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The 41st Session of The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities

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The 41st Session of The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities

*Robin M. Maher and David Weissbrodt**

The forty-first session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities¹ (hereinafter the Sub-Commission) met in August

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1. The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities was established by the Economic and Social Council (hereinafter ECOSOC) in 1947 as a subsidiary body of the Commission on Human Rights (hereinafter the Commission). The Sub-Commission is composed of twenty-six members elected by the Commission to staggered four year terms. It meets annually in Geneva, generally during the month of August, to undertake studies and makes recommendations to the Commission on Human Rights on a wide range of human rights topics. For analyses of the work of the Sub-Commission see generally *United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities* (1989), 43 ICJ Review 19 (1989); van Boven, *The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 7 Netherlands Q. Hum. Rts. 465 (1989); Brennan, Brody & Weissbrodt, *The 40th Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 11 Hum. Rts. Q. 295 (1989); Rosen & Weissbrodt, *The 39th Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 10 Hum. Rts. Q. 487 (1988); H. Tolley, *The U.N. Commission on Human Rights* 163-86 (1987); Garber & O'Connor, *The 1984 U.N. Sub-Commission on Prevention of Discrimination and the Protection of Minorities*, 79 AJIL 168 (1985); Hantke, *The 1982 Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities: Current Developments*, 77 AJIL 651 (1983); Haver, *The United Nations Sub-Commission on Prevention of Discrimination and the Protection of Minorities*, 21 Colum. J. Transnat'l. L. 103 (1982); Gardéniers, Hannum & Kruger, *The U.N. Sub-Commission on Prevention of Discrimination and the Protection of Minorities: Recent Developments*,

1989 to address a number of human rights situations that had come to worldwide attention since 1988. The session followed the bloody suppression of demonstrations in the People's Republic of China, a rash of bombings and political assassinations in Colombia, and the use of chemical weapons against unarmed civilians in Iraq. Moreover, unusual political pressures from a variety of sources played an important role. As the Sub-Commission debated its first resolution on a country which holds a permanent seat on the UN Security Council,² members of the Sub-Commission faced a challenge to maintain their independence and overcome political pressures that surrounded these controversial issues.

This article will report on the organization of the 41st session of the Sub-Commission and discuss some of its most significant work: procedural innovations such as the initiation of studies by two members of the Sub-Commission giving accused governments a right of reply before voting on country-specific resolutions; the development of a new US-USSR relationship; and the use of secret ballots for country-specific resolutions. The article will also examine the Sub-Commission's consideration of country situations, the initiation of important new studies and reports, and the highlights of presessional and sessional working groups on detention, indigenous populations, and slavery.

I. ORGANIZATION OF THE SESSION

The Sub-Commission began by electing a bureau of officers for the forty-first session. The members ordinarily elect one officer from each of the regions: a chair, three vice-chairs, and a rapporteur. The position of chair is rotated among the five geographic regions, and this year the African states

4 Hum. Rts. Q. 353 (1982); Gardeniers, Hannum & Kruger, *The 1981 Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities: Current Developments*, 76 AJIL 405 (1982); Hannum, *Human Rights and the United Nations: Progress at the 1980 Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 3 Hum. Rts. Q. 1 (1981); Hannum, *The Thirty-Third Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 75 AJIL 172 (1981); Humphrey, *The United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities*, 62 AJIL 869 (1968). Further information regarding the Sub-Commission and human rights in the United Nations may be found in the Human Rights Internet Reporter, the AIUSA Legal Support Network Newsletter, the Analytical Reports of the International Service for Human Rights, and reports compiled by the Quaker United Nations Office.

2. The five permanent members of the UN Security Council are the People's Republic of China, France, the United Kingdom (UK), the Union of Soviet Socialist Republics (USSR), and the United States (US).

had the responsibility of making a nomination.³ Their choice was Fisseha Yimer (Ethiopia), an experienced member who has previously served as chairman-rapporteur of the Working Group on Communications and as vice-chair of the Sub-Commission.⁴ Yimer was elected chair of the Sub-Commission by a unanimous vote. The Sub-Commission also elected three vice-chair: Miguel Alfonso Martinez (Cuba), Ion Diaconu (Romania), and Theo van Boven (Netherlands). Ribot Hatano (Japan) was elected rapporteur.⁵

The initial public reaction to the selection of the bureau was negative. A majority of the officers—Yimer, Diaconu, and Martinez—came from countries which faced allegations of human rights violations.⁶ The elections prompted several critical newspaper articles, including one in *Le Monde* which characterized the three officers as a "troika." The article was accompanied by a cartoon which depicted the members sitting around a table, each with a cage of people at their feet. The caption read, "Enough talking! I'm going to give you a practical example of what happens in our country," as one figure gestured with pinchers and reached threateningly into a cage of people.⁷

3. The chair rotates among the five geographic regions: Asia (1988); Latin America and the Caribbean (1987); Western Europe and Others (1985); Eastern Europe (1984), and Africa (1983). The 1986 Sub-Commission session was cancelled due to a financial crisis of the United Nations. In 1990 the Eastern European states will nominate a chair.
4. Chairman Yimer has been a member of the Sub-Commission since 1981. He served as chairman-rapporteur of the Working Group on Communications in 1983, 1987, and 1989, as well as vice-chair of the Sub-Commission in 1985. Yimer has also served as a representative of Ethiopia to the Sixth Committee of the UN General Assembly during the thirty-third, thirty-fourth, thirty-fifth and thirty-eighth, fortieth, and forty-first sessions. U.N. Doc. E/CN.4/1988/46, at 28–29 (1988).
5. See U.N. Press Release HR/2405, Aug. 7, 1989.
6. In particular, Romania was discussed at length during debate on a resolution concerning Dumitru Mazilu. Mazilu, a former member of the Sub-Commission, wrote a letter to the Sub-Commission in which he said he was being ill-treated and detained by the Romanian government. Mazilu wrote that the Romanian government has prevented him from attending the 1987, 1988, and 1989 sessions of the Sub-Commission, despite official UN requests for his attendance to present his study on youth and human rights. See *infra* notes 89–99 and accompanying text. Press reports of imprisoned human rights lawyers and persons with AIDS in Cuba were the subject of discussion on several occasions during the session. See also Weissbrodt, *Country-Related and Thematic Developments at the 1988 Session on the UN Commission on Human Rights*, 10 Hum. Rts. Q. 544, 550–58 (1988); Brody & Weissbrodt, *Major Developments at the 1989 Session of the United Nations Commission on Human Rights*, 11 Hum. Rts. Q. 586, 590–96 (1989). Ethiopia's continuing civil war and reports of human rights violations were mentioned by several nongovernmental organizations, although it was not addressed by the Sub-Commission members, perhaps in deference to Yimer's position. See, e.g., Amnesty International, Report 1989, at 50–53 (1989); Amnesty International, Political Imprisonment in Ethiopia, A.I. Index: AFR 25/01/89 (1989); Department of State, Country Reports on Human Rights Practices for 1988, Report Submitted to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs, 101st Cong., 2nd Sess. 108–20 (1989).
7. Vichniac, *Une troika roumano-cubano-éthiopienne pour encadrer la sous-commission des droits de l'homme . . .*, *Le Monde*, 9 Aug. 1989, at 4, col. 1. The caption read, "Assez de mots! Je vais vous donner un exemple pratique de ce qui se passe chez nous."

Yimer opened the session by attempting to establish an efficient approach for the Sub-Commission session. For example, pursuant to Rule 46 of the Rules of Procedure,⁸ he asked all participants to suspend congratulatory salutations when making their statements. Traditionally, speakers begin their first statement to the Sub-Commission by congratulating the chair and members of the Bureau on their election. Yimer's request was made to avoid wasting time; over the course of the session, hours of time may be attributed to congratulatory statements. Most participants respected Yimer's request, although a few participants unfortunately used time to announce they would *not* congratulate the chair.

The Bureau set time limits for all statements by participants in an attempt to accommodate an overcrowded agenda. Yimer made staying on schedule a priority, and regularly urged members to be as brief as possible. The chair did not hesitate to interrupt participants who exceeded their time limit. Yimer was less strict with government representatives and Sub-Commission members than he was with nongovernmental organizations (NGOs), however. In general, most participants appeared satisfied with Yimer's leadership during the session.

II. PROCEDURAL INNOVATIONS

A. Joint Rapporteurs

The Sub-Commission made several innovative attempts at increasing its effectiveness and productivity during the 1989 session. The appointment of joint rapporteurs for studies, the expansion of the role of governments, an encouraging new US-USSR relationship, and the use of the secret ballot highlighted the 1989 session. These innovations had a significant role in shaping this year's Sub-Commission session, but more importantly, they promise to have a continuing effect at future sessions.

In the past, a special rapporteur has been appointed by the Sub-Commission to be responsible for a particular issue or study it has undertaken. For example, Ahmad Khalifa (Egypt) has for many years been the special rapporteur on the subject of investment in South Africa;⁹ Miguel Alfonso

8. Rule 46 of the Rules of Procedure, U.N. Doc. E/5975/Rev.1 (1983), states "Congratulations to the newly elected officers shall be expressed only by the outgoing Chairman or a member of his delegation, or by a representative designated by the outgoing Chairman." The Rules of Procedure [of the Functional Commission of the Economic and Social Council] are applicable to the Sub-Commission through Rule 24 ("The rules of procedure of the commission shall apply to the proceedings of its subsidiary organs in so far as they are applicable.").

9. See A. Khalifa, *Adverse Consequences for the Enjoyment of Human Rights of Political, Military, Economic and Other Forms of Assistance Given to the Racist and Colonialist Régime of South Africa*, U.N. Doc. E/CN.4/Sub.2/1989/9 (1989). For further discussion of Khalifa's studies on South Africa, see *infra* notes 127–29 and accompanying text.

Martinez (Cuba) was appointed last year to study treaties relating to indigenous peoples;¹⁰ Asbjørn Eide (Norway) was appointed to study the right to adequate food;¹¹ Erica-Irene Daes has been studying the role of the individual in international law;¹² C.L.C. Mubanga-Chipoya (Zambia) was the Sub-Commission member responsible for studying the right to leave and return;¹³ and Danilo Türk is special rapporteur for a study on the realization of economic, social, and cultural rights.¹⁴ One of the few studies with joint rapporteurs in the past was a 1983 study on conscientious objection to military service, with joint rapporteurs Asbjørn Eide (Norway) and C.L.C. Mubanga-Chipoya (Zambia).¹⁵

The appointment of joint rapporteurs seemed to gain favor during the last year or two. Last year, joint rapporteurs Erica Daes (Greece) and John Carey (Alternate member, US) were appointed to study the relocation of Hopi and Navajo families in the American Southwest.¹⁶ This year, the Sub-Commission assigned joint rapporteurs to three studies: (1) the right to freedom of opinion and expression, given to Danilo Türk (Yugoslavia) and Louis Joinet (France);¹⁷ (2) the right to a fair trial, assigned to Stanislav Chernichenko (USSR) and William Treat (US);¹⁸ and (3) the international year of indigenous rights, given to Asbjørn Eide (Norway) and Christy Mbonu (Nigeria).¹⁹

The appointment of joint rapporteurs will permit political, regional, and ideological balance by considering more than one perspective on an issue. This innovation also permitted the designation of Soviet and US rapporteurs for the first time. There are concerns, however, that by appointing two rapporteurs, the Sub-Commission also risks disagreement and miscommunication between the appointees. The outcome of last year's study of the Hopi and Navajo relocation illustrates the potential pitfalls of this innovation. Joint rapporteurs Daes and Carey disagreed on several important aspects of their study and submitted two separate reports before agreeing to a compromise late in the session.²⁰ At least part of the problem was logistical because Carey and Daes did not have an opportunity to meet before the start of the

10. Sub-Comm'n Res. 1987/17, U.N. Doc. E/CN.4/1987/42, at 28-29 (1987).

11. ECOSOC Res. 1983/140 (1983) & Sub-Comm'n Res. 1984/27, U.N. Doc. E/CN.4/Sub.2/1984/43, at 89 (1984).

12. Sub-Comm'n Res. 1985/31, U.N. Doc. E/CN.4/Sub.2/1985/57 at 113 (1985).

13. Sub-Comm'n Res. 1982/23, U.N. Doc. E/CN.4/Sub.2/1982/43, at 97 (1982).

14. U.N. Sub-Comm'n Res. 1988/33, U.N. Doc. E/CN.4/Sub.2/1988/45, at 61 (1988). The complete report of the 1988 Sub-Commission session is found in U.N. Doc. E/CN.4/Sub.2/1988/45 (1988) (hereinafter *1988 Report*).

15. A. Eide and C.L.C. Mubanga-Chipoya, *Conscientious Objection to Military Service*, U.N. Doc. E/CN.4/Sub.2/1983/30/Rev.1 (1985).

16. Sub-Comm'n Decision 1988/105, *1988 Report* at 70.

17. U.N. Doc. E/CN.4/Sub.2/1989/L.12 (1989).

18. U.N. Doc. E/CN.4/Sub.2/1989/L.21/Rev.1 (1989).

19. U.N. Doc. E/CN.4/Sub.2/1989/L.46 (1989).

20. The final report can be found in U.N. Doc. E/CN.4/Sub.2/1989/L.40 (1989).

Sub-Commission session. Whether this study will be the model or the exception to future joint rapporteur studies is difficult to predict.

B. Extension of the Role of Governments in the Sub-Commission Session

The role of governments was changed at this year's session as a result of two new innovations. First, governments were permitted to make statements immediately before the vote on a resolution concerning their country, and second, the rule governing the subject of their statements was broadly interpreted to permit commentary on anything "of concern," including views about human rights violations in other countries.

In years past, a government participated only during debate on an issue, either by requesting time to make a statement or by responding to specific allegations made against its country as part of its right of reply.²¹ This year, the Bureau permitted a right of reply by a government just before a Sub-Commission vote on a resolution concerning that country.²² The Bureau allowed five minutes for the first statement and an additional three minutes if a second opportunity to speak was requested.²³

This year's allocation of additional time before a vote increased the potential impact governments could have on a resolution. Several governments took advantage of this opportunity to urge members to vote against country-specific resolutions. For example, the Chinese government dismissed statements by NGOs and other participants as "lies" and defended its action in Beijing as "the right of any sovereign state." Further, the Chinese representative admonished the Sub-Commission that "[n]o foreign country or international organization has the right to intervene [on any] pretext."²⁴ It is unclear, however, whether this last minute right of reply changed any votes, since most Sub-Commission resolutions are negotiated and discussed at great length before voting. In the case of China, the resolution passed by a 15-9 vote, despite the last minute appeal by the Chinese government.²⁵

21. Luis Varela-Quirós (Costa Rica) recalled at the opening session of the Sub-Commission that observers of Indonesia, El Salvador, and Romania had not been allowed to speak in 1988 before the adoption of vote on resolutions concerning those three States. He renewed the proposal he made last year (U.N. Doc. E/CN.4/Sub.2/1988/SR.35 (1988)) that the Sub-Commission allow observers to speak before the vote on resolutions. *Summary Record of the 1st Meeting*, U.N. Doc. E/CN.4/Sub.2/1989/SR.1 (1989).

22. The Bureau first requested a legal opinion from the Office of Legal Counsel. Pursuant to that ruling, the Bureau decided to allow a State a right to speak prior to the vote on a resolution of which that State is a subject. U.N. Doc. E/CN.4/Sub.2/1989/L.10, at 5 (1989).

23. U.N. Doc E/CN.4/Sub.2/1989/L.10, at 5 (1989).

24. Statement by Yu Zhizhong, Observer of China at the 41st Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, 18 Aug. 1989.

25. The Chinese government exercised its right of reply immediately following the vote to denounce the resolution and deny its effect. "The Chinese Government categorically

A second procedural innovation involved the scope of a government's right to speak. According to Rule 69 of the Rules of Procedure, states which are not members of one of the subsidiary bodies may be invited to speak on "any matter of particular concern to that State."²⁶ During the session, several governments used their right to speak during debate to comment on events occurring in other countries. Most notably, events in China were the frequent subject of their commentary. Objections to this practice by Miguel Alfonso Martinez (Cuba) led to a heated procedural debate concerning how Rule 69 should be interpreted. Debate centered over whether this rule necessarily limited a government's statement to events or issues pertaining to its own country.²⁷ Several experts argued that the universality of human rights made it a "particular concern" to everyone. Other experts and NGOs believed that uncontrolled government interventions would further turn the Sub-Commission into a political body like the Commission on Human Rights. Toward this end, representatives of the European Community and Scandinavian countries had already decided not to intervene in order to emphasize the expert and independent nature of the Sub-Commission.

Finally, a legal opinion was requested from the UN Office of Legal Affairs. The opinion stated that each state could interpret the rules of procedure applicable to it.²⁸ To the extent that such an interpretation did not constitute an amendment or suppression of the rules, the interpretation of the term "particular" was normally a judgment to be made by the observer government. In support of this ruling, Asbjørn Eide (Norway) pointed out that governments may legitimately wish to express a national sentiment over events occurring in other countries. It was decided, however, to allow governments to continue to intervene for this session only.²⁹ Eide joined Yimer and other Sub-Commission members in urging all states to be as brief as possible with their statements and to refrain from abusive or unnecessary commentaries.

The expansion of governmental involvement raises some concern about the development of the Sub-Commission as a less expert and more political body. The increase in the potential impact governments have on the deter-

rejects this resolution. It is null and void and has no binding force on China whatsoever." Statement by the Chinese Delegation on the Adoption of a Resolution Concerning China by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities at its forty-first session, 31 Aug. 1989. The final resolution on China can be found in U.N. Doc. E/CN.4/Sub.2/1989/L.31 (1989).

26. The relevant portion of Rule 69 of the Rules of Procedure is as follows: "The Commission shall invite any Member of the United Nations that is not a member of the Commission, and any other State, to participate in its deliberations on any matter of particular concern to that State."

27. Martinez (Cuba) strongly supported this position, declaring that any other interpretation could turn the debate into a "sympathy competition."

28. *Summary Record of the 20th Meeting*, U.N. Doc. E/CN.4/Sub.2/1989/SR.20, at 2 (1989).

29. 43 ICJ Review 19, *supra* note 1, at 32.

mination of an issue may result in prolonged and further politicized debate. Sub-Commission members may lose control over the work of the body; governments and NGOs may dominate the discussions. Political pressure on Sub-Commission members may increase. The entire deliberative process may develop the partisan characteristics and difficulties which exist in political bodies such as the Commission on Human Rights. Even if governments have the right to speak about resolutions occurring in other countries, they may exercise restraint. Hence, it may be too early to determine the long-term effects of additional government involvement.

C. US-USSR Relationship

The 1989 Sub-Commission session continued the cooperative effort that began at the 1988 session in regard to substantive human rights, studies, and discussions. Sub-Commission members generally seemed willing to work together, frequently consulting one another and holding meetings outside the regular session to discuss new proposals. There was a general absence of hostile exchanges between members, although there was frequent disagreement, particularly during debate on country specific resolutions and procedural debates.³⁰ Generally, however, debate was productive and positive, lacking the personal, bitter exchanges which often marred the sessions of past years.

One of the most encouraging signs at this year's session was a new spirit of cooperation between Sub-Commission members from the US and the USSR. Chernichenko and Treat, both elected to the Sub-Commission in 1988,³¹ met prior to the session in July. At Chernichenko's invitation, Treat traveled to Moscow to discuss issues scheduled for consideration at this year's session. At the Sub-Commission, the two cosponsored (along with other Sub-Commission members) three resolutions relating to the right to fair trial,³² the prevention of the taking of hostages,³³ and the elimination of racial discrimination.³⁴ Chernichenko and Treat also coauthored a working paper on a revised procedure for dealing with consistent patterns of gross

30. For examples of two such procedural debates, see *infra* notes 44–50 (consideration of secret ballot proposal for country specific resolutions) and *supra* notes 26–29 (application of Rule 69 of the Rules of Procedure concerning observer government statements) and accompanying text.

31. U.N. Doc. E/CN.4/1988/46/Add.1 (1989).

32. U.N. Doc. E/CN.4/Sub.2/1989/L.21/Rev.1 (1989).

33. U.N. Doc. E/CN.4/Sub.2/1989/L.20 (1989).

34. U.N. Doc. E/CN.4/Sub.2/1989/L.41 (1989).

human rights violations under ECOSOC resolution 1503.³⁵ Since the two Sub-Commission members had initially suggested a study of the right to fair trial, they were appointed joint rapporteurs to pursue that study.³⁶ The co-operative effort was a positive change from past years when the previous Sub-Commission members from the US and USSR often had hostile and counterproductive exchanges.³⁷ Chernichenko referred to the 1989 session as a "laboratory of initiatives" and further stated that if there was "cooperation at the level of the Sub-Commission, it is possible to continue the dialogue at the level of the Commission itself."³⁸

D. Secret Ballot

The decision to use secret ballots at this year's session was arguably the most significant factor in the passage of country-specific resolutions on human rights violations.

The Sub-Commission first considered a secret ballot for the confidential procedure involving ECOSOC resolution 1503.³⁹ Resolution 1503 requests the Sub-Commission to review communications received by the United Nations alleging a consistent pattern of gross and reliably attested violations of human rights.⁴⁰ The Sub-Commission, in turn, delegated the first review

35. The Chernichenko/Treat working paper may be found in U.N. Doc. E/CN.4/Sub.2/1989/51 (1989). ECOSOC resolution 1503 establishes a confidential procedure for responding to "consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms." The Chernichenko/Treat working paper responded to a proposal on the subject of 1503 confidential procedure reform submitted by Eide and van Boven. The Chernichenko/Treat working paper rejected the use of confidential communications to prepare factual reports for review by the Commission. For a more detailed discussion of both proposals, see *infra* notes 54–58 and accompanying text. For further discussion of the 1503 procedure, see *infra*, notes 39–41 and accompanying text.

36. U.N. Doc. E/CN.4/Sub.2/1989/L.21/Rev.1 (1989).

37. Before the appointments of Chernichenko and Treat, John Carey (US) and Vsevolod Sofinsky (USSR) often participated in heated and hostile exchanges during previous sessions of the Sub-Commission. For further discussion of these incidents, see Rosen & Weissbrodt, *supra* note 1, at 494.

38. *Transcript of Press Conference, Aug. 22, 1989, given by members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, John Carey (Alternate, US), Stanislav Chernichenko (USSR), and William Treat (US).

39. The confidential procedure was created by ECOSOC in 1970. ECOSOC Res. 1503 (XLVIII), 48 U.N. ESCOR Supp. (No. 1A) at 8, U.N. Doc. E/4832/Add.1 (1970).

40. Sub-Commission resolution 1 (XXIV) stated that "communications shall only be admissible if . . . there are reasonable grounds to believe that they may reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of *apartheid* in any country, including colonial and other dependent countries and peoples." Sub-Comm'n Res. 1 (XXIV), U.N. Doc. E/CN.4/1070, at 50–51 (1971). The communications may originate from any person or group with direct and reliable knowledge of human rights violations, and who are acting in good faith without manifest political motivations contrary to the provisions of the UN Charter. The communications must also contain a "description of

of the tens of thousands of communications to a working group comprised of five Sub-Commission members.⁴¹ This Working Group meets in confidential session and reports its conclusions to the Sub-Commission.

In past years, Sub-Commission members met in private session to consider the findings of the Working Group and to decide which situations should receive further scrutiny by the Commission. This meeting is closed to the public and the results are confidential—principally to avoid embarrassing the government before a decision by the Commission, but also to encourage independent decisions and discussion by the Sub-Commission members. Despite the rule of confidentiality, however, many governments and others learn of the vote on 1503 decisions. Voting has traditionally been by voice or a show of hands, so Sub-Commission members usually know how their colleagues voted. Sub-Commission members had little assurance that their vote would remain confidential.

In an attempt to restore confidentiality and encourage independent decisionmaking, Treat (US) proposed secret ballot voting on situations under the 1503 procedure.⁴² The proposal for a secret ballot passed by a substantial margin.⁴³ The secret ballot was intended to allow members to vote without fear of political repercussions. For many members of the Sub-Commission, this procedural change relieved some of the pressure from governments. Many members of the Sub-Commission remarked that the new secret ballot contributed to an atmosphere of increased cooperation and consensus in decisionmaking.

facts and must indicate . . . the rights that have been violated." Anonymous communications, or communications which prejudice the functioning of UN specialized agencies, or which are abusive or insulting to the state against which the complaint is directed, or which are based solely on information disseminated by the mass media, are not admissible. Furthermore, communications are not accepted if domestic remedies have not been exhausted. The working group will also consider any replies from governments that it receives. In 1989, the Sub-Commission decided not to consider communications that had not given the government five months to respond. See *infra* note 63 and accompanying text.

41. The Sub-Commission's Working Group on Communications meets for a period of two weeks prior to the commencement of the Sub-Commission session in August-September each year. The working group considers communications received by the Secretary-General and has dealt with 350,000 complaints of human rights violations between 1972 and 1988, as well as several thousand replies from governments. UN Centre for Human Rights, Communications Procedures, Fact Sheet No. 7, at 6-7 (1989).

42. The Sub-Commission had to decide to suspend Rule 59 of the Rules of Procedure in order to vote by secret ballot. Sub-Comm'n Decision 1989/105. Rule 59 of the Rules of Procedure states that "[t]he commission shall normally vote by a show of hands . . . [or] roll-call" Rule 78 provides for suspension of the rules. Rules of Procedure of the Functional Commission of the Economic and Social Council, U.N. Doc. E/5975/Rev.1. Secret ballot voting had been considered by the Sub-Commission on a previous occasion, at the 36th session of the Sub-Commission in 1983. The Sub-Commission voted to delete the request for a secret ballot in a resolution submitted by Benjamin Whitaker (UK). Report of the 1983 Sub-Commission on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1983/43, at 109 (1983).

43. The resolution passed by a 15-5 vote with 4 abstentions.

Encouraged by the success of the secret ballot for the 1503 procedure, Louis Joinet (France) proposed a secret ballot⁴⁴ for consideration of all country-specific resolutions to be addressed in public session under Sub-Commission agenda item 6.⁴⁵ One of the principal reasons behind his proposal was to ease the enormous political pressure being exerted on members concerning a resolution critical of China—the most controversial resolution of the 1989 session. There were several rumors among the participants that representatives of the Chinese government were pressuring ambassadors of the experts' countries in Beijing, cautioning others that their votes would impact bilateral economic relations, and using other pressure tactics. Joinet's secret ballot proposal, however, was not immediately accepted by the members and sparked a heated procedural debate. Ordinarily, a proposal must be made twenty-four hours in advance of a vote on the proposal.⁴⁶ Difficulties arose because Joinet's proposal for a secret ballot was submitted less than twenty-four hours before consideration was to start on item 6.⁴⁷ A confusing debate ensued at the time Joinet's proposal was made and later that day when the Sub-Commission was scheduled to begin consideration on

44. Joinet's motion was to suspend Rule 59, as Treat had proposed earlier under the confidential procedure. See *supra* note 42.

45. Item 6 resolutions are considered pursuant to ECOSOC Res. 1235 (XLII), 42 U.N. ESCOR Supp. (No.1) at 17, U.N. Doc. E/4393 (1967). Resolution 1235 authorizes the Commission on Human Rights and the Sub-Commission to establish a separate agenda item "to give annual consideration to the item entitled 'Question of the violation of human rights and fundamental freedoms . . . ' . . . contained in the communications listed by the Secretary-General pursuant to Economic and Social Council resolution 728F" Resolution 1235 has served as the basis for an annual debate during which the Sub-Commission may discuss situations of human rights violations occurring in any country in the world. These public debates are often very lively, with the participation of nongovernmental organizations, governments, and Sub-Commission members. The Sub-Commission may then adopt resolutions expressing concern about human rights violations in a particular country. While resolution 1235 refers to the confidential communications listed under resolution 728F, the members of the Sub-Commission cannot really make use of them because of the confidentiality requirement. Furthermore, resolution 1235 does not provide for any independent analysis or consideration of the communications themselves.

46. Rule 52 of the Rules of Procedure states in part, "[u]nless the commission decides otherwise, proposals and substantive amendments shall be discussed or put to the vote no earlier than twenty-four hours after copies have been circulated to all members." Rules of Procedure of the Functional Commissions of the Economic and Social Council, U.N. Doc. E/5975/Rev.1 (1983).

47. Earlier in the session, the Sub-Commission had voted to consider country-specific resolutions under item 6 before other resolutions, in deference to a request made by several nongovernmental organizations having particular interest in the results. Joinet's proposal for a secret ballot on these resolutions was made hours before consideration on item 6 was scheduled to begin. Since the Rules required twenty-four hours before voting on the proposal in order for the secret ballot resolution to be successful, the Sub-Commission would have had to vote to delay voting on item 6 resolutions until the next morning. At that time, the Sub-Commission could vote on the secret ballot proposal before consideration on item 6 resolutions began. Consequently, without a vote to delay consideration, there would not have been a secret ballot.

item 6.⁴⁸ The members finally voted to delay consideration of item 6 until the following morning. This decision was crucial because the delay allowed the twenty-four hours required for Joinet's proposal to be considered.⁴⁹ In this way, members who voted to delay consideration on item 6 also essentially voted in favor of Joinet's secret ballot proposal. In fact, Joinet's proposal passed the following morning with an almost identical vote.⁵⁰

E. 1503 Confidential Procedure

Reform of the confidential 1503 procedure for addressing gross violations of human rights was once again a topic for discussion among several Sub-Commission members. At the 1989 session, two working papers which outlined proposals for reform were circulated among Sub-Commission members: one from Asbjørn Eide and Theo van Boven, the other from Stanislav Chernichenko (USSR) and William Treat (US).

The Sub-Commission presently has three areas of responsibility concerning gross violations of human rights. First, ECOSOC resolution 1503 (XLVIII) authorizes a confidential procedure for examining communications alleging gross human rights violations.⁵¹ Second, ECOSOC Resolution 1235 (XLII) authorizes the Commission on Human Rights and the Sub-Commission to establish a separate agenda item "to give annual consideration to the item entitled 'Question of the violation of human rights and fundamental freedoms'"⁵² This resolution provides for a public debate under agenda item 6 and participation from governments and nongovernmental organizations as well as Sub-Commission members. Third, Human Rights Com-

48. Several confusing votes were taken during the debate to decide the issue. At one point, members were asked to decide whether the Sub-Commission was competent to adopt a proposal to delay consideration on item 6 resolutions until the following morning, thereby allowing the twenty-four hour delay necessary for consideration of a secret ballot vote. The wording of the proposal was such that a "no" vote was required if members considered the Sub-Commission competent to consider the issue. For example, the vote was evidently so confusing that Miguel Alfonso Martinez (Cuba) voted to delay consideration of Joinet's proposal, although he had stated he was opposed to the secret ballot proposal and voted against it the next day.

49. See *supra* note 46.

50. The vote to postpone item 6 resolutions until 31 August, in order to vote on Joinet's secret ballot proposal, was 17 in favor, 3 against (Sadi Jordan), Bhandare (India), Chernichenko (USSR)), 3 abstentions, and 3 not present. The vote on Joinet's secret ballot proposal the following morning was 14 in favor, 6 against (Martinez (Cuba), Bhandare (India), and Chernichenko (USSR)), Diaconu (Romania), Ilkahanaf (Somalia), and Jin (China)), 3 abstentions, and 3 not present. Interestingly, the vote tally for the secret ballot was also similar to the final vote on the China resolution (15 in favor, 9 against), although since the vote was secret, there is no way to know how each member voted.

51. The confidential procedure was created by ECOSOC Res. 1503 in 1970. See *supra* notes 39–41 and accompanying text for further discussion of the 1503 procedure.

52. Comm'n Res. 42 U.N. ESCOR Supp. (No.1), U.N. Doc. E/4393, at 17 (1967).

mission resolution 8 (XXIII) entrusts the Sub-Commission with the responsibility of bringing any consistent pattern of human rights abuses to the attention of the Commission on Human Rights,⁵³ but this authority has not been pursued for many years.

The Eide/van Boven proposal focused on paragraph 2 of resolution 8 as a way of increasing the effectiveness of the Sub-Commission. This section requests factual reports to be prepared by the Sub-Commission and authorizes the use of "all available sources" in preparation of these reports. The reports should be submitted to the Commission for further consideration.⁵⁴ The Eide/van Boven proposal, first made during the 1988 session,⁵⁵ suggested that five Sub-Commission members form a sessional working group to prepare factual reports pursuant to paragraph 2 of resolution 8. The first part of the report would be an objective summary of information available to the Sub-Commission on human rights situations and practices. The second part would identify trends in violations of human rights and bring to the attention of the Commission particular situations which warranted its attention.⁵⁶ Significantly, Eide and van Boven contend that communications from the 1503 confidential procedure should be used to prepare these factual reports as authorized by the second paragraph of resolution 8.

The use of the confidential communications was the issue of concern to many Sub-Commission members. Treat (US) expressed his concern over the potential for "double jeopardy"—submitting a state for consideration under both the confidential 1503 procedure and in a factual report under the Eide/van Boven proposal. He later submitted a working paper on the subject with Chernichenko (USSR) which echoed these concerns. The Chernichenko/Treat paper contends that if factual reports were to be prepared under resolution 8, as Eide and van Boven suggest, confidential communications received under resolution 1503 should be excluded to avoid duplicating the work of the Commission or submitting a state to "double discussion."

The Eide/van Boven proposal received mixed reviews during both the 1988 and 1989 sessions. Some members expressed doubt about the authority of the Sub-Commission to create such a procedure. Others pointed out that resolution 8 was adopted prior to the creation of the 1503 confidential procedure, and therefore was perhaps no longer authoritative.⁵⁷ During the 1989 session, the authors responded to some of the criticism their proposal had received. They pointed out that the actions of the Commission and the

53. Comm'n Res. 8 (XXIII), U.N. Doc E/CN.4/940, at 131 (1967).

54. *Working Paper presented by Mr. Theo van Boven and Mr. Asbjørn Eide*, U.N. Doc. E/CN.4/Sub.2/1989/47, at 2-3 (1989).

55. *Working Paper presented by Mr. Theo van Boven and Mr. Asbjørn Eide*, U.N. Doc. E/CN.4/Sub.2/1988/43 (1988).

56. U.N. Doc. E/CN.4/Sub.2/1989/47, at 2-3 (1989).

57. *Summary Record of the 9th Meeting*, U.N. Doc E/CN.4/Sub.2/1988/SR.9, at 2, 4 (1988).

Sub-Commission have never indicated that ECOSOC resolution 1503 overtook ECOSOC resolution 1235 and related Commission resolution 8. Furthermore, the two procedures are reflected in the Sub-Commission agenda as two separate and distinct items. Finally, Eide and van Boven reminded the Sub-Commission that the creation of a new working group to prepare factual reports would be entirely consistent both with the creation of similar procedures in the past and with the character and duty of the Sub-Commission.⁵⁸

Despite such assurances, however, many Sub-Commission members remained unpersuaded by either the Eide/van Boven proposal or the Chernichenko/Treat working paper. The Sub-Commission finally decided to appoint an open-ended, sessional working group of five members to meet next year to review and consider proposals for change in its consideration of human rights violations under agenda item 6.⁵⁹

The Eide/van Boven proposal and the Chernichenko/Treat working paper are indications of growing dissatisfaction with the manner in which the Sub-Commission examines situations involving human rights violations. The confidential 1503 procedure is frequently and increasingly criticized. Many commentators consider the year-long process too slow and overly formalized.⁶⁰ The essential element of confidentiality is often compromised due to a small and often predictable voting group, as well as political pressures on Sub-Commission members. Since the decisions of the Sub-Commission on 1503 communications are topics of both curiosity and serious concern, any information about the decisions soon becomes common knowledge and may even appear in the newspapers.⁶¹

The 1503 procedure can also be quite limited in its effectiveness. Unlike the public 1235 procedure, which may create strong moral outrage and negative publicity for the country concerned, the 1503 procedure is useful only if the country responds to slow and deliberate political pressure from the United Nations. There has been recent concern that countries may even deliberately seek inclusion in the 1503 procedure to avoid public scrutiny.⁶²

Both the Eide/van Boven proposal and the Chernichenko/Treat working

58. U.N. Doc. E/CN.4/Sub.2/1989/47, at 2-3 (1989).

59. U.N. Doc. E/CN.4/Sub.2/1989/L.29 (1989).

60. See, e.g., the intervention made by Fatma Ksentini (Algeria), who called the current reporting process "cumbersome, bureaucratic, [and] unreliable." *Summary Record of the 3rd Meeting*, U.N. Doc. E/CN.4/Sub.2/1989/SR.3, at 5 (1989).

61. See, e.g., Guest, *Filibuster Trims Debate at UN Rights Session*, *Int'l Herald Tribune*, 8 March 1982, at 3, col. 1-4; Guest, *Human Rights Panel Decides Not to Place Iran on Its Blacklist*, *Int'l Herald Tribune*, 30 Sept. 1981.

62. Concern over this strategy was raised during the 1988 session when Iraq was included in the 1503 procedure, reportedly to avoid a public debate over the alleged use of chemical weapons against the Kurdish population of Iraq. This tactic was apparently employed by Argentina during the military dictatorship from 1976 to 1983. See Brennan, Brody & Weissbrodt, *supra* note 1, n.37 at 303.

paper implicitly recognize the shortcomings of the 1503 procedure in their attempt to create an improved procedure. The decision to create a working group to review these proposals is an indication that the Sub-Commission is seriously considering a future change in its methods.

One step already taken by the Sub-Commission at its 1989 session, however, will increase the cumbersome and time-consuming nature of the 1503 procedure. The Sub-Commission decided to postpone consideration of all complaints received by the Working Group on Communications on which governments had not had five months to respond.⁶³ In the future, therefore, complaints will have to be received by approximately the beginning of January or even mid-December of the previous year to be eligible for consideration at the Sub-Commission in August. As a result, 1503 complaints will be over one year old if they reach the Commission on Human Rights after being referred by the Sub-Commission. It is quite likely that such dated information will impede Commission deliberations under the 1503 procedure. The Sub-Commission's decision to prolong the 1503 procedure, if it is maintained, may aggravate the defects in the procedure and thus serve as another incentive for reforming ECOSOC resolution 1503.

III. COUNTRY-SPECIFIC SITUATIONS

With the newly approved secret ballot, the Sub-Commission proceeded to adopt resolutions on China, East Timor, El Salvador, Guatemala, Iran, the Israeli-occupied territories, and Lebanon. The Sub-Commission did not, however, pass resolutions on other grave human rights situations, such as those in Iraq and Tibet.

Decisions under agenda item 6⁶⁴ were dominated by the question of the People's Republic of China. Meeting just two months after the brutal suppression by Chinese troops of the student-led "pro-democracy" movement,⁶⁵ the Sub-Commission could hardly avoid the question. Yet, permanent members of the Security Council have never been subjected to a Sub-Com-

63. Sub-Comm'n Decision 1989/106; see also 43 ICJ Review 19, *supra* note 1, at 22 (1989).

64. Sub-Commission agenda item 6 is entitled "Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: Report of the Sub-Commission established under Commission on Human Rights resolution 8 (XXIII)."

65. According to Amnesty International, at least a thousand citizens were killed and several thousands injured when Chinese troops fired indiscriminately into crowds in Beijing between 3 June and 9 June 1989. Official reports state that several dozen soldiers were also killed and over 6,000 injured. See intervention made by Amnesty International, Summary and Arbitrary Executions: Violations of the Right to Life, delivered 16 Aug. 1989.

mission resolution for violations of human rights, and China lobbied hard to avoid a resolution at the 1989 session.⁶⁶

From the beginning of the debate NGOs applied a coordinated strategy.⁶⁷ The first speaker was Li Lu, a 23-year-old economics student on Beijing's "twenty-one most wanted" list who had been in Tiananmen square on 3-4 June 1989 and witnessed the onslaught of the troops.⁶⁸ The Chinese government observer left the room while Li spoke, later explaining that Li was "a criminal, wanted by the security organs of a member state of the UN" who should not be allowed to address UN bodies. The French member Louis Joinet retorted that if national definitions of "criminal" prevailed at the UN, Yasser Arafat never should have addressed the United Nations and Nelson Mandela would not be permitted to do so.

Subsequently, clusters of NGOs delivered interventions focusing on the situation of students, trade unions, the press, and the legal system in China. Finally, Niall MacDermot, Secretary-General of the International Commission of Jurists, delivered a closing speech on behalf of the NGOs summarizing the evidence the Sub-Commission had heard and calling for action.

As the debate continued, informal head-counts began to show that a resolution critical of China would succeed by a margin of several votes—as in other votes, four of the five Latin Americans (with the exception of Miguel Alfonso Martinez (Cuba)) were willing to join the six Western members together with enough African and Asian members to carry the day. Nevertheless, the government of China began to exert such enormous pressure on the experts and their governments that no one could be certain. Joinet's secret ballot proposal was designed to alleviate at least some of this pressure; many participants believed that a resolution on China would not have been possible without a secret ballot.⁶⁹

Passage of a resolution on China was also assisted by a text considerably

66. There have been General Assembly resolutions against permanent members of the Security Council. For example, the General Assembly requested that the USSR allow Soviet women married to foreigners to join their husbands in other countries. The USSR routinely denied such requests. G.A. Res. 285 (III) (1949). See Schwelb, *The International Court of Justice and the Human Rights Clauses of the Charter*, 66 AJIL 337, 341 (1972).

67. See, e.g., Joint Statement Concerning Gross Violations of Human Rights in China, made by the International Human Rights Law Group on behalf of itself and the Human Rights Advocates, The International Commission of Jurists, the International League for Human Rights, and the Procedural Aspects of International Law Institute, 16 Aug. 1989.

68. See Intervention by the Federation Internationale des Droits de L'Homme, 16 Aug. 1989. Li gave an eyewitness account of the events that took place in Tiananmen Square on 3-4 June 1989. His moving and dramatic testimony told of "soldiers fir[ing] a barrage of bullets into the innocent crowd, killing and wounding hundreds" and "tanks roll[ing] over our tents, crushing those who were still inside—students too sick and weak to retreat after a long period of hunger striking."

69. The secret ballot is also credited with helping to pass a resolution on East Timor, which had been defeated in recent years, and strengthening other resolutions concerning El Salvador and Guatemala.

weakened to attract votes. No longer did the draft refer to specific violations. It merely read that the Sub-Commission "[c]oncerned about the events which took place recently in China and about their consequences in the field of human rights: (1) Requests the Secretary-General to transmit to the Commission on Human Rights information provided by the government of China and by other reliable sources; (2) Makes an appeal for clemency, in particular in favor of persons deprived of their liberty as a result of the above-mentioned facts."⁷⁰

The secret ballot vote on the China resolution passed 15-9. China reacted strongly by calling the resolution "null and void" as an interference in its internal affairs.⁷¹ The Chinese Sub-Commission member, Tian Jin, also denounced the resolution, saying that China was acting within its sovereign rights in "suppressing a rebellion" and that Western countries were trying to "blacken China's name."⁷² Some commentators expressed concern that China will retaliate by leading an effort at the Commission to limit the role of the Sub-Commission in the future.

A strong resolution on El Salvador (12-7-5) expressed alarm at the intensification of death squad activities and "deep concern at the continuing increase" in human rights violations and urged the government and the guerrillas of the opposition group Frente Farabundo Martí para la Liberación Nacional-Frente Democrático Revolucionario (FMLN) to negotiate.⁷³ Weakening amendments by John Carey (Alternate, US) and Halima Embarek Warzazi (Morocco) were defeated in a 10-10-2 vote, while an amendment by Miguel Alfonso Martinez calling on the government to bring to justice the assassins of Archbishop Romero was adopted 12-7-4.

A resolution on East Timor⁷⁴ also passed (12-9-3), in contrast to last year's narrow vote to take no action.⁷⁵ The vote was a significant defeat for Indonesia, which had lobbied hard to avoid adoption of the resolution. The text stated that the Sub-Commission regretted the reported increase in executions and torture, took note of the Catholic bishop's call for a referendum, and requested the Indonesian government to allow human rights groups to visit East Timor.

The original draft resolution on Guatemala sponsored by four Sub-Commission members from Latin America (Leandro Despouy (Argentina), Héctor Fix-Zamudio (Alternate, Mexico), Eduardo Suescún Monroy (Alternate, Co-

70. U.N. Doc. E/CN.4/Sub.2/1989/L.31 (1989).

71. Statement by the Chinese Delegation on the Adoption of a Resolution Concerning China By The Sub-Commission on Prevention of Discrimination and Protection of Minorities at its 41st Session, delivered 31 Aug. 1989.

72. Lewis, *UN Panel Puts China on List of Human Rights Defendants*, New York Times, 1 Sept. 1989, at 8, col. 1.

73. U.N. Doc. E/CN.4/Sub.2/1989/L.37 (1989).

74. U.N. Doc. E/CN.4/Sub.2/1989/L.34 (1989).

75. The vote to take no action passed 10-9 with 5 abstentions. 1988 Report at 97-98.

lombia), and Luis Varela-Quirós (Costa Rica)) was quite mild, given the gravity of the situation in Guatemala.⁷⁶ A motion to take no action by Warzazi (Morocco) was defeated 9-12-2. Western members van Boven (Netherlands) and Eide (Norway) proposed amendments to include references to serious violations and to call on the government "to adopt concrete measures to improve the economic and social conditions of the indigenous people." Despouy, who was the primary sponsor of the resolution, agreed to the changes. Although Varela-Quirós objected to the changes, the secret ballot allowed easy passage (13-6-4).⁷⁷

The Sub-Commission (17-4-4) expressed "grave concern" at reports of a wave of summary executions and "deep concern" about other "grave human rights violations" in Iran, including torture, denial of justice, and repression of religion and expression.⁷⁸ The decisive vote contrasted with closer votes in previous sessions, and were attributable as much to the secret ballot as to a worsened situation in Iran. The Sub-Commission also expressed concern over the persecution of members of the Baha'i community and voted to amend the resolution accordingly (17-3-4).⁷⁹

The Sub-Commission reaffirmed that the Israeli occupation in the Palestinian and other Arab territories constituted a gross violation of human rights and a crime against the peace and security of humanity under international law (15-5-2).⁸⁰ It affirmed once again the right of the Palestinian people to resist the Israeli occupation and denounced the continued repression of the *intifada*. The resolution also supported the call to convene an international peace conference to include the Palestine Liberation Organization (PLO) in accordance with Security Council resolution 242.

The Sub-Commission adopted two resolutions on the situation in Lebanon. In the first, the Sub-Commission expressed concern (18-2-3) at the increase in violence and stressed that humanitarian aid should be allowed to reach all sectors of the population.⁸¹ It also recommended that the Commission consider Lebanon at its 46th session with particular attention to the foreign powers intervening in that situation. An amendment proposed by Fatma Ksentini (Algeria) to delete a reference to the role of "external powers" in the resolution was defeated by a close 11-12-1 vote.⁸²

76. See, e.g., intervention made by International Indian Treaty Council, which cited several instances of "massacres carried out by the military" against the people of Guatemala.

77. U.N. Doc. E/CN.4/Sub.2/1989/L.33 (1989).

78. U.N. Doc. E/CN.4/Sub.2/1989/L.38/Rev.1 (1989).

79. The amendment to the resolution on Iran read, "Concerned about reports about persecution and detention of members of the Baha'i community in the Islamic Republic of Iran." *Id.*

80. U.N. Doc. E/CN.4/Sub.2/1989/L.27 (1989).

81. U.N. Doc. E/CN.4/Sub.2/1989/L.36/Rev.1 (1989).

82. An earlier version of this resolution specifically requested Syria and Israel to end their military involvement in Lebanon. The revised draft contained no country-specific references. In addition, a separate draft resolution submitted by Claire Palley (UK), which

Lebanon was also the subject of a second resolution concerning hostages and detainees. The resolution, which was adopted under agenda item 9 (administration of justice and human rights of detainees), called for the immediate release of all hostages or detainees being held in Lebanon for any reason.⁸³

A resolution on South Africa was adopted without a vote.⁸⁴ The Sub-Commission reaffirmed that apartheid is a crime against humanity and demanded once again the immediate lifting of the state of emergency, immediate cessation of all acts of brutality by South African security forces, and the immediate release of all political prisoners. It urged the government of South Africa to lift the ban on antiapartheid organizations and reaffirmed the right of all persons to refuse service in military or police forces used to enforce apartheid. The resolution called upon the international community to assist the frontline governments to safeguard their independence and territorial integrity against aggression and destabilization pursued by South Africa. Further, the resolution urged all governments to provide assistance to the oppressed people of South Africa and Namibia. The resolution also denounced governments which continue to provide military assistance to South Africa—particularly Israel and Equatorial Guinea.

There was only one resolution under agenda item 6 which was put to a secret vote and defeated. The Sub-Commission considered a resolution on Iraq which criticized the forced resettling of its Kurdish minority, disappearances, executions, and the use of chemical weapons.⁸⁵ Representatives of the Iraqi government engaged in intense lobbying efforts to avoid passage of the resolution. Shortly before the vote, the members of the Sub-Commission received an invitation from an "Iraqi Human Rights Commission" to visit Iraq to investigate the charges. Even leaving aside the question of whether this previously unknown Commission was independent of the government (in which case it would have no standing to commit the government of Iraq), some members expressed concern that a government could avoid responsibility for human rights violations by inviting individual members (rather than the Sub-Commission *qua* Sub-Commission) for a visit to its territory without any of the procedures normally accompanying UN fact-finding visits. Indeed, at the 1989 session of the Commission on Human Rights, Romania had made just such a vague offer, only to withdraw it when presented with a list of procedures⁸⁶ which it would have had to accept. The Iraqi delegation confirmed that members would be free to visit as they

focused exclusively on Syria's role in Lebanon, was withdrawn by Palley before a vote could be taken.

83. U.N. Doc. E/CN.4/Sub.2/1989/L.20 (1989).

84. U.N. Doc. E/CN.4/Sub.2/1989/L.26 (1989).

85. U.N. Doc. E/CN.4/Sub.2/1989/L.32 (1989).

86. See, e.g., Model Rules of Procedure for U.N. Bodies Dealing With Violations of Human Rights, U.N. Doc. E/CN.4/102/Rev.1 (1970).

wished, and this assurance apparently impressed a majority of Sub-Commission members. A proposal to take no action by Waleed Sadi (Alternate, Jordan) passed by a vote of 14-10.

Since the session ended, members of the Sub-Commission have apparently not been permitted to visit Iraq, despite repeated requests. There is speculation as to when, whether, and under what conditions Iraq will actually permit visits by Sub-Commission members. Iraq should be the subject of more attention at the Sub-Commission and Commission if it fails to allow members to visit.

The Sub-Commission also did not take any action on the situation in Tibet. Although several of the Sub-Commission members expressed concern over the situation, many believed that a resolution on Tibet would hurt the chances for successful passage of the China resolution. Including Tibet in the China resolution was opposed by several NGOs which stressed that inclusion would be a tacit recognition of what many consider a Chinese occupation of Tibet. A further strategic consideration was to leave the subject for the Sub-Commission to address at its forty-second session in 1990. In any event, a resolution on Tibet was never formally submitted.⁸⁷

In all, the Sub-Commission considered nine resolutions with regard to country violations and adopted all but a single resolution on Iraq. Although the number of resolutions adopted did not vary dramatically from previous years,⁸⁸ use of the secret ballot eased political pressures and contributed to a general spirit of cooperation among the Sub-Commission members during this controversial phase of the Sub-Commission's work.

IV. STUDIES AND REPORTS

Due to the cooperative atmosphere of the session, a great deal of work was accomplished by the Sub-Commission, including the initiation of several new studies. Despite an overcrowded agenda and falling at least two days behind schedule at one point, a number of studies were also completed and sent to the Commission for further action.

A. Mazilu

Dumitru Mazilu was once again a subject of concern for the Sub-Commission. Mazilu, a former Sub-Commission member from Romania, was ex-

87. Several NGOs did make interventions on Tibet, however. A particularly dramatic intervention was made by a young Tibetan named Tsetan Ngodup Gonpa who staged a hunger strike during the session. He attracted the attention of several Sub-Commission members by spending the duration of his hunger strike in a tent pitched in front of the United Nations building in Geneva. He spoke to the Sub-Commission on the ninth day of his hunger strike about the plight of Tibetans.

88. The Sub-Commission adopted eight of ten resolutions on country situations in 1988. See Brennan, Brody & Weissbrodt, *supra* note 1, at 301.

pected to deliver his report on human rights and youth at the thirty-ninth session of the Sub-Commission in 1987. When he failed to appear there was speculation that the Romanian government was preventing him from attending.⁸⁹ Leandro Despouy, the outgoing chair of the 1987 Sub-Commission session, received a letter from Mazilu in April of that year confirming that he was being detained.⁹⁰ In 1988, the Sub-Commission reacted to Mazilu's absence by asking the UN Secretary-General to request assistance from the Romanian government in locating Mazilu and facilitating a visit to see him by a Sub-Commission member. The Sub-Commission also requested ECOSOC to solicit an advisory opinion from the International Court of Justice to determine the applicability of the Convention on the Privileges and Immunities of the United Nations.⁹¹ ECOSOC requested the ruling in May 1989 and the International Court of Justice rendered an opinion on 15 December 1989 that the Convention does apply to Mazilu.⁹²

At the 1989 session, the Secretariat received what appeared to be Mazilu's report on human rights and youth.⁹³ The report was apparently smuggled out of Romania sewn inside a courier's coat⁹⁴ and was extremely critical of the Romanian government. For example, Mazilu reports that "the Romanian people have seen themselves reduced to the cruellest poverty by rulers whose only 'merit' consists in lying with even greater shamelessness and subjecting human beings to tortures that even the most ferocious tyrants never imagined."⁹⁵ Not surprisingly, consideration of the report was strongly opposed by representatives of the Romanian delegation and the Romanian expert, Ion Diaconu, elected in 1988 to replace the absent Mazilu.⁹⁶ The Sub-Commission, citing concerns over objectivity, subject matter, and the

89. *Id.* at 298.

90. Letter from Dumitru Mazilu to the 1987 Chairman of the Sub-Commission (19 Apr. 1988).

91. Sub-Comm'n Res. 1988/37, U.N. Doc. E/CN.4/Sub.2/1988/45, at 64 (1988). ECOSOC Res. 1989/75 requested an advisory opinion on this subject from the International Court of Justice. See also Secretary-General's report to the Commission on Human Rights at its forty-fifth session U.N. Doc. E/CN.4/1989/69 (1989) and Commission Res. 1989/37 U.N. Doc. E/CN.4/1989/20 (1989).

92. ECOSOC is one of the UN organs authorized by the General Assembly to request advisory opinions from the International Court of Justice. G.A. Res. 89(I), U.N. Doc. A/64/Add.1, at 176 (1947). On 24 May 1989, ECOSOC requested an advisory opinion in regard to Mazilu's situation in ECOSOC Res. 1989/75, U.N. Doc. E/1989/INF/7, at 153 (1989). The International Court of Justice rendered its advisory opinion on 15 December 1989. Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, 1989 I.C.J. Communiqué No. 89/24 (15 Dec. 1989).

93. Mazilu's report on Human Rights and Youth is found in U.N. Doc. E/CN.4/Sub.2/1989/41 (1989). A supplement to his report, entitled "A special view on the Romanian case" may be found in U.N. Doc. E/CN.4/Sub.2/1989/41/Add.1 (1989).

94. There was some confusion over this report, since it was handwritten and at times almost incoherent. Additionally, the report was not dated or accompanied by a signature indicating that the report was authored by Mazilu.

95. U.N. Doc. E/CN.4/Sub.2/1989/41/Add.1 at 7 (1989).

96. Diaconu's statement to the Sub-Commission objected to the report on the grounds that it was "not objective" and "waged a political campaign against Romania."

appropriateness of discussing the report in Mazilu's absence, decided to take no action on Mazilu's report on youth.⁹⁷ The Sub-Commission did, however, express concern over Mazilu's safety, and expressly invited him to update and present his report at next year's Sub-Commission session.⁹⁸

Several months after the Sub-Commission session Dumitru Mazilu reappeared in Romania. In late December 1989, the former president Nicolae Ceausescu was arrested and summarily executed. Mazilu assumed the post of vice president in the new Romanian government.⁹⁹ The Sub-Commission can probably anticipate the return of Mazilu at the 1990 session.

B. New Initiatives

The Sub-Commission heard several preliminary reports this year, including reports on AIDS; the protection of minorities; the realization of economic, social, and cultural rights; and freedom of opinion and expression. The Sub-Commission also decided to initiate several new studies: compensation for victims of gross human rights violations; international peace and security; and human rights and the environment.

The Sub-Commission tackled the growing problem of AIDS and the dangers of discrimination and persecution that accompany this epidemic. Luis Varela-Quirós (Costa Rica) was appointed special rapporteur to study discrimination against persons with the HIV virus or AIDS.¹⁰⁰ Varela-Quirós presented his preliminary report on the feasibility of this study at the 1989 session.¹⁰¹ He reported that persons suffering from AIDS or who carry the HIV virus have been subject to discriminatory measures such as criminal penalties, isolation, quarantine, and ostracism.¹⁰² In light of these findings, the Sub-Commission asked Varela-Quirós to further examine how the rights of persons with AIDS are being affected by the problem of discrimination in consultation with governments and the World Health Organization.¹⁰³ Varela-Quirós is expected to present a preliminary report to the Sub-Commission at its forty-second session.

Claire Palley (UK) presented her initial findings on the protection of

97. The vote to take no action passed by a 11–4 vote, with one abstention. Previously, Diaconu had made a motion to withdraw Mazilu's report from consideration altogether, which was defeated with the vote to take no action.

98. U.N. Doc. E/CN.4/Sub.2/1989/L.58 (1989).

99. See, e.g., Schwartz, *Where Do We Begin*, Newsweek, 8 Jan. 1990, at 24.

100. U.N. Doc. E/CN.4/Sub.2/1989/L.4 (1989).

101. Varela-Quirós was asked to examine the methods by which a study on discrimination against persons with AIDS or HIV could be examined by the Sub-Commission in decision 1988/111. His report can be found in U.N. Doc. E/CN.4/Sub.2/1989/5 (1989).

102. U.N. Doc. E/CN.4/Sub.2/1989/5, at 3 (1989).

103. U.N. Doc. E/CN.4/Sub.2/1989/L.4 (1989).

minorities.¹⁰⁴ Palley was asked by the Sub-Commission at its fortieth session to prepare a working paper on "the possible ways and means to facilitate the peaceful and constructive resolution of situations involving racial, national, religious, and linguistic minorities."¹⁰⁵ In the past, the Sub-Commission has found this subject particularly problematic due to its complex and political nature. As a result, the Sub-Commission has generally avoided the question altogether.¹⁰⁶ The Sub-Commission decided in 1988, however, at least to consider the possibility of examining the protection of minorities. Palley's working paper on the subject recognized the inherent difficulties of a study on the protection of minorities, such as agreeing on a definition of "minority," but recommended that the Sub-Commission pursue the subject. Accordingly, the Sub-Commission created a new agenda item for the protection of minorities and appointed Asbjørn Eide (Norway) as special rapporteur.

The Sub-Commission's decision to examine this issue is an important step toward recognizing the long-neglected rights and needs of racial, ethnic, religious, and linguistic minorities. Eide suggested that better recognition of the problems of ethnic conflicts and protection of minorities could be achieved if the United Nations suspended attempts to establish definitions and, instead, redirected attention to issues of substance. He is expected to present his preliminary report on the subject in 1990 and a final report in 1991.¹⁰⁷

One of the studies that received the most attention at the forty-first session was a preliminary report on the realization of economic, social and cultural rights presented by Special Rapporteur Danilo Türk (Yugoslavia).¹⁰⁸ His report marked the first time the Sub-Commission has examined this broad and complex issue.¹⁰⁹ Türk's study reinforced the importance of these rights and

104. U.N. Doc. E/CN.4/Sub.2/1989/43 (1989).

105. Sub-Comm'n Res. 1988/36, 1988 Report at 63.

106. For a history of how the Sub-Commission has addressed the question of protection of minorities in the past, see Brennan, Brody & Weissbrodt, *supra* note 1, at 322-23; see also Humphrey, *supra* note 1.

107. U.N. Doc. E/CN.4/Sub.2/1989/L.53 (1989).

108. U.N. Doc. E/CN.4/Sub.2/1989/19 (1989).

109. Although the Commission has asked the Sub-Commission on several occasions to study this issue (see, e.g., Comm'n Res. 1985/42, U.N. Doc. E/CN.4/1985/66, at 85 (1985)), the Sub-Commission did not decide to initiate a study until 1988 (Sub-Comm'n Res. 1988/33, 1988 Report at 61.) The Sub-Commission had previously examined the related issue of the right to adequate food as a human right. Eide, *The New International Economic Order and the Promotion of Human Rights, Report on the right to adequate food as a human right*, U.N. Doc. E/CN.4/Sub.2/1987/23 (1987). The Sub-Commission subsequently adopted a resolution on the right to food. Sub-Comm'n Res. 1987/27, U.N. Doc. E/CN.4/Sub.2/1987/42 at 39 (1987). The resolution asked the Secretary-General to request all states to submit descriptions of any laws they had pertinent to the right to food, and for the Food and Agriculture Organization to provide all such information it had at its disposal. The Secretary-General submitted a brief report on this subject at the 1989 Sub-Commission session, stating that while the Food and Agriculture Organization had responded, no

called for steps to identify their core concepts, emphasizing the obligation of states to provide protection for these rights. The Sub-Commission asked Türk to prepare a progress report for presentation at the Sub-Commission's forty-second session in 1990.¹¹⁰

In addition to his preliminary report on the realization of economic, social, and cultural rights, Türk also prepared a comprehensive working paper on freedom of opinion and expression.¹¹¹ Türk stressed that these freedoms, as embodied in Article 19 of the Universal Declaration of Human Rights¹¹² and in Article 19 of the International Covenant on Civil and Political Rights,¹¹³ are human rights to be protected and respected, particularly since they frequently are prerequisites to the exercise of other human rights.¹¹⁴ Türk said that priority should be given to the political dimension of the right to freedom of opinion and expression, and therefore special attention will be paid to three areas: (1) legal regulation of limitations and restrictions constituting the actual implementation of the right to freedom of expression; (2) negative sanctions (particularly detention) affecting individuals who express their opinion; and (3) the question of measures (legislative, administrative, and others) which are to be taken to promote, safeguard, and strengthen the right to freedom of opinion and expression.¹¹⁵ At Türk's suggestion, the Sub-Commission appointed Türk and Louis Joinet (France) as joint rapporteurs to pursue the study of conceptual and methodological questions surrounding this subject in further detail.¹¹⁶ Joinet and Türk will present their study to the Sub-Commission at its forty-second session in 1990.

The subject of compensation for victims of gross violations of human rights was first addressed by the Sub-Commission at its fortieth session.¹¹⁷ At this year's session, the concept that victims of gross violations are entitled to restitution, compensation, and rehabilitation was advanced. The Sub-Commission asked Theo van Boven to prepare a preliminary report on the subject for presentation at its forty-second session in 1990.¹¹⁸

Other important initiatives by the Sub-Commission this year include the invitation to Murlidhar Bhandare (India) to prepare a working paper on the

replies from governments had been received. U.N. Doc. E/CN.4/Sub.2/1989/16, at 2 (1989).

110. U.N. Doc E/CN.4/Sub.2/1989/L.42 (1989).

111. U.N. Doc. E/CN.4/Sub.2/1989/26 (1989).

112. G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948) *adopted* 10 Dec. 1948.

113. G.A. Res. 2200 A (XXI) December 16, 1966, 21 U.N. GAOR, Supp. (No.16) at 52, U.N. Doc. A/6316 (1966) *entered into force* 23 March 1976.

114. For example, Türk stated, the right to development is only protected when the people participate in the formulation of agricultural policy. *Summary Record of the 5th Meeting*, E/CN.4/Sub.2/1989/SR.5, at 10 (1989).

115. See U.N. Press Release HR/2411, Aug. 9, 1989, at 2.

116. U.N. Doc. E/CN.4/Sub.2/1989/L.12 (1989).

117. Sub-Comm'n Res. 1988/11, *1988 Report* at 35-36.

118. U.N. Doc. E/CN.4/Sub.2/1989/L.9 (1989).

interrelationship between international peace and human rights, particularly the right to life and the right to development,¹¹⁹ and the invitation to Fatma Ksentini (Algeria) to examine the methods for a study on the relationship of human rights and the environment.¹²⁰ Both Bhandare and Ksentini are expected to present their initial findings at the forty-second session of the Sub-Commission.

C. Updated Studies

Several studies from previous years were discussed by the Sub-Commission this year, including several updated and final reports which were sent to the Commission for further action. Some of the most important studies conducted by the Sub-Commission related to elimination of religious intolerance, investment in South Africa, the elimination of racial discrimination, and states of emergency.

Theo van Boven (Netherlands) presented his study on religious intolerance at the 1989 session.¹²¹ This report was van Boven's third in three years on incidents and governmental actions¹²² which are inconsistent with the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.¹²³ His findings indicated that discrimination continues to occur despite international and national efforts to eliminate such practices. Van Boven discussed the idea of drafting a set of specific measures in the form of new international norms, but cautioned that a great deal of preliminary examination was required before this task could be attempted.¹²⁴ Van Boven also stated that he was unconvinced that the creation of a treaty on the subject would be helpful because of cumbersome reporting procedures and financial difficulties that frequently accompany such instruments. The Sub-Commission adopted a resolution which submits

119. U.N. Doc. E/CN.4/Sub.2/1989/L.22 (1989).

120. U.N. Doc. E/CN.4/Sub.2/1989/L.23 (1989).

121. Comm'n Res. 1986/20 appointed Theo van Boven as special rapporteur to examine incidents and governmental actions inconsistent with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, and to recommend remedial measures for such situations. Pursuant to that resolution, van Boven presented his first report to the Commission at its forty-third session. U.N. Doc. E/CN.4/1987/35 (1987). His mandate was extended for another year by Comm'n Res. 1987/15. Van Boven presented a second report to the Commission at its forty-fourth session U.N. Doc. E/CN.4/1988/45/Add.1 & Corr.1 (1988).

122. See also the report of the Secretary-General, also presented at the forty-first session of the Sub-Commission, which detailed information received from twenty-two governments and several organizations on religious intolerance. U.N. Doc. E/CN.4/Sub.2/1989/31 & Add.1 (1989). The Sub-Commission requested this report in Sub-Comm'n Res. 1987/33, U.N. Doc. E/CN.4/Sub.2/1987/42, at 49-50 (1987).

123. G.A. Res. 36/55, 36 U.N. GAOR, Supp. (No.51), U.N. Doc. A/36/51, at 171-72 (1981).

124. U.N. Doc. E/CN.4/1989/44, at 58 (1989).

van Boven's report and the summary records of debate to the Commission, along with a recommendation for a seminar on the link between religious intolerance and other human rights.¹²⁵ Since the Commission has been unable to decide whether to pursue a Convention on Religious Intolerance, it is likely that the Sub-Commission will be asked in the future to study this issue further.¹²⁶

An updated report on investment in South Africa was presented by Ahmed Khalifa (Egypt).¹²⁷ The report noted that since 1984 a number of large transnational corporations have sold their South African subsidiaries and affiliates or announced their intention to do so. There was evidence, however, that several of the companies maintain ties with the host country in licensing, thus defeating the purpose of disinvestment.¹²⁸ With regard to mechanisms of disinvestment, the report noted that investment withdrawals took several forms and could be broadly distinguished into three categories: (1) total shut-down of operations, including sales, representatives, offices, and subsidiaries; (2) reduction of ongoing investment, reduction of direct investment, and sale of ongoing operations to third parties or local management; and (3) placement of property in a trust.¹²⁹

Khalifa's report and the subsequent passage of a resolution condemning South Africa have become routine at the Sub-Commission each year. In view of the continuing policy of apartheid and the disappointing results of Khalifa's study, it may be time for the Sub-Commission to improve the effectiveness of Khalifa's mandate, for example, by informing corporations that they are under surveillance by the Sub-Commission for their investment in South Africa.

Asbjørn Eide, special rapporteur on the question of elimination of racial discrimination, referred to apartheid as the most critical and serious problem in the world today. He reported the results of attempts to combat apartheid and racial discrimination, and summarized worldwide UN activities during the Decades to Combat Racism.¹³⁰ He emphasized that apartheid itself

125. U.N. Doc. E/CN.4/Sub.2/1989/L.19 (1989).

126. This item has been on the agenda of the Sub-Commission for several years. Special Rapporteur Elizabeth Odio Benito (Costa Rica) presented her final report on the elimination of religious intolerance at the 1987 session of the Sub-Commission. U.N. Doc E/CN.4/Sub.2/1987/26 (1987). The Commission on Human Rights addressed this subject again during its 1989 session with the presentation of a report from Special Rapporteur Angelo Vidal D'Almeida Ribeiro (Portugal). See Brody & Weissbrodt, *Major Developments at the 1989 Session of the Commission on Human Rights*, *supra* note 6, at 605.

127. U.N. Doc. E/CN.4/Sub.2/1989/9 and Add.1 (1989). Some of Khalifa's previous reports may be found at U.N. Docs: E/CN.4/Sub.2/1988/6 & Add.1 & Corr. 1 (1989); E/CN.4/Sub.2/1987/8/Rev.1 & Add.1, Parts I & II (1987); E/CN.4/Sub.2/1985/8 & Add.1 & Add.2 (1985); E/CN.4/Sub.2/1984/8 & Add.1 & Add.2 (1984); E/CN.4/Sub.2/1983/6 & Add.1 & Add.2 (1983); E/CN.4/Sub.2/1982/10 (1982); E/CN.4/Sub.2/1981/469 (1981).

128. U.N. Doc. E/CN.4/Sub.2/1989/9, at 3 (1989).

129. *Id.* at 5.

130. U.N. Doc. E/CN.4/Sub.2/1989/8 & Add.1 (1989).

should be the main focus of attention, stating that reforms legislated by the South African minority government are cosmetic and not of substance. Racial categories, he noted, are the core of apartheid and any minor extensions of political rights have been granted along racial lines.

Eide advocated a three-pronged program of international action: (1) a much more rigorous application of sanctions; (2) adoption of a systematic policy of cooperation with antiapartheid groups; and (3) development of alternative contacts within the sporting, cultural, and economic fields, according to circumstances and specifications laid down by antiapartheid organizations.¹³¹

The final report on the Draft Declaration on the Right to Leave and Return by C.L.C. Mubanga-Chipoya, a former Sub-Commission member from Zambia, was discussed two years after it was scheduled.¹³² NGOs and some observer states noted that the right to leave a country is linked to the possibility of entering another country and that the prerogative of admitting a foreigner is that of the host state. Since the right to leave is meaningless without the right to enter, further elaboration of the draft declaration was suggested. Based on these and other comments, the Sub-Commission passed a resolution asking the Secretary-General to prepare an analytical compilation of comments on the declaration, and decided to establish a sessional working group at its forty-second session to revise the draft declaration.¹³³

Leandro Despouy (Argentina) presented his annual report on states which have proclaimed, extended, or terminated a state of emergency since 1 January 1985.¹³⁴ His 1989 report indicated at least twenty-five states of emergency existed during the last year.¹³⁵ In the past, Despouy's report has largely consisted of data received from governments and NGOs. Frequently this data indicates that a state of emergency has resulted in the suspension of constitutional and judicial guarantees in that country. Since implementation can significantly affect human rights, an analysis of this effect would be useful. Despouy stated that although he has been unable to do so in the

131. U.N. Doc. E/CN.4/Sub.2/1989/8/Add.1, at 2-4 (1989).

132. U.N. Doc. E/CN.4/Sub.2/1988/35 & Add.1 (1988). The Sub-Commission voted to consider Mubanga-Chipoya's report and the draft declaration at the forty-first session under a separate agenda item (item 16). Sub-Comm'n Res. 1988/39, *1988 Report* at 67.

133. U.N. Doc. E/CN.4/Sub.2/1989/L.30 (1989).

134. U.N. Doc. E/CN.4/Sub.2/1988/30 & Add.1 & Add.2/Rev.1 (1988). Despouy was appointed special rapporteur on states of emergency in 1985. ECOSOC Res. 1985/37. In addition to this year's report, Despouy has submitted reports on states of emergency in 1987 and 1988: E/CN.4/Sub.2/1987/19 & Rev.1 & Add.1 & Add.2 (1987); E/CN.4/Sub.2/1988/18 & Add.1 (1988).

135. E/CN.4/Sub.2/1989/30, at 5 (1989). Since November 1988, there have been states of emergency in twenty-five countries, including South Africa, Brunei Darussalam, China, Colombia, Peru, United Kingdom and Northern Ireland, Israeli-occupied territories, Turkey, Myanmar (formerly Burma), and USSR. *Id.* at 6-7. Eight states have also reportedly terminated their states of emergency: Argentina, Algeria, Chile, Haiti, Senegal, Sri Lanka, Venezuela, and Yugoslavia. *Id.* at 7-8.

past, he plans to include such an analysis in next year's report.¹³⁶ Despouy also plans to include some preliminary legal provisions for the protection of human rights that may serve as a model for states imposing a state of emergency.¹³⁷

The Sub-Commission addressed the independence of judges and lawyers again this year. In previous years, the Sub-Commission had examined this issue in light of a draft Universal Declaration on the Independence of the Judiciary which was prepared by Special Rapporteur and former Sub-Commission member L. M. Singhvi (India).¹³⁸ The 1989 Sub-Commission took up the issue with the participation of several NGOs which reported that 144 judges and lawyers in thirty-four countries have been harassed, detained, attacked, killed, or sanctioned from January 1988 to June 1989.¹³⁹ In response to this evidence, the Sub-Commission appointed Louis Joinet (France)¹⁴⁰ to prepare a working paper on "the means by which the Sub-Commission could assist in ensuring respect for the independence of the judiciary and the protection of practicing lawyers."¹⁴¹

Two studies were reserved for discussion at future sessions of the Sub-Commission. Although Halima Embarek Warzazi (Morocco) presented her report on the health of women and children,¹⁴² her mandate was extended two years in order to present a more complete analysis.¹⁴³ Louis Joinet (France) also presented his report on administrative detention,¹⁴⁴ but an overcrowded schedule did not allow for adequate consideration, and the Sub-Commission decided to defer the issue until 1990.¹⁴⁵

V. THE WORKING GROUP ON DETENTION

The Working Group on Detention¹⁴⁶ met for the first time since the General Assembly adopted the Body of Principles for the Protection of All Persons

136. *Id.* at 9. Despouy included a human rights analysis in one report this year concerning the state of emergency in South Africa. U.N. Doc. E/CN.4/Sub.2/1989/30/Add.1 (1989).

137. U.N. Doc. E/CN.4/Sub.2/1989/30, at 9–10 (1989).

138. U.N. Doc. E/CN.4/Sub.2/1988/20 (1988).

139. International Commission of Jurists Centre for the Independence of Judges & Lawyers, *The Harassment & Persecution of Judges & Lawyers, January 1988–June 1989* (1989).

140. Joinet is both a lawyer and a judge; he is *avocat general* at the *Cour de Cassation* and former Secretary-General of the *French Syndicat de la Magistrature*. See 43 ICJ Review 19, *supra* note 1, at 24–25 (1989).

141. U.N. Doc. E/CN.4/Sub.2/1989/L.13 (1989).

142. U.N. Doc. E/CN.4/Sub.2/1989/42 & Add.1 (1989).

143. U.N. Doc. E/CN.4/Sub.2/1989/L.25 (1989).

144. U.N. Doc. E/CN.4/Sub.2/1989/27 (1989).

145. U.N. Doc. E/CN.4/Sub.2/1989/L.68 (1989).

146. As with other working groups, the five members of the Working Group on Detention are nominated by the member's respective regional group. The members of the working group for 1989 were Miguel Alfonso Martinez (Cuba), chairman; Louis Joinet (France), rap-

Under Any Form of Detention or Imprisonment in December 1988.¹⁴⁷ The working group, which had first drafted the Principles, was again the source of important standard-setting work this year under the leadership of Chairman Miguel Alfonso Martinez (Cuba).¹⁴⁸

The working group began its 1989 session by taking up consideration of the draft Declaration on the Protection of All Persons From Enforced or Involuntary Disappearances.¹⁴⁹ The International Commission of Jurists submitted a draft declaration to the working group last year.¹⁵⁰ In 1988 the working group devoted several sessions to the draft, and the Sub-Commission sent it to governments, NGOs, the Working Group on Enforced or Involuntary Disappearances, and the UN Crime Branch in Vienna for their comments.¹⁵¹ On the basis of the comments received and taking into account the draft Inter-American Convention Against Enforced or Involuntary Disappearances, the ICJ, in cooperation with several NGOs, prepared a revised draft for consideration by this year's working group.

The working group spent three formal sessions in general debate over the draft declaration and seven informal sessions examining the draft revision article by article.¹⁵² The result of these working sessions was the tentative adoption by the informal group of a second revised version of the draft declaration with several articles still unfinished. In its final formal session, the working group asked its chairman, Alfonso Martinez, to prepare, without

porteur; Mary Concepción Bautista (Philippines); Danilo Türk (Yugoslavia); and Judith Sefi Attah (Nigeria). Other Sub-Commission members that participated in the working group were John Carey (Alternate, US), Ribot Hatano (Japan), Yozo Yokota (Alternate, Japan) and Cornelis Flinterman (Alternate, Netherlands). A number of NGOs also regularly attended the meetings. The final report of the working group can be found in U.N. Doc. E/CN.4/Sub.2/1989/29/Rev.1 (1989).

147. The Principles, which the Working Group first drafted, were adopted in G.A. Res. 43/173, 9 Dec. 1988. Resolutions and Decisions Adopted by the General Assembly During The First Part Of Its Forty-Third Session, Press Release GA/7814, at 584 (16 Jan. 1989).

148. Last year the working group decided to change the way in which it selects a chairman. The functions of chairman and rapporteur were separated for the first time, and it was decided that the rapporteur would become chairman the following year. Next year, Rapporteur Louis Joinet will become chairman. See Brennan, Brody & Weissbrodt, *supra* note 1, at 318.

149. U.N. Doc. E/CN.4/Sub.2/1989/WG.1/CRP.1 (1989).

150. See Brennan, Brody & Weissbrodt, *supra* note 1, at 318.

151. Nine governments submitted comments on the draft: Chad, Finland, Malawi, Netherlands, Portugal, Sweden, UK, and Uruguay. Several NGOs also submitted comments: Amnesty International, International Commission of Jurists, the International Confederation of Free Trade Unions, the International "Terre des Hommes" Federation, and the Regional Council on Human Rights in Asia. Others that commented on the draft include the Working Group on Enforced or Involuntary Disappearances, the UN Centre for Social Development and Humanitarian Affairs, some of the UN specialized agencies (see, e.g., World Health Organization and UNESCO), INTERPOL, and the Inter-American Commission on Human Rights.

152. The 1988 draft had contained eleven articles, but the 1989 draft contained nineteen. The original eleven articles had been expanded and revised; eight new articles had been added.

financial implications, a revised text for next year's working group so that the draft could be submitted to the Sub-Commission next year. Alfonso Martinez let it be known that he would delegate the task to Ribot Hatano (Japan) and Yozo Yokota (Alternate, Japan) since Yokota had chaired most of the informal sessions. Because of the importance of this item, the working group decided to give highest priority to the analysis of the revised draft at its next session.

The working group also considered two new initiatives, first proposed last year by Alfonso Martinez: the privatization of prisons and the execution of juvenile offenders. On the first issue, several NGOs expressed concern that the privatization of prisons could lead to a sacrifice of humane prison conditions in the interest of profits. Members of the Sub-Commission and NGOs such as Amnesty International also cautioned that privatization should not relieve a state of its responsibility to maintain and protect prisoners' rights. Interest in this subject led to a request by the Sub-Commission that Chairman Alfonso Martinez prepare a study of the issue for next Sub-Commission session.

Concerning the execution of youthful offenders, Amnesty International and Defense for Children International pointed out that capital punishment for persons committing crimes under age eighteen had occurred in Barbados, Iran, Iraq, Nigeria, Pakistan, and the United States in the 1980s. The United States was a subject of particular attention; several participants expressed regret over the recent US Supreme Court decision allowing the execution of minors.¹⁵³ William Treat (US) said that while he was undecided about the appropriateness of the death penalty in general, he did not agree with its application for minors under the age of eighteen. Although the Sub-Commission adopted a resolution requesting an end to this practice by consensus,¹⁵⁴ Louis Joinet (France) expressed concern that the Sub-Commission's specific consideration of juvenile executions may be misinterpreted as approval of the death penalty for adults. He suggested future consideration of capital punishment in general with juvenile executions as a subtopic.

In a separate resolution, the Sub-Commission also decided to study the application of international standards concerning the human rights of detained juveniles.¹⁵⁵ The Sub-Commission asked Mary Concepción Bautista (Philippines) to examine this issue with particular attention to juvenile offenders in penal institutions and to present her findings when the Sub-Commission returned to this issue at the next session.

153. *Compare* *Stanford v. Kentucky*, 109 S.Ct. 2969 (1989) (capital punishment on an individual for a crime committed at seventeen years of age does not constitute cruel and unusual punishment under the eighth amendment to the US Constitution) *with* *Thompson v. Oklahoma*, 108 S.Ct. 2687 (1988) (fifteen-year-old offender cannot be executed).

154. U.N. Doc. E/CN.4/Sub.2/1989/L.70 (1989).

155. U.N. Doc. E/CN.4/Sub.2/1989/L.69 (1989).

Last year, the working group asked Bautista to assess the impact of human rights violations on UN staff members, their families, and on the functioning of the UN system.¹⁵⁶ This issue gained considerable attention throughout the Sub-Commission session, due to the continued absence of Dumitru Mazilu¹⁵⁷ and a dramatic demonstration by UN staff members. Sub-Commission members leaving a session at lunch time were greeted by a large crowd holding placards and signs demanding increased protection for UN staff members and their families. The names of various staff members who had been kidnapped, injured, or killed were prominently displayed for Sub-Commission members to see.¹⁵⁸

Several Sub-Commission members remarked that they were very moved by the demonstration. Subsequently, the Sub-Commission adopted three resolutions concerning the protection of UN staff. One of these resolutions condemned the practice of hostage taking, with particular reference to UN staff members and the murder of the commander of the United Nations Truce Supervision Organization, Lt. Col. William R. Higgins.¹⁵⁹ Bautista presented her report on the protection of UN staff members,¹⁶⁰ and the Sub-Commission adopted a resolution which asked her to continue her study and submit an updated version at its forty-second session. The resolution also urges states to provide information on staff members that are missing, and to allow medical treatment for staff members requiring assistance as a result of detention.¹⁶¹ A third, related resolution calls for immediate and unconditional release of all hostages or detainees in Lebanon, where Lt. Col. Higgins was kidnapped and killed.¹⁶²

VI. WORKING GROUP ON INDIGENOUS POPULATIONS

The Working Group on Indigenous Peoples is one of three presessional working groups that meet prior to the commencement of the Sub-Commission session.¹⁶³ The Working Group on Indigenous Populations is the most well

156. Sub-Comm'n Res. 1988/9, 1988 Report at 43.

157. See *supra* notes 89–99 and accompanying text for a discussion of the Mazilu case.

158. A report submitted by the staff representatives of the United Nations secretariat to the Fifth Committee of the General Assembly in 1988 contained a list of twelve UN staff members who have died or are presumed to have died in detention in conditions that have never been clarified. Many other staff members remain missing. U.N. Doc. A/C.5/43/27 & Corr.1 (1988). The Secretary-General's report on this subject indicated that he had been unable to exercise fully his right of protection in sixty-five cases of arrest and detention of UN staff members. U.N. Doc. E/CN.4/1989/19, at 9 (1989).

159. U.N. Doc. E/CN.4/Sub.2/1989/L.20 (1989).

160. U.N. Doc. E/CN.4/Sub.2/1989/28 (1989).

161. U.N. Doc. E/CN.4/Sub.2/1989/L.67, at 3 (1989).

162. U.N. Doc. E/CN.4/Sub.2/1989/L.61 (1989).

163. The other two presessional working groups are the Working Group on Slavery, discussed below, and the Working Group on Communications, which deals with 1503 communications.

attended and dynamic of the three, with participation from indigenous peoples from all over the world. It is unique in that attendance and participation is open to any indigenous group or advocate, regardless of formal UN recognition of their status. It serves the useful function of providing a forum for representatives of indigenous peoples to speak about human rights violations directly to members of the working group and government observers.

The working group met for the seventh time 31 July to 4 August 1989. As in recent years, Erica-Irene Daes (Greece) assumed the position of chair-rapporteur, bringing her considerable experience and expertise to this year's session.¹⁶⁴ In contrast to the trend of previous years, attendance at this year's working group declined slightly from last year.¹⁶⁵ Despite this decline, however, the working group again spent the majority of its week listening to accounts of human rights violations of indigenous peoples, particularly from first-time participants in the working group. Less than two days of the session were devoted to standard-setting. Providing an opportunity for indigenous people to be heard presents a difficult dilemma for members of the working group. While, as Chairperson Daes observed, a "free and democratic forum" is encouraged, the relatively small amount of time allocated to standard-setting raises concerns about the efficiency and productivity of the working group.

The draft Universal Declaration on the Rights of Indigenous Peoples was once again the major subject of standard-setting. Preparation of this draft has been continuing for several years, and last year Daes presented a working paper with proposed principles for consideration.¹⁶⁶ The major principles of the draft contain provisions for: (1) recognition of both individual and collective rights for indigenous peoples, with a special emphasis on collective rights; (2) protection of the identity of indigenous peoples as manifested by their culture, language, and customs; and (3) introduction of some aspects of indigenous self-determination; and the reaffirmation of land and resource rights.¹⁶⁷

Governments and NGOs were asked to submit comments on the draft,

164. Other members of the working group are Miguel Alfonso Martinez (Cuba), Tian Jin (China), Danilo Türk (Yugoslavia), and Judith Attah (Nigeria). Attah was unable to attend this session for the second consecutive year and Christy Mbonu (Alternate, Nigeria) took her place.

165. Although over 300 participants attended this year's session, only 103 NGOs were represented at this year's session, as compared with 142 last year. *Report of the 1989 Working Group on Indigenous Populations*, U.N. Doc. E/CN.4/Sub.2/1989/36 (1989) [hereinafter 1989 Report on Indigenous Populations.]

166. See *A working paper by Mrs. Erica-Irene A. Daes containing a set of draft preambular paragraphs and principles for insertion into a universal declaration on indigenous rights*, U.N. Doc. E/CN.4/Sub.2/1988/25 (1988).

167. *Report of the Working Group on Indigenous Populations*, U.N. Doc. E/CN.4/Sub.2/1988/24, at 18 (1988) (description of the significant features of the proposed principles as outlined by Daes in her presentation of the draft). See Brennan, Brody & Weissbrodt, *supra* note 1, at 313.

and general remarks from the ten governments and nine NGOs that responded this year were positive. Many governments, however, expressed concern that the reference to indigenous "peoples," instead of "populations," may indicate a right to self-determination — aspects of which several governments find unacceptable.¹⁶⁸ Representatives of indigenous people argued strenuously for continued use of the term "peoples."¹⁶⁹ Other problems mentioned by several governments include the absence of a definition for the term "indigenous." Defining the term appears to be a reasonable suggestion, particularly since there are instances of dispute about its use,¹⁷⁰ but a universally applicable definition may be difficult to create considering the variety of peoples who consider themselves "indigenous."

Daes' revised version of the draft declaration, which she presented to the working group this year, remains generally unchanged from the first draft with a few changes.¹⁷¹ Although Daes stated that completion of the draft is the "most immediate task" of the working group, she also maintained that it is a "never-ending exercise."¹⁷² There are no present plans to send the draft to the Commission for review. More discussion is expected concerning self-determination, autonomy, and land resource rights. Also, indigenous representatives may need more time to prepare the Sub-Commission and Commission before submitting the draft declaration for their approval.

Another subject expected to receive considerable attention in the future is Miguel Alfonso Martinez' study on the significance of treaties related to indigenous peoples. In 1987 the Sub-Commission adopted the recommendation of the working group to appoint Martinez as special rapporteur on treaties.¹⁷³ The Commission on Human Rights, however, limited his mandate to preparation of an outline on the "possible purposes, scope, and sources of a study to be conducted on the potential utility of treaties. . . ."¹⁷⁴ In

168. See Analytical Compilation of observations and comments received pursuant to Sub-Commission resolution 1988/18, U.N. Doc. E/CN.4/Sub.2/1989/33/Add.1 (1989).

169. Representatives of indigenous people prefer the use of "peoples," as Daes uses in the draft Declaration, rather than "populations" because they maintain the term "peoples" is an affirmation of their separate and unique identity.

170. See, e.g., the statement made by the Japanese delegation on the subject of the Ainu people of Hokkaido. The Shimin Gaikou Center and Ainu Association of Hokkaido charged that the Ainu people were not recognized as an indigenous group and quoted Ambassador Kiyoshi Furukawa as saying that Japan was a "homogenous nation." The Japanese delegation explained that the Ainu is considered one of many ethnic groups which "mixed and formed the Japanese people over the long periods of history."

171. See *First revised text of the Draft Universal Declaration on Rights of Indigenous Peoples prepared by the Chairman/Rapporteur of the Working Group on Indigenous Population*, Erica-Irene Daes, pursuant to Sub-Commission resolution 1988/18, U.N. Doc. E/CN.4/Sub.2/1989/33 (1989). Daes stated that she refrained from making any substantive revisions of the draft due to the small number of replies she received from governments and indigenous peoples prior to the working group session. U.N. Doc. E/CN.4/Sub.2/1989/33, at 3 (1989).

172. U.N. Doc. E/CN.4/Sub.2/1989/33, at 4 (1989).

173. Sub-Comm'n Res. 1987/17, U.N. Doc. E/CN.4/Sub.2/1987/42, at 28–29 (1987).

174. Comm'n Res. 1988/56, U.N. Doc. E/CN.4/Sub.2/1988/88, at 126 (1988).

1989, ECOSOC finally adopted a second recommendation by the Sub-Commission¹⁷⁵ that a full study be authorized.¹⁷⁶

After presenting an outline of his study at the 1988 Sub-Commission session,¹⁷⁷ Martinez had little progress to report at the 1989 working group, cautioning participants that it was a task "not to be completed precipitously" and that it would be difficult to complete in the three years allocated. His study will examine the historical practice of negotiating treaties and the way in which the rights of indigenous peoples are affected.

A study on the conflicting land claims and relocation of the Hopi and Navajo of Arizona was completed by joint rapporteurs John Carey (US) and Chairperson Daes, albeit in a confusing and controversial manner.¹⁷⁸ Following visits by each rapporteur to Arizona, two separate and inconsistent reports were submitted on the subject.¹⁷⁹ Two draft resolutions were also submitted, one of which was later withdrawn. After several discussions, the two rapporteurs were able to agree on a resolution which discontinued the Sub-Commission's involvement in the issue and encouraged the parties to resolve the problem by themselves.¹⁸⁰

Another controversy arose over the International Labour Organization's (ILO) newly revised convention. In a rare move, a large number of indigenous and NGO participants walked out of the working group in a demonstration of disapproval when the ILO representative introduced the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (169) (revised Convention 107).¹⁸¹ In a statement on behalf of the Indigenous Preparatory Meeting, governments were urged not to ratify the convention and the Sub-Commission was asked to "condemn the racist revision."

Other matters discussed at the working group included the voluntary fund for indigenous people, which enabled thirty-seven participants to attend the working group by providing financial assistance for travel, food, and lodging expenses,¹⁸² and the appointment of Asbjørn Eide (Norway) and Christy Mbonu (Nigeria) to prepare a working paper on possible UN activities during the International Year for Indigenous Rights, expected to be held in 1993.¹⁸³

175. Sub-Comm'n Res. 1988/20, 1988 Report at 47.

176. ECOSOC Res. 1989/77, U.N. Doc. E/1989/INF/7, at 154 (1989).

177. See *Outline on the Study of Treaties, Agreements, and Other Constructive Arrangements Between States and Indigenous Populations*, U.N. Doc. E/CN.4/Sub.2/1988/24 & Add.1 (1988).

178. Carey and Daes were asked to examine this situation in 1988. Sub-Comm'n Decision 1988/105, 1988 Report at 70.

179. U.N. Doc. E/CN.4/Sub.2/1989/35, Parts I & II & Add.1 (1989).

180. U.N. Doc. E/CN.4/Sub.2/1989/47/Rev.1 (1989).

181. Convention 169 replaced Convention 107, The Indigenous and Tribal Peoples Convention. International Labour Conf. 76th Sess. Prov. Rec. 25 (1989).

182. 1989 Report on Indigenous Populations at 9 (1989).

183. U.N. Doc. E/CN.4/Sub.2/1989/L.46 (1989).

VII. WORKING GROUP ON CONTEMPORARY FORMS OF SLAVERY

The Working Group on Contemporary Forms of Slavery held its fourteenth session during the week prior to the 1989 Sub-Commission. The 1989 session of the working group was marked by renewed attention by members, NGOs, intergovernmental organizations (IGOs), and observer governments to the topic of slavery in all its modern forms. Historically, the sessions of the working group on slavery were poorly attended by both members and representatives of NGOs, and substantive work rarely came out of the committee. At its 1988 session, however, the working group was infused by new leadership and a new plan of action for conducting its work.¹⁸⁴

At the 1989 session, all five members of the working group were present,¹⁸⁵ as well as representatives from fourteen observer governments, one national liberation movement, four IGOs, and twenty-seven NGOs.¹⁸⁶ In addition to increased participation by these groups, the fourteenth session of the working group witnessed more public debate and discussion between the NGOs, IGOs, and observer governments. Indeed, both the minister of justice from Norway and a scientific representative from the Council of Europe made special appearances to discuss their work towards the prevention of sexual exploitation of children.¹⁸⁷ On a number of different occasions, representatives from the observer governments of Belgium, Ethiopia, India, Japan, Pakistan, the Philippines, and Venezuela exercised either their right of reply to allegations made by NGOs, or actively participated in the formulation of recommendations by the working group. Such exchanges between parties, providing the opportunity for substantive question and answer sessions, established a significant benchmark for the further work of the working group.

During the course of the session, it was decided that the chairmanship of the working group should rotate among the members in the future. The

184. See generally *Report of the Working Group on Contemporary Forms of Slavery on its Thirteenth Session*, U.N. Doc. E/CN.4/Sub.2/1988/32 (1988) (hereinafter *1988 Report of the Slavery Working Group*). For instance, Asbjørn Eide, a well-respected expert from Norway, was elected chair of the working group. The working group also set forth a three year plan whereby one primary issue related to contemporary forms of slavery is to be considered each year. See Brennan, Brody & Weissbrodt, *supra* note 1, at 316–18.

185. Members of the working group are: Mary Concepción Bautista (Philippines), Ion Diaconu (Romania), Asbjørn Eide (Norway), Fatma Ksentini (Algeria), and Luis Varela-Quiros (Costa Rica). The authors would like to correct a mistake made in the report of the 1988 session of the Sub-Commission. Brennan, Brody & Weissbrodt, *supra* note 1 at n.105, stated that Varela-Quiros only attended the last day of the working group. In fact, he participated in the 7th, 8th, 9th, 10th, and 11th meetings. Travel-related problems prevented him from attending earlier meetings. See *1988 Report of Slavery Working Group* at 3.

186. See generally *Report of the Working Group on Contemporary Forms of Slavery on its Fourteenth Session*, U.N. Doc. E/CN.4/Sub.2/1989/39 (1989) (hereinafter *1989 Report of the Slavery Working Group*).

187. *1989 Report of the Slavery Working Group* at 12–15.

rotation of the chairs may become a precedent for other working groups of the Sub-Commission. While the Bureau of the Sub-Commission routinely rotates from session to session, the leadership of the working groups have traditionally rested with one individual. The reasons cited for maintaining the same chairman-rapporteur from year to year include maintaining continuity as well as the ability of one well-respected, informed, and motivated person to guide the efforts of each working group. During the 1988 session of the Working Group on Detention, however, the long-standing chair, John Carey (Alternate, US) agreed to the principle of rotating the chair of the working group. In 1989 Carey was replaced by Miguel Alfonso Martinez (Cuba). Erica-Irene Daes (Greece) has led the Working Group on Indigenous Populations in its pathbreaking standardsetting work for the past several years. Asbjørn Eide (Norway) is widely believed to be responsible for changing and improving the slavery working group over the past two years, due to his expertise, devotion to the working group's program, and relationship with organizations concerned with contemporary forms of slavery. It is not known how a switch to a rotating chair system will affect the future work of the slavery working group.

The working group chose as its main theme for the 1989 session the prevention of sale of children, child prostitution, and child pornography as well as the compilation of concrete recommendations for the initiatives of the working group.¹⁸⁸ The working group asked the Sub-Commission to recommend to the Commission on Human Rights that a special rapporteur be appointed for a one-year period, to consider matters relating to the sale of children, child prostitution, and child pornography, including the problem of the adoption of children for commercial purposes.¹⁸⁹

The working group heard very disturbing testimony from representatives of the Ecumenical Coalition on Third World Tourism regarding the sexual exploitation of children for profit and its ties to international tourism in the Philippines, Sri Lanka, Thailand, and Taiwan. The horrible effects of forced prostitution on urban working and street children in the Philippines are also described in detail. Defense for Children International and the International Abolitionist Federation informed the group about the prevalence of the illegal sale of children for adoption both intercountry and across international borders. The International Save the Children Alliance presented a report prepared by its Norwegian and Swedish chapters on the sexual exploitation of children in developing countries, noting that this tragic phenomenon generally occurs against a backdrop of poverty, family breakup, discrimination against women and children, and a fundamental lack of respect for

188. 1989 *Report of the Slavery Working Group* at 6.

189. 1989 *Report of the Slavery Working Group* at 28. The Sub-Commission adopted the recommendation of the Working Group on Slavery to appoint a special rapporteur. U.N. Doc. E/CN.4/Sub.2/1989/L.63 (1989).

children's rights. The International Catholic Child Bureau presented information on the widespread use of child pornography and difficulty in policing this industry due to recent technological developments. Government observers, representatives of NGOs, and members of the working group were asked to prepare a set of recommendations for combatting practices related to the sale of children. By and large, these recommendations are reflected in the working group's draft Programme of Action.¹⁹⁰ The working group will distribute these recommendations to relevant governments, specialized agencies, and NGOs for comments, before examining the Programme at its next session.

Attendees at the working group on slavery also discussed portions of the draft Convention on the Rights of the Child, which was expected to be presented to the UN General Assembly in fall 1989.¹⁹¹ In particular, the Friends World Committee for Consultation addressed recruitment of children into military service. The Friends Committee asked that the working group urge the General Assembly to strengthen the protection afforded to children by Article 38 of the draft Convention on the Rights of the Child where the minimum age for participation in hostilities or recruitment into armed services was specified as fifteen.¹⁹²

At its 1990 session, the working group will consider the exploitation of child labor and debt bondage. It is expected that, among other items, this session will focus on the extensive abuse of child labor and debt bondage in India based upon studies conducted by the Anti-Slavery Society, as well as the practice of *restavek*, or domestic servitude, in Haiti raised by the Minnesota Lawyers International Human Rights Committee.

VIII. CONCLUSION

The Sub-Commission continues to be under scrutiny and there are a number of proposals for changing its nature and particularly its work on country situations. There are problems with the way the Sub-Commission is organized and selected. One difficulty is that the Sub-Commission has sought to study many different subjects. Each year the Sub-Commission adds new work and valuable studies to its agenda without completing enough of its past work. Commentators on last year's session suggested that the Sub-Commission use sessional working groups more effectively in order to complete the review

190. 1989 Report of the Slavery Working Group at 30-37.

191. The General Assembly adopted the Convention on 20 Nov. 1989. See U.N. Doc. A/44/736 (1989).

192. The General Assembly refused to raise the eligibility age for recruitment into armed forces. Article 38 of the Convention on the Rights of the Child states that the minimum draft age is fifteen. See U.N. Doc. A/44/736, at 5 (1989).

of older studies. This approach was followed to some extent at the 1989 session of the Sub-Commission and should be pursued more fully in the future. The sessional working groups should be allocated more time and resources. The first ten days of the Sub-Commission might be more effectively used by holding a larger number of working group sessions. If there are older studies which have not been making significant progress, they should be discontinued or transmitted to the Commission.

This article demonstrates that the Sub-Commission is performing useful work as to standard-setting in several areas, for example, the draft Universal Declaration on the Rights of Indigenous Peoples and the draft Declaration on the Protection of All Persons from Enforced or Involuntary Disappearances.

The innovative use of the secret ballot helped ease political pressures at the Sub-Commission and allowed members to take action on the human rights crisis in China. If continued at future sessions, the secret ballot could prove to be a useful way for the Sub-Commission to maintain its independent nature and more effectively address human rights violations in countries. As international tensions have diminished in some regions—particularly in Eastern Europe—it may become possible for the Sub-Commission to spend its time addressing more substantive human rights issues.