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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fortieth session

SUMMARY RECORD OF THE 25th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 25 August 1988, at 11 a.m.

Chairman: Mr. BHANDARE

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Organization of work

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The meeting was called to order at 11.15 a.m.

ORGANIZATION OF WORK

1. Mrs. WARZAZI, speaking on a point of order, said that she wished to protest strongly about the behaviour of a non-governmental organization which earlier that morning had taken the liberty of distributing the text of a draft decision to the members of the Sub-Commission. She would point out, first of all, that the decision taken by the Sub-Commission had been based solely on Mr. Chernichenko's proposal that the Sub-Commission should recommend the Commission on Human Rights to request that a prize should be awarded to Nelson Mandela. Furthermore, the Sub-Commission alone was responsible for its decisions and no one could tell it what it should do.
2. Mrs. MBONU supported Mrs. Warzazi: no non-governmental organization had the right to impose its views on the Sub-Commission.
3. The CHAIRMAN reminded the Sub-Commission that only members could submit draft decisions and resolutions or amendments thereto and that no draft submitted by anyone else and without the endorsement of a member of the Sub-Commission could be taken into consideration. All drafts submitted must, furthermore, be consistent with the decisions taken by the Sub-Commission as reflected in the summary records.

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS (agenda item 11)

(E/CN.4/Sub.2/1988/21 and Add.1 and 2, E/CN.4/Sub.2/1988/22;
E/CN.4/Sub.2/1988/NGO/1; E/CN.4/Sub.2/1985/21) (continued)

4. Mrs. MBONU said that scientific and technological developments were of paramount importance for the advancement of mankind, and in particular for the developing countries. Unfortunately, those developments often led to abuses and thus threatened human life itself. For that reason, the Commission on Human Rights and the Sub-Commission regularly examined the question of the relationship between human rights and scientific and technological developments. Thus in resolution 1988/60, which it had adopted at its forty-fourth session, the Commission had called upon all States, appropriate organs of the United Nations, specialized agencies, and intergovernmental and non-governmental organizations concerned to take measures to ensure that the results of scientific and technological progress were used exclusively in the interests of international peace, for the benefit of mankind, and for promoting and encouraging universal respect for human rights and fundamental freedoms.
5. A characteristic example of the adverse consequences of scientific and technological developments was the illegal dumping of dangerous products and toxic wastes by the transnational corporations of developed countries in certain developing countries. That practice had attained such proportions that the Council of Ministers of the Organization of African Unity had adopted a resolution (CM/PLAN/DRAFT/RES.4 (XLVIII)/Rev.1) condemning all transnational corporations and enterprises involved in the introduction of nuclear and hazardous industrial wastes into Africa, demanding that they should decontaminate the areas affected and calling upon all African countries which had concluded or were in the process of concluding agreements on that question to terminate them. It should be noted that most African countries were

generally misled by the transnational corporations, a fact which emerged from the Secretary-General's preliminary report on that question (E/1988/72), which exposed the methods used by those corporations to dump their wastes in such countries while knowing perfectly well that they were extremely dangerous products and that developing countries lacked the technical capabilities for the safe disposal of such wastes. Some African countries, however, were beginning to respond to that situation, as evidenced in particular in the cases of Nigeria and the Congo.

6. In conclusion, she emphasized that the problem posed a serious threat to life and to human rights, affecting not only the peoples of the developing countries but mankind as a whole. For that reason, she hoped that the draft resolution submitted on that question (E/CN.4/Sub.2/1988/L.4) would be adopted by consensus.

7. Mr. YOKOTA said that scientific and technological developments had often had, and were continuing to have, very damaging effects, whether they were reflected in warfare, pollution, environmental destruction, the manufacture of dangerous products or interference with privacy through the abuse of computerized files. All those negative aspects had serious repercussions on the enjoyment of human rights and, in particular, on the right to life, as guaranteed in the International Covenant on Civil and Political Rights, and on the right to an adequate standard of living and the right to the best possible mental and physical health, as set forth in the International Covenant on Economic, Social and Cultural Rights. Many reports and documents had been prepared on the harmful ecological effects of scientific and technological developments, in particular by the United Nations Environment Programme (UNEP).

8. Nevertheless, the negative impact of scientific and technological developments on human rights and fundamental freedoms could not obscure the positive aspects. Among the areas in which development efforts should be concentrated for the benefit of human rights, he referred to technical research for the manufacture of inexpensive appliances to enable a greater number of handicapped persons to participate with as much independence as possible in the life of society. He also referred to studies on methods of pollution control, emphasizing that intergovernmental co-operation was essential in carrying out studies of that kind.

9. He thanked Mr. Joinet for his study on guidelines concerning computerized personal data files (E/CN.4/Sub.2/1988/22). Annex I of that document dealt (in section II) with the application of those guidelines to files kept by governmental international organizations. In his view, it would be preferable to use the phrase "intergovernmental organizations", as commonly used in United Nations documents. Regarding exceptions to the principle of access to information, more emphasis should be placed on freedom of the press, radio and television. Journalists, in particular, should be protected against any possibility of access to their information sources.

10. Mr. TREAT associated himself with the comments made by the two previous speakers. In particular, he felt that measures should be taken to put an end to illicit movements of toxic products; the question should be referred to UNEP with a view to the formulation of a draft convention on the subject.

11. Mr. ASSOUMA said that the dumping of toxic products and wastes in Africa was a threat to the right to life and health. He wished to speak on the subject for three reasons: first, it was a matter of survival for the African peoples concerned; secondly, the sizeable increase in such trade between North and South had been the subject of a resolution adopted by the OAU Council of Ministers at its forty-eighth session on 23 May 1988, the text of which had been outlined by Mrs. Mbonu; and thirdly, his country, Togo, had already taken forceful decisions on that question.

12. It might be asked why Africa was particularly affected by the phenomenon. The reason was that the industrialized nations, which produced enormous quantities of toxic wastes, did not have enough room to bury them. Disposal was made even more difficult by pressures from ecologist movements and by draconian regulations. Furthermore, the cost of "clean" disposal of wastes, by high-temperature incineration was very high. The industrialized countries had therefore sought to get rid of their wastes on other continents and had found that sending them to third-world countries was 10 times cheaper than other methods. That was why ships loaded with tons of waste in drums had been seen during the past few years making their way towards the South. In the countries of destination, the local trading partners fell into the trap and it had thus been possible to offload substantial shipments. Large numbers of drums were then to be seen lying on disused land exposed to the sun. Gradually the contents began to leak out. One child had touched liquid from a drum and been burnt; he had been taken to hospital, but had died the following day.

13. Several African countries had already been shaken by that scandal. The new scourge had been checked, fortunately, thanks in particular to the intervention of members of the European Parliament, who had publicly denounced such traffic. In that regard, he also wished to mention the role played by the Belgian François Roellants du Vivier and his friends in the Entente Européenne pour l'Environnement, who had been able to trace all the channels in question. Togo had not itself been affected by the phenomenon, but in May 1988 it had nevertheless launched a public information campaign to ensure that any suspicious dumping site was reported.

14. A draft resolution was currently being circulated on the question and he hoped that it would be adopted without a vote. He emphasized the role which could also be played in that area by non-governmental organizations - whose effectiveness was widely acknowledged - in denouncing any traffic brought to their attention.

15. Mrs. KSENTINI said that item 11 provided an opportunity to focus on the issues which must be resolved to ensure that science and technology remained in the service of man. First of all, the work done by Mr. Joinet on guidelines concerning the use of computerized personal files had been very useful and he must be encouraged to pursue his efforts. The question of toxic wastes from multinational corporations had also been considered during the discussion. Such wastes posed a serious threat to developing countries. Unfortunately, dumping had been tolerated in some countries because fraudulent means had been employed to deceive those countries and exploit any loophole in their legislation. The question was a serious one, not only because of the danger it created, but also because the countries in which dumping occurred lacked the means to deal with the consequences, particularly in the area of health.

16. Confronted with that threat, OAU had already adopted a resolution, which Mrs. Mbonu had read out. Moreover, as Mrs. Mbonu had also indicated, the Secretary-General of the United Nations had prepared a report on the subject for the Economic and Social Council dated 15 May 1988 and entitled "Illicit traffic in toxic and dangerous products and wastes" (E/1988/72). Efforts must now be further intensified at the international level to support the national efforts already undertaken. The Sub-Commission would contribute to that end, in line with the appeal by the sponsors of the draft resolution on the question, by adopting that text unanimously.

17. Mr. GROSE (World Health Organization) said that his organization had taken a strong stand to protect persons infected with the human immuno-deficiency virus (HIV). In particular, the World Health Assembly, on 13 May 1988, had adopted a resolution entitled "AIDS: Avoidance of discrimination in relation to HIV-infected people and people with AIDS" (resolution WHA41.24). Paragraph 1 of that resolution urged the States members of WHO "to foster a spirit of understanding and compassion for HIV-infected people and people with AIDS through information, education and social support programmes". Although the public now better understood that AIDS could not be spread through casual contact, prejudice remained and there were still cases of discrimination against HIV-infected persons at school, in the workplace, etc. For that reason, the above-mentioned resolution urged WHO's 166 member States "to protect the human rights and dignity of HIV-infected people and people with AIDS, and of members of population groups, and to avoid discriminatory action against, and stigmatization of, them in the provision of services, employment and travel" (para. 1).

18. The World Health Assembly had underlined that such a policy was critical to the success of national and international AIDS prevention programmes. If HIV infection or suspicion of HIV infection led to stigmatization and discrimination, the persons concerned would avoid detection and contact with health services. That was clearly contrary to the desired objective: if infection was to be prevented, persons at risk must be informed, educated, and provided with health and social support. Persons suspected of being or known to be HIV-infected should remain integrated with society to the maximum possible extent. In paragraph 3 of the above-mentioned resolution WHA41.24, the World Health Assembly requested the Director-General of WHO "to stress to Member States and to all others concerned the dangers to the health of everyone of discriminatory action against, and stigmatization of, HIV-infected people and people with AIDS, and members of population groups ...". In summary, protecting the human rights and dignity of HIV-infected people, including people with AIDS and members of population groups, was not simply a moral question; it was a material necessity.

19. In its resolution 42/8, adopted in October 1987, the United Nations General Assembly had for its part confirmed WHO's role of directing and co-ordinating the global battle against AIDS, and had urged all organizations in the United Nations system, as well as non-governmental and voluntary organizations, to support that struggle in conformity with WHO's global strategy. The department of the Under-Secretary-General for International Economic and Social Affairs had been designated as a focal point for AIDS activities at United Nations Headquarters. The Under-Secretary-General had established a steering committee to co-ordinate those activities in conformity with WHO's global strategy (the Centre for Human Rights was represented on

that committee). With the agreement of the Secretary-General, the Director-General of WHO had established an inter-agency advisory group on AIDS to further the co-ordination of activities within the United Nations system. It would also be essential for intergovernmental, governmental and non-governmental organizations concerned with human rights to play an active role in that area by helping to prevent discrimination against HIV-infected persons and persons with AIDS. Lastly, the Global Programme on AIDS would offer the Sub-Commission and the Centre for Human Rights its full co-operation in informing the human rights community further about AIDS.

20. Mr. EIDE observed that the statement just made by the WHO representative set a major challenge for the Sub-Commission and he requested that it should be distributed to members of the Sub-Commission. He hoped that the final report by Mr. Joinet on guidelines concerning the use of computerized personal files (E/CN.4/Sub.2/1988/22), which was the fruit of lengthy efforts, would be adopted and transmitted to the Commission. The dumping of dangerous wastes in certain third-world countries was a problem which should already have been taken up in the past; it was to be hoped that the draft resolution to be submitted on that subject would be adopted by consensus.

21. Mrs. WARZAZI associated herself with the condemnations of the disposal of toxic wastes by multinational corporations, which regarded the poor countries as dumping grounds. She paid a tribute to the European Parliament and to certain periodicals such as Jeune Afrique which had spoken out about such traffic. In Africa in particular, that practice was very dangerous for the inhabitants, cultures and the environment, and there was a risk that the amount of dumping would increase even further. It was therefore essential to alert uninformed populations and Governments that were sometimes unconcerned in order to put an end to dishonest traffic in that area. The Sub-Commission, for its part, should take a strong position on the problem by condemning the multinational corporations that were guilty of such practices and the local officials who facilitated them.

22. Mrs. THOMPSON (International Commission of Jurists), speaking about AIDS, said that her organization was very concerned about the increasing discrimination against people who were HIV-positive or were presumed to be infected because they belonged to certain ethnic, cultural, social or sexual groups, such as minorities, the homeless, prostitutes - male or female, homosexuals or drug-users. Examples of discrimination could be cited at the national level: in Belgium, testing was compulsory for African students; in Cyprus, Africans seeking work permits were also subjected to a compulsory test; in South Africa, foreigners planning to work, with the exception of Europeans, were required to take a test; and in the United States, applicants for immigration visas and refugees and aliens seeking residence permits also had to take a test. In various places, people who had AIDS or were HIV-positive had been dismissed from their jobs, evicted from housing or refused life insurance and marriage licences; children had also been barred from certain schools, and patients had experienced difficulties in obtaining medical or dental treatment and hospital care. Furthermore, violations of human rights in the criminal justice system included court-appointed attorneys refusing to represent persons thought to be infected, many courts demanding testing as a condition of bail for defendants accused of sexual or drug-related crimes, and the imposition of prison sentences for persons who infected others, whether voluntarily or involuntarily.

23. WHO had pointed out that such discriminatory practices had widespread and serious consequences. It was therefore imperative to educate the public about the true nature of the disease and about the right of patients to the same privacy, confidentiality and humane treatment as that granted to persons suffering from other diseases.

24. She cited resolutions concerning AIDS prevention and control, such as WHO resolution WHA40.26, Economic and Social Council resolution 1987/75 and General Assembly resolution 42/8, and drew attention to the recommendations issued by the Council of Europe in November 1987 (No. R/87/25), which emphasized the need to increase voluntary testing sites, ensure confidentiality and make counselling available, instead of screening of the general population and passing discriminatory legislation - an approach that was uneconomical and unjustified both scientifically and ethically. The need to protect the rights of people who were HIV-positive or had AIDS was also underlined in WHO resolution WHA41.24.

25. Her organization hoped that Governments and NGOs would co-operate fully and collaborate with WHO in the campaign against AIDS. WHO had already initiated a European programme aimed at establishing guidelines and policies for WHO/NGO collaboration through the organization of networks at the national level. The purpose of that programme was to define areas where discrimination was occurring and to identify the gaps in public information and educational programmes.

26. Mr. TARDU (International Centre for Sociological, Penal and Penitentiary Research and Studies) noted that the Sub-Commission examined only once every two years, and then very briefly, the relationship between human rights and scientific and technological developments. The low priority given to those problems was a matter of concern and should be reconsidered.

27. Today, three related phenomena helped to maximize both the positive and negative impact of scientific and technological developments on human rights. First of all, there was the unprecedented range of scientific knowledge, which created the danger of the destruction of mankind as a whole. There was also the constant acceleration of such developments since, thanks to the computer, the application of technologies was almost immediate and there was therefore a dangerously widening gap between science, morality and law. Lastly, there was an increasing diffusion of knowledge and technological equipment, including computers, pharmaceutical products, weapons and, to some extent, even atomic weapons. New technical means were rapidly seized upon by numerous strong centres of power: States, multinational corporations, the media, religious movements, political parties, etc. Confronted with those powers, whose action was often transnational, the room for individual autonomy was reduced.

28. In view of that three-fold phenomenon, there was a need to do more than indulge occasionally in gentle scientific futurology. The future was already at hand, constantly posing new problems for human rights. Between 1970 and 1976, under the mandate of the General Assembly and the Commission on Human Rights, the Centre for Human Rights, in conjunction with appropriate specialized agencies and private associations, had undertaken a series of interesting and pioneering studies on many aspects of the problem (human rights and biology, human rights and genetics, human rights and information technology). As a result of those studies, a consolidated report had been prepared on the theme of the balance to be maintained between scientific and

technological developments, on the one hand, and the promotion of human rights and the spiritual progress of mankind, on the other. Regrettably, the mandate given to the Centre for Human Rights had not been renewed after 1976, perhaps because the General Assembly had considered it sufficient to adopt a Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind.

29. That Declaration, however, should be considered only as a starting-point. There was now a need to go beyond standards of such a general nature, and the United Nations should again undertake an in-depth periodic examination of those problems on a sectoral basis, by specific area. Commission on Human Rights resolution 1988/59 assigned an important role in that regard to the United Nations University (UNU). Without wishing to underestimate UNU, however, it might be asked whether that mandate was not too onerous for an institution with fragile resources dependent on the flow of funds. The United Nations human rights bodies, the Commission and the Sub-Commission, should not therefore consider that they were released from their responsibilities in that area.

30. Biology, biochemistry and genetic engineering posed new problems with regard to human rights. His organization (the Messina Centre) therefore proposed that the Sub-Commission should consider the possibility of resuming the series of studies which had been undertaken previously, beginning with those areas. Moreover, it was precisely in those sectors that the Messina Centre had recently established a branch - an international and interdisciplinary organization to study the ethical and legal problems of the new biology. His organization was in close contact in that area with the new International Centre for Genetic Engineering and Biotechnology set up in 1985 by UNIDO and would be happy to collaborate with the Sub-Commission and the United Nations Centre for Human Rights if a new study were to be initiated in the areas under consideration.

31. Human rights and information technology, in particular micro-informatics, was another area of crucial importance which the Sub-Commission should not ignore. The Messina Centre was also closely concerned with those problems in so far as they affected relations between the police and human rights. It had devoted two seminars to that topic, as well as one of the human rights courses organized by it for the police. He wished to take the opportunity of commending Mr. Joinet for his excellent report on computerized files (E/CN.4/Sub.2/1988/22) and for the guidelines he had formulated with great care. However, as he had said personally to Mr. Joinet, he would like him to consider the possibility of again modifying principle 6 (Power to make exceptions) in order to limit further the risks of abuse. He wished to suggest in particular that the Special Rapporteur might follow the wording of article 4 of the International Covenant ("to the extent strictly required by the exigencies of the situation"), rather than simply using the phrase "if ... necessary" (see *loc. cit.*, p. 11). Mr. Joinet might also consider adding the important words "in a democratic society" to the wording of the Covenant. Nevertheless, he congratulated Mr. Joinet on having already modified principle 6 so as to limit the number of exceptional cases; he was fully aware of the difficulties confronting Mr. Joinet, thanks to whom an extremely valuable working text was available. In conclusion, he urged the Sub-Commission to resume its programme of studies concerning that area.

32. Mr. RAJKUMAR (Pax Romana) said that the fortieth anniversary of the Universal Declaration of Human Rights in 1988 should be an occasion for deeper reflection.

33. Looking at the various human rights instruments in force, it was apparent that not one dealt specifically with the question of environmental protection and ecological balance. Yet the environment was now being subjected to steady and growing ecological pressures, such as the dumping of chemical wastes, which contributed to the systematic deterioration of the ecological balance. Environmental protection, although a universal duty, was being compromised by human ignorance and arrogance. Ecological laws, however, allowed no exceptions and it was imperative to address the question from the standpoint of human rights and, in general, with reference to moral and legal considerations. Pax Romana wished to speak in particular about the illicit transboundary traffic in toxic and dangerous wastes, a phenomenon which affected all parts of the world.

34. That question had been duly examined by the United Nations system, which had called for the adoption of appropriate measures to be applied without discrimination and in a spirit of international co-operation to preserve the environment and ecological safety. None the less, that traffic was continuing. For example, Argentina, Peru and two other Latin American countries had negotiated agreements with a United States firm for the dumping of toxic wastes from American industries on their territories. Under those agreements, the countries concerned would receive \$US 40 per drum of waste. That proposal had given rise to heated controversy in Peru. In 1987, Venezuela had returned some chemical wastes to Italy and, at the most recent session of the General Assembly, the representative of Venezuela had stressed the fact that the growing traffic in dangerous wastes posed a threat to mankind. The Chairman of the United States firm which had negotiated the above agreements had claimed that the wastes covered by them were not dangerous and that their storage could provide a substantial income for the countries concerned. An Italian official, referring to his country's shipment of toxic wastes to Nigeria, had stated that the shipment was a purely commercial transaction between two companies and that the Italian Government was prepared to provide Nigeria free of charge with a plant for the treatment of chemical wastes. While that proposal represented an act of generosity on the part of Italy, that country was, however, not really fulfilling its obligations.

35. One New York-based company had sold chemical wastes as "pure chemical products" to companies abroad. Many shipments had thus been made to India, South Korea, Nigeria and Zimbabwe. That company, furthermore, had been prosecuted for selling wastes - which it had claimed to be dyestuffs - to a company in Zimbabwe sponsored by the United States Agency for International Development. In fact, the company in question had itself been purchasing wastes from the navy, the army and the Department of Agriculture. Cases of that kind were numerous, and Greenpeace International cited some 150 shipments of toxic wastes during the past 2 years alone, mainly to Latin America and Africa. Toxic wastes were being discharged into watercourses, into the sea and near populated areas; dangerous or prohibited products were being marketed, through third countries, in the developing countries.

36. UNEP had formed detailed guidelines in that area, but there was still no effective mechanism for monitoring or controlling the spread of dangerous wastes at the global level. He therefore urged the international community to exercise its common responsibility.

37. Mr. DIACONU associated himself with the comments made by the African experts and said that the dumping of toxic products was a phenomenon that existed not only in Africa and Latin America but also in Europe, including Romania, where one recent case had led to prosecution under Romanian law. The phenomenon, in fact, involved agreements between Governments but, above all, illegal contracts signed by private companies, and that was a practice which absolutely must be combated.

ORGANIZATION OF WORK

38. The CHAIRMAN informed the Sub-Commission that he had received a communication from Mr. Mazilu dated 11 August 1988 in Bucharest. The Under-Secretary-General had also received a communication, dated 19 August, in which Mr. Mazilu, who was apparently now at home, indicated his readiness to come to Geneva to present his report. In the communication addressed to the Chairman, Mr. Mazilu likewise expressed his readiness to come to Geneva and added that to do so he needed permission from the Romanian authorities. Mr. Mazilu called for the termination of the measures taken against him and his family, and referred to the provisions of the United Nations Charter and the relevant resolutions of the General Assembly, the Commission on Human Rights and the Sub-Commission to the effect that all Member States were required to facilitate and not impede the work of a special rapporteur of the United Nations. Mr. Mazilu said that he was determined to do his utmost to carry out to the best of his ability his mandate as a special rapporteur of the United Nations on human rights and youth. He was convinced that that work would serve the noble cause of human rights in a complex and contradictory world. Copies of those two communications would be distributed to members of the Sub-Commission.

39. Mr. EIDE said he was very pleased to learn that Mr. Mazilu had been located, that he was in good health and that he was ready to come to present his report to the Sub-Commission. He wished to thank the Secretary-General of the United Nations and the Under-Secretary-General for Human Rights, as well as the Legal Liaison Office, which had recently given its opinion on the implementation of the Convention on the Privileges and Immunities of the United Nations. It was clear from that opinion that the members of the Sub-Commission were not representatives of Governments, but were acting in a personal capacity. The same was true of special rapporteurs. Thus, while from the standpoint of the Romanian authorities Mr. Mazilu was an ordinary citizen, as far as the United Nations was concerned he was a special rapporteur enjoying certain privileges and immunities, in particular the privilege of being authorized to carry out the task entrusted to him by the Sub-Commission by coming to present his report in Geneva without impediment. There was nothing to indicate, moreover, that Mr. Mazilu was effectively prevented from enjoying those privileges and immunities. Since Mr. Mazilu was at home, he suggested that the secretariat should get in touch with the United Nations Information Centre in Bucharest to explain the problem and request it to contact Mr. Mazilu and ensure that he would be able to come to present his report to the Sub-Commission. The United Nations Information Centre in Bucharest could supply the Special Rapporteur with an air ticket

enabling him to attend the Sub-Commission the following week, and could request the Romanian authorities to permit Mr. Mazilu to leave Romania and travel to Geneva. The United Nations Information Centre in Bucharest could inform the Director-General of the United Nations Office at Geneva, at the latest by the morning of Monday, 29 August, whether there was any difficulty.

40. Mrs. DAES paid a tribute to the Secretary-General of the United Nations, the Under-Secretary-General for Human Rights, the Chairman of the Sub-Commission and the Director of the United Nations Information Centre in Bucharest for having spared no effort in locating Mr. Mazilu. She entirely supported the suggestion just made by Mr. Eide.

41. Mr. ALFONSO MARTÍNEZ said he wished to point out to Mr. Eide, with all due respect, that when he expressed an opinion, he should do so personally and unambiguously. He asked the secretariat why members of the Sub-Commission had been provided not with the original of the letter received from Mr. Mazilu, but only with a photocopy of a typewritten document bearing no signature.

42. Mr. DIACONU said that the members of the Sub-Commission had evidently been provided with a text which had been typewritten in the secretariat in Geneva. If there was a hand-written and signed text, it should be made available to the Sub-Commission as soon as possible. He reminded members that they had heard the explanations by the Romanian authorities and that Mr. Mazilu's relatives had themselves stated that he had been ill. The letter supposedly sent by Mr. Mazilu to the Chairman was dated 11 August, i.e. the day on which the Sub-Commission had inquired about the fate of the Special Rapporteur and on which it had been said that his whereabouts were unknown. The whole question was most unclear and he requested that the original document be made available. It had furthermore been stated that the Special Rapporteur had been ill and had been receiving treatment. In the circumstances, it was legitimate to ask whether he had really been able to write a letter.

43. The question of privileges and immunities did not arise in the present case. Without wishing to enter into a long discussion, he would simply point out that the experts enjoyed United Nations privileges and immunities only when they were on mission, and not throughout the year.

44. He failed to see how Mr. Eide's suggestion might provide a solution. The United Nations Information Centre in Bucharest could, of course, contact Mr. Mazilu, but the Sub-Commission could not legitimately tell it what to say. A solution therefore should be sought, but not in that direction, which was not the right one.

45. Mrs. WARZAZI pointed out that she had asked the Under-Secretary-General for Human Rights why the members of the Sub-Commission did not enjoy the same status as the members of the International Law Commission.

46. Mr. van BOVEN said that a simple matter was being made complicated: the Sub-Commission was due to consider, the following week, an agenda item on which Mr. Mazilu was to present a report. He therefore fully supported Mr. Eide's suggestion. It was not necessary for the Sub-Commission to take a formal decision and the Secretary-General could simply be requested to facilitate the Special Rapporteur's travel to Geneva.

47. Mr. PELLET agreed that the question of privileges and immunities was not at the heart of the distressing problem being considered by the Sub-Commission, although the secretariat had given an interesting legal opinion which he endorsed as a professor of international law. What was at issue, in fact, was the right of freedom of movement of any person, whether or not he was a Special Rapporteur of the Sub-Commission. Since Mr. Diaconu felt that the United Nations Information Centre in Bucharest could contact Mr. Mazilu without difficulty, it would appear that the Sub-Commission could support Mr. Eide's suggestion.

48. Mr. DIACONU said that if the Sub-Commission did not take a formal decision, he would not oppose the action proposed. But he had never said that such a procedure could help the Sub-Commission in its work.

49. The CHAIRMAN pointed out that Mr. Mazilu was due to come to the Sub-Commission the following week in order to present his report on agenda item 15 (c). Furthermore, he had been assured that the communication received from Mr. Mazilu was authentic. As soon as he had the original of the document, he would arrange for photocopies to be distributed to all the experts. The question of the application of privileges and immunities in Mr. Mazilu's case had been settled by the opinion given by the Legal Liaison Office. He was convinced, for his part, that the Special Rapporteur should enjoy all the privileges and immunities of the United Nations in connection with the preparation of the study on human rights and youth which had been entrusted to him by the Sub-Commission. He noted that all members of the Sub-Commission, with the exception of Mr. Diaconu, recognized that every effort should be made to enable Mr. Mazilu to come and present his report in person. Since Mr. Mazilu himself expressed his willingness to come to Geneva, the problem of his illness became secondary. One could not but pay tribute to the courage of the Special Rapporteur, who, notwithstanding his heart disease, was prepared to come to attend the Sub-Commission. He therefore proposed that the Sub-Commission should ask the Secretary-General of the United Nations to spare no effort in ensuring that Mr. Mazilu could attend the Sub-Commission's session.

50. Mr. DIACONU said that if the Sub-Commission did not take a formal decision, he would not oppose the procedure envisaged. If it took other action, he would call for a vote.

51. After a discussion in which Mr. DIACONU, Mrs. WARZAZI and Mr. EIDE took part, the CHAIRMAN noted that the members of the Sub-Commission hoped that Mr. Mazilu would be able to come and present his report to the Sub-Commission in person.

The meeting rose at 1 p.m.