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## The 42nd Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

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## The 42nd Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

by Reed Brody, Maureen Convery, and David Weissbrodt

The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities began its forty-second session<sup>1</sup> on 6 August 1990 under unusual pressure; meeting four days after Iraq's invasion of Kuwait, it faced a tense world situation with an overcrowded agenda of studies and human rights violations in particular countries. In addition the Sub-Commission had to address criticism from some members of its parent body, the Commission

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1. The official report of the 42nd session is found in U.N. Doc. E/CN.4/Sub.2/1990/59 (1990) (hereinafter *1990 Report*). The United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities was established by the Commission on Human Rights in 1947 to make recommendations on issues related to discrimination and minorities. The scope of human rights issues considered by the Sub-Commission increased as the human rights issues considered by the Commission grew. The Sub-Commission helps the Commission develop international standards in many areas of human rights by producing reports, studies, and draft instruments on human rights. This article is adapted from one which appeared in 45 ICJ Rev. 15 (1990). The authors also wish to thank Leslie Anderson for her help on the section of this article dealing with the Working Group on Contemporary Forms of Slavery. For other analyses of the 1990 session see generally, Macpherson, *U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, 42nd Session*, Quaker United Nations Office, (1990); Zoller, *Reform, Independence and Expertise: Analysis of the 42nd Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 10 Hum. Rts. Monitor 3 (1990). For analyses of previous sessions of the Sub-Commission see generally, Maher & Weissbrodt, *The 41st Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 12 Hum. Rts. Q. 290 (1990); Brennan, Brody & Weissbrodt, *The 40th Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 11 Hum. Rts. Q. 295 (1989); Rosen & Weissbrodt, *The 39th Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 10 Hum. Rts. Q. 487 (1988). For other articles on the Sub-Commission see Maher & Weissbrodt, *supra*, at 290.

on Human Rights, who questioned Sub-Commission involvement in country situations.<sup>2</sup>

During the Sub-Commission session, human rights problems arose in several countries which were said to require immediate attention: the confrontation between the Mohawks and police in Canada, the conflict in Liberia, and Iraqi hostage-taking in Kuwait. In light of the Commission's criticism, Sub-Commission experts debated how to respond to the urgent situations. Some members argued that the credibility of the Sub-Commission was at stake and required the human rights body to take some action. At the other extreme, a small group maintained that the Sub-Commission should not get involved in any country-specific human rights situations, whether urgent or not.<sup>3</sup> A sessional working group had been authorized in 1989 and met in 1990 to study Sub-Commission action on situations in specific countries and examine ways to improve the Sub-Commission's review of human rights violations.<sup>4</sup>

Commission members concerned with the Sub-Commission's ability to consider the large number of pending studies also maintained that the Sub-Commission initiates too many studies which lack practical application. The extensive discussion of urgent situations and country violations made time for discussion of studies even more scarce this session.

This article will examine the activities of the 1990 session in light of the Commission's criticism. It will examine the Sub-Commission's response to urgent situations, the resolutions and decisions on country situations, and the studies and reports discussed during the session. Part I considers Commission criticism of increasing "politicization" in the Sub-Commission. This part focuses on the political pressures on Sub-Commission members and the decision to act on "urgent" human rights situations. Part II discusses the resolutions adopted on human rights violations in seven countries: Indonesia (East Timor), El Salvador, Guatemala, Iran, Iraq, Israel occupied Palestinian and other Arab territories, and South Africa. This part examines the Sub-Commission's vigorous response to human rights violations through these

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2. Comm'n Res. 1990/64, U.N. Doc. E/CN.4/1990/94, at 139 (1990) [hereinafter cited as *1990 Commission Report*]. Yimer (Ethiopia), the 1989 Sub-Commission chair, reiterated the Commission's criticism in an unusually candid opening speech for the 1990 session. At the 1990 session of the Commission on Human Rights delegates rebuked the Sub-Commission for exceeding its mandate as a body of experts and adopting resolutions on human rights violations in particular countries. The US ambassador maintained that the Sub-Commission was acting like a miniature Commission and should be instructed to stop adopting country-specific resolutions, which is the task of the Commission. See *Commission on Human Rights Summary Record of the 47th Meeting*, E/CN.4/1990/SR.47, at 10 (1990).
  3. "Country-specific" violations refer to human rights abuses in particular countries examined by the Sub-Commission under item 6 of its agenda and prompt resolutions directed at particular countries. See *infra* notes 18–65 and accompanying text.
  4. See *infra* notes 122–24 and accompanying text.

resolutions as well as two decisions taken on Iraq and two procedural resolutions facilitating action on human rights violations: that is, further institution of the secret ballot for resolutions on human rights violations in particular countries and improvements in the confidential procedure under Economic and Social Council (ECOSOC) resolution 1503. This part includes the countries scrutinized under the 1503 procedure and the five cases transmitted to the Commission.

Part III summarizes the Sub-Commission's substantive work on thematic human rights issues. This section reviews the studies and meetings of sessional working groups—paying special attention to the significant accomplishments of the 1990 session including: completion of the draft UN Declaration on the Protection of All Persons from Enforced or Involuntary Disappearances; completion of a study on Administrative Detention; proposals for four new studies on the environment, the independence of the judiciary and the protection of practicing lawyers, the right to a fair trial, and the question of the ownership and control of the cultural property of indigenous peoples; adoption of measures to combat racial discrimination and protect minorities; and a review of several on-going studies. Part IV will discuss the meetings of two pre-sessional working groups: the Working Group on Indigenous Populations and the Working Group on Contemporary Forms of Slavery. Part V will describe new initiatives including two new topics for study: human rights and extreme poverty, and *habeas corpus*.

## I. SUB-COMMISSION TREATMENT OF HUMAN RIGHTS SITUATIONS

In a special address to the Sub-Commission the chairperson of the Commission, Mrs. Purificación Quisumbing (Philippines), while praising many aspects of the Sub-Commission's work, highlighted the resolution on the Sub-Commission adopted by the Commission criticizing its subsidiary body.<sup>5</sup> She expressed concern that the Sub-Commission spends too much time in politicized debate. In particular, many Commission members believe the Sub-Commission adopts too many resolutions and decisions on human rights situations in specific countries.<sup>6</sup>

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5. See Comm'n Res. 1990/64, *1990 Commission Report* at 139. The Commission resolution asks the Sub-Commission to consider ways to avoid a proliferation of studies and to avoid duplicating the work of the Commission. The text of the Commission's resolution on the Sub-Commission does not differ significantly from previous years. See Comm'n Res. 1989/35, U.N. Doc. E/CN.4/1989/86, at 102 (1989). Her appearance, however, marked the first time the chair of the Commission attended the Sub-Commission, emphasizing both a recognition of the need for continuous dialogue as well as the serious nature of the Commission's scrutiny.

6. The representative of Cyprus observed that the critical remarks made about the Sub-Commission focused on the politicization of its work and the fact that it was becoming a forum for issues which would normally be discussed by government representatives rather than by independent experts. See *Commission on Human Rights Summary Record of the 48th Meeting*, E/CN.4/1990/SR.48 at 8 (1990).

Some Commission members argued that Sub-Commission activity on country situations should be curbed to avoid duplicating the work of the Commission.<sup>7</sup> This argument, however, overlooks the significant difference between the independent expert members of the Sub-Commission, and the government members of the Commission. The independence of Sub-Commission members facilitates the examination of violations in particular countries and is more likely to ensure objective evaluations of country situations.<sup>8</sup> The text of Sub-Commission resolutions can be more forthright than those adopted by the Commission.<sup>9</sup> Also, because the Commission only meets once a year in January-March, the Sub-Commission meeting provides the opportunity for mid-year scrutiny of evolving situations.

Some observers downplay the independence of the Sub-Commission, maintaining that debates and votes have become increasingly politicized. To be elected by the Commission, an expert must usually benefit from the active campaigning of her government. Although elected as individuals, Sub-Commission members exhibit varying degrees of independence from their governments.<sup>10</sup> The Commission in its 1990 resolution called upon states to nominate as members and alternates, persons meeting the criteria of independent experts. In an attempt to decrease political influence on voting, the Sub-Commission initiated use of a secret ballot for country resolutions in 1989, and in 1990 attempted to make that practice more permanent.<sup>11</sup>

In fact, the real motive for curbing Sub-Commission involvement in country situations may not be to avoid duplication of Commission efforts, but to eliminate one forum where country specific violations are discussed. This would please experts seeking to avoid criticism of their country or their country's friends. It became apparent in debates that some experts agreed with those in the Commission who would like to drop or severely limit the Sub-Commission's consideration of human rights violations in countries.<sup>12</sup>

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7. See *supra* note 2.

8. Votes on country resolutions in the Commission are more likely to reflect relations with a particular country than the human rights situation in the country.

9. See *infra* notes 45-47 and accompanying text.

10. See Brennan, Brody, & Weissbrodt, *supra* note 1, at 296.

11. See *infra* notes 19-28 and accompanying text.

12. See notes 45-46 and accompanying text. It was also apparent that several members wanted to halt NGO criticism of their countries. Criticism of NGOs began when Attah (Nigeria) questioned the accreditation of NGOs, criticizing NGOs for "taking in strays." At another point Yimer (Ethiopia) alleged that an unaccredited NGO was allowed to speak, although when the chair checked the NGO's accreditation, he found it in order. A third attack came from Warzazi (Morocco) who objected when information relating to human rights abuses in Morocco was presented under an item other than agenda item 6 (which is devoted to violations of human rights in any country of the world). Although the chair, in a departure from past practice, requested NGOs not to include the names of countries in statements under agenda items other than item 6, the following day speakers mentioned country names without incident.

A different proposal suggested compiling all the information on country situations into one report for the Commission.<sup>13</sup>

### A. Emergency Situations

In light of the Commission's criticism on country-specific action, the Sub-Commission's first challenge was how to deal with urgent human rights situations such as Iraq's invasion of Kuwait. Some experts believed that other situations also required immediate consideration: the dismissal of the Bhutto government in Pakistan, attacks on civilians in Liberia, and the confrontation between Mohawk Indians and the Canadian government. Other experts argued that the Sub-Commission lacked the necessary authority to act outside of an agenda item and without all the facts before it. Chair Danilo Türk (Yugoslavia) referred the matter to the Sub-Commission's bureau<sup>14</sup> which decided that urgent situations could be debated on an *ad hoc* basis, so long as members observed the rules of procedure.<sup>15</sup>

As a result, the Sub-Commission adopted a number of decisions including two on the situation in Iraq and Kuwait,<sup>16</sup> one requesting continuing updates on the Mohawks in Canada, and one on Israel's refusal to allow certain Palestinian experts to attend the NGO meeting on the question of Palestine taking place at the UN at the same time as the Sub-Commission session.<sup>17</sup>

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13. See Maher & Weissbrodt, *supra* note 1 at 302–03. Eide (Norway) and van Boven (Netherlands) presented a working paper in 1988 and again in 1989 proposing that the Sub-Commission prepare a two-part factual report on country-situations. The first part of the report would provide an objective summary of information on human rights situations and the second part would identify trends in violations and bring particular situations to the attention of the Commission. Some members expressed concern that an objective report would not identify human rights situations adequately but be a step backwards towards the time several years ago when members and NGOs were prohibited from naming countries during discussion of country specific human rights violations. See *infra* notes 121–23 and accompanying text.

14. As in most UN bodies, the bureau consists of the chair, three vice-chairs (who direct the session in the absence of the chair), and the rapporteur. Representing the five regional groups, the bureau meets to resolve procedural matters. This session the members of the bureau were Attah (Nigeria), Hatano (Japan), Treat (US), Chair Türk (Yugoslavia), and Rapporteur Saboia (Brazil).

15. *Summary Record of the 4th Meeting*, U.N. Doc. E/CN.4/Sub.2/1990/SR.4, at 2 (1990). The ruling rejected the argument advanced by a Sub-Commission member that urgent situations relating to violations of human rights in a particular country come under agenda item 6 (violations of human rights in any part of the world) and should be considered only during discussion of that item. See *infra* note 19.

16. See *infra* notes 40–41 and accompanying text.

17. Sub-Comm'n Decision 1990/110, *1990 Report* at 68.

## II. COUNTRY-SPECIFIC RESOLUTIONS AND NEW PROCEDURES

The Sub-Commission responded vigorously to country-specific violations of human rights. It began by instituting a secret ballot on all country-specific resolutions, thus reducing pressure on members during the voting. This facilitated the passage of every resolution tabled this session. The Sub-Commission adopted a resolution on Iraq, while similar efforts had failed in the previous two sessions. In addition, it adopted resolutions on six other countries: Indonesia (East Timor), El Salvador, Guatemala, Iran, Israel occupied Palestinian and other Arab territories, and South Africa.<sup>18</sup> Under the confidential 1503 procedure, the Sub-Commission eased requirements for receiving communications alleging human rights violations. It reportedly transmitted the cases of five countries charged with gross and systematic violations of human rights for consideration by the Commission.

### A. Secret Ballot

The Sub-Commission considers human rights violations in specific countries under one of two procedures: the public procedure established by ECOSOC resolution 1235<sup>19</sup> or the confidential procedure established by ECOSOC resolution 1503.<sup>20</sup> Before 1989, the Sub-Commission voted on country resolutions under both procedures by a show of hands or, when requested, by a roll-call vote. In the 1989 session members decided to use a secret ballot on all country-specific resolutions. First, members decided that the secret ballot would reinforce the confidentiality of the 1503 procedure and help secure independent voting. The Sub-Commission, concerned that pres-

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18. The Sub-Commission decided to discuss the situation in Lebanon at its next session. Sub-Comm'n Decision 1990/121, *1990 Report* at 71. A proposed resolution on Cambodia was withdrawn prior to voting after a report that UN negotiations produced an agreement for elections in the country.

19. The public procedure was created by ECOSOC in 1967. ECOSOC Res. 1235 (XLII), 42 U.N. ESCOR Supp. (No. 1) at 17, U.N. Doc. E/4393 (1967). The Commission requested that the Sub-Commission examine gross violations of human rights and fundamental freedoms and report on its findings. Although the Sub-Commission has never produced a written report, it began considering violations under an agenda item entitled "Questions 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." This subject has arisen under agenda item 6 at recent Sub-Commission sessions.

20. The confidential procedure was established 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). Under the 1503 procedure the Working Group on Communications reviews communications alleging violations for "a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms." Members of the working group vote on whether to forward a country suspected of gross violations for review by the full Sub-Commission.

sure from governments also threatened independent decisionmaking in the public procedure (particularly as to the 1989 resolution on China's Tiananmen Square crackdown), also voted to use a secret ballot on resolutions under the 1235 procedure.

The Sub-Commission's use of the secret ballot was opposed by some members of the Commission. They argued that by suspending rule 59 of the Rules of Procedure<sup>21</sup> (which provides for open voting) to permit the secret ballot, the Sub-Commission might be encouraged to undermine the rules of procedures<sup>22</sup> by suspending the rules year after year to use the secret ballot.<sup>23</sup>

Members of the Sub-Commission also were concerned that the secret ballot made it inappropriate for them to explain their votes.<sup>24</sup> At the 1989 session the Sub-Commission asked the UN Office of Legal Affairs to examine how the rule permitting explanation of a vote applied to a secret ballot. In an opinion presented this session, the legal office concluded that rule 60 does not prevent the use of the secret ballot<sup>25</sup> and advised the Sub-Commission that suspension of rule 59 for purposes of a secret ballot indicates that members may not explain their vote.

In the 1990 session many Sub-Commission members again expressed concern that independent voting would be strengthened by the secret balloting on country-specific resolutions.<sup>26</sup> Louis Joinet (France) proposed that rule 59 be suspended. Theodoor Cornelis van Boven (Netherlands) pointed

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21. *Rules of Procedure of the Functional Commissions of the Economic and Social Council*, U.N. Doc. E/5975/Rev.1, at 14 (1983) [hereinafter *Rules*].

22. See *Summary Record of the 48th Meeting*, E/CN.4/1990/SR.48, at 7 (1990); See also *Summary Record of the 49th Meeting*, E/CN.4/1990/SR.49, at 8, 14 (1990). The Nigerian delegate maintained that everything possible to protect the independence and integrity of Sub-Commission members should be done, taking care not to abuse the rules of procedure. The Ethiopian and Indonesian delegates opposed the Sub-Commission's use of the secret ballot.

23. Under rule 78 a rule of procedure may be temporarily suspended provided there has been twenty-four hours notice of the proposal for suspension. *Rules* at 19. Timely notice to suspend rule 59 was not an issue.

24. Rule 60 allows a member to make a brief statement to explain their vote before or after voting. *Rules* at 15. Members opposing the secret ballot argued that rule 60 gives members the right to explain her vote at all times and prevents the Sub-Commission from using a secret ballot.

25. The legal advisor cited rule 80 of the General Assembly which allows secrecy to be maintained by making an exception for the explanation of the vote when a secret ballot is used.

26. Some members asserted that the secret ballot enhanced the independence of experts and that this was particularly necessary during voting. Daes (Greece) recalled an expert twenty years ago who lost his post because he voted for a resolution on a Latin American country. Joinet (France) maintained that experts were already independent and thus the secret ballot did not serve to make them independent but, in light of the increasing number of sensitive matters before the Sub-Commission, to strengthen guarantees of independence. See *Summary Record of the 18th Meeting*, U.N. Doc. E/CN.4/Sub.2/1990/SR.18, at 9 (1990). Treat (US) proposed use of the secret ballot under the 1503 procedure. See *infra* note 66 and accompanying text.



out that a more enduring solution was necessary and that the Sub-Commission should not continue to suspend voting on an *ad hoc* basis. A resolution sponsored by William W. Treat (US) and van Boven (Netherlands) proposed that ECOSOC add a footnote to the rules of procedure which would permit the Sub-Commission in future sessions to vote on violations of human rights by secret ballot.<sup>27</sup> The resolution passed 20-2-2, with Miguel Alfonso Martínez (Cuba) and Tian Jin (China) dissenting, while Rajindar Sachar (India) and Fisseha Yimer (Ethiopia) abstained. The vote on Joinet's proposal to suspend rule 59 and permit the secret ballot at the 1990 session was carried 17-3-4 with Alfonso Martínez (Cuba), Tian Jin (China), and Yimer (Ethiopia) dissenting; Aidid Abdillahi Ilkahanaf (Somalia), Ahmed Khalil (alternate, Egypt), Christy Ezim Mbonu (Nigeria), and Sachar (India) abstaining; and Fatma Zohra Ksentini (Algeria) not participating.<sup>28</sup> It is significant that five of the members for Africa, where country-specific resolutions have encountered the most opposition, failed to support the secret ballot.

## B. Iraq

Several human rights organizations, including Amnesty International and the International Commission of Jurists, had for several years urged the passage of a resolution on Iraqi human rights abuses only to see resolutions defeated each time they were put to a vote. In 1988, after Iraq's widespread use of chemical weapons on its Kurdish population, strong Iraqi lobbying and Iran-Iraq peace talks blocked a resolution.<sup>29</sup> At last year's session an Iraqi government-sponsored NGO<sup>30</sup> invited experts, as individuals, to visit Iraq to assess the human rights situation. The invitation came on the eve of voting on a resolution citing torture, chemical weapons use, disappearances, and displacement of the Kurdish population in Iraq. A motion to take no action on the resolution was adopted by 14-10.<sup>31</sup>

The Sub-Commission learned that four members accepted the Iraqi invitation and apparently visited Iraq in May 1990. While most members believed that an invitation to the Sub-Commission should only be accepted if it were ensured that the visit would take place in accordance with the

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27. Alfonso Martínez (Cuba) proposed that a working group be established to draft a new set of rules of procedure, taking into account the distinct characteristics of the Sub-Commission as an expert body. The Sub-Commission postponed consideration of the proposal until next year. Sub-Comm'n Decision 1990/106, *1990 Report* at 67.

28. Sub-Comm'n Decision 1990/105, *1990 Report* at 67.

29. See Brennan, Brody & Weissbrodt, *supra* note 1, at 302.

30. The group calling itself the "Iraqi Human Rights Commission," had not been known prior to the invitation. See Maher & Weissbrodt, *supra* note 1, at 308.

31. *Id.*

standard UN fact-finding procedures, this invitation was extended to individual members.<sup>32</sup>

During the debate some members criticized the four experts, Alfonso Martínez (Cuba), El Hadji Guissé (Senegal), Ilkahanaf (Somalia), and Tian Jin (China) for making the trip without Sub-Commission approval. Both the newly-elected Guissé and Ilkahanaf stated during debate that they believed in accepting the invitation that they would find all their colleagues when they arrived in Baghdad.<sup>33</sup>

Members were most concerned with the absence of procedures necessary to insure objective fact-finding.<sup>34</sup> Standard UN procedures for fact-finding visits include, for example, freedom to travel throughout the country, access to prisons and other centers of detention, and the freedom to interview people in private, without fear of reprisal against the informant.<sup>35</sup> The Sub-Commission informally agreed to consider fact-finding procedures at the next session.

In a secret ballot (19-4-1), the Sub-Commission adopted a resolution on Iraq virtually identical to those defeated in previous years, except for additional paragraphs concerning abuses in occupied Kuwait.<sup>36</sup> Iraq's annexation of Kuwait in August 1990 created a political climate facilitating passage of the resolution—the first in regard to an Arab country in the history of the Sub-Commission. The resolution expressed concern for the situation of human rights and fundamental freedoms in Iraq, noting reliable reports of "mass extrajudicial executions, enforced or involuntary disappearances and arbitrary detention in Iraq" as well as the situation of displaced Kurds living in camps in northern Iraq, and the forced displacement of a part of the Shi'ite population in the south. The resolution urged the government to ensure full

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32. In the previous session of the Commission, Romania made a similar offer to Commission members but retracted the offer when presented with a list of standard procedures. See *id.*

33. Guisse and Ilkahanaf told the Sub-Commission a little about their visit. They met with the Ministers of Foreign Affairs, Justice, and Interior and went to northern Kurdish areas, including Halabja. According to Guissé, the authorities recognized that chemical weapons had been used against the town, but declined to respond when asked whether the town was at the time occupied by Iraqi Kurds or Iranian soldiers. Guisse offered a moving description of Halabja: "The village looked like a tar spot on a lake of milk. In other words, carbonized. It was totally destroyed. If there was any life in the village it was in the graveyard." See *Summary Record of the 17th Meeting*, U.N. Doc. E/CN.4/Sub.2/1990/SR.17, at 7–8. Guisse also visited Kurdish schools and villages but said they were not allowed to speak to opposition groups and heard only one side of the story.

34. Eide (Norway) said minimum requirements included an independent translator, the freedom to ask any questions to any person the factfinders want to interview, and the opportunity to visit any place they chose.

35. See generally, Weissbrodt and McCarthy, *Fact-Finding by International Nongovernmental Human Rights Organizations*, 22 Va. J. Int'l L. 7, 42–84 (1981); Vargas, *Visits on the Spot: The Experience of the Inter-American Commission on Human Rights*, in *International Law and Fact-Finding in the Field of Human Rights* 137–50 (B. Ramcharan ed. 1982).

36. Sub-Comm'n Res. 1990/13, *1990 Report* at 35.

respect for human rights and called urgently for the immediate release of all foreign nationals prevented from leaving Iraq and Kuwait. To underscore its concern about Iraq's violations, the Sub-Commission recommended that the Commission study the situation as well as consider appointing a special rapporteur.<sup>37</sup>

Despite the overwhelming support for a resolution prompted by Iraq's invasion of Kuwait, a division arose over a series of last-minute amendments, threatening agreement on a text.<sup>38</sup> The conflict began when Treat (US) proposed an amendment condemning Iraq's failure to protect diplomatic personnel and its use of foreign hostages as human shields in military areas. Ksentini (Algeria) followed with an amendment expressing concern that economic sanctions against Iraq may harm civilians if food and medicines were included.<sup>39</sup> Some members feared the changes would destroy agreement and urged the sponsors to withdraw their amendments without success. Only after Gilberto Vergne Saboia (Brazil) proposed that all amendments be considered together did the Sub-Commission succeed in defeating the proposed changes and adopting the resolution.

Earlier in the session a similar debate on the hostage situation and sanctions drove the Sub-Commission into an unusual closed session. After the closed session the chair reported that the Sub-Commission decided without a vote to appeal to the government of Iraq to facilitate the immediate departure of the nationals of third countries from Iraq and Kuwait.<sup>40</sup> In closed session, the Sub-Commission also decided without a vote to appeal to those participating in sanctions against Iraq not to prevent the delivery of necessary food and medicine.<sup>41</sup> Some members feared that Iraq would attempt to use

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37. Because the Commission appoints a special rapporteur only when it finds serious violations of human rights in a particular country, the appointment of a special rapporteur on Iraq would be a major step. The Commission currently has appointed a working group, special rapporteur, special representative, or expert on several countries: Afghanistan (special rapporteur), El Salvador (special rapporteur), Guatemala (expert), Haiti (expert), Iran (special representative), Romania (special rapporteur), and South Africa (working group). See Brody, Parker & Weissbrodt, *Major Developments in 1990 at the UN Commission on Human Rights*, 12 Hum. Rts. Q. 559 (1990).

38. The informal procedure for producing a resolution often includes a series of draft resolutions and informal consultations between members. During the debate Joinet (France) and van Boven (Netherlands) spoke of the time and extensive negotiations which were required to produce the text.

39. Some members opposing the amendment maintained that the embargo would not injure civilians because it allowed humanitarian aid.

40. Sub-Comm'n Decision 1990/108, *1990 Report* at 68. The decisions on Iraq were discussed in closed session or during private consultation among members of the bureau. The private meetings served two purposes. First, members escaped political pressure during voting. Second, the Sub-Commission protected the appearance of unity.

41. Sub-Comm'n Decision 1990/109, *1990 Report* at 68. Both Sub-Commission decisions 1990/108 and 1990/109 confirmed Security Council resolutions 664 and 661, respectively. The five members of the Sub-Commission from nations which are the permanent members of the Security Council reportedly received assurances from the sponsors of the two Sub-Commission decisions that the decisions were reaffirmations of the Security Council resolutions.

the two separate decisions to link the release of hostages to a softening of the economic embargo.<sup>42</sup> This same concern apparently prompted the tense debate which threatened to break the resolution on Iraq.

### C. Country Resolutions

Reports about the Indonesian government's violations of human rights in East Timor received considerable attention. Several Timorese citizens spoke for NGOs about continuing violations in East Timor, while Indonesia exercised its right of reply.<sup>43</sup> A memorandum circulated by the Indonesian government asserted that the human rights organization Asia Watch had visited East Timor—an assertion contradicted by the organization.<sup>44</sup> The Indonesian government lobbied hard against the resolution. Mbonu (Nigeria) maintained that because the Commission did not take up the issue of East Timor,<sup>45</sup> the Sub-Commission should not take any action. It was also argued that the draft resolution on East Timor duplicated the work of the Commission and was the kind of resolution which the Commission asked the Sub-Commission to avoid.<sup>46</sup> Other members defended the Sub-Commission's authority to act, noting that the independent nature of the Sub-Commission permitted a different view about decisions on human rights situations in particular countries.<sup>47</sup>

The resolution passed by a surprisingly easy margin of 14-9-1, in a secret ballot.<sup>48</sup> It requested Indonesian authorities to facilitate access to East Timor by international humanitarian and development organizations and appealed to all sides to exercise restraint in seeking a durable settlement of the conflict. The resolution recommended that the Commission consider the situation in East Timor at its January-March 1991 session.

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42. The Sub-Commission took care not to link the two decisions, delaying public reading of the decision on humanitarian aid until the discussion of economic, social, and cultural rights.

43. Several NGOs compared the Indonesian invasion and occupation of the island to the Iraqi invasion of Kuwait.

44. Joinet (France) pointed out that the Indonesian government's claim that representatives of nongovernmental organizations had been able to visit East Timor without restriction was not supported by information he received from some NGOs. *Summary of the Second Part of the 34th Meeting*, E/CN.4/Sub.2/1990/SR.34/Add.1, at 4 (1990).

45. See Sub-Comm'n Res. 1989/7, U.N. Doc. E/CN.4/Sub.2/1989/58, at 25 (1989) [hereinafter *1989 Report*]. The resolution asked the Commission to consider the situation in East Timor. The request serves only to bring the matter to the Commission's attention, indicating the seriousness with which the Sub-Commission viewed the violations in East Timor. See *supra* note 37 and accompanying text.

46. See *supra* note 44, at 5.

47. Daes (Greece) and van Boven (Netherlands) replied that the Sub-Commission has its own role to respond to human rights situations independent from the Commission.

48. Sub-Comm'n Res. 1990/15, *1990 Report* at 38.

The resolution on *El Salvador*, adopted without a vote,<sup>49</sup> differed slightly from last year's (which was adopted 12-7-5 in a secret ballot), reflecting the ongoing peace negotiations. The government and the Frente Farabundo Martí de la Liberación Nacional (FMLN) reportedly cooperated in drafting the resolution. The Sub-Commission expressed its support for an agreement between the government and the FMLN to accept a verification mission on human rights and offered its full cooperation to the Secretary-General to see that such a mission occurs at the earliest possible date. The resolution recommends that the special rapporteur on El Salvador, in his report to the General Assembly, place emphasis on both parties' compliance with their human rights commitments.<sup>50</sup>

The Sub-Commission expressed concern for the persistent increase in human rights violations committed for political reasons and urged the government to take all necessary measures to continue the investigation into the "foul murder" of the Rector and other staff of the Central American University, with a view to punishing the guilty parties. The resolution also apportioned responsibility for human rights violations to the FMLN, stating that the FMLN "has the capacity and the will to assume the commitment of respecting the attributes inherent in the human person."<sup>51</sup>

The Sub-Commission adopted a resolution on Guatemala, without a vote, which expressed its concern "about reports that serious violations of human rights, such as disappearances and extrajudicial executions, continue to occur . . .," as well as "about the situation of the indigenous population, whose human rights and fundamental freedoms are being seriously violated."<sup>52</sup> It pointed both to the persistence of abductions, threats, and killings of indigenous peasants and to the violation of their rights by forced participation in civil defense patrols and by forcible recruitment into the army. The Sub-Commission also noted "serious shortcomings in the economic, social, and cultural rights, which particularly affect the majority indigenous population."<sup>53</sup>

The resolution introduced new elements to country-specific scrutiny, making requests of the Guatemalan government which have not appeared in previous resolutions. First, it calls on the Guatemalan government to make serious efforts "to create the conditions that will enable [refugees] to return to their places of origin, with full guarantees of their security and respect

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49. Sub-Comm'n Res. 1990/14, *1990 Report* at 36.

50. The resolution refers to the agreement signed by the parties on 26 July 1990.

51. Sub-Comm'n Res. 1990/14, *1990 Report* at 36. The idea of attributing responsibility for human rights to non-state parties reflects a shift from the position that only state-parties can be held accountable for violations of human rights. See generally, Weissbrodt, *The Role of International Organizations in the Implementation of Human Rights and Humanitarian Law in Situations of Armed Conflict*, 21 Vand. J. Transnat'l L. 313 (1988).

52. Sub-Comm'n Res. 1990/11, *1990 Report* at 31.

53. *Id.*

for the exercise of their human rights." Second, it stressed the need to provide assistance in the field of human rights not only to the government, but also to Guatemalan NGOs. According to Guatemalan opposition groups, the most important characteristic of this resolution is that for the first time it "goes beyond the purely humanitarian grounds to deal directly with political matters."<sup>54</sup> The Sub-Commission has attached a great deal of importance to the Oslo peace process in both the preambular and operative paragraphs.<sup>55</sup>

The resolution on Iran was adopted 14-4-4 in a secret ballot and showed a diplomatic softening from last year's text, mixing words of encouragement with the pointed criticism characteristic of prior resolutions on Iran. The Sub-Commission expressed deep concern for grave violations of human rights in Iran, noting continued reports of illegal arrests and executions. While it welcomed the government's decision to invite the Commission's special representative, Mr. Galindo Pohl, to visit the country, the Sub-Commission expressed regret that serious obstacles had been placed in the way of persons seeking to provide information to the special representative on violations of human rights. A new addition to the resolution referring to reports of violations of women's rights was accepted after considerable debate.<sup>56</sup>

During the discussion on Iran it was evident that the secret ballot could not eliminate entirely the political pressures affecting members' voting. Mary Concepción Bautista (Philippines), a co-sponsor, withdrew her support for the resolution just before voting began. Bautista explained that Iraq's invasion had left hundreds of thousands of Philippine workers stranded in Kuwait and she could not support a resolution against Iran after Iran offered to assist the workers. In response, the chair reminded members that the explanation of votes may undermine the secret ballot<sup>57</sup> and that members should not directly or indirectly reveal their votes. Despite frequent warnings, several members continued to make indirect explanations prior to voting.

In a separate resolution, the Sub-Commission paid tribute to Professor

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54. Statement by the Representación Unitaria de la Oposición Guatemalteca.

55. The National Reconciliation Commission sponsored talks between various sectors of Guatemalan society and the Guatemalan National Revolutionary Unity (URNG) which in March 1990 produced the Oslo agreement. The agreement's objective was to achieve a political solution to the armed conflict. See Sub-Comm'n Res. 1990/11, *1990 Report* at 31.

56. Palley (UK) noted many reports of women arrested for failing to wear veils and punished by whipping. She wanted the resolution to include a reference to the treatment of women as second-class citizens. Several members objected to the criticism of the practice regarding women's clothing as culturally biased. Guissé (Senegal) warned that the Sub-Commission should be careful in speaking of religious practices and the reference to clothing was deleted. *Summary Record of the First Part of the 34th Meeting*, U.N. Doc. E/CN.4/Sub.2/1990/SR.34, at 4-5 (1990).

57. See *supra* note 25 and accompanying text.

Rajavi, an Iranian exile leader assassinated in Switzerland in April 1990.<sup>58</sup> The resolution avoids accusing Iran of the killing but calls on the special representative on the situation of human rights in Iran to include information on the assassination in his next report.<sup>59</sup>

A growing impatience with Israel's occupation and its persistent refusal to apply the Fourth Geneva Convention was reflected in the resolution adopted by an 18-1-4 vote in secret ballot.<sup>60</sup> The resolution reaffirmed the applicability of the Fourth Geneva Convention and the rights of the Palestinian people to resist the Israeli occupation. It also declared numerous acts perpetrated by the Israeli occupation authorities as grave violations of international law including "bringing great numbers of Jewish immigrants from all over the world and settling them in the occupied territories."<sup>61</sup> The Sub-Commission repeated the call it made last year for an international peace conference on the Middle East and requested the Secretary-General to provide the Sub-Commission at its next session with an updated list of reports on the occupied Arab territories.

In a rare display of Sub-Commission unity on South Africa, members unanimously adopted a resolution condemning the continuing arrest, torture, and killings of peaceful demonstrators and strikers and strongly urging the international community to maintain international pressure against the government in Pretoria.<sup>62</sup> The resolution differed from the text adopted in previous years, recognizing some positive steps taken by the government which resulted, *inter alia*, in the unbanning of the African National Congress, the release of Nelson Mandela and some political prisoners, and the partial lifting of the state of emergency. The resolution called on the government to take additional measures including the unconditional release of all political prisoners and detainees and the removal of all troops from the townships. The Sub-Commission appealed to the government not to proceed with the execution of several opponents of apartheid, including the "Upton Fourteen." The resolution urged those governments that had recently established or were contemplating the establishment of diplomatic relations and economic ties with South Africa to reconsider their decision.<sup>63</sup>

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58. Sub-Comm'n Res. 1990/8, 1990 Report at 26.

59. *Id.* at 27.

60. Sub-Comm'n Res. 1990/12, 1990 Report at 32. While the text of the resolution closely resembles last year's resolution, last year's vote of 15-5-2 showed that Israel lost several supporters this session.

61. *Id.* at 33. See *infra* note 99 and accompanying text discussing a resolution this session putting population transfer on next year's agenda.

62. Sub-Comm'n Res. 1990/10, 1990 Report at 28.

63. During debate Mbonu (Nigeria) protested what she called Hungary's "flirtation" with the apartheid regime of South Africa, arguing that the East European countries now savoring their own freedom should not deny the same freedom to the black majority of South Africans by supporting the government. *Summary Record of the 12th Meeting*, U.N. Doc. E/CN.4/Sub.2/1990/SR.12, at 4 (1990).

In a second resolution on South Africa<sup>64</sup> the Sub-Commission called on all governments to maintain sanctions against South Africa until the apartheid system is totally dismantled. The Sub-Commission requested that the Secretary-General contact the government of South Africa to arrange a visit by Ahmed Khalifa (Egypt), the Sub-Commission's special rapporteur monitoring foreign aid to South Africa.

While the secret ballot facilitated passage of eight country-specific resolutions, some NGOs expressed disappointment that so few resolutions came before the Sub-Commission. Each country resolution adopted at the 1990 session (East Timor, El Salvador, Guatemala, Iran, Iraq, Israel occupied Palestinian and other Arab territories, and South Africa), with the exception of Iraq, was the subject of a resolution in 1989. Notably, no resolution was introduced on Sri Lanka or Tibet.<sup>65</sup>

#### D. 1503 Procedure

As with country resolutions under the public procedure, the Sub-Commission used the secret ballot to facilitate voting on country resolutions under the confidential 1503 procedure.<sup>66</sup> The Sub-Commission reportedly considered fourteen countries recommended by its Working Group on Communications.<sup>67</sup> The International Service for Human Rights also reported that the Sub-Commission forwarded five cases for consideration by the Commission: Chad, Myanmar, Somalia, Sudan, and Zaire.<sup>68</sup>

The Sub-Commission facilitated the procedure for considering future 1503 communications by reducing the deadline for their receipt from five

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64. Under a separate agenda item the Sub-Commission reviews an annual report on transnational corporations and other organizations with investments or providing assistance to South Africa. See Sub-Comm'n Res. 1990/3, *1990 Report* at 22.

65. Although concern for the situation in Tibet arose in the 1988 and 1989 sessions, the Sub-Commission failed to introduce a resolution both times. See Maher & Weissbrodt, *supra* note 1, at 309, see also Brennan, Brody & Weissbrodt, *supra* note 1, at 302. One observer reported that in the 1990 session members agreed not to introduce a resolution on Tibet in exchange for China's agreement not to oppose the resolution on Iraq.

66. Sub-Comm'n Decision 1990/111, *1990 Report* at 67. Although members vote in closed session on country resolutions under 1503, information on voting is often available; thus the secret ballot helps ensure that confidentiality and independent voting are maintained.

67. The International Service for Human Rights reported that the Sub-Commission received the following cases from the working group: Bahrain, Brazil, Chad, Colombia, Guatemala, Mauritania, Myanmar (formerly Burma), Peru, Singapore, Somalia, Sudan, Syria, Turkey, and Zaire to the Sub-Commission. Zoller, *supra* note 1, at 11. Under 1503 the Sub-Commission has three courses of action: it can vote to end consideration of a country; to hold the matter until the next year, giving the country an opportunity to improve the situation; or to transmit a country situation to the Commission for further consideration. Members of this year's working group were: Heller (Mexico), Ramishvili (alternate, USSR), Tian Jin (China), van Boven (Netherlands), and Yimer (Ethiopia).

68. *Id.*



months to twelve weeks prior to the working group's meeting.<sup>69</sup> In 1989 the Sub-Commission had given governments five months to respond.<sup>70</sup> The 1989–90 deadline had meant that many communications were over a year old by the time they were considered by the Commission in March of the following year. The Sub-Commission this session decided that this rule unnecessarily delayed consideration of serious violations and instituted the twelve week minimum. Assuming the working group for next year will meet beginning July 22, 1991, the new date for receipt of communications is 29 April 1991.

### III. DRAFT DECLARATION ON DISAPPEARANCES AND REVIEW OF STUDIES

The Sub-Commission uses the expertise of its members to produce studies on a wide range of human rights issues and initiates draft international human rights standards. At its 1990 session the Sub-Commission completed a significant norm-setting project by adopting a draft Declaration on the Protection of All Persons from Enforced or Involuntary Disappearances. The Sub-Commission also completed consideration of a study on administrative detention and considered several other studies including three preliminary reports on new studies. The Sub-Commission uses working groups which meet during the session to facilitate work in specific areas. Three working groups met during the session: the Working Group on Detention which has met every year since the mid-1970s; a new working group drafting a declaration on the right to leave and return; and a revived working group examining the organization of work of the Sub-Commission.<sup>71</sup>

#### A. Draft Declaration on Disappearances

The Sub-Commission adopted a draft Declaration on the Protection of All Persons from Enforced or Involuntary Disappearances and transmitted it to

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69. Until 1989 the working group in theory considered all communications dated on or before June 30th of the year the working group met. See generally, Newman & Weissbrodt, *International Human Rights, Law, Policy, and Process* 120 (1990).

70. Sub-Comm'n Decision 1989/102, *1989 Report* at 69 (1989). Under the 1989 rule communications had to be submitted by late February of the year in which they were to be considered.

71. Two working groups meet in public every year prior to the full session and produce a report for the Sub-Commission: the Working Group on Indigenous Populations and the Working Group on Contemporary Forms of Slavery. See *infra* notes 124–134 and accompanying text. A third Working Group on Communications reviews communications received under the 1503 procedure and decides whether to recommend a country for consideration by the Sub-Commission. See *supra* note 67 and accompanying text.

the Commission on Human Rights for its consideration, with the recommendation that it be endorsed and transmitted to the Economic and Social Council and the General Assembly for final adoption. The Sub-Commission began working in 1986 on a preliminary draft declaration prepared by Joinet (France) together with several NGOs.<sup>72</sup> The Sub-Commission's Working Group on Detention considered the preliminary draft in 1988 and a revised draft in 1989.<sup>73</sup> After several meetings this session, the working group approved the final draft.

The twenty-two article draft not only prohibits disappearances but sets forth various measures which states should take to ensure that disappearances do not occur, or, if they do occur, which measures should be taken to investigate and punish them. Among its key points are: the "systematized" practice of enforced or involuntary disappearance is characterized as "a crime against humanity"; the absolute character of the prohibition of disappearance is reaffirmed as the rights violated thereby include several non-derogable rights; *habeas corpus* shall not be suspended as a means of identifying the whereabouts of detainees; detainees shall be held in officially recognized places of detention and be brought promptly before a judge; states shall thoroughly investigate alleged disappearances and protect witnesses; a state in which a person accused of an act of disappearance is found must either try or extradite the accused ("universal jurisdiction"); disappearances are to be considered extraditable offenses; and no statute of limitations or amnesty may apply.

## **B. Studies on Administration of Justice; Review of Working Group on Detention**

As part of its standard-setting activities the Sub-Commission examines international practices related to the administration of justice and the human

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72. The International Commission of Jurists (ICJ), together with other NGOs, proposed the initial draft in 1988 and played a key role in its further elaboration and promotion. After the Working Group on Detention considered the first draft at several meetings in 1988, the ICJ carried out wide consultations and prepared a completely revised draft for consideration by the working group in 1989.

73. Formal and informal consultations with the Working Group on Enforced or Involuntary Disappearance, the Inter-American Commission on Human Rights, the Centre for Social Development and Humanitarian Affairs, governments, and nongovernmental organizations contributed to the drafting process. The ICJ convened a meeting of experts in Geneva 21-23 March 1990 to facilitate preparation of a final draft. Chaired by Alfonso Martínez (Cuba), last year's chair of the Working Group on Detention, the meeting included five Sub-Commission and working group experts, two members of the Working Group on Enforced or Involuntary Disappearances, representatives of the UN Centre for Human Rights, and several NGOs. The draft approved in this three day meeting was presented by Alfonso Martínez and Joinet (France) for adoption by the Working Group on Detention and was approved with only minor modifications.

rights of detainees. To facilitate production and review of studies in this area, the Working Group on Detention often considers reports prior to discussion in the full Sub-Commission.<sup>74</sup> Seven reports were scheduled for review this session concerning administrative detention, human rights of detained juveniles, independence of the judiciary, privatization of prisons, protection of UN staff, the right to a fair trial, and states of emergency. The rapporteurs on detained juveniles,<sup>75</sup> privatization of prisons,<sup>76</sup> and states of emergency<sup>77</sup> explained that their reports were incomplete, delaying review until next year.<sup>78</sup> Even with fewer studies than expected to review, the Sub-Commission could not undertake detailed discussion of the remaining reports.<sup>79</sup>

The Sub-Commission completed consideration of Joinet's (France) report on Administrative Detention, having run out of time for discussion at the previous session. The updated report examined the use of administrative detention in several situations,<sup>80</sup> the legal basis for administrative detention,

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74. The working group meets separately from the Sub-Commission and considers reports and issues related to detention. Members of this working group, as with other working groups, are nominated from their regional groups. This session its members were Guisse (Africa), Hatano (Asia), chair Joinet (Western Europe and other States), Suescun Monroy (Latin America), and Turk (Eastern Europe). Other experts also participated in working group sessions.
75. Bautista (Philippines) who was to report on the application of international human rights standards to detained juveniles explained that she had not been able to incorporate government and NGO responses to her questionnaire into the report and that the responses she received were inadequate. She requested that new requests for information be addressed to governments and NGOs. The Sub-Commission adopted a resolution requesting governments to respond to the questionnaire and extended Bautista's mandate to next year. Sub-Comm'n Res. 1990/21, *1990 Report* at 47. On a related issue, Guissé (Senegal) will present a note on the use of the death penalty for persons under the age of 18 when the working group meets next session.
76. Alfonso Martínez's (Cuba) report on privatization of prisons was postponed until next year.
77. Despouy (Argentina) submitted a brief report on states of emergency and explained that he was to prepare an annual list of the countries that proclaimed or terminated a state of emergency, but had not received the assistance he needed from the Secretariat to incorporate all the information he received into his report. See *Summary Record of the Second Part of the 26th Meeting*, U.N. Doc. E/CN.4/Sub.2/1990/SR.24/Add.1, at 11–12 (1990). In a resolution affirming the continuing interest in states of emergency, the Sub-Commission requested the Secretary-General to give the special rapporteur all the necessary assistance. Sub-Comm'n Res. 1990/19, *1990 Report* at 44.
78. The large number of unfinished reports this session suggests that more assistance and cooperation may be needed from the Secretariat; the Secretariat needs more staff to accomplish the increased work expected of it; and the Sub-Commission should consider the demands of a project when appointing a rapporteur, especially when a rapporteur is taking on a second or third project.
79. Many members commented that the studies on the judicial process and detention make up the backbone of the Sub-Commission's work and regretted not having more time to discuss the reports. Rapporteurs seeking critical commentary relied on the Working Group on Detention which reviewed the reports.
80. The report puts administrative detention into five categories: states of emergency, detention of foreigners (i.e. refugees and asylum seekers), for purposes of "re-education," for disciplinary measures (i.e. army discipline), and measures to avoid social maladjustment

and the ways governments circumvent safeguards.<sup>81</sup> The report notes that since the General Assembly recently adopted the Body of Principles for the Protection of Detainees<sup>82</sup> which applies to persons in administrative detention, the Sub-Commission should concentrate on implementing those standards. The report proposes to the Commission several alternative methods to monitor abusive detention, including the creation of a special rapporteur on administrative detention; a special rapporteur on all forms of detention; and a working group of five members, each to look at a different aspect of detention.<sup>83</sup> The Sub-Commission approved the recommendations and requested that the Commission consider the proposals and either pursue one or request further elaboration from the Sub-Commission.

The Sub-Commission considered preliminary reports on the independence of the judiciary and the right to a fair trial. It also reviewed an updated report on protection of UN staff. In the previous session, the Sub-Commission appointed Joinet (France) to prepare a report on ways the Sub-Commission could ensure respect for the independence of the judiciary and the protection of practicing lawyers which would complement the work of other UN bodies.<sup>84</sup> The report recognized the dual approach to the independence of judges and lawyers adopted by the Commission: standard-setting had been entrusted to the UN Crime Branch in Vienna and the task of monitoring actual situations was given to the Sub-Commission.

On the day Joinet's report was discussed, the International Commission of Jurists released its report on the "Harassment and Persecution of Judges and Lawyers" describing the cases of 430 judges and lawyers in forty-four countries who had suffered reprisals for carrying out their duties.<sup>85</sup> The Sub-

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(detention of minors). See *Report on the practice of administrative detention*, U.N. Doc. E/CN.4/Sub.2/1990/29 (1990).

81. The rapporteur received information from thirty-three governments on practices and legislation concerning administrative detention and concluded that there are many procedures which permit abuse. See *id.* at 17. Many observers accused governments of using administrative detention to circumvent the ordinary judicial process and to halt criticism or protest.
82. G.A. Res. 43/173, 43 U.N. GAOR Supp. (No. 49), U.N. Doc. A/43/49, at 297 (1989).
83. U.N. Doc. E/CN.4/Sub.2/1990/29/Add.1 (1990).
84. U.N. Doc. E/CN.4/Sub.2/1990/35 (1990). *The Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders in September 1986, was endorsed by the General Assembly in December 1985. G.A. Res. 40/146, 40 U.N. G.A.O.R. Supp. (No.53), U.N. Doc. A/40/53, at 254 (1985). The protection of practicing lawyers was addressed in the draft basic principles on the Role of Lawyers which was endorsed by ECOSOC and submitted to the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders in August-September 1990. See Report of the Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc A/CONF.144/28, at 124 (1990). The Commission requested that the Sub-Commission consider effective means of monitoring and implementing the Basic Principles.*
85. See ICJ, *Attacks on Justice: The Harassment and Persecution of Judges and Lawyers*, (R. Brody ed. 1990); Brody, *Judges and Lawyers Need Protection*, Int'l Herald Tribune, 23 Aug. 1990, at 17, col. 3.

Commission endorsed the recommendations in Joinet's paper for direct Sub-Commission monitoring of actual situations and requested that the Commission appoint him to complete a report.<sup>86</sup>

The Sub-Commission gave careful consideration to the preliminary report of joint rapporteurs Stanislav Valentinovich Chernichenko (USSR) and Treat (US) on the right to a fair trial. The right to a fair trial has been a norm of international human rights law for at least forty years and a substantial jurisprudence has developed elaborating and interpreting this right, but relatively little research has been undertaken to analyze the developing content of the right. Chernichenko and Treat prepared a preliminary paper on the treaties and other instruments defining the attributes of the right to a fair trial which are the most protective of the right.<sup>87</sup>

Sub-Commission members suggested that certain aspects of the right to a fair trial, for example, the right to petition for *habeas corpus*, should be made non-derogable even during periods of emergency. Other members noted the need for fair trial standards to apply to military courts, emergency courts, and other special tribunals. It was suggested that the two rapporteurs should consider not only which attributes of the right to a fair trial ought to be made non-derogable, but also whether a model code for the right to a fair trial could be developed.

The Sub-Commission adopted a resolution recommending to the Commission and to ECOSOC that the two rapporteurs continue their study.<sup>88</sup> If the study is authorized to continue, it is expected that the rapporteurs will next review the jurisprudence on the right to a fair trial which has evolved in the European Commission and Court of Human Rights, the Inter-American Commission on and Court of Human Rights, and the Human Rights Committee established by the International Covenant on Civil and Political Rights.

The report on Protection of UN Staff reviewed violations of the human rights of UN staff members and provided an updated list of UN staff who have been missing, detained, executed, or released.<sup>89</sup> Rapporteur Bautista (Philippines) recommended use of a broader information campaign and the dissemination of lists of arrested, detained, and missing staff members to increase pressure on governments to respect the rights of UN staff. The Sub-Commission urged governments to respect the rights of staff members and their families, to permit physicians to visit detainees, and to allow observers

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86. Sub-Comm'n Res. 1990/23, *1990 Report* at 49. The report has two objectives: first, to examine means to enhance cooperation between UN programs for strengthening and protecting the judiciary and second, to inform the Sub-Commission of legislative or judicial measures which have served to strengthen or undermine the independence of the judiciary and protection of practicing lawyers.

87. U.N. Doc. E/CN.4/Sub.2/1990/34 (1990).

88. Sub-Comm'n Res. 1990/18, *1990 Report* at 42.

89. The report provides scant analysis of the rights and immunities of UN staff members, primarily providing a list and update of individual cases.

to attend hearings concerning UN staff. The Sub-Commission requested that a final report be submitted at the next session.

At its previous two sessions, the Sub-Commission expressed concern about the rights of one of its former members after the government of Romania prevented Dumitru Mazilu from attending the 1988 and 1989 sessions of the Sub-Commission to fulfill his role as the special rapporteur on human rights and youth. At the request of the Sub-Commission and the Commission, ECOSOC sought an advisory opinion from the International Court of Justice on the applicability of the Convention on the Privileges and Immunities of the United Nations to Mazilu's case.<sup>90</sup> In a landmark opinion dated 15 December 1989, the Court decided that immunity extended to a rapporteur of the Sub-Commission and covered Mazilu, even though he had ceased to be a member of the Sub-Commission.<sup>91</sup> While the opinion had no practical effect on the Mazilu case, because the Ceaucescu government fell in the interim, its holding is important for other experts within the UN system.<sup>92</sup> Mazilu presented a preliminary report on human rights and youth and was invited to return next session to present a progress report.<sup>93</sup>

### C. Minorities

Racial discrimination and the treatment of minorities received considerable attention at this session. The Sub-Commission discussed two reports: one on the elimination of racial discrimination by Asbjørn Eide (Norway) and a second, also by Eide, on the protection of minorities. The report on racial discrimination<sup>94</sup> evaluated the progress made in combating racism through

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90. Article VI, Section 22, of the Convention provides that "Experts . . . performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions . . ." 1 U.N.T.S. 15, 12 U.S.T. 1418, T.I.A.S. 6900, *entered into force* 17 Sept. 1946. Romania argued that rapporteurs, whose activities are only occasional, could not be equated with experts "on mission" and that experts could not enjoy privileges and immunities in their country of residence while not "on mission."

91. The Court held that immunity extends to persons to whom the UN has entrusted a mission, that members of the Sub-Commission must be regarded as experts on mission, and that rapporteurs of the Sub-Commission must be regarded as experts on mission even if they are no longer members of the Sub-Commission. *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, 1989 ICJ 9.

92. Noting that the Convention provides that the privileges and immunities "are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals," Joinet invoked the decision in support of his secret ballot proposal. See *supra* note 26 and accompanying text.

93. Mazilu gave a moving address about the difficulty he had encountered in getting out of Romania. He thanked the members of the Sub-Commission, members of the Secretariat, the international media, and the Swiss authorities for helping him.

94. The Sub-Commission considered the report in 1989 but agreed to discuss the recommendations at the 1990 session. *Study on the achievement made and obstacles encountered during the Decades to Combat Racism and Racial Discrimination*, U.N. Doc. E/CN.4/Sub.2/1989/8 (1989).

activities associated with the UN's Second Decade to Combat Racism and Racial Discrimination.<sup>95</sup> The report on minorities focused on conflicts involving minorities and peaceful means for resolving such conflicts.<sup>96</sup>

During the discussion on racial discrimination, many members expressed alarm at recent incidents evidencing racism. Eide maintained that racism in Europe—demonstrated in its “most pernicious forms” through anti-Semitism and hostility towards North Africans and migrant workers—has not disappeared but has increased with the changes in Eastern Europe and the rise of nationalism.<sup>97</sup> Several members agreed that the treatment of migrant workers presented a serious problem and needed more attention. Khalifa (Egypt) warned that a resurgence of racism would come with the widening gap between “North” and “South” as economic rivalry replaced political rivalry between countries.<sup>98</sup>

Members agreed that more work was needed to combat racial discrimination, emphasizing that because racism is often caused by “conflicts over economic resources,” it “can best be defeated by a combination of economic as well as legislative and educational measures.”<sup>99</sup> The Sub-Commission took three actions to fight racism. First, it recommended that the General Assembly launch a third Decade to Combat Racism and Racial Discrimination to begin in 1993 with a focus on “indigenous peoples, migrant workers and other vulnerable groups in society.”<sup>100</sup> Second, it recognized the need to improve communication between UN bodies dealing with racial discrimination and requested that the Secretary-General arrange a meeting between the Sub-Commission and the Committee on the Elimination of Racial Discrimination (CERD) for one day during its 1991 session.<sup>101</sup> Third, it agreed to consider the practices of population transfers and implanting settlers or settlements at its next session.<sup>102</sup>

Although minorities appear in the Sub-Commission's name, it has just

95. The General Assembly proclaimed 1983–1993 the Second Decade to Combat Racism and Racial Discrimination and approved an extensive program of activities including the elimination of apartheid as one of the prime objectives.

96. *Protection of Minorities*, U.N. Doc. E/CN.4/Sub.2/1990/46 (1990). The rapporteur expressed his intention to focus on the handling of minority situations in real life rather than on the question of what rights should be adopted for minorities. *Id.* at 2.

97. *Summary Record of the 5th Meeting*, U.N. Doc. E/CN.4/Sub.2/1990/SR.5, at 4 (1990).

98. *Id.*

99. Sub-Comm'n Res. 1990/1, *1990 Report* at 19.

100. *Id.*

101. *Id.* CERD ordinarily meets during the same period as the Sub-Commission so such a meeting can easily be arranged.

102. Sub-Comm'n Res. 1990/17, *1990 Report* at 41. Palley (UK) initiated the discussion by recalling the situation in Cyprus after the Turkish invasion. Pax Christi International named eight governments which implement policies to displace or relocate certain populations: Israel (in the occupied territories), China (in Tibet, Xinjiang, and Inner Mongolia), Indonesia (in East Timor and West Irian), the USSR (in the Baltic Republics), Bangladesh (in the Chittagong Hills Tract), Iraq (with respect to the Kurdish people and the Shi'ite communities), Sri Lanka (Tamils), and South Africa.

begun to devote significant attention to the topic. Eide's report on minorities avoided the contentious question of how to define minorities<sup>103</sup> or minority rights<sup>104</sup> and instead examined the more pragmatic question of how to find peaceful and constructive ways to manage conflicts between minorities and governments.<sup>105</sup> Sub-Commission members agreed that the aim in dealing with minorities should be integration rather than assimilation. The rapporteur proposed a two year study which would analyze national experiences with minority situations<sup>106</sup> with a view to developing a model or repertory of possible approaches to different situations.<sup>107</sup>

#### D. Economic, Social, and Cultural Rights and Other Studies

The report by Türk (Yugoslavia) on economic, social, and cultural rights drew attention to such rights as the right to housing which have received less attention from the Sub-Commission than civil and political rights.<sup>108</sup> Türk's report examines what kind of indicators can be used to monitor human rights performance by governments in the economic and social fields and recommends further study in conjunction with international financial institutions including the International Monetary Fund (IMF) and the World Bank. Experts from developing countries stressed the hardship caused by austerity measures imposed by the IMF. The Sub-Commission encouraged the rapporteur to establish direct contact with international financial institutions and suggested that a UN seminar be organized to discuss the question of indicators.<sup>109</sup> It approved a second progress report addressing the realization of economic, social, and cultural rights in the context of structural adjustment

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103. The report considers as a minority members of a group who are identified by ethnic or national identity, culture, and religion. See *supra* note 96, at 4.

104. The rapporteur notes that the Commission has set up an open-ended working group to consider the drafting of a Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities which addresses the complex question of minority rights.

105. Many members argued that a report on the protection of minorities could not be completed without such a definition and urged the rapporteur to consider unique means of identification like by ancestry as demonstrated by the tribal systems in Africa. Members debated the report's distinction between "settled minorities" and "recent immigrants." Members did not object to apportioning different rights to the two groups. Some did question, however, whether the recent and settled distinction would adequately represent the status of some minority groups.

106. National experiences would be obtained through a questionnaire sent to states and NGOs and through state reports already submitted to other UN bodies like CERD.

107. See *Summary Record of the 10th Meeting*, U.N. Doc. E/CN.4/Sub.2/1990/SR.10, at 12 (1990).

108. The report examines the right to adequate housing, land rights, and the question of extreme poverty portraying the indivisibility of economic, social, and cultural rights and civil and political rights to individuals living in poverty. See *Realization of Economic, Social, and Cultural Rights*, U.N. Doc. E/CN.4/Sub.2/1990/19, at 55 (1990).

109. Sub-Comm'n Res. 1990/16, *1990 Report* at 39.



and the role of international financial institutions in the realization of those rights.<sup>110</sup>

Several important reports came at the end of the session when the Sub-Commission had little time left for discussion. The report on freedom of expression recognized that the right to freedom of expression is a derogable right and examined which restrictions and derogations are permissible.<sup>111</sup> Joinet (France), who co-authored the report with Türk (Yugoslavia), proposed that further study include permissible restrictions and limitations on racist speech, the relation between freedom of expression and association, and methods to guarantee media pluralism. Few members were able to comment on the report and the Sub-Commission decided to give priority attention to an updated report at its next session.<sup>112</sup>

A second report related to freedom of expression proposed a study on ways and means to extend additional protection to journalists reporting human rights violations.<sup>113</sup> Rapporteur Waleed M. Sadi (Jordan) noted that more than 600 journalists have been killed in the last ten years.<sup>114</sup> The Sub-Commission was unable to discuss Sadi's report and agreed to discuss it during the 1991 session.

The Sub-Commission discussed Halima Embarek Warzazi's (Morocco) study on traditional practices affecting the health of women and will consider the final report in the next session. It also reviewed a preliminary report by former member Varela-Quirós (Costa Rica) on discrimination against people infected with the HIV virus, which attributed discrimination to the lack of proper information and advocated measures to insure that their fundamental human rights are not violated.<sup>115</sup> The rapporteur planned to send a questionnaire to countries and NGOs to examine particular discriminatory practices in his next report. The Sub-Commission postponed the report on disability which the rapporteur was unable to complete.

Ksentini (Algeria) presented a concise note on the environment and human rights which considered the impact of the environment on several rights, especially those protecting individual health and well-being.<sup>116</sup> Ksentini proposed a study which would look at the relation between the environment and various human rights and focus on factors constituting a healthy and balanced environment. The Sub-Commission approved Ksentini's note and requested the Commission to entrust her with a study on human rights and the environment.<sup>117</sup>

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110. *Id.* at 40.

111. U.N. Doc. E/CN.4/Sub.2/1990/11 (1990).

112. Sub-Comm'n Decision 1990/117, *1990 Report* at 70.

113. U.N. Doc. E/CN.4/Sub.2/1990/17 (1990).

114. *Id.* at 2.

115. U.N. Doc. E/CN.4/Sub.2/1990/9 (1990).

116. U.N. Doc. E/CN.4/Sub.2/1990/12 (1990).

117. Sub-Comm'n Res. 1990/7, *1990 Report* at 26.

The Sub-Commission considered a preliminary report by van Boven (Netherlands) and Cornelis Flinterman (alternate, Netherlands) on Compensation for Gross Violations of Human Rights.<sup>118</sup> Some members questioned whether the right to compensation could be exercised in practice and urged further study of the experience of countries in Latin America in next year's report.<sup>119</sup>

### E. Sessional Working Groups

The Sub-Commission created a sessional working group to examine the draft declaration on the right of everyone to leave any country, including his own, and to return to his country.<sup>120</sup> Little progress was made, however, as experts clashed over whether the right to leave should be linked with the right to enter another country. Sadi (Jordan) was finally asked to prepare a revised draft declaration on the basis of comments received and the Sub-Commission agreed to establish a working group to examine the draft at the next session.<sup>121</sup>

The Sub-Commission established a working group to analyze ways to better discharge its responsibilities in dealing with human rights violations in particular countries.<sup>122</sup> The main idea considered by the working group was the possibility of producing a "universal" report for the Commission incorporating the facts and country situations considered under the 1235 procedure. In debating the form this report would take, members questioned how to determine facts, assure credible information, and avoid politically-motivated accounts. Some experts argued against the feasibility or need for such a report, preferring the present practice of adopting country-specific resolutions. They argued that Sub-Commission resolutions do not duplicate the work of the Commission because the resolutions are different in nature and substance than those of the Commission.<sup>123</sup> While most experts expressed the view that the present practice of dealing with violations was not satisfactory, no agreement could be reached on a new approach.<sup>124</sup>

## IV. PRE-SESSIONAL WORKING GROUPS

The Working Group on Indigenous Populations and the Working Group on Contemporary Forms of Slavery each met in 1990, before the Sub-Commission's August session.

118. U.N. Doc. E/CN.4/Sub.2/1990/10 (1990).

119. *Summary Record of the 31st Meeting*, U.N. Doc. E/CN.4/Sub.2/1990/SR.31, at 9 (1990).

120. Members included: Chair Alfonso Martínez (Cuba), Diaconu (Romania), Eide (Norway), Mbonu (Nigeria), and Sadi (Jordan).

121. Sub-Comm'n Decision 1990/123, *1990 Report* at 71.

122. The members included: Chair-Rapporteur van Boven (Netherlands), Chernichenko (USSR), Heller (Mexico), Ksentini (Algeria), and Sachar (India).

123. E/CN.4/Sub.2/1990/14, at 5.

124. *Id.* at 6.

## A. Working Group on Indigenous Populations

This year's pre-session Working Group on Indigenous Populations met for two weeks instead of one, as had previously been the practice.<sup>125</sup> The working group planned to use the additional five days for informal drafting groups of governments and indigenous representatives to "seek agreement on recommendations" for making faster progress on the draft declaration on indigenous rights. The working group began by establishing three informal drafting groups. The first group, chaired by Alfonso Martínez (Cuba), considered the draft provisions on land and resources; Türk (Yugoslavia) chaired the second group, which considered political rights and autonomy; and Erica-Irene A. Daes (Greece) chaired the third group which examined other issues in the draft.

Unfortunately, the United Nations did not provide interpretation services for the first week, due to a lack of resources. This affected the Spanish-speaking indigenous peoples most acutely. Without interpretation, the Spanish-speakers were effectively excluded from contributing to the drafting process. On the third day, in a show of solidarity, all indigenous groups boycotted the drafting groups, refusing to participate until Spanish interpretation was provided. A statement explaining the reasons for the boycott, was submitted to the working group members, who responded positively by expressing their intention to ensure that interpretation be provided for the full two weeks of the 1991 working group meeting. To keep the efforts of the drafting groups moving forward, the indigenous peoples' organizations held separate meetings serviced by volunteer interpreters.<sup>126</sup> Interpreters were provided for the final two plenary meetings. Each of the three drafting groups submitted a report and, despite the enormous pressures, accomplished much substantive work during the first week of the session.<sup>127</sup> Very few governments participated in the drafting groups, however, with the exception of Australia, Canada, and Norway.<sup>128</sup>

During the second week of the working group's session, indigenous peoples from around the world informed the working group of recent developments affecting their lives and communities. The situation of the Mo-

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125. Members of the working group were: Chair-Rapporteur Daes (Greece), Alfonso Martínez (Cuba), Hatano (Japan), Mbonu (Nigeria), and Türk (Yugoslavia). See generally, *Report of the Working Group on Indigenous Populations on its Eighth Session*, U.N. Doc. E/CN.4/Sub.2/1990/42 (1990).

126. In a gesture of support, Chairwoman Daes cancelled several drafting meetings to provide indigenous groups with an opportunity to inform the Spanish-speaking members of drafting developments and to enable them to make their own contributions.

127. The amendments made by the three groups bring it closer to the indigenous position on many key issues, including self-determination.

128. This approach appeared to have been a deliberate decision on the part of governments to stand back and wait to deal with the declaration at higher levels.

hawks in Quebec, Canada,<sup>129</sup> attracted the attention and support of the working group and several participants. The Mohawks requested the assistance of the Sub-Commission in arriving at a peaceful resolution to the conflict.

While the working group adhered to its past policy of not taking up "complaints," the Sub-Commission dealt with the Mohawk issue on its very first day, inviting Canada to send a representative to the Sub-Commission that afternoon. Canada responded by accepting a private meeting with chairpersons Daes (of the working group) and Türk (of the Sub-Commission) and by agreeing to keep the Sub-Commission informed about developments. During the Sub-Commission session Türk gave summaries of the reports he received. The conflict appeared to subside during the session and Türk thanked the Canadian government for its cooperation during the dispute.<sup>130</sup>

The Sub-Commission adopted resolutions calling for full interpretation for future working group meetings; stressing the need to give indigenous people greater control over their own resources and development; endorsing an "International Year of the World's Indigenous Peoples" beginning in 1992; and calling on universities, museums, and private collectors to return human remains, as well as objects of religious and cultural significance to indigenous peoples.

## B. Working Group on Contemporary Forms of Slavery

The Working Group on Contemporary Forms of Slavery held its fifteenth session from 30 July to 3 August 1990.<sup>131</sup> Ksentini (Algeria) was elected chair-rapporteur<sup>132</sup> and the main theme discussed at this session was the eradication of the exploitation of child labor and of debt bondage.

The working group heard testimony from a variety of NGOs about specific instances of child labor and debt bondage, as well as testimony

129. The conflict erupted over a land dispute in which the Canadian government appropriated land containing a Mohawk burial ground for the purposes of expanding a golf course. Mohawk resistance and a breakdown in negotiations resulted in a barricade and confrontations between the Canadian federal forces and members of the Mohawk community.

130. After the Sub-Commission session ended the Canadian army troops broke down the barricades. Indian leaders denounced the move as "an invasion." See *N.Y. Times*, 2 Sept. 1990, at A3, col. 1.

131. Members of the working group were: Chair-Rapporteur Ksentini (Algeria), Diaconu (Romania), Palley (UK), Sadi (Jordan), and Suescún Monroy (Colombia). See generally, *Report of the Working Group on Contemporary Forms of Slavery on its Fifteenth Session*, U.N. Doc. E/CN.4/Sub.2/1990/44 (1990).

132. Despite the decision at the 1989 session to rotate the chair, Ksentini will chair the next session as well.

relating to past themes of the working group such as child prostitution and pornography and the sale of children.<sup>133</sup> For example, on the issue of the exploitation of child labor, Pax Christi intervened about girl child labor in India, particularly in hazardous industries such as match and fireworks manufacture. In response, the Sub-Commission requested the Commission to authorize the appointment of a special rapporteur to update Bouhdiba's (Tunisia) report on the exploitation of child labor<sup>134</sup> and to extend the study to include the problem of debt bondage. The Sub-Commission also invited the ILO to consider holding a seminar or workshop on debt bondage.

The Sub-Commission adopted the working group's program of action for the elimination of the exploitation of child labor, seeking to eradicate some of the most odious forms of child exploitation, such as prostitution and the sale of children, and encouraging the international community to increase its vigilance against the use of children for criminal purposes such as drug trafficking and in military activities. The program calls for a public awareness campaign which would target key sectors including agriculture and domestic service. The Sub-Commission called on governments to pursue a national policy designed to ensure the effective abolition of child labor and to raise the minimum age for employment.

The working group welcomed the appointment of Vitit Muntarbhorn (Thailand) as the Commission's special rapporteur to consider matters relating to the sale of children, child prostitution, child pornography, and the problem of the adoption of children for commercial purposes. It also welcomed the acceptance by the General Assembly of the Convention on the Rights of the Child<sup>135</sup> and called on all states to ratify it. The main theme of next year's working group session will be the prevention of the traffic in persons and the exploitation of the prostitution of others.

## V. NEW INITIATIVES

The Commission has twice recommended that the Sub-Commission not initiate a new study unless a previous study has been completed.<sup>136</sup> Of the nineteen reports presented this session, the Sub-Commission had received

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133. Representatives of the Anti-Slavery Society made interventions about bonded labor in Bangladesh, India, Pakistan, and Nepal, estimating that twenty million people work as bonded laborers in Pakistan and five million in India.

134. U.N. Doc. E/CN.4/Sub.2/479/Rev.1, U.N. Sales No. E.82.XIV.2 (1981).

135. G.A. Res. 44/25, 28 I.L.M. 1448 (1989).

136. Comm'n Res. 1989/36, U.N. Doc. E/CN.4/1989/86, at 104 (1989), and Comm'n Res. 1988/43, U.N. Doc. E/CN.4/1988/88, at 105 (1988).

ECOSOC approval for thirteen.<sup>137</sup> The Sub-Commission considered six preliminary reports in preparation for obtaining Commission and ECOSOC approval for full studies.<sup>138</sup> Although the Sub-Commission completed one study this session, it requested ECOSOC approval for four new studies.<sup>139</sup>

Part of the responsibility for initiating too many studies, however, rests with the Commission. In its 1990 session the Commission requested that the Sub-Commission examine the question of extreme poverty. The Sub-Commission complied and appointed Eduardo Suescún Monroy (Colombia) to complete a working paper on human rights and extreme poverty.<sup>140</sup> The Sub-Commission was also asked to study the political implementation of UN norms in the administration of justice.<sup>141</sup> While the Sub-Commission did not respond directly to this request, the Working Group on Detention asked John Carey (alternate, US) and Suescún Monroy (Colombia) to work on a note on the *habeas corpus* and *amparo* procedural protections, respectively.

The Sub-Commission could speed up review of studies if it required rapporteurs to complete reports promptly. Studies frequently stretch over several years, clogging the agenda and wasting time—particularly when rapporteurs do not make significant progress each year.<sup>142</sup> The Sub-Commission could improve timely completion of studies if it required each rapporteur to prepare only one study at a time. Restricting rapporteurs to one study would also help address Commission criticism that work is not evenly distributed among experts. The studies initiated this session improve the

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137. The studies include: administrative detention; compensation for victims of gross violations; discrimination and AIDS; economic, social, and cultural rights; freedom of opinion and expression; human rights and disability; human rights and youth; problem of minorities; states of emergency; treaties between States and indigenous peoples; and traditional practices affecting women's health. A report on consequences of assistance to South Africa is approved annually by both bodies. The study on protection of UN staff did not involve financial implications and did not require Commission and ECOSOC approval although the Commission did express its appreciation for the report.

138. The reports were on: human rights and the environment; human rights of detained juveniles; independence of the judiciary; privatization of prisons; protection of journalists; and the right to a fair trial.

139. Three of the studies were the subjects of preliminary reports: the environment, the judiciary, and the right to a fair trial. A new study on ownership of cultural property was recommended by the Working Group on Indigenous Populations.

140. Sub-Comm'n Decision 1990/119, 1990 Report at 70.

141. See G.A. Res. 43/173, *supra* note 82, at 222; see also Comm'n Res. 1990/81, 1990 Commission Report at 168.

142. Four studies expected this session were not presented: Despouy's (Argentina) on human rights and disability; Alfonso Martínez' (Cuba) report on privatization of prisons; Martínez' on treaties and indigenous peoples (instead the rapporteur submitted a brief working paper explaining the breadth of his project and requesting that the Secretary-General circulate a questionnaire which would facilitate his study, see Sub-Comm'n Res. 1990/28, 1990 Report at 57); and Bautista's (Philippines) on human rights and international standards for detained juveniles. See *supra* notes 75–77. All three rapporteurs had more than one study to complete for this session.

distribution of work among members, having appointed six new rapporteurs who were not working on another study.<sup>143</sup>

It was announced at the end of the session that next year's chair will be Joinet (France). This announcement was a welcome development which will allow better advance planning for the coming session. In the past, chairs were selected at the beginning of the session. Before the end of the session, Joinet circulated a draft proposal to improve the efficiency of Sub-Commission debates. The draft clusters NGO interventions at the beginning of the Sub-Commission, giving each NGO forty minutes to make known all its country-specific and thematic concerns, followed by government statements and rights of reply, and leaving the remaining time—probably two weeks—for debate among the experts.<sup>144</sup>

## VI. CONCLUSIONS

Among the many accomplishments of the Sub-Commission's 1990 session, two of the most significant were the Draft Declaration on Enforced or Involuntary Disappearances and the resolution criticizing Iraqi human rights violations.

The Sub-Commission completed its work on the draft Declaration on Disappearances in four years, a relatively short period for a major international human rights instrument. The draft Declaration will be considered next by the Commission on Human Rights, and if adopted there, by ECOSOC, and ultimately the General Assembly.

The Sub-Commission's action on Iraq was fully justified by the serious violations occurring in that country for a number of years. The adoption of the resolution now, however,—when almost identical resolutions referring to torture, disappearances, and summary executions were defeated in 1988 and 1989—highlights the political nature of the Sub-Commission's decisionmaking process. Adoption of the 1990 resolution was not due to a deteriorating human rights situation in Iraq. Instead, the resolution became politically possible because Iraq had annexed Kuwait just before the Sub-Commission session. Had the Sub-Commission adopted such a resolution in previous years—in response to clear evidence of gross and systematic

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143. The rapporteurs and their studies are: Ksentini (Algeria) on human rights and the environment; Chernichenko (USSR) and Treat (US) on the right to a fair trial; Suescún Monroy (Colombia) on human rights and poverty; Guissú (Senegal) and Carey (alternate US) on *habeas corpus*. Daes (Greece) has prepared studies in previous years and will report on ownership of cultural property. Joinet (France) has been a very active rapporteur and will take on the report on independence of the judiciary in addition to the report he currently co-authors with Türk.

144. NGOs could comment on studies published later in the session by reserving time out of their forty minutes.

abuses including the use of chemical weapons to exterminate civilian populations—it might have put the Iraqi authorities on notice that they could not brutally violate the rights of others without suffering international criticism.<sup>145</sup>

Several experts lamented the lack of any substantive discussion on the numerous reports. This problem seems inherent in a system where the majority of reports are released only after the experts have already arrived in Geneva and have little time to study the reports. In addition, comments on a report, when they are made, usually get lost in general floor discussion which takes in many items and reports at the same time. It is well known that many experts do not even write their own reports, counting on the overburdened UN Secretariat to do the work. Resolutions authorizing further study of an issue are routinely prepared by the author of the report and frequently fail to take into account the comments made by other members.

One solution might be for the Sub-Commission, when authorizing a study or report, to assign a number of its members to receive and critique the report. Alternatively, *ad hoc* working groups could devote one hour or more to discussion of each report. In either event, the author would have to “defend” his or her report. Resolutions prepared in consultation with the assigned reviewers or the *ad hoc* working groups might reflect an informed expert consensus and give the authors needed direction.

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145. Similar efforts to condemn the Iraqi's human rights record in the Commission failed in both 1989 and 1990. See *supra* note 37, at 574–75.