon to make additional efforts, their resources were, alas, constantly shrinking. The Commission and Sub-Commission must therefore work hand in hand to remedy that situation and respond to the expectations of the international community by establishing closer co-ordination and continuous dialogue. For example, joint meetings of the officers of the Commission and of the Sub-Commission could be held, a working group composed of members of the two bodies could be set up, and the chairmen of the Commission and Sub-Commission could meet every year.

45. Lastly, she referred to the situation in the Gulf and the plight of innocent civilians, nationals of third countries, who were deprived of their right to leave a country freely. Security Council resolution 664, adopted the previous week, called upon Iraq to facilitate the immediate departure from Iraq and Kuwait of nationals of third countries and to take no action to jeopardize the safety or health of such foreign nationals. She urged the Sub-Commission to join in that appeal and to grasp the opportunity to work for the world-wide realization of human rights.

46. The CHAIRMAN thanked the Chairman of the forty-sixth session of the Commission on Human Rights for her perceptive comments, which would most certainly be very useful to the Commission. He proposed that the text of her statement should be published as a document of the present session of the Sub-Commission.

47. The Sub-Commission had not failed to take note of the critical comments made by the Commission because it was the only way to correct any errors and work more effectively. The summary records of the previous session of the Commission on Human Rights had been distributed to the members of the Sub-Commission, who, after studying them and listening to Mrs. Quisumbing, were better aware of the lines on which the Commission wished them to work and the limits it wished to set to the Sub-Commission's activities.

48. Mrs. Quisumbing was absolutely right in saying that the work of the Sub-Commission must be considered within the context of the growing demands which were made on it and which faced all human rights bodies alike with the obligation to find appropriate solutions. It was also true that the Commission and Sub-Commission must work together to that end, for only thus could they contribute more effectively to the protection of human rights. The Sub-Commission, as alive as it was to all the human rights problems faced the world over, was also concerned over the issue of the right to leave any country which Mrs. Quisumbing had raised.

49. The Sub-Commission was aware of the extent of the challenges that it must face, but he firmly believed that it could meet them. The Sub-Commission was also fully aware of the unique opportunity it at present had to communicate directly with the Commission and of the desirability of pursuing that dialogue in order to give real substance to the idea of a productive and effective association between the Commission and the Sub-Commission.

The meeting rose at 1.05 p.m.