



**Economic and Social  
Council**

Distr.  
RESTRICTED

E/CN.4/Sub.2/1990/SR.28/Add.1  
27 September 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND  
PROTECTION OF MINORITIES

Forty-second session

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

Held at the Palais des Nations, Geneva,  
on Monday, 27 August 1990, at 6 p.m.

Chairman: Mr. TÜRK

CONTENTS

Communications concerning human rights: report of the Working Group established under Sub-Commission resolution 2 (XXIV) in accordance with Economic and Social Council resolution 1503 (XLVIII) (continued)

---

\* The summary record of the first part (closed) of the meeting appears as document E/CN.4/Sub.2/1990/SR.28.

\*\* All persons handling this document are requested to respect and observe its confidential nature.

---

This record is subject to correction. Participants wishing to submit corrections during the session of the Sub-Commission are asked to hand them, in typewritten form, to the Secretary of the Sub-Commission. A consolidated corrigendum to the summary records covering the closed meetings of the Sub-Commission will be issued shortly after the session.

COMMUNICATIONS CONCERNING HUMAN RIGHTS: REPORT OF THE WORKING GROUP ESTABLISHED UNDER SUB-COMMISSION RESOLUTION 2 (XXIV) IN ACCORDANCE WITH ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1503 (XLVIII) (agenda item 9) (continued) (E/CN.4/Sub.2/1990/R.1 and Add.1-12)

Communications concerning Myanmar (continued) (E/CN.4/Sub.2/1990/R.1/Add.5 and 6)

1. Mr. SUESCUN MONROY endorsed the comments by Mr. Sachar and agreed with Mr. van Boven on the importance of making the recent information which had been obtained available to the Special Rapporteur of the Commission on Human Rights. He was therefore in favour of referring the communications concerning Myanmar to the Commission.
2. Mrs. KSENTINI observed that a reply, dated 16 August 1990, had been sent by the Government of Myanmar. If the communications were to be transmitted to the Commission, it was important for the Special Rapporteur to have that reply before him in order to make a full evaluation of the situation.
3. The CHAIRMAN explained that the reply now contained in the file concerning Myanmar had been received only after the Working Group on Communications had completed its work.
4. Mr. SACHAR said that he had taken account of the Government's latest reply in reaching a conclusion on the action he thought most appropriate. It was certainly not being ignored.
5. Following a procedural discussion in which Mr. ALFONSO MARTINEZ, Mrs. DAES, Mr. van BOVEN, Mrs. WARZAZI and Mr. GUISSSE took part, the CHAIRMAN invited the Sub-Commission to vote by secret ballot on Mr. Despouy's proposal that the communications relating to Myanmar should be referred to the Commission on Human Rights.
6. The proposal was adopted by 21 votes to 2, with 2 abstentions.

The meeting was suspended at 6.25 p.m. and resumed at 7.20 p.m.

Communications concerning Peru (E/CN.4/Sub.2/1990/R.1/Add.7)

7. Mrs. WARZAZI said that while the situation in Peru gave cause for concern, the fact that a new, democratically elected Government had taken office held out hope for the future. She therefore proposed that the communications relating to Peru should be dropped.
8. Mrs. MBONU said that, for the same reasons, she would recommend that the communications be set aside.
9. Mr. SABOIA supported Mrs. Warzazi's proposal. Peru faced a difficult situation caused by the actions of an extremely radical terrorist group that was not only attacking the Government but threatening to destroy the very foundations of society. Democratic elections had nevertheless been held and the new President had committed himself to ensuring strict observance of human rights.
10. Mrs. BAUTISTA, Mr. GUISSSE, Mr. SADI and Mr. MAXIM endorsed Mrs. Warzazi's proposal.

11. Mrs. PALLEY supported the motion but indicated her intention in future to call for any new communications concerning Peru to be referred to the Commission on Human Rights.

12. Mr. van BOVEN, Chairman/Rapporteur, Working Group on Communications, expressed some personal reservations about dropping the communications. Aside from the terrorist organizations, there were factions close to the Government that could also be held accountable for many of the killings, disappearances and other human rights violations reported in Peru. The fact that a new Government had taken office was not necessarily a reason for the Sub-Commission to file the communications, since that course of action would deprive the Commission of the opportunity to enter into a dialogue with it that might help to prevent future abuses. He would ask for a vote on Mrs. Warzazi's proposal.

13. Mr. EIDE said that he had similar doubts. In particular, he was struck by the fact that the Sub-Commission had not yet found a way of dealing with situations in which, although it did not wish to criticize a newly-elected Government, it was nevertheless concerned about the inadequate control that Government appeared to have over certain elements. More thought would have to be given to that problem if the Sub-Commission was to carry out its responsibilities effectively under the confidential procedure when faced with such situations.

14. Mr. ILKAHANAF said that he was always in favour of giving a chance to new, democratically elected Governments, which could not be held responsible for what happened before they took office. He would therefore go along with Mrs. Warzazi's proposal.

15. Mr. ALFONSO MARTINEZ said that his attention had been drawn to a note by the Secretariat indicating that a number of submissions had been received from the Government of Peru under Commission resolution 1990/75 on the consequences for the enjoyment of human rights, of acts of violence committed by irregular armed groups and drug traffickers. The note indicated that those submissions, not reproduced as official documents, were available for consultation in the Secretariat files. He sought clarification as to their content and the procedure followed by the Secretariat.

16. Mr. MOLLER (Chief, Communications Section, Centre for Human Rights) explained that in the past weeks the Secretariat had received a steady flow of notes from the Government of Peru invoking resolution 1990/75, in particular its operative paragraph 3, and deeming the information contained in them to be relevant to the work of the Working Group on Communications and the Sub-Commission. The Secretariat did not wish to question that opinion and had endeavoured, in consultation with the Government, to place before the Sub-Commission as much of the information as was possible within the limited time-frame, indicating that what it had not been able to translate and reproduce in document form was available for consultation in its files upon request.

17. Mr. ALFONSO MARTINEZ said that he appreciated the heavy work-load of the Secretariat. He merely wished to know whether he would be correct in assuming that the recent submissions, in the Government's opinion, had a bearing on the evaluation which the Sub-Commission was required to make with regard to the communications under consideration.

18. Mr. MOLLER (Chief, Communications Section, Centre for Human Rights) replied that the Government of Peru evidently believed that to be so. However, it was not for the Secretariat to interpret the views of the Government. What the Sub-Commission had before it were representative samples of the submissions which had recently been received.

19. Mr. van BOVEN, Chairman/Rapporteur, Working Group on Communications, said that, in his view, Mr. Ilkahanaf's argument that the new Government should be given the benefit of the doubt had some validity. He had no illusions that the Sub-Commission's confidential procedure could avoid political considerations. Yet, the interests of Governments all too often seemed to prevail in the discussions over the interests of the victims. When a new Government took office, it could not take the position that the past no longer mattered. Indeed, the State had a responsibility under international law to deal with the consequences of the past and should be encouraged to assume that responsibility.

20. Mr. JOINET remarked that the present case showed the limits of the 1503 procedure. A decision to transmit the communications to the Commission would amount to a "condemnation" of the Government, leaving out of account the instances of torture, disappearances and summary executions that were no doubt attributable to the guerrilla movement. Nevertheless, despite the various electoral promises, he had yet to see any tangible manifestation of the political will needed to pursue a consistent human rights policy as in Colombia, Guatemala or El Salvador. Accordingly, he pleaded strongly in favour of transmitting the communications to the Commission.

21. Mr. SACHAR noted from the Government's replies that Amnesty International's communication had been transmitted to the competent authorities so that the appropriate investigations could be carried out and, where necessary, those responsible could be punished. Some of the allegations had been clarified, and the authorities were continuing to investigate the remaining cases. All the same, it was true that the Government had yet to give concrete evidence of its good faith. Moreover, the Sub-Commission, like any human rights body, had to make a distinction between violence perpetrated by individuals or groups, which of course could not be condoned, and State violence. As Mr. van Boven had rightly observed, the State must be bound by the rule of law and had a responsibility to undo the mistakes of the past. The best solution would be to keep the situation under close scrutiny for another year, but not to drop the communications.

22. Mr. EIDE said that a Government could not be absolved simply because it faced a violent opposition group. He favoured the transmittal of the communications to the Commission, and saw that not as a condemnation but as an invitation to a dialogue on what was a very complex situation. In that regard, the Sub-Commission might consider in future the idea of a working paper to develop its conceptual understanding of the scope of permissible derogations by Governments in states of siege or emergency, perhaps linking that up with Mr. Despouy's study of the question.

23. Following a procedural discussion in which Mr. YIMER and Mr. ALFONSO MARTINEZ took part, the CHAIRMAN invited the Sub-Commission to vote by secret ballot on Mrs. Warzazi's proposal that the communications relating to Peru should be dropped.

24. The proposal was adopted by 12 votes to 10, with 3 abstentions.

Communications concerning Somalia (E/CN.4/Sub.2/1990/R.1/Add.8)

25. Mrs. PALLEY proposed that the communications concerning Somalia should be referred to the Commission on Human Rights.
26. Mr. GUISSÉ and Mr. JOINET supported the proposal.
27. The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission decided to adopt Mrs. Palley's proposal without a vote.
28. It was so decided.

Communications concerning Sudan (E/CN.4/Sub.2/1990/R.1/Add.9, 10 and 11)

29. Mr. KHALIL said that, as with other countries, political instability and civil strife were factors that could not be totally disregarded. There were, however, many communications concerning Sudan to which no Government replies had been received. He therefore proposed that the most appropriate action would be to keep the communications pending and to watch the situation closely.
30. Mr. EIDE felt that the situation in Sudan differed from that in Colombia or Peru. There was no democratically elected Government clearly striving to ensure respect for human rights. The military had overthrown the previous Government, thereby creating an additional set of human rights problems. That being so, he saw no alternative but to transmit the communications to the Commission.
31. Mr. JOINET agreed with the conclusion reached by Mr. Eide, although he felt there was no reason to condemn a Government simply because it was a military Government.
32. Mr. van BOVEN, Chairman/Rapporteur, Working Group on Communications, proposed that the communications should be referred to the Commission. As he saw it, the concerns in them were being voiced not only by external bodies but by a credible organization that was very familiar with the situation in the region. The basic guarantees of democracy and the rule of law had been subverted. Failure to reply to the allegations did not necessarily constitute an admission of responsibility, but it was definitely evidence of an unwillingness to co-operate. Forwarding the communications to the Commission might encourage the Government to enter into a positive dialogue.
33. Mr. SADI considered that keeping the communications pending was just as serious as referring them to the Commission. He was one of those who believed that the Commission was highly politicized and that the Sub-Commission was less so, and better placed to scrutinize the situation. He therefore supported Mr. Khalil's proposal.
34. The CHAIRMAN invited the Sub-Commission to vote by secret ballot on Mr. Khalil's proposal that the communications concerning Sudan should be kept pending.
35. The proposal was rejected by 17 votes to 6, with 1 abstention.

36. The CHAIRMAN invited the Sub-Commission to vote by secret ballot on Mr. van Boven's proposal to refer the communications concerning Sudan to the Commission on Human Rights.

37. The proposal was adopted by 21 votes to 1, with 2 abstentions.

Communications concerning Turkey (E/CN.4/Sub.2/1990/R.1/Add.12)

38. Mr. ILKAHANAF said that Turkey was emerging from a period of military dictatorship and was experiencing difficulties like other countries in a similar situation, such as Argentina, the Philippines and Pakistan. Although seemingly not in full control of the military and the security forces, the Government was acting in a spirit of co-operation and had replied to every communication, noting the errors of the past and showing its readiness to comply with the international human rights instruments. It should not be forgotten that there was the problem of the Kurds who had left Iraq for Turkey and that pressures were being exerted by various secessionist groups. He accordingly proposed that the Government should be given the benefit of the doubt and that the communications concerning Turkey should be dropped.

39. Mrs. DAES proposed that the communications should be transmitted to the Commission. Some had been kept pending for several years, and it appeared from reading them that every major provision in the Universal Declaration and the International Bill of Human Rights was being systematically violated. New testimonies reported further gross violations, including the torture of children. If the Sub-Commission did not see fit to refer such communications to the Commission, what kind of communications was it prepared to send forward?

40. Mr. JOINET said that he would have been inclined to take the same view as Mrs. Daes but for two considerations. First, although they might not be well treated in Turkey, many Kurds had decided to seek refuge there rather than stay in Iraq to suffer even greater hardship. It was an unfortunate constraint of the Sub-Commission's procedure that transmittal of the communications would represent a condemnation of Turkey and not Iraq. Second, it should be noted that in its reply (GR/1990/5/Add.2) the Government expressed regret that Amnesty International had chosen to attack Turkey on all possible fronts while failing to establish a meaningful and constructive dialogue with the Turkish authorities. That statement might be interpreted as an opening consistent with the communications procedure and paving the way for an Amnesty International delegation to visit Turkey. Bearing that in mind, he would be ready to consider keeping the matter pending for another year.

41. Mrs. PALLEY agreed with Mr. Joinet that it would be preferable to defer action. Turkey was facing very real problems, particularly with terrorism. Of course, a distinction needed to be made, as Mr. Sachar had already remarked in another connection, between the violence of terrorist groups and State terrorism. There were undoubtedly certain sections of the Turkish army and police which used methods that the Sub-Commission could not overlook. At the same time, Mr. Ilkahanaf's point that Turkey was emerging as a democracy was well taken, although it had to be said that that process had been under way since 1982 and that a fully-fledged democracy might have been expected by the end of the decade. She also agreed with an earlier comment by Mr. Joinet that not all military Governments were bad; indeed, some behaved more responsibly than civilian Governments. The present Turkish authorities seemed to be in

full control and should be encouraged to pursue their human rights policies consistently. The Sub-Commission could contribute to that end better by keeping the situation under close review than by putting the case before the Commission.

42. Mr. SACHAR noted that, according to the documentation, Turkey had since 1987 recognized the competence of the European Commission of Human Rights to receive individual petitions and also the obligatory jurisdiction of the European Court of Human Rights. Those bodies could provide greater and swifter relief than the Sub-Commission. Looking at the precedents, he could not see that the communications relating to Turkey warranted the application of different standards to those adopted in the cases of Colombia and Peru.

43. Mr. van BOVEN, Chairman/Rapporteur, Working Group on Communications, pointed out that the communications before the Sub-Commission did not deal with the question of the Kurds but with torture practices. In that connection, it should be noted that Turkey was a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, pursuant to which it had prepared a report due for consideration shortly by the Committee against Torture. It was true that Turkey had recognized the right of individual petition under the European Convention on Human Rights but it had entered some far-reaching reservations concerning that right, a fact not mentioned by the Government in its submissions. The documentation as a whole tended to give the impression that there was an ongoing dispute between Amnesty International and the Government of Turkey. The Sub-Commission should not approach the matter from that standpoint. It had a responsibility to examine cases on their merits and to come to its own assessment of the validity of the allegations made.

44. In his view, dropping the communications was not the right action to take in the circumstances. An argument could be made out for sending forward all relevant information under the 1503 procedure, particularly as the Sub-Commission was not, unfortunately, the place for a dialogue with the Government. However, the Committee against Torture would in any event be taking up many of the issues relating to Turkey at its forthcoming session and it might be advisable to await the outcome of its deliberations. It was unreasonable to leave cases pending indefinitely, but he would go along with the view that action should be deferred for one more year.

45. Mr. SADI remarked that it was becoming customary for the Sub-Commission to look at situations in a political context. Still, it was encouraging that the message had got across that if Turkey was to assume its rightful place as a member of the European Community it would have to improve its record. That was an important consideration.

46. Mrs. PALLEY agreed with Mr. van Boven that the members of the Sub-Commission should not be swayed by Turkey's recognition of the right of individual petition. The reservations made by the Government to the provisions of the European Convention were so wide-ranging that, according to many leading international lawyers, its accession was almost rendered a nullity.

47. Mr. ILKAHANAF, referring to an earlier comment by Mrs. Palley, expressed the view that Turkey had made very significant progress towards democracy over a relatively short period. And, as an emerging democracy, it had its own

courts and other institutions to which anyone could apply for relief. It was hard to understand why so many petitions were being channelled through organizations like Amnesty International.

48. Mr. JOINET, responding to the statement by Mr. van Boven, said that his comments had not been made in the context of a conflict between Amnesty International and the Government of Turkey, but instead reflected a position of principle. Any Government that refused to allow a non-governmental organization into its territory led outside observers to suppose that the allegations against it were well founded. That, of course, was mere supposition, not a certainty. But once an opening was made, it was in his view preferable to foster a dialogue rather than take a decision that would inevitably be construed as condemnatory. On the point raised by Mrs. Palley, he felt that progress towards democracy was not to be measured in years. His own country had taken centuries to reach a stage where it could consider itself, rightly or wrongly, as democratic. A decision to keep the communications pending might not produce the desired results, but sending them forward would for the time being serve no useful purpose. If, after a further year, no significant improvement in the situation could be observed, he would call for their transmittal to the Commission.

49. The CHAIRMAN invited the Sub-Commission to vote by secret ballot on Mr. Ilkahanaf's proposal to drop the communications relating to Turkey.

50. The proposal was rejected by 17 votes to 5, with 3 abstentions.

51. The CHAIRMAN invited the Sub-Commission to vote by secret ballot on Mrs. Daes's proposal to refer the communications concerning Turkey to the Commission on Human Rights.

52. The proposal was rejected by 13 votes to 8, with 3 abstentions.

53. The CHAIRMAN said that, in view of the results of the voting on the previous proposals, he would take it that the Sub-Commission wished to keep the communications concerning Turkey pending.

54. It was so decided.

The meeting rose at 9 p.m.