

CURRENT DEVELOPMENTS

United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities

〈Forty-first Session, 7 August — 1 September 1989〉

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The outgoing Chair, Mr. Bhandare (India), observed with characteristic good humour that the weather was pleasant, a harbinger to the cordial session we were going to have. He claimed that as friction can lead to progress, conflict can lead to peace and noted that the past year had been marked by the 40th anniversary of the Universal Declaration of Human Rights. He informed the Sub-Commission that the UN Centre for Human Rights had received the report of the Special Rapporteur on Human Rights and Youth, Mr. Mazilu (Romania), written in his own hand, and a letter from Mr. Mazilu saying he had been held in captivity in his country since 1986. Finally, Mr. Bhandare congratulated Mr. Martenson, Under-Secretary-General for Human Rights on the "glossy, catchy and informative" material being produced as part of the World Campaign for Human Rights.

As Under-Secretary-General, Mr. Martenson then gave his address, precluded by a minute of silence in memory of Yo Kubota, member of the Secretariat of the Centre for Human Rights, who recently died in an accident while on mission in Namibia. Mr. Martenson reminded the assembly that the Sub-Commission was the human rights "think-tank" and the expert members were at the "cutting-edge" tackling human rights concerns ranging from discrimination against AIDS sufferers to the fight against racism, from the rights of indigenous peoples to the question of toxic waste; "scarcely an area of human activity and of international concern

remains untouched by human rights considerations". He referred to the triangular relationship between legislation, implementation, and information. Effective monitoring was essential for implementation of human rights instruments. In just the first half of this year, the Communications Section of the Centre for Human Rights received some 200,000 individual complaints of human rights abuses, most of which will be dealt with under the "1503 procedure". Mr. Martenson drew particular attention to the situation of refugees and asylum seekers and the risks of forcibly returning or "refouling" them to their countries of origin. Noting that refugees constitute one of the most vulnerable categories of persons, he stated that the Sub-Commission should consider how the international community could assure their protection.

Mr. Yimer (Ethiopia) was elected as the new Chairperson. With his eight years' service as an expert member of the Sub-Commission and his experience of chairing the Working Group on Communications it was reckoned that he "had what it takes" to be a good "skipper" and not let "the boat roll too much". Mr. van Boven (Netherlands), Mr. Alfonso Martinez (Cuba) and Mr. Diaconu (Romania) were elected as Vice-Chairs, with Mr. Hatano (Japan) as Rapporteur.

Mr. Yimer began as he went on ; without fuss and bother. Noting the rule that congratulations are the prerogative of the outgoing Chairperson, he called for no more please, and proceeded to the first item.

Review of the Work of the Sub-Commission and Further Developments

Mr. Eide and Mr. van Boven's working paper (E/CN.4/Sub.2/1989/47)* sought to clarify the distinctive yet complementary role of the Sub-Commission in considering violations of human rights and fundamental freedoms as compared with other human rights bodies, particularly the Commission on Human Rights. Key paragraphs 2 and 6 of Resolution 8 (XXIII) of the Commission on Human Rights mandated the Sub-Commission to prepare a report containing information on violations and bring to the attention of the Commission any situation which appeared to

* Hereinafter the last number of the Sub-Commission document will be given e.g. <47>.

reveal a consistent pattern of gross violations. There was mixed opinion as to whether the public consideration of human rights violations under Resolution 8 (XXIII) had been overtaken by the "1503" confidential procedure and out dated by the advent of working groups and special rapporteurs which deal with specific violations. It was felt that the Sub-Commission was increasingly serving "merely as a letter-box" when its proper role should be "analysis".

One expert felt that, given the precarious situation of human rights in developing countries, the item concerned with the new international economic order and the promotion of human rights should be considered annually rather than on a biannual basis.

There was no follow-up on last year's Sub-Commission resolution which requested the Secretary-General in co-operation with UNESCO to prepare a global programme for the preparation of teaching materials.

Resolutions :

Establishment of a sessional working group. Decided to review the work of the Sub-Commission on human rights violations (item 6).

The new international economic order and the promotion of human rights.

Will be considered on an annual basis ;

List of studies already undertaken. Examining ways and means of rationalizing proposals for studies. Will be submitted to the Sub-Commission's 42nd session < 1990 >.

Human rights monitoring mechanisms established within the UN framework. Requests the Secretary-General to consider convening an international meeting of experts not later than 1990.

Further developments in five main areas of concern were reviewed :

(i) Human rights and the environment

This item first appeared on the Sub-Commission's agenda in 1988 when the Sub-Commission recommended that the Commission on Human Rights should adopt a resolution concerning the movement and dumping of toxic and dangerous products and wastes. The subsequent Commission resolution requested that the United Nations Environment Programme (UNEP) take speedy action to elaborate a global convention on the control of transboundary movements of such wastes. Discussion at this year's Sub-

Commission focussed on a brief report by the UN Secretary-General reviewing UNEP work in this field.

Members of the Sub-Commission stressed the need to maintain this item on the agenda, especially since the 'Basle' Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was still seen as inadequate by some member states. Members suggested a number of further initiatives. These included a human rights input into preparations for the 1992 UN Conference on Environment and Development, the need for international monitoring of toxic waste movement and disposal, and a request that the International Atomic Energy Agency (IAEA) should submit a report to the Commission on Human Rights or the Sub-Commission, on the progress of the IAEA's draft code of practice on international transactions involving radioactive waste.

Resolutions :

Human rights and the environment. Asks Ms. Ksentini (Algeria) to prepare a concise note setting forth methods by which a study on the relationship between human rights and the environment could be made, based on information gathered from governments, UN bodies, intergovernmental and non-governmental organizations (NGOs).

Movement and dumping of toxic and dangerous products and wastes.

Recommends that UNEP should negotiate with the Organization of African Unity (OAU) in order to find global solutions to hazardous waste problems. Requests that a report on these negotiations be prepared by the Secretary-General to be submitted for consideration at the 46th Session (1990) of the Commission on Human Rights.

(ii) The use of chemical weapons

The Secretary-General's report on chemical weapons was distributed but was not introduced by the representative of the Secretary-General <4>. Opening the debate, Ms. Palley (UK) referred to numerous cases of alleged use of chemical weapons but underlined the difficulty of investigating and proving their use. Referring to the draft Convention on Chemical Weapons, she said that herbicides should be banned and riot control agents strictly controlled. She focussed on the use of chemical weapons by the government of Iraq in 1988, the use of gas at Tbilisi in 1989 and most recently the alleged use of chemical weapons by Angola. Ms. Palley recommended that the

Sub-Commission should act as a "watchdog" for the use of chemical weapons and the Secretary-General's investigatory machinery should be used to investigate alleged use.

Members of the Sub-Commission expressed indignation about the use of chemical weapons and stressed that they should be prohibited and destroyed. Some members fearing that the Sub-Commission might duplicate the work of the UN Conference on Disarmament felt it should reassert its humanitarian approach. There was some controversy about the alleged use of chemical weapons by Angola. The government of Angola stated that the allegation was groundless.

Resolution :

Chemical weapons. Supports the work of the UN Conference on Disarmament and agrees that the use of chemical weapons should be kept on the Sub-Commission's agenda.

(iii) Traditional practices affecting the health of women and children

Ms. Warzazi (Morocco) in introducing her report noted that although there was no longer a taboo on discussing traditional practices, governments had not responded well to her request for information and this reflected their general negativity regarding the subject <42>. NGOs had provided substantial information. There was concern that harmful practices like female circumcision should not be "sanitized" in hospitals. Governments, including western governments, should take preventative measures, but these should not be merely legal. The UK had set a good example not only in passing legislation forbidding female circumcision but also by supporting NGO activities aimed at eliminating the practice.

Resolution :

Traditional practices. Recommends that Ms. Warzazi's mandate be extended for two years; field missions be undertaken and international seminars held, the Centre for Human Rights providing necessary support, also that the subject be kept on the agenda of the Sub-Commission for sustained follow-up.

(iv) Right to freedom of opinion and expression

Mr. Turk's Working Paper recommended that two members be

appointed to work jointly on a study on the right to freedom of expression <26>.

The Working Paper was praised and commended as a "calm" study "de-ideologizing" inter-state relations. Freedom of expression was considered an integral human right to be respected and protected. It was generally agreed that there cannot be development without respect for human rights or without freedom of expression and that participation in development was a prerequisite for assuring expression.

Resolution :

Right to freedom of opinion and expression. Endorses the decision to entrust Mr. Joinet and Mr. Turk with the preparation of a study.

(v) Discrimination against persons with HIV virus or suffering from AIDS

Mr. Varela introduced his note on AIDS and suggested that regional seminars be held in co-operation with the World Health Organization on human rights and AIDS <5>.

Some felt that the note did not sufficiently emphasize the need for preventative measures to combat AIDS. It was also agreed that the responsibility for the origin of AIDS should not be laid on the "African doorstep". However, it was acknowledged that African countries were in need of assistance to combat the disease. Although some experts felt the proposed study should be broadened to include consideration of discrimination against sick or disabled persons in general, others were not convinced that this was a good idea.

Resolution :

Discrimination against HIV-infected people or people with AIDS.

Entrusts Mr. Varela with a study of problems and causes taking into account the guidelines of the International Consultation on HIV/AIDS and Human Rights, held 26-28 July 1989 in Geneva.

Other resolutions :

Protection of persons detained on the grounds of mental ill-health or suffering from mental disorder. Requests the Secretary-General to make available the study "Principles, guidelines and guarantees" (17/Add. 1 &

Annex III) at the 46th session of the Commission on Human Rights and its working group on rights of the mentally ill.

Thanks to the government of Bangladesh. Expresses thanks for co-operation in respect of the treatment of tribal populations.

Compensation for victims of gross violations of human rights. Entrusts Mr. van Boven with the task of undertaking a study, a preliminary report which should be submitted to the Sub-Commission's 42nd session (1990).

Assistance to Paraguay in the field of human rights. Expresses its satisfaction at the positive changes that have occurred in Paraguay.

Elimination of racial discrimination

This item covers the role of the Sub-Commission in combatting racial discrimination and the adverse consequences for human rights of all forms of assistance given to the South African government.

Mr. Khalifa (Egypt) presented his updated report <9> giving details of banks and transnational corporations which assist the South African regime. He argued that sanctions are impeding the South African economy, and that they provide substantial political leverage. South Africa's foreign exchange reserves are now below those of Botswana and it is in danger of defaulting on its \$27 billion foreign debt. On the other hand, transnational banks based in Switzerland, the FRG and the United Kingdom are the major source of capital inflow into South Africa, and countries such as Taiwan have been stepping in to fill the trade gaps left by disinvesting companies.

There was universal appreciation of Mr. Khalifa's report. Apartheid was described as "immoral, irrational and unacceptable". There were calls for the immediate repeal of the Race Definition Act, the Group Areas Act, and for the termination of the current state of emergency. Ms. Palley, (UK) argued that since the rationale of apartheid is "economic exploitation", "economic sanctions are not just punitive, but are undermining the root of apartheid". Mr. Joinet (France) noted that a ban on loans appeared to be central to Mr. Khalifa's analysis, and other members expressed concern that the number of transnational corporations doing business with South Africa had increased. Mr. Khalifa was asked to continue his research.

The study of Mr. Eide (Norway) on the achievements made and obstacles encountered during the Decades to Combat Racism and Racial Discrimination distinguished 'racist regimes' from countries where racism

occurred but where there was a willingness expressed on behalf of the government to eradicate it <8>. The section on racist regimes focused on South Africa including the sale of arms to South Africa by the government of Israel. The study also considered the western origins of 'racism', and under contemporary measures to end racial discrimination, states were encouraged to become parties to the International Convention on the Elimination of all Forms of Racial Discrimination (CERD).

The importance of eliminating discrimination against ethnic, linguistic and religious minorities, indigenous people and migrant workers was stressed during the debate. Others emphasized the need for states to meet their financial obligations under the Convention on the Elimination of all Forms of Racial Discrimination (CERD) and for states to adopt anti-discrimination legislation. It was agreed that Mr. Eide's study would be considered in more detail at the next session of the Sub-Commission.

Resolutions :

Measures to combat racism and racial discrimination and the role of the Sub-Commission. Refers to the final report of the Special Rapporteur, Mr. Eide to the Commission on Human Rights and recommends that it be distributed widely.

Adverse consequences for the enjoyment of human rights of assistance to South Africa. Invites the Special Rapporteur, Mr. Khalifa (Egypt), to continue to update his list of banks, transnational corporations and other organizations which assist the racist South African regime.

Gross Violations of Human Rights

Reference was made to the situation of human rights in the following countries: Albania; Burundi; Chile; China (Tiananmen Square and Tibet); Colombia; Cyprus; Ecuador (indigenous people of Amazonia); El Salvador; Ethiopia (Eritrea); Guatemala; Haiti; Honduras; Indonesia (East Timor); Iran (Baha' is); Iraq; Israel (Palestine and Bedouins of the Negev); Japan (Ainu); Mauritania; Myanmar/Burma; Peru; Philippines; Romania (Hungarian minority); Saudi Arabia; Somalia; South Africa; Sri Lanka (Tamils); Syria; Turkey (Kurds); USA (Hopi Indians); USSR (Armenian minority in Azerbaijan).

There was a considerable debate on the violent suppression of the student-led Chinese pro-democracy movement. The observer for China

considered it to be the "internal affair of a sovereign state to put down riots" and stated that "no foreign country or international organization had the right to intervene on any pretext". It was pointed out that China has accepted international obligations by ratifying treaties and that China has voted in favour of special rapporteurs to examine the human rights situation in Afghanistan, Chile and South Africa. At one point he walked out of the room in protest at the allegations of one outspoken NGO calling them "criminals" and "liars." Some speakers drew fresh attention to the situation in Tibet in the light of the June events in Tiananmen Square. The experts, however, agreed the China should not be totally "blacklisted" or "pushed into the darkness", but avenues for dialogue should be kept open. In adopting a resolution on China, the Sub-Commission for the first time adopted a resolution critical of one of the permanent members of the Security Council.

The observer for Australia felt that two important principles needed to be reaffirmed, firstly, the principle of the universality of human rights and secondly, cooperation with Mr. Wako, the special rapporteur on summary and arbitrary executions. There was a general discussion on how Rule 69 of the Rules of Procedure, which states that observers may only comment on "matters of particular concern" should be interpreted. It was noted that there had been no objection when some governments intervened on South Africa and Israel. A legal opinion was sought which stated that this interpretation was up to the particular observer. Some of the experts defended observer interventions, claiming that "today no country could hold the position that human rights concerns were purely domestic".

Mr. Chernichenko (USSR) submitted a working paper <55> in which he expressed his concern that the Sub-Commission as an expert body should be depoliticized. The Sub-Commission should not be punctuated by recriminatory rights of reply and generally, a certain "serenity" should be ensured in the discussions.

On the positive side, it was noted that events in Chile, Namibia, Paraguay and the Soviet Union indicated an improvement in the respect of human rights in those countries.

There were also interventions under this item on gross violations of economic, social and cultural rights and human rights and the environment.

Resolutions :

It was agreed to suspend rule 59 to allow for a secret ballot on resolutions under this agenda item.

Protection of journalists. Calls upon journalists to expose gross human rights violations, and requests Mr. Sadi (Jordan) to prepare for the 42nd session (1990), a feasibility report to study this.

Situation in South Africa. Demands that the state of emergency be lifted, calls on the international community to assist the frontline states, appeals for clemency for the "Uppington 14", calls for disinvestment by foreign companies and for all countries to cut military links. The resolution also mentions conscientious objection to military service and the alarming number of executions.

The situation in the Palestinian and other Arab territories occupied by Israel. Condemns Israel for its gross violations, supports the call to convene an international peace conference on the Middle East.

Human rights in China. Requests the Secretary-General to transmit relevant information to the Commission on Human Rights and appeals for clemency.

Human rights in Guatemala. Urges the government of Guatemala to intensify its efforts to ensure that the human rights and fundamental freedoms of its citizens are fully respected and draws attention to the importance of the independence of the judiciary in achieving this.

Question of East Timor. Recommends that the Commission on Human Rights considers the matter at its 46th session (1990).

Human rights in Lebanon. Recommends that the Commission on Human Rights consider this, in particular the aggravating role of external powers at its 46th session (1990).

Human rights in El Salvador. *Inter alia*, decides to consider this at its 42nd session and expresses satisfaction that the government has invited the Working Group on Enforced or Involuntary Disappearances to visit.

Human rights in the Islamic Republic of Iran. Expresses deep concern and urgently calls on Iran to cease executions, in particular those of political prisoners.

A resolution concerning the situation of human rights in Iraq was withdrawn because of an invitation from Iraq inviting the Sub-Commission to visit the country.

1503 PROCEDURE Every year the UN receives thousands of letters from individuals alleging that their human rights have been violated. At first, the Commission on Human Rights took the view that it had no power to take any action, but it has now changed its policy and will consider them if they appear to reveal "a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms in a particular situation". Communications are summarized in a confidential list which is distributed to members of the Commission and Sub-Commission. Copies of the communications are sent to listed states and their replies are submitted to the Commission. Both the Commission and Sub-Commission have established working groups to assist them with this work. The Commission may decide to undertake a "thorough study" or an "investigation" followed by reports and recommendations. Such procedures are conducted in strict confidence.

The following experts were elected to be members of the Sub-Commission's Working Group on Communications: Mr. van Boven (Netherlands), Mr. Ramichvili (USSR), Mr. Yimer (Ethiopia), Mr. Jin (China) and Mr. Alejandro Sobarzo Loaiza (Mexico) or Mr. Alfonso Martinez (Cuba).

Economic, Social and Cultural Rights

Mr. Turk's paper <19> stated that further analysis of the concept of the interdependence and indivisibility of human rights was needed, preferably with a specific focus on the issues of extreme poverty and the effects of structural adjustment policies on the realization of economic, social and cultural rights. Mr. Turk stressed the need to study how the work of the UN specialized agencies, and the international financial institutions, notably the International Monetary Fund and the International Bank for Reconstruction and Development (IBRD) affected such realization.

Members of the Sub-Commission praised Mr. Turk's paper and stressed that the two types of human rights formed "an organic whole". However, it was pointed out that the report was biased towards industrialised countries and more account should be taken of agricultural economies. The enforcement of civil and political rights and the availability of resources were seen to be linked and the need to 'de-ideologize' consideration of economic, social and cultural rights was stressed. The importance of the Limburg principles was acknowledged.

A number of Sub-Commission members emphasized the effect of the

external debt of developing countries, particularly in Latin America, on the realization of human rights. Mention was also made of pockets of extreme poverty in developed countries. It was also stated that economic, social and cultural rights are not adequately reflected in the UN human rights agendas.

NGOs raised the linkage between the role of women in development and the prevention of discrimination and protection of women, and emphasized the need to find methods to objectively measure the implementation of economic, social and cultural rights.

Resolutions :

Realization of economic, social and cultural rights. Asks Mr. Turk to prepare a progress report on the realization of economic, cultural and social rights for the next session of the Sub-Commission.

Foreign debt, economic adjustment policies and their effects on the enjoyment of human rights. Stressed that foreign debt and economic adjustment policies for developing countries must be designed so as not to hamper the improvement of human rights.

Administration of Justice and Impartiality of the Judiciary

A wide variety of topics were discussed under this item although discussion was cut short due to pressure of time.

(i) Administrative detention

Discussion centred around a detailed study by Mr. Joinet (France) <27> entitled "The Practice of Administrative Detention". It described the need for a UN monitoring procedure to cover administrative detention including new developments, such as measures taken to combat the AIDS virus and recommended that each year a report on the development of all forms of administrative detention be considered by the Commission on Human Rights. Furthermore, the issue of detention should be drawn to the attention of relevant special rapporteurs and working groups.

Resolution :

Administrative detention. It was agreed to consider the study next year.

(ii) Working Group on Detention

This Sessional Working Group continued its work on the draft declaration on the protection of all persons from enforced or involuntary disappearances.

Mr. Alfonso Martinez, Chair of the Working Group, introduced the subject of juveniles and the death penalty at the Working Group. There was some concern that a focus on juveniles might be seen to legitimate the death penalty for adults, but after discussion a number of recommendations were submitted to the Sub-Commission.

Concern was expressed at the possible difficulties involved in the application and supervision of international norms for prisoners in private prisons.

Resolutions :

Juveniles and the death penalty. All states should stop executing people under the age of 18, and should enact legislation to prohibit the application of the death penalty to those under 18 years.

Detention of juveniles. The Secretary-General is asked to revise document E/CN.4/Sub.2/1987/30 concerning the human rights of detained juveniles and the application of international standards.

Privatisation of prisons. Asked Mr. Alfonso Martinez (Cuba) to prepare a working paper on approaches to this issue.

Use of force by law enforcement officials. Calls on governments to incorporate into their national legislation UN standards on the use of force by law enforcement officials.

Hostages in Lebanon. Calls for the release of all hostages in Lebanon.

(iii) Protection of UN staff

The Sub-Commission had before it an updated report by the Secretary-General and a preliminary report <28> by Special Rapporteur, Ms. Bautista. These reports dealt with human rights violations of UN staff members. Discussion focussed on the kidnapping and killing of Colonel William Higgins, and the current position of Mr. Mazilu. The UN was urged to take stronger measures to protect its personnel and to refrain from giving technical assistance to countries where inadequate protection is afforded to UN officials.

Resolutions :

Hostage taking. Urges governments and the Secretary-General to act to stop hostage taking and to seek the release of existing hostages.

Protection of UN staff. Urges the Special Rapporteur to present an updated report on detained, imprisoned or missing UN officials to the next session of the Sub-Commission.

Right to a fair trial. Mr. Chernichenko (USSR) and Mr. Treat (USA) were asked to prepare a report on existing international norms on the right to a fair trial.

(iv) States of emergency

The Special Rapporteur, Mr. Despouy, reported that at least 25 states had proclaimed or continued a state of emergency since November 1988, while eight others had declared the termination of their states of emergency <30>.

It was agreed by members that these states of emergency constituted a grave threat to the maintenance of human rights. Governments should be made aware that human rights must be upheld during a state of emergency. Furthermore, steps should be taken to develop standards to prevent the abuse of firearms and to investigate suspicious deaths in custody.

Resolution :

Human rights and states of emergency. Appeals to governments to adopt national legislation in accordance with international norms concerning states of emergency. Requests that the work of the Special Rapporteur be continued and an updated copy of his report be submitted to the Commission on Human Rights.

(v) Independence and impartiality of the judiciary

The draft Declaration on the independence and impartiality of the judiciary was generally welcomed by the Sub-Commission. A variety of minor alterations to the draft were suggested, for example to allow recognition of differences in types of legal systems. It was suggested that action to safeguard the independence of the judiciary should focus initially on attorneys, and the training of judges.

Resolution :

Independence of the judiciary. Calls on governments to respect the in-

dependence of the judiciary and to provide protection for lawyers subject to arbitrary pressures. Mr. Joinet was asked to prepare a paper on how the Sub-Commission could best monitor respect for the independence of the judiciary.

Elimination of Religious Intolerance

A two-part working paper by Mr. van Boven (Netherlands) <32> examined provisions relevant to the elimination of religious intolerance and factors to be considered before any drafting of a binding international instrument on this subject. In particular, the elaboration of new norms should not prevent the implementation of existing standards and raise the level of protection. Furthermore, it was recognized that solid preparatory work was needed prior to the commencement of the drafting process and the initial input should come from experts in consultation with governments and other interested groups.

Mr. van Boven was complemented on his working paper although it was felt that the study would have been enriched if it had taken into account bi-lateral treaties and referred to legal material from non-European sources. During the debate it was recognized that religious intolerance has a long history and has often resulted in violence including civil and foreign wars. Religious intolerance is manifested by individuals, groups and governments and often it indicates underlying economic, political and social problems. It was noted that religion is not only a question of choice but of culture and that the collective dimension of religion should be recognized. The inter-relationship between religious freedom and human rights was acknowledged. It was also noted that there is no clear definition of the term "religion". Some felt that the Sub-Commission should give more consideration to education, dialogue, mediation and reconciliation as means of eliminating religious intolerance.

Most speakers agreed that the Sub-Commission should proceed slowly on what is a very complex matter. Generally, the issue would benefit from further preparatory work before any drafting of a new instrument. Those who were in support of a new instrument stated that the process should begin even if the drafting would be difficult. Others suggested that an optional protocol to the International Covenant on Civil and Political Rights would suffice.

Improvements of religious rights were noted in Hungary, Poland and

the USSR but the Sub-Commission's attention was drawn to violations in : Burundi, Bulgaria (Turkish muslims), Greece (Turkish muslims), Israel, Lebanon, Northern Ireland, Sri Lanka, Syria (Jews), Tibet (Buddhists), Turkey (Kurds) and USA (Navajo Indians).

Resolution :

Elimination of religious intolerance. Recommends that the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief should serve as the basis for further work. The possible drafting of a new instrument requires sound research given the complexity of the subject. The Secretary-General should consider organizing a seminar on the inter-relationship between the right to freedom of thought, conscience, religion and belief, and other human rights.

International Peace and Security

The Sub-Commission was presented with a report by the Secretary-General, requested in 1985, on the inter-relationship between human rights and international peace <2>. While stressing the importance of the item, some members noted the lack of progress on the issue and the need to refine the concepts used in the report in future studies.

Members stressed that peace and security were based on more than just the absence of outward conflict between nations. There was a need to recognize the close links between peace and economic security, and that international peace could be fostered through development. It was noted that economic security was essential to ensure social, civil and political rights. Furthermore, by preventing violations of human rights, internal violence and possibly wider regional conflicts and international war could be curbed or prevented altogether.

Discussion turned to the training of armed forces and mention was made of armed forces involvement in Southern Lebanon and the killing of members of the Irish Republican Army (IRA) in Gibraltar. There was an appeal for armed forces to be educated to respect the existence of a multiplicity of views and ideas in a society.

Resolutions :

Human rights and armed conflict. Recognizes the need for governments to educate their armed forces in human rights and humanitarian law.

Human rights and peace. Recognizes the need for further study of the inter-relationship between international peace and the effective realization of human rights, particularly focussing on issues of transparency, the right to life and the right to development.

Discrimination Against Indigenous Populations

Under Mrs. Daes' (Greece) "business-like" chairing, the pre-sessional Working Group on Indigenous Populations worked in a "constructive and democratic manner". Reviewing developments, a number of speakers remarked on the seminar which had taken place in January 1989 on discrimination against indigenous peoples. Indigenous people had participated on an equal footing with governments, and Chief Ted Moses of the Grand Council of the Crees who had acted as Chair/Rapporteur noted that for the first time a UN-sponsored seminar had recognized indigenous peoples as *peoples* and had adopted the report <22> by consensus. There was discussion on the draft Universal Declaration on Rights of Indigenous Peoples with emphasis on the need for a more participatory drafting procedure and the importance of linking indigenous rights with the process of development.

The International Labour Organization (ILO) Convention on Indigenous and Tribal Peoples, Convention 107, had been revised and supplanted by Convention 169 at the June 1989 ILO Conference. The ILO representative noted that the revised Convention did away with the "paternalistic and integrationist approach" of the earlier Convention. However, certain representatives of indigenous peoples' NGOs objected to the revision and called for its boycott. They felt that the revision did not go far enough. However, the ILO representative emphasized that ILO standards are designed to be a minimum rather than a panacea for human rights. He hoped that states would exceed the provisions of the revised Convention.

The Sub-Commission also had before it a report by Mr. Carey (USA) on the relocation of Hopi and Navajo Indian families and a summary of information submitted by Mrs. Daes <35 Parts I & II>.

Resolutions :

Meeting of Experts. Recommends an agenda for a meeting of experts on indigenous self-government.

Draft Universal Declaration on Indigenous Rights. Recommends that Mrs.

Daes prepare a second revised text.

Report of the Seminar on social & economic relations between indigenous peoples and states. Recommends that the global consultation on the realization of the right to development take into account the rights and concerns of indigenous peoples, and that regional training courses on human rights standards and procedures be organized for indigenous peoples' organizations.

International Year for Indigenous rights. Designated 1993.

Relocation of Navajo and Hopi families. Requests that the Secretary-General offer appropriate assistance from the programme of advisory services in the field of human rights.

Treaties, agreements and other constructive arrangements between states and indigenous populations. Looks forward to reviewing at its 42nd session (1990), the preliminary report of the Special Rapporteur, Mr. Alfonso Martinez (Cuba).

Slavery and Slavery-Like Practices

The Working Group on Contemporary Forms of Slavery met for one week prior to the Sub-Commission. At its last session in 1988 the Working Group decided to consider one item in depth each year and this year the theme was the prevention of the sale of children, child prostitution and child pornography.

The Working Group heard a large number of interventions from NGOs. Information was provided about young boys and girls, lured by prospects of employment, being forced into prostitution and pornography. The Working Group heard about sex tours to Asia which were operated from industrialized countries. Furthermore, it was noted that, in industrialized countries, young boys and girls participate in prostitution and pornography to raise money for drugs or because they are alienated within society.

The sale of children for adoption was raised, in particular the fact that poor families part with their children for financial gain. Western-based adoption agencies receive between 2,500 and 10,000 US dollars for the placement of a child. The Working Group's attention was also drawn to the lack of protection afforded by article 21 of the draft Convention on the Rights of the Child concerning adoption for profit.

At the Sub-Commission in August 1988, Friends World Committee for Consultation (FWCC) submitted a report concerning the conscription of

children, and this received a lot of media attention. This year the Quakers provided further information about child soldiers. In particular, there was concern about article 38 of the draft Convention on the Rights of the Child which, as it stands, permits children to be recruited into the armed forces and to participate in hostilities.

Other issues touched upon by the Working Group included the slave-trade and the slavery-like practices of apartheid, child labour, debt-bondage, and traffic in persons (adult prostitution).

In addition to the large number of NGOs and governments who participated in the Working Group, the participation of the International Labour Organization (ILO), the UN Educational, Scientific and Cultural Organization (UNESCO) and Interpol was appreciated. The absence of the UN Children's Fund (UNICEF) was lamentable, especially given that the Commission on Human Rights in 1986, recommended that UNICEF be designated the primary body responsible for research and education about the sexual exploitation of children (Resolution 1986/34).

Resolutions :

Anti-Slavery Society. Congratulated on 150th anniversary.

Slavery and slavery-like practices (Child soldiers and adoption for commercial purposes). Express deep concern about the recruitment and participation of children in hostilities and the lack of protection afforded to children by article 38 of the draft Convention on the Rights of the Child. The Secretary-General was requested to submit a report on child soldiers and adoption for commercial purposes.

Slavery and slavery-like practices (Special Rapporteur). Recommends that the Commission on Human Rights appoints a Special Rapporteur on the sale of children, child prostitution and pornography.

Programme of action. Aims to counteract the sale of children, child prostitution and pornography and invites governments and others to comment on the draft, on the recommendation to the Commission.

Promotion of Human Rights

This item was considered under four sub-headings.

(i) The status of the individual and international law

Ms. Daes introduced her report concerning the status of the individual

in contemporary international law <40>. She noted that international law was going through a period of transition which would lead to the establishment of a new legal order in which the individual would play an increasingly important role.

It was also pointed out that the subject of international law was inter-state relations, not the individual. Ms. Daes' proposal that the individual should have direct access to the International Court of Justice was interesting but might prove difficult to put into practice. It would, in any case, involve a review of the United Nations Charter.

Resolution :

The individual in contemporary law. Recommends that the Commission on Human Rights expresses its appreciation of Ms. Daes' study which should be published and widely disseminated.

(ii) Children and youth

Human rights and youth was first put on the UN agenda by Romania in 1960. This year, the report of the Special Rapporteur, Mr. Mazilu (Romania), <41 & add I>, was circulated but Mr. Mazilu himself was not present. The Romanian authorities maintained that Mr. Mazilu's ill health had prevented him from travelling to Geneva to present his report.

The expert from Romania, Mr. Diaconu, informed the Sub-Commission that the report should have focussed on general trends and presented a world view. He considered Mr. Mazilu's report to be a "political pamphlet"; a "compilation of slogans" on one country. He was concerned that regarding the content of the report, Mr. Mazilu had not respected guidelines issued by the Secretariat. Other members of the Sub-Commission felt that the report should not be discussed without Mr. Mazilu himself being present. This would set a bad precedent.

Resolution :

Human Rights and Youth. Mr. Mazilu is requested to update his report in the light of discussions at the Sub-Commission. The Secretary-General is requested to follow closely the personal situation of Mr. Mazilu and his family.

(iii) Prevention of discrimination and protection of women

The most recent reports of the Committee on the Elimination of Discrimination Against Women and the Commission on the Status of Women were available. There was no debate on this sub-item. However, the issue of "women and human rights" came up under other agenda items, notably in discussions on traditional practices, the right to development, and contemporary forms of slavery such as prostitution and pornography.

(iv) Protection of minorities

Ms. Palley (UK) presented her report on possible ways and means in which the Sub-Commission could deal with the situations of social, national, religious and linguistic minorities <43>. She noted that there was little mention of minorities in UN instruments and to date there was no definition of minorities. Although autonomy was not a requirement, it was one way of protecting cultural, linguistic and religious rights. The participation of minorities in national institutions set up to protect minority rights was important. She suggested that Mr. Eide be asked to take over the work on minorities.

It was noted that ethnic conflicts pose a major problem for human rights and that more information was needed to identify common patterns in such conflicts. Finally, it was important to recognize that minorities enjoy human rights individually and collectively, including rights of non-discrimination and equality.

Resolution :

Minorities. Mr. Eide (Norway) was asked to prepare a further report on ways of peacefully and constructively resolving the situation of minorities.

The Right to Leave and Return

The Sub-Commission considered the final report of Mr. Mubanga-Chipoya <35> on this subject together with a working paper containing proposed amendments to the draft Declaration by Mr. Diaconu (Romania) <54>. It was stressed that the right to leave a country was inextricably linked with problems of entering a country. However there was as yet no such thing as a right to enter as this was still a matter of state sovereignty.

The representative of the UN High Commissioner for Refugees pointed out that there is an internationally recognized right of an individual to seek

and enjoy asylum. This implies certain responsibilities regarding admission to another country that should be taken seriously. Friends World Committee for Consultation (FWCC) made an oral intervention stressing these points and suggested that the Sub-Commission should consider establishing a sessional working group to elaborate the draft declaration.

There was some concern that countries should cooperate to prevent the "brain drain" from developing countries, and provision should be made for this in the draft Declaration. Currency controls and airport taxes were also considered to restrict free movement.

Resolution :

Right of everyone to leave any country, including his own, and to return to his country. Asks the Secretary-General to prepare an analytical compilation of comments on the draft Declaration on freedom and non-discrimination and decides to establish a sessional working group at its 42nd session (1990) to revise the draft Declaration.

QUNO's Comments

With Mr. Yimer in the chair the atmosphere was cordial and business-like. Although impatient when time was wasted he was fair and just in his rulings to experts, governments and NGOs alike.

The Sub-Commission had before it a number of documents which provided for some good debates and excellent contributions from experts and NGOs.

The debates continued to be less politicised than in previous years, even when the human rights situations in individual countries were discussed. The depoliticisation of debates was assisted by the Chair who intervened when the discussions started to deviate from the item under consideration.

It was generally agreed that the use of the secret ballot when voting on gross violations of human rights (item 6) facilitated the adoption of a number of resolutions on specific country situations. In previous years public voting has resulted in similar resolutions being defeated or subjected to "motions to take no action". However, the use of secret ballots is unlikely to become a part of Sub-Commission procedure. The United Nations legal office is of the opinion that voting should normally take place in public as this is established UN practice. The secret ballot this year enabled the Sub-Commission to adopt a resolution on a permanent member of the

Security Council (China), but as one diplomat said it was a "Prague Spring" and the backlash will come either from the General Assembly or the Commission on Human Rights. Even before the Sub-Commission had ended there was concern that China was mobilising the non-aligned movement to take action against the Sub-Commission. The use of secret ballot by the Sub-Commission could be interpreted as a declaration of independence, but the "fallout" from the China resolution remains unknown.

The debate on gross violations was interesting, particularly because of the resolutions on China and East Timor. The human rights situation in Iraq still gives cause for concern and there remain a number of uncertainties surrounding the invitation to visit Iraq. This development is likely to restrict debate on Iraq at the Commission on Human Rights in 1990, although it may be possible to obtain further clarification and insights about the visit. The van Boven/Eide proposal for a report containing information about gross violations of human rights is worthy of further discussion but should be seen only as a complement to agenda item 6 (gross violations) and the 1503 procedure, and not as substitute. An interesting development in the debate on gross violations of human rights are the interventions on gross violations of economic, social and cultural rights, and human rights and the environment. Even under the confidential 1503 procedure it is understood that there are a growing number of communications concerning gross violations of cultural rights.

The decision to congratulate a government, in this case Bangladesh, in its treatment of its tribal people, is unusual. Such a resolution surprised many participants and could be perceived as double standards in the field of indigenous issues.

There were good debates on slavery, indigenous peoples, detention, AIDS, traditional practices (female circumcision) and freedom of expression. The discussion concerning freedom of expression was particularly good. This subject will be of interest to the Commission on Human Rights and could complement the debate on political prisoners. Future debates on debt and human rights are likely to consider the effect which adjustment policies have, not only on economic, social and cultural rights, but also on civil and political rights.

As in previous years lack of time meant that not all agenda items received the Sub-Commission's deserved attention. The overloaded agenda

is unlikely to be solved immediately and may in fact be aggravated because of the proliferation of new items, and studies which have been requested. While a rationalisation of the agenda may help to solve the problem, it must not restrict the Sub-Commission from examining issues which it believes are of particular concern. As was so succinctly put by Mr. Jan Martenson, Under-Secretary-General for Human Rights, in his statement to this year's Sub-Commission; "scarcely an area of human activity remains untouched by human rights consideration". The Sub-Commission makes its own distinct contribution to human rights but should continue its efforts to avoid duplicating work already undertaken in other forums. Consideration should be given to the working methods of the Sub-Commission and in particular whether an increase in sessional working groups might further assist the Sub-Commission in carrying out its mandate.

With a few exceptions, non-governmental organisations made a very positive contribution to the items under discussion. NGOs co-operated on a variety of issues and where possible, co-ordinated their work. However, this should not be understood to mean that there will always be an agreed NGO position.

Members and their alternates at the Sub-Commission (1989)

Africa

Ms. Fatma Zohra Ksentini (Mr. Boudjemaa Delmi) - Algeria ; Mr. Ahmed Khalifa-Egypt ; Mr. Fisseha Yimer-Ethiopia ; Ms. Halima Embarek Warzazi (Mr. Mohamed Lghmari)-Morocco ; Ms. Judith Sefi Attah (Ms. Christy Ezim Mbonu) Nigeria ; Mr. Aidid Abdillah : Ilkahanaf (Mr. Mohamed Isa Turunji)-Somalia ; Mr. Yawo Agboyibor (Abdou Assouma)-Togo.

Asia

Mr. Tian Jin (Mr. Shao Jin)-China ; Mr. Murlidhar Chandrakant Bhandare-India ; Mr. Ribot Hatano (Mr. Yozo Yokota)-Japan ; Mr. Awn Shawkat Al-Khasawneh (Mr. Waleed M. Sadi)-Jordan ; Ms. Mary Concepcion Bautista (Ms. Haydee B. Yorac)-Philippines.

Eastern Europe

Mr. Ion Diaconu (Mr. Ioan Maxim)-Romania ; Mr. Stanislav Valentinovich Chernichenko (Mr. Teimouraz Otarovich Ramichvili)- USSR ; Mr. Danilo Turk-Yugoslavia.

Latin America

Mr. Leandro Despouy (Ms. Maria Teresa Flores)-Argentina ; Mr. Rafael

Rivas Posada (Mr. Eduardo Suescon Monroy)-Colombia ; Mr. Luis Varela Quiros (Mr. Jorge Rhenan Segura)-Costa Rica ; Mr. Miguel Alfonso Martinez (Mr. Julio Heredia Perez)-Cuba ; Mr. Alejandro Sobarzo Loaiza (Mr. Hector Fix Zamudio)-Mexico.

Western Europe and other States :

Mr. William W. Treat (Mr. John Carey)-United States ; Mr. Louis Joinet (Mr. Alain Pellet)- France ; Ms. Erica-Irene A. Daes-Greece ; Mr. Asbjörn Eide (Mr. Jan Helgessen)-Norway ; Mr. Theodoor van Boven (Mr. Cornelis Flinterman)-Netherlands ; Ms. Claire Palley-United Kingdom.

*Representatives of the Friends World Committee for Consultation-Quaker, United Nations Office, Geneva.