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Petition by Harold Mc Cusker, M.P.

Procedures Concerning Communications at UN Commission on Human
Rights

The Division of Human Rights of the UN Secretariat has transmitted copies of above petition (communication) to the PMUN Geneva (copy of covering note dated 24 May 1982 attached). The note from the Division of Human Rights states in its final paragraph "Any reply which the Permanent Mission may wish to transmit on behalf of its Government under the above mentioned resolutions should be forwarded to the Division of Human Rights, United Nations Office at Geneva, with an indication as to whether the reply is to be presented to the Commission and the Sub-Commission in summary form or in full."

The machinery for selecting from the thousands of communications received annually those that "appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms" was established by ECOSOC Resolution 1503. The procedure established by Resolution 1503 concerns violations of all human rights embodied in the Universal Declaration of Human Rights. Further criteria for determining the admissibility of such communications, relating to their object, source, contents and timeliness, as well as the existence of other remedies, were laid down in Sub-Commission resolution 1 (XXIV) (attached).

Resolution 1503 provides that, as an initial stage all communications received under Resolution 728 F are screened by a five member working group of the Sub-Commission (working group on communications). Those communications, which, in the view of the majority of the members of the Working Group on Communications, appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fulfill the conditions for admissibility laid down in Sub-Commission resolution 1 (XXIV), are referred to the Sub-Commission, together with replies of Governments, if any, also received under Resolution 728 F (XXVII). The Working Group on Communications will meet from 2-13 August 1982. The sub-Commission will meet from 16 August - 10 September.

After the initial screening by the Working Group on Communications, the Sub-Commission as a whole, as a second stage, is called on to consider the communications and the Government replies brought before it with a view to determining whether to refer to the Commission on Human Rights particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission. In this connection the Sub-Commission is not restricted to the materials brought before it by the Working Group on Communications. It is also requested to consider

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"other relevant information" (paragraph 5 of Resolution 1503). The resolution appears to leave it to the discretion of the Sub-Commission to decide which other sources of information may be relevant to any particular situation.

Whereas the Working Group on Communications refers "communications" to the Sub-Commission the Sub-Commission is called on to refer "particular situations" to the Commission on Human Rights. The form in which the Sub-Commission shall do so is not prescribed, but since 1974 the Sub-Commission has annually communicated its findings to the Commission in confidential reports to which it has attached the materials which it has had before it for consideration.

The third stage in the procedure is implemented by the Commission on Human Rights, which is requested to examine any situation referred to it by the Sub-Commission and, thereupon, to decide: (a) whether it requires a thorough study by the Commission and a report and recommendation thereon to the Council in accordance with paragraph 3 of Resolution 1235 (XLII), or (b) whether it may be the subject of an investigation by an ad hoc committee. However, the latter course of action can only be taken with the express consent of the State concerned.

At its thirty-fourth session in 1978 the Commission decided to make permanent the practices which had not been expressly provided for in Resolution 1503 namely, (i) to invite the States directly concerned to send their representatives to address the Commission and to reply to any questions put by the members (Commission decision 5 (XXXIV)).

If the McCusker petition is to be considered by the working group of the Commission on Human Rights, which meets at the end of January, it first of all has to pass the hurdle of the Sub-Commission working group (Working Group on Communications) and the Sub-Commission itself. In this note therefore I will deal almost exclusively with the workings of the Sub-Commission and its working group. If the petition does pass these two hurdles, we will have ample time to consider our tactics for the meeting of the Commission and its working group early next year. To keep the situation in perspective, it is worth recalling that last year only 15 situations were referred to the Commission on Human Rights by its working group. Decisions were taken in private session on situations in eight countries (Afghanistan, Argentina, German Democratic Republic, Haiti, Paraguay, Republic of Korea, Uruguay and Venezuela). This was the end result of the thousands of communications which were submitted to the working group of the Sub-Commission during the previous August.

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Sub-Commission Working Group on Communications

The Sub Commission Working Group on Communications meets in private session and takes its decision by majority vote. The five members of the working group act in their individual capacity (as do the members of the Sub-Commission itself) but it is nonetheless interesting to look at the nationalities of the members of the working group and their alternates. The current members are from:

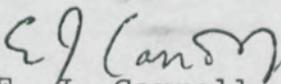
Regional Group

Asia : India (Alternate from Iraq)
Africa : Ethiopia (Alternate from Ghana)
Latin America : Peru (Alternate from Costa Rica)
W.E.O. : Belgium (original member (US) recently deceased)
Eastern Europe : U.S.S.R. (Alternate from Yugoslavia)

Even though members of the Sub-Commission (which would also include those who are also members of the working group) receive every month, in accordance with OP 4 of Resolution 1503, a brief description of communications and any replies from Governments, it is obviously a very difficult, if not impossible task for the five members of the group to examine adequately all the communications it receives. I have also heard an accusation of politicisation of this body. In these circumstances, and particularly in view of the fact that a decision to refer a communication is taken by majority vote rather than by consensus it is difficult to state whether Mr. Cusker's communication is likely to be rejected.

Sub-Commission on Prevention of Discrimination and Protection of Minorities

Examination of communications referred to the Sub-Commission by its working group takes place in private session. Only members of the Sub-Commission can attend the private sessions, which last about a week. There are 26 members of the Sub-Commission. Members are nominated by governments, but serve in their personal capacity for a 3 year term. Members are elected on the following basis: 7 from African states; 5 from Asian states; 6 from Western European and other states; 5 from Latin American states; and 3 from Eastern European states. One of the members of the Sub-Commission is from the UK, whereas there is no Irish member. This means that a written reply to Mc Cusker's petition is the only way the Government can answer his allegations.


E. J. Carroll
UN Section

23 June 1982