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REPORT OF THE SUB-COMMISSION ON PREVENTION OF
DISCRIMINATION AND PROTECTION OF MINORITIES
ON ITS FORTIETH SESSION

Report of Mr. M.C. Bhandare, Chairman of the Sub-Commission, at
its fortieth session, prepared in accordance with paragraph 20
of Commission on Human Rights resolution 1988/43

Introduction

1. The Commission on Human Rights at its forty-fourth session adopted resolution 1988/43, entitled "Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities", in which it called upon the Sub-Commission, in the fulfilment of its functions and duties, to be guided by the relevant resolutions of the Commission and the Economic and Social Council. Resolution 1988/43 also contained a number of guidelines for the Sub-Commission and, in paragraph 20, the Commission requested the Chairman of the Sub-Commission to report to the Commission on the implementation of those guidelines. The present report is submitted by the Chairman of the Sub-Commission at its fortieth session to the Commission on Human Rights pursuant to that request.

2. The guidelines contained in resolution 1988/43 can be grouped under the following headings:

- (a) Terms of reference and role of the Sub-Commission;
- (b) Methods of work;
- (c) Studies and reports and activities of special rapporteurs;
- (d) Standard-setting activities;
- (e) Consideration of new developments;
- (f) Resolutions and decisions.

I. TERMS OF REFERENCE AND ROLE OF THE SUB-COMMISSION

3. The report of the Sub-Commission on its fortieth session (E/CN.4/1989/3-E/CN.4/Sub.2/1988/45) demonstrated the breadth of the subjects brought to its attention by the Commission, Sub-Commission members and non-governmental organizations for analysis and action from the expert human rights point of view. Prevention of discrimination and protection of minorities are themes which run through the Sub-Commission's many resolutions and decisions, whether they deal with measures to combat racism and racial discrimination, the adverse consequences for human rights of assistance to South Africa or specific situations of violations of human rights. Also of serious concern to the Sub-Commission are issues relating to the protecting of vulnerable groups, such as indigenous peoples and persons subjected to contemporary forms of slavery, including women and children. In addition, the Sub-Commission's attention is focused on the drafting of new international standards and the exploitation of new areas of concern for their human rights dimensions.

4. The Commission and the Sub-Commission, in dealing with the Sub-Commission's terms of reference and the role it could play in the United Nations system for the promotion and protection of human rights, have tried to focus on guidelines to maximize the Sub-Commission's contribution and minimize duplication and overlapping. In its resolution 1988/43, the Commission reaffirmed that the Sub-Commission could best assist it by providing it with recommendations based on the different views and perspectives of independent experts. The Commission also expressed its conviction that it was essential that the impartiality and objectivity of the Sub-Commission and the independent status of its members and their alternates should be its guiding principles.

5. At its fortieth session, the Sub-Commission considered the comments and suggestions made by the Commission and the guidelines submitted to it in resolution 1988/43, under, in particular, its agenda item 3 "Review of the work of the Sub-Commission" (E/CN.4/Sub.2/SR.3, SR.4, SR.8 and SR.9). During the debate, the members emphasized that the central issue in all the discussions was the relationship between the Commission and the Sub-Commission and how the Sub-Commission, as a body of independent experts, could best assist the Commission in its work. It was agreed that the Sub-Commission needed guidelines from the Commission on the discharge of its mandate. The members were of the opinion that the dialogue which had taken place between the two bodies was of great importance to both of them. The view was expressed that it was necessary to stimulate, by all possible means, the formulation of new proposals and specific recommendations for the promotion and protection of human rights through international co-operation. The need to rationalize the Sub-Commission's work was recognized, and the Sub-Commission agreed to keep the review of its work under consideration and decided to consider the relevant item after its forty-first session in 1989 on a biennial basis (decision 1988/104).

6. During the discussion of its role and mandate, various views and comments were expressed on how to render the functions of the Sub-Commission more effective and how the potentials of the Sub-Commission could be best utilized to enhance its distinctive role and avoid duplication with the work of the Commission. Particular attention was paid to the role of the Sub-Commission in relation to allegations of violations of human rights. In that respect, attention was drawn to the following main tasks falling within the terms of reference of the Sub-Commission:

(a) Carrying out duties provided for under Economic and Social Council resolution 1503 (XLVIII), which was specifically designed to deal confidentially with the communications referred to in Council resolution 728 F (XXVIII);

(b) Preparing, for the use of the Commission, a report containing information on violations of human rights and fundamental freedoms from all available sources in accordance with paragraph 2 of Commission resolution 8 (XXIII);

(c) Bringing to the attention of the Commission any situation which it has reasonable cause to believe reveals a consistent pattern of gross violations of human rights, in accordance with paragraph 6 of Commission resolution 8 (XXIII).

7. In the light of that mandate, and the Commission's request that the Sub-Commission, when examining items which were extensively discussed elsewhere in the United Nations system, should concentrate on those specific human rights issues on which it could make a distinctive contribution, the suggestion was made that further and more detailed consideration should be given to the mandate contained in Commission resolution 8 (XXIII) (see document E/CN.4/Sub.2/1988/43). Thus, the Sub-Commission decided to continue the discussion, at its forty-first session, of the various possibilities of implementation of paragraphs 2 and 6 of Commission resolution 8 (XXIII), without prejudice to the confidential procedure provided for in Economic and Social Council resolution 1503 (XLVIII) or to other procedures instituted since the adoption of that resolution (decision 1988/104, para. 1).

8. The proposal contained in document E/CN.4/Sub.2/1988/43 was also submitted in connection with the rationalization of the work of the Sub-Commission. It was suggested that the report which might be submitted pursuant to paragraph 2 of Commission resolution 8 (XXIII) should be mainly factual and contain a summary of the information presented to the Sub-Commission by members, non-governmental organizations and observers for Governments in the course of the debate relating to the relevant agenda items. Thus, assuming that speakers in the Sub-Commission would no longer use a whole range of other agenda items to draw attention to specific violations of human rights, but limit themselves for that purpose to the relevant item under which violations of human rights were discussed, it was felt that the organization of the work of the Sub-Commission would be less complicated and the debate on violations of human rights would be concentrated under a single item (see E/CN.4/Sub.2/1988/SR.9, para. 4).

9. The Commission, in resolution 1988/43, requested the Secretary-General to continue to give strong support to the Sub-Commission and in particular to ensure that Sub-Commission documents were available in all languages in good time before the session. In its resolution 1988/2, the Sub-Commission considered the role of the Centre for Human Rights as a unit of the United Nations Secretariat called upon to ensure the proper and effective functioning of the international human rights bodies and recommended for adoption by the Commission draft resolution I entitled "Co-ordinating role of the Centre for Human Rights" (E/CN.4/1989/3-E/CN.4/Sub.2/1988/45, chap. I, sect. A).

II. METHODS OF WORK

10. Noting that the steps taken so far by the Sub-Commission to rationalize and streamline its work had not so far fully achieved the desired results, the Commission, in resolution 1988/43, invited the Sub-Commission to continue its efforts to rationalize its agenda and to arrive at increased efficiency and economical methods of work, by avoiding procedural debates to the maximum extent possible so that more time could be devoted to matters of substance, and by organizing contributions of observers and non-governmental organizations in such a way as to leave sufficient time for debate among its members. The Commission also called upon all members of the Sub-Commission to attend the sessions of the Sub-Commission and its working groups or to be represented by their alternates and to take an active part in their deliberations, in order to achieve a broad exchange of individual views based on the knowledge and experience of all the members.

11. In organizing the work of its fortieth session, the Sub-Commission was activated by the Commission's guidance and every effort was made to rationalize the agenda and to arrive at increased efficiency and economical methods of work. The members of the Sub-Commission minimized procedural debates drastically and the number of points of order raised at the fortieth session were substantially fewer than in the past few years. As was mentioned above, the Sub-Commission began consideration of ways and means of streamlining its consideration of issues relating to violations of human rights.

12. Regarding attendance, all members of the Sub-Commission were present for most of the session. When a member was unable to attend, he was, as a rule, replaced by his alternate. The deliberations were carried out with a broad exchange of individual views based on knowledge and experience.

13. With regard to the conduct of meetings, all members of the Sub-Commission did their utmost to ensure that the time allotted to the meetings of the Sub-Commission was effectively utilized. In addition to formal meetings, members of the Sub-Commission also worked in informal meetings to expedite the work of the Sub-Commission in the most economical way.

14. During the regular meetings, efforts were made to start meetings of the Sub-Commission and working groups on time. At the outset of the session, the Bureau agreed on recommendations relating to time-limits for statements.

15. The Sub-Commission recognizes that working groups constitute an invaluable element in the expert work of the Sub-Commission, particularly in standard-setting work. This has been well demonstrated by the Working Group on Communications, the Working Group on Contemporary Forms of Slavery, the Working Group on Indigenous Populations, the Sessional Working Group on the questions of persons detained on the grounds of mental ill-health or suffering from mental disorder, and the Working Group on Detention.

III. STUDIES AND REPORTS AND THE ACTIVITIES OF SPECIAL RAPPORTEURS

16. The Commission on Human Rights reaffirmed that the systematic preparation of well-researched studies and reports was a most important element of the expert work of the Sub-Commission and of its contribution to the work of the Commission. In that context, the Commission recommended that, as a general rule, the Sub-Commission should propose a new study only when a study previously authorized had been fully completed. The Commission reminded the Sub-Commission that new studies could only be undertaken, or reports involving financial implications requested from the Secretary-General, after authorization by its superior bodies. The Commission recalled Sub-Commission resolution 1984/37, in which the Sub-Commission had established a three-year cycle for the finalization of reports undertaken under its auspices and in which it had expressed its understanding that the stages of that cycle would not normally require repeated approval by the Commission on Human Rights or the Economic and Social Council or further resolutions of the Sub-Commission. The special rapporteurs were urged to submit their reports by the deadline given by the Secretariat so that those reports could be available in all languages well before the meeting.

17. At its fortieth session, the Sub-Commission completed consideration of a number of reports by special rapporteurs: the report and the draft declaration submitted by Mr. L.M. Singhvi on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1988/20 and Corr.1 and Add.1 and Add.1/Corr.1), the final report by Mr. L. Joinet, on guidelines for the regulation of computerized personal data files (E/CN.4/Sub.2/1988/22), and the analysis concerning the proposition to elaborate a second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (E/CN.4/Sub.2/1987/20). The reports are now before the Commission for further consideration and approval (see Sub-Commission resolutions 1988/22, 1988/25 and 1988/29. In addition, the Special Rapporteur on the right of everyone to leave any country, including his own, and to return to his country submitted his final report to the fortieth session of the Sub-Commission (E/CN.4/Sub.2/1988/35 and Add.1 and Add.1/Corr.1).

18. With regard to this issue, annex III of the report of the Sub-Commission on its fortieth session (E/CN.4/1989/3-E/CN.4/Sub.2/1988/45) contains a list of the studies and reports under preparation. As that annex shows, the Sub-Commission at its fortieth session initiated three new studies with financial implications to be prepared by Mr. D. Türk, Mrs. H.E. Warzazi and Mr. M. Alfonso Martínez. For the most part, these studies respond to requests for action from the Commission. The subjects of these studies are: more effective realization of economic, social and cultural rights (Sub-Commission resolution 1988/33), recent developments with regard to traditional practices affecting the health of women and children (Sub-Commission resolution 1988/34), and treaties, agreements and other constructive arrangements between indigenous populations and Governments (Sub-Commission resolution 1988/20). In addition, the Sub-Commission continued a number of studies or reports by Special Rapporteurs which had been authorized in the past.

19. Further, as also reflected in annex III, the Sub-Commission continued its tradition of proceeding with studies and reports under preparation with no financial implications. An unprecedented number of five new studies and

reports which the Sub-Commission considered important for its future work were entrusted to members of the Sub-Commission at its fortieth session without any financial implications. The Sub-Commission felt that it was necessary to obtain as much information as possible on new aspects and developments, in order to avoid duplication of work and to enable the Sub-Commission to decide whether to examine questions at a later stage.

20. In connection with other subjects before it, the Sub-Commission was of the view that the issues raised merited further and more careful study and it decided to keep them under consideration. For example, reference may be made to the study and the draft declaration on the right to leave any country, including his own and to return to his own country (E/CN.4/Sub.2/1988/35 and Add.1 and Add.1/Corr.1), the study on the achievements of, and obstacles encountered during, the first Decade for Action to Combat Racism and Racial Discrimination (E/CN.4/Sub.2/1988/5), the study on administrative detention without charge or trial (E/CN.4/Sub.2/1988/12), and the study on the status of the individual and contemporary international law (E/CN.4/Sub.2/1988/33 and Add.1).

21. As for the report on human rights and youth, the Special Rapporteur, Mr. Mazilu, has not yet been able to submit his report to the Sub-Commission. This matter has been taken up by the Sub-Commission at various meetings, and efforts have been made to establish contact with the Government of Romania and to bring to the Government's attention the Sub-Commission's urgent need to establish personal contact with its Special Rapporteur. The Sub-Commission requested that the Government assist in locating Mr. Mazilu and facilitate a visit to him by a member of the Sub-Commission and the Secretariat to help him in the completion of his study on human rights and youth if he so wished (Sub-Commission decision 1988/102).

22. In its resolution 1988/37, the Sub-Commission requested the Secretary-General to approach once more the Government of Romania and invoke the applicability of the Convention on the Privileges and Immunities of the United Nations, and request the Government to co-operate fully in the implementation of that resolution, by ensuring that Mr. Mazilu's report was completed and presented to the Sub-Commission at the earliest possible date, either by himself or in the manner indicated in that resolution. Further, the Sub-Commission requested the Secretary-General, in the event that the Government of Romania did not concur in the applicability of the provisions of the said Convention in the case in question, and thus with the terms of that resolution, to bring the difference between the United Nations and Romania immediately to the attention of the Commission on Human Rights at its forty-fifth session. The Sub-Commission also requested the Commission, in the latter event, to urge the Economic and Social Council to request, in accordance with General Assembly resolution 89 (1) of 11 December 1946, an advisory opinion from the International Court of Justice on the applicability of the relevant provisions of the Convention on the Privileges and Immunities of the United Nations to the case of Mr. Mazilu.

IV. STANDARD-SETTING ACTIVITIES

23. In this field, the Commission recommended that the Sub-Commission should pay particular attention to the standard-setting activities assigned to it by the Commission and give priority to those topics on which standards were being prepared, in accordance with decisions taken by the Commission and within the time frames set by the Commission.

24. The fortieth session of the Sub-Commission witnessed the completion of the drafting of four significant instruments in the field of human rights which the Sub-Commission has forwarded to the Commission for consideration. They are the draft second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (E/CN.4/Sub.2/1987/20), the draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1988/20/Add.1 and Corr.1), the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care (E/CN.4/Sub.2/1988/23), and the guidelines on the use of computerized personal data files (E/CN.4/Sub.2/1988/22).

25. In response to the recommendation made in Commission resolution 1988/55 concerning the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief, it may be recalled that, by its resolution 1985/34, the Sub-Commission decided to consider the item on religious freedoms on a biennial basis. In 1987, the Sub-Commission adopted resolution 1987/33 on the subject. At its fortieth session, the Sub-Commission requested Mr. van Boven to prepare, without financial implications, a working paper with a view to assisting the Sub-Commission to carry out the tasks entrusted to it by Commission resolution 1988/55 (Sub-Commission decision 1988/112).

26. In this regard, the Commission may wish to note that, in its resolution 1988/32, the Sub-Commission recommended to the Commission that it should consider establishing a pre-sessional working group on the drafting of an international instrument on freedom of religion or belief after the mandate of the working group on a draft convention on the rights of the child had come to an end.

V. CONSIDERATION OF NEW DEVELOPMENTS

27. The Commission stressed the valuable role that the Sub-Commission, as a body of independent experts, could play in initiating new developments in the field of human rights and invited the Sub-Commission to give due regard to such new developments.
28. As in the past, at its fortieth session the Sub-Commission discussed the reports submitted by the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) (E/CN.4/Sub.2/1988/3 and E/CN.4/Sub.2/1988/4 respectively) providing information on developments in their recent activities. The Sub-Commission took note of all the information contained in those reports, in particular with regard to the right of peoples to self-determination and the protection of the human rights of migrant workers. The Sub-Commission also considered the reports of the Secretary-General on the interrelationship between human rights and peace (E/CN.4/Sub.2/1988/2) and on the strengthening of legal instruments (E/CN.4/Sub.2/1988/36 and Add.1).
29. The Under-Secretary-General for Human Rights, in his introductory statement to the fortieth session of the Sub-Commission, drew attention to General Assembly resolution 42/8 on the prevention and control of acquired immunodeficiency syndrome (AIDS) and World Health Assembly resolution WHA 41.24 on avoidance of discrimination in relation to human immunodeficiency virus (HIV)-infected people and people with AIDS. Having received information from the World Health Organization, the International Commission of Jurists, and certain members on the problem of discrimination against persons with the HIV virus or suffering from AIDS, and in the light of the considerations set forth in the above-mentioned resolutions, the Sub-Commission concluded that it should study that problem. Consequently, the Sub-Commission agreed to ask Mr. Luis Varela Quirós to prepare, for submission to the Sub-Commission at its forty-first session, without financial implications, a concise note setting forth methods by which a study could be made on the problem (Sub-Commission decision 1988/111).
30. The Sub-Commission also adopted decisions in three other relatively new areas where developments warranted expert human rights input, namely the movement and dumping of toxic and dangerous products and wastes (resolution 1988/26), respect for the right to life as it related to the elimination of chemical weapons (resolution 1988/27), and compensation for victims of gross violations of human rights (resolution 1988/11). Mention in this context may also be made of resolutions dealing with the strengthening of human rights teaching (1988-35) and the protection of human rights defenders (1988/38).

VI. RESOLUTIONS AND DECISIONS

31. The Commission invited the Sub-Commission to give due consideration to draft resolutions proposed for adoption and to seek the widest possible measure of agreement on them, bearing in mind that such resolutions should be proposed only on such subjects as had been thoroughly discussed in the Sub-Commission or in its working groups and should be consistent with the role of the Sub-Commission as a body of independent experts. Further, the Commission requested the Secretary-General to draw the attention of the Sub-Commission, in all instances where decisions or resolutions would involve financial implications not hitherto approved, to the necessity to submit to its superior bodies draft proposals for their consideration.

32. In the drafting of resolutions, decisions or any other proposals for adoption, members of the Sub-Commission have endeavoured to find the widest possible agreement on them before tabling them. As reflected in the Sub-Commission's report, the majority of resolutions and decisions tabled were adopted without a vote, which tends to illustrate the efforts made by the Sub-Commission to work in harmony and in a most constructive manner to carry out its tasks, without having recourse to procedural debates.

33. In this regard chapter II, sections A and B, of the report of the Sub-Commission contain 40 resolutions and 13 decisions adopted at its fortieth session. The attention of the Commission may be drawn especially to chapter I, sections A and B respectively, containing eight draft resolutions and five draft decisions recommended by the Sub-Commission for adoption by the Commission. Section C of the same chapter refers to eleven resolutions and four decisions referring to matters which are drawn to the Commission's attention and which require consideration and action by the Commission.

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