



**Economic and Social
Council**

Distr.
RESTRICTED

E/CN.4/Sub.2/1990/SR.28
3 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 FIRST PART* OF THE 28th MEETING (CLOSED)**

Held at the Palais des Nations, Geneva,
on Monday, 27 August 1990, at 3 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 second part (closed) of the meeting appears as document E/CN.4/Sub.2/1990/SR.28/Add.1.

** 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.

The meeting was called to order at 3.10 p.m.

COMMUNICATIONS CONCERNING HUMAN RIGHTS: REPORT OF THE WORKING GROUP ESTABLISHED UNDER SUB-COMMISSION RESOLUTION 2 (XXIV) IN ACCORDANCE WITH ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1503 (XLVIII) (agenda item 9) (continued) (E/CN.4/Sub.2/1990/R.1 and Add.1-6)

Organization of work

1. The CHAIRMAN drew attention to a proposal by Mr. Treat, made on Thursday, 23 August, that pursuant to rule 78 of the rules of procedure of the functional commissions of the Economic and Social Council, the Sub-Commission should temporarily suspend rule 59 so as to allow for voting on item 9 by secret ballot.
2. Mrs. DAES supported the proposal by Mr. Treat, for reasons she had explained at previous sessions of the Sub-Commission.
3. Mr. ALFONSO MARTÍNEZ opposed the proposal, which he considered even less justified in the case of item 9 than it had been in that of item 6. He proposed that the Sub-Commission should vote by roll-call on Mr. Treat's proposal.
4. Mr. Eide, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mrs. Bautista, Mr. van Boven, Mr. Chernichenko, Mrs. Daes, Mr. Despouy, Mr. Eide, Mr. Guissé, Mr. Hatano, Mr. Heller, Mr. Joinet, Mr. Khalil, Mrs. Ksentini, Mr. Maxim, Mr. Suescún Monroy, Mrs. Palley, Mr. Saboia, Mr. Treat, Mrs. Warzazi.

Against: Mr. Alfonso Martínez, Mr. Tian Jin, Mr. Yimer.

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

5. The proposal by Mr. Treat was adopted by 18 votes to 3, with 4 abstentions.

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

6. In reply to Mr. ILKAHANAF, who asked whether the Sub-Commission had to take action on communications pending before the Commission but not before the Sub-Commission, Mr. van BOVEN, Chairman/Rapporteur, Working Group on Communications, explained that once a communication was pending before the Commission it was for the Commission to deal with it at its next session. However, if additional communications on the same country reached the Sub-Commission by a decision of the Working Group, the Sub-Commission would of course have to decide whether to transmit them to the Commission.

7. Mr. YIMER said that communications were not transmitted automatically but had to be considered on their merits, whether a country's case was pending before the Commission or not.

8. Mr. JOINET asked what was the position concerning Chad, concerning which a communication was pending before the Commission since there had been no reply from the Government. If the Sub-Commission received a new communication, did the Commission leave the matter pending until it received a reply and if a reply were received did the Sub-Commission consider it or was it transmitted to the Commission direct? He considered that countries like Chad should not be put on the same footing as countries with a well-developed administration.

9. Mr. van BOVEN, Chairman/Rapporteur, Working Group on Communications, explained that when a communication was pending before the Sub-Commission and had not reached the Commission, and a reply was received, the Sub-Commission naturally had to consider that communication together with the reply. Communications were not transmitted to the Commission unless they met the criteria of Council resolution 1503 (XLVIII). If Mr. Joinet was referring to communications that were pending both before the Commission and the Sub-Commission it would depend on the nature of the reply. If the reply referred to the communications pending before the Commission, it was his understanding that it would be discussed in the Commission; if it was a reply to the communications to be discussed by the Sub-Commission, that body would have to consider it. Sometimes Governments sent very general replies referring both to a pending communication and to one before the Sub-Commission. It would then seem logical for the reply to go both to the Commission and the Sub-Commission.

10. Mr. JOINET said he attached great importance to the receipt of replies. Even a reply that was a mere acknowledgement requesting an extension of the time-limit was an indication of a Government's willingness to co-operate and enter into dialogue.

11. Mr. ALFONSO MARTÍNEZ considered that the Sub-Commission should adopt the Working Group's recommendation that the two communications concerning Chad should be transmitted to the Commission.

12. Mr. SADI supported that proposal. The Sub-Commission had deferred action the previous year on allegations of gross violations of human rights so as to give the Government of Chad the benefit of the doubt. Since it had not sent a reply the Sub-Commission had to take action.

13. Mr. DESPOUY also supported the proposal. Although there might be technical reasons for the lack of response by the Government of Chad, a country without developed administrative structures, the communications revealed a highly disturbing pattern of gross violations of human rights. Moreover, the case of the 600 to 1,000 prisoners of war whose names and whereabouts were unknown seemed to have been forgotten by the public at large.

14. Mr. GUISSÉ pointed out that Chad was a developing country emerging from a war that had been imposed on it. Even in developed countries, human rights were not always fully respected. He therefore hoped that the Sub-Commission would establish a dialogue with the Government of Chad rather than take punitive measures against it.

15. Mr. van BOVEN, Chairman/Rapporteur, Working Group on Communications, agreed with Mr. Guissé. However, since it was only in the Commission, where the Government concerned was invited to give its views, that dialogue was possible, for the very reason given by Mr. Guissé the communications ought to be referred to the Commission. He endorsed the proposal of Mr. Alfonso Martínez.
 16. Mr. YIMER supported that view.
 17. Mrs. BAUTISTA also supported the proposal of Mr. Alfonso Martínez in view of the wide range of human rights violations involved and the failure of the Government of Chad to reply to the communication.
 18. Mr. SADI pointed out that referring the communications to the Commission did not mean that the Sub-Commission was judging the Government of Chad.
 19. The CHAIRMAN said that, if there was no objection he would take it that the Sub-Commission wished to adopt the Working Group's proposal that the communications concerning Chad should be transmitted to the Commission on Human Rights.
 20. It was so decided.
- Communications concerning Colombia (E/CN.4/Sub.2/R.1/Add.2, R/2;
E/CN.4/GR.1990/7)
21. The CHAIRMAN drew attention to new communications referred to in the report of the Working Group on Communications and to pending communications.
 22. Mrs. WARZAZI said that the Government of Colombia did not have the means to control violations of human rights. The situation was a complex one on which the Sub-Commission could not take a decision. She was not in favour of sending the communications to the Commission but proposed that they should be suspended until the political situation in Colombia was clarified and there was a responsible authority able to end human rights violations.
 23. The CHAIRMAN pointed out that the Sub-Commission's options were to file the communications, keep them pending or transmit them to the Commission.
 24. Mrs. DAES agreed with Mrs. Warzazi, in particular because the Government of Colombia had sent a reply appealing for understanding and co-operation. The communications should be filed.
 25. Mr. HELLER said that the policy of the new Government in Colombia was to co-operate with the Sub-Commission, as shown by its reply. Moreover, Colombia maintained close links with United Nations human rights bodies. He endorsed the proposal by Mrs. Warzazi.
 26. Mr. ILKAHANAF did not think that the Government of Colombia could be condemned for a situation that it was trying to rectify. He supported Mrs. Warzazi's proposal.

27. Mr. EIDE proposed that the communications should be kept pending until the following year. The situation in Colombia was complex: the intentions of the Government in combating human rights violations were good, but some of the armed and security forces which also belonged to the Government were engaging in actions on the pretext of getting rid of undesirable political elements.

28. Mr. GUISSÉ considered that there was no responsible authority in Colombia which could hold a dialogue with the Sub-Commission. He therefore endorsed Mrs. Warzazi's proposal.

29. Mr. SABOIA said that the Government of Colombia had shown a very constructive attitude towards all the international human rights bodies and had engaged in dialogue with the Sub-Commission by replying in great detail to the allegations concerning the situation in Colombia. It was a very special situation, with violence, attempts to disrupt life and law and order from all sides, and drug traffickers and various groups trying to overthrow the Government. But the Government had nevertheless been able to maintain the democratic process and hold peaceful elections, with a peaceful transfer of power. It had also attempted to investigate and had in some cases been able to prosecute and sentence members of the police and armed forces engaged in the actions referred to by Mr. Eide. He strongly supported the proposal to drop the case.

30. Mr. SADI expressed concern about the contents of the communications before the Sub-Commission. The Government of Colombia was obviously concerned as well. There was a positive dialogue, and the kind of reply from Colombia was not a complete denial of what was in the communications but an attempt to deal with them. That was a new kind of dialogue which he would like to see encouraged. What the Sub-Commission was seeking was results, rather than putting a decision on record. He felt that his views should be taken into account by all members of the Sub-Commission in making a final decision.

31. Mr. van BOVEN, Chairman/Rapporteur, Working Group on Communications, said that there could be no doubt that there was a continuing consistent pattern of gross violations of human rights in Colombia. It was true that not all violations could be attributed to the Government, but they remained a matter of very serious concern to the international community. If the Sub-Commission just dropped the case, because it felt that it did not know how to deal with it, that could create the mistaken impression that the problems in Colombia had more or less been solved. He commended the Colombian Government on its dialogue with the United Nations, which should continue.

32. It had been argued that the Commission on Human Rights was seized with many aspects of the problem, through its Special Rapporteurs. However, it was not appropriate for the Sub-Commission to say that the Commission was already seized with the matter. The Sub-Commission could not keep the problem pending for ever. In his opinion, the Sub-Commission should not condemn the Colombian Government but should submit the information received to the Commission so that the Commission would be able to decide how to deal most effectively with the situation, in the light of its established procedures. If the Sub-Commission decided merely to drop the case, it would be abdicating its responsibility.

33. He would not oppose a motion to keep the matter before the Sub-Commission but he was against the motion to drop it. He would prefer the matter to be referred to the Commission for a decision on the best course of action.

34. Mrs. PALLEY said that in 1989 she had been in favour of keeping the matter pending, in the belief that it might help the Colombian Government. If the Sub-Commission maintained some kind of continuing relationship the Government could use the Sub-Commission's interest to put pressure on the military and the police - in so far as they were out of control - to return to order.

35. That was no longer the case. Colombia had a new democratically elected Government which was trying its hardest to restore order and human rights and, in face of great difficulties, to follow up human rights violations. She disputed the idea that there was no one with whom the Sub-Commission could talk in Colombia: there was an elected Government, even though it was not fully in control of the situation. In her view - and she would like to take the opportunity of expressing her admiration of all members of the judiciary for their bravery - the communications should be dropped. If there should be fresh communications in the future that would be a different matter.

36. Mr. SUESCUN MONROY said that the various proposals before the Sub-Commission seemed to be reasonable. He agreed entirely with Mrs. Palley's views. It was clear from the constructive dialogues that had taken place that the Colombian Government was co-operating more than most Governments with the United Nations and was deeply concerned about human rights.

37. The problem was not how to maintain a dialogue. It was how the Government could maintain public order. The situation now was one of uncontrollable violence which had begun with common crime, followed by terrorism from extremist groups and drug traffickers. No other country could have experienced such violence, which was fed from outside by drug trafficking groups and by other groups trained by former members of the Israeli army. Such violence, so well financed and organized, had disrupted the country and also, unfortunately, some of the police and armed forces.

38. Colombia had a tradition of democracy, with regular elections, the only exception being four or five years of military Government in the 1960s. Initially, the Government had hoped that matters would improve and had not anticipated such a crisis. Ultimately the Government had decided to face up to the situation and the former President had done so, at very high cost in human lives, particularly in the police.

39. The new Government had tried to deal with the situation through dialogue with guerrilla groups and the one known as M.19 - one of the most belligerent - had now joined the peace process. One of its former leaders was now Minister for Health. That showed the Government's peaceful intentions. The peace process would continue with the other groups and a constituent group including a number of them was due to meet on 5 November 1990.

40. His own view was that Colombia was a complex case. There had been violations of human rights and the Government had done everything possible to prevent them. The new Government had opened up more opportunities for overcoming insurgents. The real problem was drug trafficking and that was an international problem.

41. Mr. TIAN JIN said that, in view of Mr. Suescún's comments and bearing in mind the difficulties faced by the Colombian Government, he was in favour of dropping the case.
42. Mr. DESPOUY suggested that the Sub-Commission should vote on Mrs. Warzazi's proposal.
43. Mr. GUISSÉ said that he wished to withdraw his reference to a responsible authority, which had been unfortunate. There was indeed a Government in Colombia, although the drug traffickers and armed guerrillas had disrupted public order, despite all the Government's efforts, so the responsible authority was faced with great difficulties. In the light of Mr. Suescún Monroy's statement, if it would help the Government to restore sovereignty and respect for human rights in Colombia, it would perhaps be advisable to drop the question, rather than trouble the Government with letters and requests when it had other more important tasks.
44. Mr. EIDE said that he would abandon his suggestion that the matter should be kept pending. There were now only two possibilities: to drop the matter or to transmit it to the Commission on Human Rights. The question was how best human rights bodies could help the Government to cope with a very complicated situation. He was still uncertain and had no answer at the present time.
45. Mr. TREAT supported Mrs. Warzazi's proposal. He knew of no other Government in a situation where it was threatened by a drug mafia equipped with more finance and resources and more military arms than the Government itself. A politically elected democratic Government was being challenged by anti-democratic forces. He was in favour of supporting the Colombian Government by dropping the communications.
46. Mr. MAXIM said that he had for some years been carrying out research on world terrorism, concentrating on Latin America and especially Colombia, Peru and Bolivia. He agreed that the Sub-Commission was facing a very special situation. He also agreed that a Government that was making efforts to restore democracy and control the situation could not be blamed. He therefore supported the proposal to withdraw the case.
47. Mr. KHALIL said that he was now convinced that the situation in a given country should be taken into consideration: it was not reasonable to treat all Governments in the same way. He would therefore favour dropping the present communications.
48. Mr. ALFONSO MARTÍNEZ pointed out that, although members of the Sub-Commission could not explain their vote in a secret ballot, the debate was recorded in the summary records, which were also confidential, but which were sometimes read by people outside, so the positions of members of the Sub-Commission were known. That was a contradictory situation and he suggested that the Sub-Commission might consider at its next session what could be done about it.
49. He pointed out that a decision on the question of Colombia had been taken in the Working Group on Communications by four votes to one, with one abstention. It was important to understand the points made in the reply from

the Colombian Government. He had listened carefully to Mr. Suescún Monroy who had given his interpretation of the situation and the violence in Colombia. At the same time, he noted that the file on Colombia contained communications going back to 1985. Surely the practice of keeping those on a file would help towards a solution of the problem. He would accept any decision by the Sub-Commission, provided it could be taken by a consensus.

50. Mr. SUESCÚN MONROY, referring to the question how to co-operate with Colombia, said that in his personal view, the most important form of co-operation would be the provision by European Governments of an advisory service for courts and the police. The corruption of some of their officials was one of the major problems in Colombia, and the United Nations could assist. He was in favour of a decision by consensus.

51. Mrs. KSENTINI said that she was now convinced that in view of the Government's co-operation and its efforts to improve the situation, the best way to help it to overcome its current problems would be to drop the communications. She therefore supported that solution.

52. Mr. van BOVEN, Chairman/Rapporteur, Working Group on Communications, speaking in his individual capacity, said that Mr. Suescún Monroy's statement that the best way to help the Colombian Government would be by providing advisory services would support his own view that the matter should be brought to the attention of the Commission on Human Rights; the Sub-Commission could not decide how the United Nations should assist Colombia, whereas the Commission had at its disposal a whole range of methods and mechanisms. Mr. Suescún Monroy could not speak on behalf of his Government in the Sub-Commission because he was present in his individual capacity, but in the Commission, where discussions were at government level, it would be possible to discuss ways of approaching the problem of assisting the Colombian Government.

53. He felt that the best solution would be to transmit the material to the Commission. However, since the Sub-Commission seemed to be nearly unanimous in wishing to drop the issue - although he thought that decision would be wrong - he would not press for a vote if the other members of the Sub-Commission wished for a consensus. His views would be recorded in the summary records.

54. The CHAIRMAN suggested that the Sub-Commission might wish to decide without a vote to drop all the communications concerning Colombia.

55. It was so decided.

56. Mrs. KSENTINI said that there was merit in Mr. Suescún Monroy's suggestion, supported by Mr. van Boven, concerning advisory services, which was consistent with United Nations practice. She also drew attention to the question of confidentiality. If questions were kept before the Sub-Commission, they remained confidential, whereas if they were submitted to the Commission they became public. Perhaps the members of the Sub-Commission would reflect on that aspect.

Communications concerning Guatemala (E/CN.4/Sub.2/1990/R.1/Add.3)

57. Mr. ILKAHANAF said that the situation in Guatemala appeared to be similar to that obtaining in Colombia. For example, witnesses were afraid to testify, and a judge was reported to have been kidnapped when he was leaving the court-house. The Government might be trying to do its best, but there were other forces beyond its control.

58. Also, a draft resolution had been submitted concerning Guatemala. If the Sub-Commission was to transmit the communication, it could find itself condemning the Government of Guatemala twice. That would pose a problem.

59. Mr. HELLER said that it was not really possible to establish similarities between one case and another; each case had its own peculiarities. The fact that a draft resolution concerning a particular country was before the Sub-Commission or any other body had nothing to do with the Sub-Commission's discussion of a communication concerning that country. In the case under consideration, he had the impression that the Government's reply was not comprehensive enough. He therefore proposed that the communication should be kept pending for a year.

60. Mr. SADI said that he was rather confused. The Sub-Commission had decided to vote by secret ballot, but members were revealing the way they intended to vote. What was the correct procedure?

61. He fully agreed with Mr. Heller that no parallel could be drawn between the situation in Colombia and the situation in Guatemala. There was a Special Rapporteur for Guatemala, who considered the situation in that country to be anything but favourable. The Working Group's decision to refer the case to the Sub-Commission had been unanimous, but since then a reply had been received from the Government. Had that altered the Working Group's assessment?

62. The CHAIRMAN pointed out that the Government's reply was dated 10 August 1990 and had been received only on 14 August 1990.

63. Mr. van BOVEN, Chairman/Rapporteur, Working Group on Communications, confirmed that the reply had been received too late to be considered by the Working Group. Moreover, it was not really related to the communication. It was general in nature and intended for the Inter-American Commission on Human Rights. The Government had thought it might also be useful for the Sub-Commission.

64. Mr. JOINET fully agreed with Mr. van Boven. Furthermore, the situation in Guatemala was not like the situation in Colombia. In Guatemala, the opposition was not represented in the Government and there was a Special Rapporteur for that country. However, in view of the peace efforts that were being made, he considered that the Sub-Commission should keep the communication pending.

65. Mr. ILKAHANAF, speaking on a point of order, noted that there was a communication concerning Guatemala and that a draft resolution concerning that country had been submitted under agenda item 6. Was the Sub-Commission going to proceed with the communication or with the draft resolution?

66. The CHAIRMAN replied that the Sub-Commission was discussing only communications under agenda item 9.

67. Mr. YIMER pointed out that the fact that a reply had been received from the Government did not necessarily mean that the Working Group would not transmit the communication to the Sub-Commission. The Working Group would transmit a communication not only in the absence of a reply from the Government, but also if the reply was unsatisfactory.

68. Mr. ILKAHANAF said that his point of order had not really been settled. The proceedings under agenda item 6 were public but the proceedings under agenda item 9 were confidential.

69. The CHAIRMAN said that he could see no possibility of the Sub-Commission being successful in its work if it discussed two agenda items simultaneously.

70. Mrs. PALLEY, speaking on a point of order, said that the issue of double jeopardy had already been extensively discussed by the Sub-Commission. Some members had thought it was not really an issue at all, while others had thought it important. She herself considered the issue to be misleading. Moreover, when the Sub-Commission referred matters regarding a particular country to the Commission on Human Rights, no condemnation was necessarily implied. Consequently, there could be no question of double jeopardy. She hoped that the issue could be disposed of once and for all. In any case, a procedural ruling had to be made.

71. Mr. CHERNICHENKO said that the case of Guatemala was being studied under agenda item 6 and in the Commission on Human Rights, and the grounds for taking a decision in relation to that country under the procedure established by Economic and Social Council resolution 1503 (XLVIII) were not clear.

72. Mr. ALFONSO MARTÍNEZ said that, in examining communications, it was virtually impossible not to refer to matters of overall importance affecting each individual case. The fact that there was a special procedure in the form of a Special Rapporteur or of a draft resolution under agenda item 6 had nothing to do with the issue of double jeopardy. The Sub-Commission did not yet know what decisions would be taken under agenda item 6, and no special procedure could have the effect of destroying the confidential procedure established under Economic and Social Council resolution 1503 (XLVIII).

73. He agreed with Mr. Heller that it was not possible to assimilate cases. The particular features of the Guatemalan case were clear. The communication dealt with a very specific matter - the El Aguacate affair. The fact that the Working Group on Communications had examined the case and had decided, with no dissenting vote, to transmit it to the Sub-Commission was significant. The mission report by the International Federation for Human Rights was highly revealing. The Sub-Commission could transmit the communication to the Commission on Human Rights without implying any condemnation. He requested a vote on Mr. Heller's proposal that the communication be kept pending.

74. The CHAIRMAN invited the Sub-Commission to vote by secret ballot on Mr. Heller's proposal to keep the communication pending.

75. The proposal was adopted by 18 votes to 2, with 3 abstentions.

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

76. Mrs. WARZAZI noted that most of the communications regarding Mauritania were not new but had been kept pending. The complaints came from individuals who seemed to be acting for strictly political reasons. The Government of Mauritania had sent a fully satisfactory reply. It had always been receptive to criticism and inquiries, including those made by the Sub-Commission. Moreover, it had ratified the Optional Protocol to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - something which many countries had not yet done. All that showed the good will of the Government, which must be encouraged. In addition, Mauritania had reaffirmed its willingness to work with NGOs like the International Commission of Jurists.
77. Communication No. 89/6/195,345 of June 1989 indicated that the persons dealt with in it had been released, so no action by the United Nations was needed. The Committee against Torture would no doubt monitor the situation in Mauritania.
78. Communications Nos. 89/7/198,032-198,034 presented only one point of view and did not reflect the real situation. The Sub-Commission could not accept such an unbalanced picture. Moreover, the grounds for the communications were political, and it was only at the political level that the problem could be solved. The OAU and many fraternal countries were trying to mediate. Consequently, any action taken by the Sub-Commission was unlikely to be helpful. She therefore proposed that the communications should not be considered further. It was to be hoped that NGOs would make on-the-spot inquiries and help the Government of Mauritania to find appropriate means of educating the public to respect the law, especially the law totally abolishing slavery.
79. Mr. KHALIL agreed that it was best to solve the problem on a regional basis.
80. Mrs. KSENTINI supported Mrs. Warzazi's proposal that the communications should not be considered further. They all had their origin in a political problem being dealt with by the OAU. She asked how it had happened that anonymous communications without signatures had been presented to the Sub-Commission. As a protective measure, the Secretariat might delete the signature of a complainant when sending the communication to a Government, but the communication must be signed in the first place.
81. Mr. GUISSÉ said that the statement made by the Government of Mauritania was not in keeping with the facts. Violations of human rights were increasing every day. NGOs could not work on the spot. Mention had been made of the OAU's mediation, but nothing had come of it. He was aware of the problem because he saw the results daily. He therefore requested the Sub-Commission to keep the Mauritanian file pending.
82. Mr. SABOIA noted that the communications regarding Mauritania were of two kinds. The pending ones related to the imprisonment and maltreatment of students, whom the Government had reportedly released. The latest communications related to a situation which looked like a dispute with a neighbouring country, which an effort was being made to solve by mediation. He therefore supported Mrs. Warzazi's proposal.

83. Mr. ALFONSO MARTÍNEZ said that the communications received in 1990 should not be considered further. The communications regarding Mauritania were in fact of two different types. The Government had already replied to those that had been pending, and there was no reason to doubt its good faith.

84. He, too, did not understand how the Sub-Commission had come to have before it the communications contained in document E/CN.4/Sub.2/1990/R.1/Add.4, since they were unsigned. They also had all the characteristics of an organized campaign seeking to manipulate people. Moreover, the situation to which they related was the subject of mediation by the OAU.

85. Mr. van BOVEN, Chairman/Rapporteur, Working Group on Communications, said that most communications came from organizations which were not based in the countries concerned and there was accordingly no problem regarding divulgence of the sources of the information. It was another matter in the case of individuals who were living in those countries and who might be liable to reprisals.

86. Economic and Social Council resolution 728 (F) (XXVIII) provided in its paragraph 2 (b) that the name of the author of a communication would be divulged only with the author's explicit authorization. On the issue of the admissibility of communications, Sub-Commission resolution 1 (XXIV) stated that the anonymity of communications was inadmissible. He interpreted that to mean that communications arriving at the Secretariat without a signature would be inadmissible. The resolution went on to say that, pursuant to subparagraph 2 (b), authors had the right to demand that their names should not be divulged. The normal rule therefore seemed to be that authors must be clearly identified and the communications signed; there were cases however where that information must not be passed on.

87. Mr. MOLLER (Chief, Communications, Centre for Human Rights) said that, in order to clarify any misunderstanding that might have arisen, he wished to confirm that the Working Group on Communications had never, since it had started work in 1972, passed an anonymous communication to the Sub-Commission. Pursuant to paragraph 2 (b) of Council resolution 728 (F) (XXVIII) the signatures on many communications were deleted. When a communication was received by the Secretariat, the routine procedure was to acknowledge receipt of the communication, to make a summary of its contents, and to send a copy to the Government concerned. The name of the author was deleted unless the author clearly stated that he had no objection to the disclosure of his name, signature and other details that might reveal his identity. Since 1972, the Working Group had had access to copies identical to those sent to the Government with the signature of the author deleted, in accordance with the requirements of paragraph 4 (b) of Council resolution 1503 (XLVIII).

88. The Sub-Commission had never insisted before that signatures should be reinserted at the Sub-Commission level. In many cases the material which the Sub-Commission had before it in documentary form was identical to that sent to the Commission where again Governments were represented and where the Government concerned was invited to submit observations. It was his understanding that the Sub-Commission had accepted the practice through the years that the signature should be deleted before the document was reproduced.

89. In the current case, he had noticed that the original text had been French but the English translation had read "signature omitted" although normally the phrase "signature deleted" was used. He apologized for any confusion that might have resulted.

90. Mrs. DAES wished to underline the co-operation which the Government of Mauritania had always given to the Sub-Commission over many years. Mauritania had been the first country to accept visits by two Sub-Commission Rapporteurs on the issue of human rights. Moreover, Mauritania was a less developed country with many problems; notwithstanding that, it had ratified many human rights instruments and continued to co-operate with the United Nations.

91. She therefore strongly supported the proposal to drop the communications.

92. Mrs. PALLEY expressed the view that the Sub-Commission should take a decision to forgo any right to request signatures on communications. Clearly, it should respect the secrecy of the individuals who had submitted information. It would be inconsistent for the members as individuals to seek a secret ballot and at the same time to deny secrecy to signatories.

93. At the previous session of the Sub-Commission, there had been a suggestion that the matter should be kept within the African family on the grounds that African problems were best solved through the Organization of African Unity. In the current case, however, there were genuine complaints of torture against individuals. If the Sub-Commission was to adopt the criterion that such issues should be settled politically within the regional organization, the Sub-Commission would not be able to make a single finding against any State in South or Central America as the Organization of American States had often made arrangements on not only inter-country, but also on intra-country matters.

94. In her view, the Sub-Commission should keep the complaints on Mauritania pending.

95. Following a procedural discussion in which Mrs. KSENTINI, Mrs. WARZAZI and Mrs. PALLEY took part, the CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission wished to accept the procedure followed by the Secretariat.

96. It was so decided.

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

98. The proposal was adopted by 12 votes to 9, with 3 abstentions.

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

99. Mr. HATANO informed the Sub-Commission that an independent expert had been appointed by the Chairman of the Commission on Human Rights pursuant to the Commission's decision of 15 February 1990 to investigate the human rights situation in Myanmar. The expert would visit Myanmar in October 1990.

100. Mr. DESPOUY said that if the Sub-Commission decided to drop the communications it would be undercutting the Special Rapporteur. The information contained in the communications was important for the evaluation to be made by the Special Rapporteur for the Commission on Human Rights. He proposed that the communications should be transmitted to the Commission on Human Rights for consideration, bearing in mind the replies which had been received and analysed.

101. Mr. ILKAHANAF said it was his understanding that the Opposition in Myanmar had gained a majority in the recent elections. He would welcome further information regarding the situation.

102. Mr. van BOVEN, Chairman/Rapporteur, Working Group on Communications, supported the proposal by Mr. Despouy. The Commission on Human Rights had decided to keep the human rights situation in Myanmar under review within the framework of the 1503 procedure. The recent information which had been obtained concerned alleged serious violations of human rights; the independent expert should not be deprived of that information.

103. Mrs. DAES said that the situation in Myanmar was very complicated but that there appeared to have been some signs of improvement recently. Some of the statements made to the Working Group on Indigenous Populations had referred to improvements in the human rights situation and to the efforts by the Government. As a Special Rapporteur had been appointed, she proposed that the Sub-Commission should keep the situation in Myanmar under review for one year.

104. Mr. ALFONSO MARTÍNEZ said that he was not sure that there was a continuing grave situation of violations of human rights in Myanmar and he accordingly agreed with Mrs. Daes. While it was true that no response had been received from the Government of Myanmar, that was not necessarily evidence of guilt. In his view the situation should be kept under observation for a year.

105. Mr. SACHAR expressed the view that the communications must be referred to the Commission on Human Rights. Elections had been held in Myanmar in a situation of great stress. The Opposition had received an overwhelming majority in the elections but had not been allowed to take over the Government. The newly elected President continued to be kept under house arrest by the military authorities. No greater violation of human rights could be imagined.

106. Mr. JOINET supported Mr. Sachar.

107. Mr. EIDE agreed with Mr. Sachar. The voice of the people had not been effectively implemented in Myanmar. The alleged improvements of the situation in Myanmar could only be accepted with great reservations. In any case he failed to understand why the Sub-Commission should keep the information to itself when the Commission on Human Rights had appointed a Special Rapporteur to look into the situation.

108. Mrs. PALLEY strongly supported the view that the communications must be submitted to the Commission on Human Rights. The details in the communications had been confirmed to her by other sources. Through a personal contact she had learned that the newly elected President was kept in preventive detention and was not even permitted close family contacts. There was no justification for giving any support whatever to the military Government which continued to usurp power.

109. Mr. YIMER said that no reply had yet been received from the Government of Myanmar. The issue was under consideration by the Commission on Human Rights under the 1503 procedure. It was accordingly not proper for the Sub-Commission to withhold the communications from the Commission. He accordingly agreed with those who supported transmission of the communications to the Commission.

110. Mrs. BAUTISTA said that, in the light of the information provided by Mr. Sachar, the communications should be forwarded to the Commission on Human Rights so that the Special Rapporteur could have access to them. Such action would be in the best interests of the people of Myanmar.

111. Mr. DESPOUY said that it would not be the first time that the Sub-Commission had taken similar decisions within the 1503 procedure. In Paraguay a representative of the Secretary-General had performed duties similar to those of a Special Rapporteur; the same had occurred in Haiti and in Equatorial Guinea.

112. The current case represented a very specific situation. If the Sub-Commission did not transmit the communications, the Special Rapporteur might find himself in a situation in which he would have to report under the 1503 procedure without having received reliable new information on what had been happening. He could, of course, obtain information if he visited the country and could then report to the Commission on the basis of the information thus obtained. But if he did not travel to the country, the only resources available to him would be the communications received under the 1503 procedure. In that case he would have to go through the Sub-Commission. If the Sub-Commission did not elevate the communications it would be depriving the Special Rapporteur of a valuable source. If the Commission had appointed a Special Rapporteur it was because it wanted to be informed fully of the situation in the country.

The summary record of the second part of the meeting appears
as document E/CN.4/Sub.2/1990/SR.28/Add.1.
