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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-first session

SUMMARY RECORD OF THE FIRST PART* OF THE 35th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 30 August 1989, at 3 p.m.

Chairman: Mr. YIMER

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* The summary record of the second part of the meeting appears as document E/CN.4/Sub.2/1989/SR.35/Add.1.

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The meeting was called to order at 3.20 p.m.

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS (agenda item 15) (continued)

(a) THE STATUS OF THE INDIVIDUAL AND CONTEMPORARY INTERNATIONAL LAW (continued)

(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF CHILDREN: HUMAN RIGHTS AND YOUTH (continued)

(c) PREVENTION OF DISCRIMINATION AND PROTECTION OF WOMEN (continued)

(d) PROTECTION OF MINORITIES (continued)

(E/CN.4/Sub.2/1989/40; E/CN.4/Sub.2/1989/41 and Add.1; E/CN.4/Sub.2/1989/43; E/CN.4/Sub.2/1989/53; E/CN.4/Sub.2/1989/NGO/1; E/CN.4/Sub.2/1989/NGO/6; E/CN.4/1989/38; E/CN.4/1989/69; E/CN.4/Sub.2/1988/33 and Add.1)

1. Mr. DIACONU, speaking on item 15 (b), recalled that it was at Romania's initiative that the United Nations had begun in 1960 to consider problems relating to youth, a process which had led to the adoption of the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples in 1965, and to the proclamation of the International Youth Year and the holding of a world conference on that subject in 1985.

2. The report on human rights and youth requested by the Sub-Commission in its resolution 1985/12 was to have been a thematic report prepared in accordance with the guidelines set forth by the Sub-Commission in its resolution B, published in the Sub-Commission's report of 5 February 1954 (E/CN.4/Sub.2/157), concerning the study of discrimination in education and later extended to all other reports and studies.

3. However, the report issued by the Secretariat under item 15 (b) of the Sub-Commission's agenda (E/CN.4/Sub.2/1989/41 and Add.1) was not consistent with those guidelines since it did not deal with the question under consideration at the international level and made a number of references to the situation in one particular country, did not indicate general trends or the factors determining those trends and their nature, was not factual and objective and contained a series of defamatory allegations against one country, its domestic policy and its political and social system. That report was evidently part of the political campaign which was being waged in certain circles against Romania and which bore no relation to the real situation or to human rights. The addendum to the report, furthermore, revealed the political aims of that document, and its dissemination was contrary to the provisions of Economic and Social Council resolution 664 (XXIV), which stated that country reports should not normally be issued as documents and any exception to that rule must be approved by the Council itself and, of course, relate to studies concerning many countries. Furthermore, the report was couched in insulting language unacceptable to the Sub-Commission. If it were compared to any other reports or study presented to the Sub-Commission, it would be readily apparent that the document was in fact a political pamphlet and a collection of slogans reflecting a partisan political philosophy.

4. Such a report was likely to embarrass many members of the Sub-Commission and jeopardize its credibility. He would therefore like to know why the Centre for Human Rights had not made sure that the report fully complied with the guidelines established by the Sub-Commission before distributing it, why the Secretariat had not found it appropriate, in accordance with established practice, to request the State Member concerned to make comments on the document and why, if it was aware of the Sub-Commission's guidelines and Economic and Social Council resolution 664 (XXIV), it had not taken them into account, as it should have done, and had arranged for the document to be circulated.

5. It was absolutely essential either to reaffirm the guidelines established by the Sub-Commission concerning the nature, contents and economy of reports and studies submitted to it or to formulate new guidelines, and to draw attention again to the fact that all rapporteurs and the Centre for Human Rights must respect those guidelines.

6. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that his observations with regard to the Special Rapporteur appointed by the Sub-Commission to prepare a report on human rights and youth were already on record in various statements he had made before the Sub-Commission in 1987, 1988 and at the current session, as well as in the Secretary-General's note issued as document E/CN.4/1989/69. It should be recalled, furthermore, that the principle at stake was to be considered by the International Court of Justice.

7. He believed that some of the remarks made by Mr. Diaconu and the observations formulated by the Permanent Mission of the Socialist Republic of Romania in its note verbale of 15 August 1989 (E/CN.4/Sub.2/1989/53) denoted a misapprehension of the concept of an international civil service and of the responsibilities which that service implied. It was axiomatic that the Secretariat must at all times be neutral, objective and unbiased. The independence of international civil servants vis-à-vis Governments or any other authority external to the Organization was, furthermore, established by Article 100 of the Charter of the United Nations. Their priority task was to implement fully, faithfully and effectively the mandates given to them by intergovernmental or expert bodies such as the Sub-Commission.

8. Such neutrality was no easy or simple goal. It was a constant challenge to all the members of the international civil service and was also at the heart of the United Nations efforts to secure peace, justice and human dignity. As Dag Hammarskjöld had stressed, in the final analysis, it was a question of integrity, and if integrity in the sense of respect for law and respect for truth were to drive the international civil servant into positions of conflict with any particular interest, then that conflict was a sign of his neutrality and not of his failure to observe neutrality and was in line, not in conflict, with his duties as an international civil servant.

9. Mr. FIX ZAMUDIO said that Mrs. Daes' study (E/CN.4/Sub.2/1989/40) was of fundamental importance since the focus on the individual by international organizations was a recent development, particularly in the field of human rights, and one that was rapidly gathering momentum.

10. In that regard, attention should be drawn to the positive aspects of the inter-American system for the protection of human rights considered by Mrs. Daes. Violations of human rights could be reported to the Inter-American Commission on Human Rights by the victims themselves or by individuals, groups or associations acting on their behalf. The Commission took no decision on admissibility of the communications submitted to it until it received comments from the Governments of the States concerned. However, it had adopted the principle of treating the allegations made in such complaints as well-founded if the State in question failed to reply or replied in an incomplete or imprecise manner. That allowed the victims' rights to be protected when Governments refused explicitly or implicitly to co-operate with the Commission, as had often been the case with some Latin American military Governments.

11. In contentious matters, however, individuals could not appear directly before the Inter-American Court of Human Rights except as witnesses in cases referred to it by the Commission; in other cases, they had to act through lawyers appointed by the Commission.

12. Mr. HATANO congratulated Mrs. Daes on her report (E/CN.4/Sub.2/1989/40), which was one of the most valuable studies conducted in the field of international law. Regrettably, he had not had the time to examine it in detail and wished merely to draw the Sub-Commission's attention to the theoretical analysis of the relationship between international law and municipal law contained in chapter I, part B, of the study. The main theories on that topic were listed in paragraph 24 and analysed in more detail in paragraphs 25 to 31, although the explanations did not always correspond to the "harmonization" theory as referred to in paragraph 24 (d). Since that theory was a new idea in the study of international law, it should be explained more fully in order to avoid any confusion.

13. Most of the specific recommendations set out in chapter X of the study were convincing and seemed well founded, but he did not share the view expressed by Mrs. Daes in paragraph 567 (j) concerning the possible revision of the Statute of the International Court of Justice to offer private individuals free access to the Court. In his view, that idea was not only unrealistic but also harmful inasumuch as the Court's major task was to settle disputes between States peacefully in accordance with the law.

14. Mrs. BAUTISTA said that Mrs. Daes' report was a valuable contribution to the work carried out in the field of international law. It therefore deserved thorough study and that required considerable time. She therefore proposed that consideration of the study should be deferred to the Sub-Commission's forty-second session.

15. Mr. CHERNICHENKO said that the study carried out by Mrs. Daes was very interesting and deserved great attention as it would form the theoretical basis of the Sub-Commission's future work in that field. He was therefore ready to support the proposal made by Mrs. Bautista.

16. He nevertheless wished to draw the Sub-Commission's attention to a number of specific points in that study, in particular the questions raised in paragraphs 504 et seq., which dealt largely with the question of who was a

subject in international law. Mrs. Daes cited a study he had himself made on the topic and he wished to point out that he had never held that a private individual was the object, or the subject, of international law. In fact, international law was concerned with intergovernmental relations.

17. The recommendations made in chapter X of the study were very interesting, but he was not entirely convinced by those contained in paragraph 567 (f), (h), (i) and, to some extent, (l). They could easily be combined, moreover, as they related essentially to the need to develop international machinery for the protection of human rights and the desire to broaden the access of private individuals to established bodies. With regard to subparagraph (j), it seemed to him that a revision of the Statute of the International Court of Justice would entail a revision of the Charter of the United Nations, a matter that was more within the competence of the General Assembly than of the Sub-Commission. As to the recommendation contained in subparagraph (o), he was not sure whether it was in keeping with a study that focused on the adoption of specific measures since it was an entirely theoretical question.

18. Lastly, he supported the final specific recommendation contained in paragraph 568 (e) that Mrs. Daes' study should be transmitted to the International Law Commission, but it would be logical in his view also to transmit the records of the discussion on that topic to the Commission.

19. Mr. SADI said that Mrs. Daes' study was aimed at helping the individual to achieve a better understanding of his status in international law and to use that law to his advantage. International law, indeed, was still an abstraction and individuals must be afforded the possibility of using all the instruments of international law that had been adopted over the years, particularly in the sphere of human rights.

20. States very often signed and ratified those instruments without incorporating the provisions in their domestic law or amending their legislation accordingly. He would have liked Mrs. Daes to make a recommendation in that regard and to appeal to States to incorporate the principles and obligations to which they had adhered at the international level in their domestic law. That was an extremely important matter as individuals still did not know how to use the standards of international law which safeguarded their rights.

21. The recommendation that the Statute of the International Court of Justice should be revised was, in his view, too ambitious. He could not see how, in practice, an international tribunal would be able to give rulings on cases brought before it by individuals from all over the world, particularly as the Court did not deal exclusively with violations of human rights. The only possible solution, in his view, would be to establish regional mechanisms associated with the United Nations system that would each deal in its respective region with any violation of the human rights set forth in the international instruments.

22. The subject of the study carried out by Mrs. Daes was nevertheless too important for the Sub-Commission to devote only a few hours to it. It would perhaps be advisable, therefore, to postpone consideration of the study until the following year, as suggested by Mrs. Bautista.

23. Mr. Tian JIN congratulated Mrs. Daes on her very factual report, which was the product of thorough study, but he felt that it would be better to consider it further at the next session. There were a number of comments he would have liked to make on the report but, in order not to waste the Sub-Commission's time, he would transmit them personally to Mrs. Daes.

24. The Sub-Commission had many documents before it under item 15 (b) which he had read with care. In doing so, he had noted that one of those documents included an addendum concerning one specific country. That was an unusual practice and he felt that reports should deal with developments throughout the world and avoid referring to any one country in particular.

25. Mr. DIACONU, speaking on a point of order, said that he had asked the secretariat a number of questions and would like it to answer them.

26. Mr. McCARTHY (Centre for Human Rights), replying to the questions raised by Mr. Diaconu concerning the Secretariat's role in the preparation and distribution of the report now before the Sub-Commission under item 15 (b) (E/CN.4/Sub.2/1989/41 and Add.1), said that the Secretariat had taken into account the various resolutions adopted by the Sub-Commission concerning its methods of work and the two resolutions cited by Mr.Diaconu, as well as the revised guidelines of 1974. In that regard, it should be noted that the guidelines laid down by the Sub-Commission for the preparation of reports were intended for the special rapporteurs and it was they, therefore, who should be asked about the application of those guidelines.

27. The Secretariat was familiar with the rules of procedure and with the suggestions of the Commission and of the Sub-Commission, and took them into account to the fullest possible extent in its contacts with the special rapporteurs when it helped them in planning, gathering information for and, if they so wished, drafting their reports, as well as in distributing the documents they had been entrusted to prepare.

28. The Secretary-General had submitted to the Commission on Human Rights document E/CN.4/1989/69, which described his efforts to provide assistance to Mr. Mazilu, as he had been requested by the Commission on Human Rights and the Economic and Social Council. The Secretariat had also tried to establish contact with a view to enabling the Rapporteur to present his study. As everyone knew, its efforts had unfortunately not been successful.

29. It was not the first time that the question of the contents of a report had caused controversy within the Sub-Commission, and he referred in that regard to the discussions which had been held in 1985 and which were reflected in the Sub-Commission's report to the Commission on Human Rights (E/CN.4/1986/5), from which it would be clear that the content of a report and the approach taken on the question under study were left entirely at the discretion of the Special Rapporteur.

30. Lastly, he wished to refer to the rules of procedure of the Economic and Social Council, rule 26 (b) of which required the Secretariat to "receive, translate and circulate documents". The answers to the questions raised by Mr. Diaconu could thus be found in the principles and practice of the Sub-Commission itself. Whether reports should be communicated in advance to the countries concerned for possible comment was, of course, entirely a matter for the Special Rapporteur to decide.

31. Mr. DIACONU said that he was not satisfied with the answers provided by the secretariat. A document which arbitrarily cast aspersions on a country had been circulated as a document of the Sub-Commission; that was contrary to the purposes and principles of the Charter of the United Nations, an organization for co-operation and not confrontation. That situation, moreover, set a dangerous precedent for future special rapporteurs. It was clear that those who encouraged the dissemination of such documents, notwithstanding the rules and practices of the United Nations, were using the Organization for their own ends and were to be held accountable for their conduct. The United Nations was not a publishing house that could print anything, even if the author was a special rapporteur. The Secretariat could not shirk its responsibility, therefore, by referring to its neutrality or the impossibility of establishing contacts. The author of that document - and he doubted whether he really was the author of the whole of that report, which resembled no other report considered by the Sub-Commission - had acted either under the influence of illness or for personal political ends. As a result, the document in question was totally inconsistent with the rules concerning the form and content of reports submitted to the Sub-Commission.

32. Mr. EIDE said that, with all due respect, Mr. Diaconu was putting the cart before the horse, an opinion no doubt shared by the other members of the Sub-Commission who certainly recalled the various episodes of the history of that report.

33. It was likely that as Mr. Mazilu proceeded with his work, he had realized that to study the question of human rights and youth it was necessary above all to recognize that young people had the right to think and express their views freely, to criticize the traditions and approaches chosen by their elders and to look for innovative solutions and new ideas. The essential requirement, therefore, as Mr. Mazilu had indeed noted, was freedom of expression. Mr. Mazilu's study was admittedly not cast in the usual mould, but account must be taken of the fact that it reflected the situation in which he found himself. All special rapporteurs had to accept the criticisms of the other experts, which enabled them to probe more deeply in their thinking. Mr. Mazilu should have come to Geneva in 1987, and again in 1988, to discuss his study with the members of the Sub-Commission, who would no doubt have made comments and suggestions that he could then have taken into account. Unfortunately, he had been unable to come and the efforts of the Sub-Commission to persuade the Romanian Government to lift its prohibition had failed.

34. He was surprised by Mr. Diaconu's reaction, which concerned only some aspects of the final study and took no account of the conditions under which the Special Rapporteur had worked. He continued to hope that the Sub-Commission would be able to discuss that study directly with Mr. Mazilu, perhaps at its next session, once the Court had given its advisory opinion, which would no doubt be favourable to the Sub-Commission. He would therefore refrain for the time being from making any comment on the many good ideas contained in the report under consideration or on some of the ideas which in his view might be open to criticism.

35. Mr. van BOVEN said it was strange that the Secretariat should be criticized by an expert about a document when the responsibility rested entirely with the Romanian Government, which had not allowed Mr. Mazilu to travel to Geneva to discuss his report with the other members of the

Sub-Commission so that he could take account of any criticisms or suggestions, or to maintain contact with the Secretariat for consultations. It was surely contrary to the very spirit of the work of rapporteurs that the Secretariat should not be able to discuss the questions addressed with them.

36. Mr. JOINET fully shared the views expressed by Mr. Eide and Mr. van Boven. He likewise requested that consideration of Mr. Mazilu's report should be postponed until the next session as it was unthinkable to consider that document in the absence of its author.

37. Mr. DESPOUY supported Mr. Eide, Mr. van Boven and Mr. Joinet and recalled that as Chairman of the Sub-Commission the year when Mr. Mazilu should have come to present his preliminary report, he had spared no effort to enable him to do so. He had arranged for telegrams to be sent, had suggested that contact be made with the Special Rapporteur and had requested the Secretary-General to intervene. None of those initiatives, however, had been successful. The Sub-Commission was now in a paradoxical situation whereby the Secretariat was being criticized on account of actions for which it should instead be commended. For his part, he wished to state that all the initiatives taken under his chairmanship had been entirely his responsibility and he once again thanked the Secretariat for the way in which it had carried out the tasks entrusted to it.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (agenda item 9) (continued)

(a) QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT (continued)

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(E/CN.4/Sub.2/1989/18; E/CN.4/Sub.2/1989/20 and Add.1; E/CN.4/Sub.2/1989/21 and Add.1; E/CN.4/Sub.2/1989/22; E/CN.4/Sub.2/1989/23; E/CN.4/Sub.2/1989/24 and Add.1-3; E/CN.4/Sub.2/1989/25; E/CN.4/Sub.2/1989/27; E/CN.4/Sub.2/1989/28; E/CN.4/Sub.2/1989/29; E/CN.4/Sub.2/1989/30 and Add.1 and Add.2/Rev.1; E/CN.4/Sub.2/1989/45; E/CN.4/Sub.2/1989/50; E/CN.4/Sub.2/1989/NGO/7; E/CN.4/Sub.2/1989/NGO/11; E/CN.4/1989/10; E/CN.4/1989/15; E/CN.4/1989/18 and Add.1; E/CN.4/1989/19; E/CN.4/Sub.2/1988/12; E/CN.4/Sub.2/1988/18/Rev.1; E/CN.4/Sub.2/1988/28; E/1988/20; E/CN.4/Sub.2/1987/30 and Add.1; A/C.6/43/L.9; CCPR/C.2/Rev.2)

38. Mr. JOINET, introducing the report of the Working Group on Detention (E/CN.4/Sub.2/1989/29), as Rapporteur of the Group, said that he had agreed to work on that question in a language other than his own because he had thought that the report would be issued in French before the Sub-Commission took up the item. Since it had apparently not been possible to translate the document in time, he would restrict his comments to the first part of the report with which he had been particularly concerned, and would ask Mr. Alfonso Martínez to introduce the remainder, since the text had been drafted both in English and Spanish.

39. During seven informal and six formal meetings, the Working Group had considered in turn the six items on its agenda. Nearly all its work had been devoted to considering a draft declaration on the protection of all persons from enforced or involuntary disappearances. He recalled that on several occasions the Commission had requested the Sub-Commission to prepare a statement on that serious and very widespread practice which was not covered by any international instrument. The previous year, the Working Group had prepared a draft which the Sub-Commission had transmitted to Governments, non-governmental organizations and to the United Nations Office at Vienna for comments.

40. On the basis of the comments received and in the light of the draft Inter-American Convention against enforced or involuntary disappearances, the International Commission of Jurists (ICJ) had prepared a revised draft which it had submitted to the Working Group for consideration. The Working Group had studied the draft declaration at three formal meetings and had then discussed the revised draft submitted by the ICJ, article by article, at seven informal meetings. As a result of the efforts of all participants, it had been possible to approve the second revised version, some articles had, however, been left in square brackets. At its last meeting, the Working Group had requested its Chairman to prepare, without financial implications, a revised version of the draft, in order to enable the Group to consider it as a matter of priority and to finalize it at the following session for submission to the Sub-Commission at its forty-second session.

41. Mr. ALFONSO MARTINEZ, continuing the introduction of the report of the Working Group on Detention (E/CN.4/Sub.2/1989/29), as Chairman of the Group, said that, unfortunately he would not be in a position to carry out the task entrusted to him by the Working Group, namely, to establish a version of the draft declaration which would include all the revisions; he had, however, asked Mr. Hatano to undertake that task, as he was authorized to do.

42. With regard to item 2 of its agenda, the Working Group had decided not to continue its consideration of that question for the reasons given in the report (op. cit., para. 22).

43. The Working Group had given particular attention that year to agenda item 3 concerning the situation of detained children as the decisions taken on the subject showed (para. 30).

44. The Working Group had decided not to retain item 4 on its agenda (para. 31).

45. With regard to item 5, following a very useful discussion in which, in addition to members of the Group, other experts of the Sub-Commission and a large number of non-governmental organizations had taken part, the Group had decided to entrust the Chairman with the preparation of a working paper (para. 40) on that issue, the somewhat delicate nature of which had been revealed by the discussion. The Working Group would also submit a draft decision to the Sub-Commission.

46. Lastly, the Group had decided (para. 48) to continue its consideration of item 6 and to request States applying the death penalty to refrain from imposing it on persons of less than 18 years of age.

DISCRIMINATION AGAINST INDIGENOUS PEOPLES (agenda item 13)
(E/CN.4/Sub.2/1989/33 and Add.1-3; E/CN.4/Sub.2/1989/35 (Part II) and Add.1; E/CN.4/Sub.1/1989/36 and E/CN.4/Sub.2/1989/49)

47. Mrs. DAES, introducing the report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1989/36), said that Governments had made an effort to participate constructively in the work of the Working Group and had even proposed measures to improve the effectiveness of its work on the rights of indigenous peoples.

48. More than 400 indigenous peoples had taken part in the Group's work through their representatives. During the consideration of developments in the sphere of the promotion and protection of the rights and fundamental freedoms of indigenous peoples, the Working Group had heard a large number of complaints concerning the manner in which they were treated, particularly in certain parts of the world, although she had drawn the attention of their representatives to the fact that the Working Group was not a court.

49. With regard to standard-setting activities, the substantial contributions made by all the parties concerned had enabled the Working Group to adopt by consensus a number of recommendations which would be submitted to the Sub-Commission. On the basis of those recommendations and of the decisions taken, the Working Group had also prepared draft resolutions which would be submitted for consideration at a later stage to the Sub-Commission.

50. The decisions and recommendations of the Working Group were contained in Annex I to the report. She drew particular attention to the recommendation contained in paragraph 5 in which the Working Group requested authorization to meet for 10 working days at its eighth and future sessions, and the recommendation contained in paragraph 8 concerning the meeting of experts to review national experience in the operation of schemes of internal self-government for indigenous populations authorized by General Assembly resolution 42/47. She also drew attention to the recommendation contained in paragraph 15, concerning requests from indigenous peoples' organizations for technical assistance from the programme of advisory services. Annex II contained the revised text of the draft Universal Declaration on the Rights of Indigenous Peoples, as presented by herself.

51. Mr. CAREY introduced part II of the report, on the relocation of Hopi and Navajo families (E/CN.4/Sub.2/1989/35 (Part II) and Add.1) which he had prepared pursuant to Sub-Commission decision 1988/105, part I having been prepared by Mrs. Daes. Both Rapporteurs would have preferred to submit a single report, but geographical distance, lack of time and a number of minor divergences of view had prevented them from doing so. The most useful part of his report was probably the Appendix attached as an addendum and containing two maps, the first showing the Navajo and Hopi reservations situated in north-east Arizona, and the second indicating the "former joint use" area.

52. In Arizona, he had met Navajos and Hopis who had expressed different viewpoints on the relocation of the families of the two peoples. In order to acquaint the members of the Sub-Commission with the various opinions prevailing on the issue, he had added five annexes to his report which he had distributed directly to members of the Sub-Commission containing the following information: Annex I contained background information on the issue and a summary of the various opinions prepared by a specialist. Annex II gave the

opinion of the Hopi Tribal Council, to the effect that the Hopis had occupied the locations before the Navajos, who had arrived a hundred years previously; Annex III described the opposing views of some Hopis. The official position of the Navajo nation was recorded in Annex IV and the opinion of some Navajos (the Big Mountain elders), who opposed relocation, appeared in Annex V.

53. In brief, the information collected on the issue showed that the relocation of Hopi and Navajo families was an extremely controversial issue since within the same tribe the opinions of the Tribal Council (official position) differed from those of certain members of the tribe (dissenting position), not to mention the opposition existing between the Hopi Tribal Council and the Navajo Tribal Council. There were therefore at least four different opinions among the peoples directly concerned; in addition there was in a manner of speaking a fifth opinion, that of United States legislation on relocation. Consequently, the issue was highly sensitive and extremely complex for which there was no ready-made solution; it was ground on which the Sub-Commission should venture only with the greatest caution, particularly if it intended to come down in favour of one of the various opinions.

54. He took the example of the moratorium which had been proposed (E/CN.4/Sub.2/1989/35 (Part I), para. 51) to delay the implementation of relocation programmes; the Navajo authorities were in favour, but not the Hopi authorities, who claimed that the territory was theirs and that the Navajos should leave it. In order to be able to reach a decision on that point an in-depth study of the issue would be necessary, something which was not possible within the time-period allocated to the Sub-Commission.

55. The same applied to the proposal that the United Nations should make advisory services available to the Traditional Hopi people (E/CN.4/Sub.2/1989/35 (Part I) para. 51), with the dual aim of firstly enabling Hopi children to have a better understanding of their tribe's traditional culture, religion and language, and, secondly, to provide legal assistance to Navajos who were to be relocated. In respect of the first point, he said that from what he had been able to observe at first hand, Hopi children could attend local elementary and secondary schools while living at home with their parents; the latter were then able to bring them up in their traditional language, religion and culture. With regard to the advisory services to be provided in respect of legal assistance to Navajos who were to be relocated, he did not really see the need for it since there was a Hopi/Navajo Legal Services Programme, the aim of which was precisely to give legal assistance to Navajos threatened with relocation through the agency of persons speaking their language.

56. Mrs. DAES introduced the part of the report on the relocation of Hopi and Navajo families (E/CN.4/Sub.2/1989/36 (Part I)) which she had prepared pursuant to Sub-Commission decisions 1987/110 and 1988/105, comprising a summary of the information received on what she considered to be a humanitarian problem, and which had, in fact, been recognized as such both by the members of the United States Congress and by the American press and public opinion. Any relocation was a traumatic experience for the person affected, wherever it occurred or whatever the conditions in which it took place. The annexes to her report, which could be consulted in the Secretariat, included an account of the conditions for the relocation of Hopi and Navajo families. In all cases the information came from official sources, supplied by members

of Congress, commissions and administrative services with competence in the matter. She wished to express her gratitude for the welcome she had received, particularly from members of Congress, and the ease with which she had been supplied with the documentation requested.

57. After going to Arizona, more specifically to the Big Mountain area where relocation was taking place, and having talked to members of the Hopi and Navajo Tribal Councils, she had included in her report the representations which had been made to her; all those concerned requested the competent United States authorities to make an effort to deal more humanely with the families which came under the relocation.

58. In her Conclusions, contained in section X of her report (para. 50), she stressed that the problem of relocation was a grave one and related to many human rights provisions and principles provided by international and regional instruments. The Hopis and Navajos were peaceful peoples profoundly religious, who asserted that they wished to live in peace and settle their disputes peacefully among themselves. If the relocation programme were implemented, it should be done so in a more humane and generous fashion, since relocation threatened the cultural survival of the Hopis and Navajos; in particular, their sacred shrines and burial places should be respected and should not be subject to expropriation, while the environment and way of life of the two tribes should also be respected.

59. In her Recommendations (sect. XI, para. 51), she said that she was in favour of a moratorium (proposed in H.R. Bill 1235 of the United States House of Representatives), having heard the opinions of members of Congress who were well acquainted with the issue; that time-frame would be of great assistance to those who were to be relocated in protecting their human rights. She also recommended that the Hopis should receive advisory services, naturally with the approval of the United States Government.

60. She suggested that the Sub-Commission might take note of the two parts of the report on the relocation of Hopi and Navajo families and conclude its consideration of the issue, after adopting a draft resolution which, she hoped, would follow the lines of her recommendations.

61. The CHAIRMAN said that although the reports on item 13 had been distributed, the members of the Sub-Commission could continue to address items 9 and 15 of the agenda, consideration of which had not been completed.

62. Mr. BHANDARE noted that the two parts of the report on the relocation of Hopi and Navajo families (E/CN.4/Sub.2/1985/35 (Part I), (Part II) and Add.1) indeed reflected different forms of tackling the issue, but those differences of opinion, like those which also existed among the peoples concerned, might help the Sub-Commission to take an appropriate decision. It should not be forgotten that indigenous peoples, who accounted in all for over 300 million people throughout the world, were the weakest link in the chain of minorities and that they had great hopes in the work of the Working Group.

63. Referring to agenda item 15 (b), and the report by Mr. Mazilu (E/CN.4/Sub.2/1989/41 and Add.1), he said that the Sub-Commission should not create a precedent by considering the report in the absence of its author. He very much regretted that there had been criticism of the Secretariat and

recalled that it was he who had proposed in 1987, International Youth Year, that the study should be entrusted to Mr. Mazilu. He proposed formally that consideration of Mr. Mazilu's report should be postponed until the following session and that the topic dealt with in the report should be kept on the Commission's agenda until Mr. Mazilu was in a position to introduce his report himself. He requested that his proposal should be put to the vote, if necessary.

64. Mr. EIDE said that Mrs. Daes' report (E/CN.4/Sub.2/1989/40) was an important study whose purpose was to describe a sphere which was evolving. The question of the international protection of human rights had played a major role in the transformation of contemporary international law. Although development had been rapid in some spheres, it was not particularly noticeable in others. For example, the International Court of Justice could only be seized of a case by a State and not by an individual. However, other machinery was open to individuals and had been studied by Mrs. Daes.

65. The individual had long been merely an object in international law, but he was also in the process of becoming a subject for whom international human rights law was of considerable interest. One only had to consider the number of non-governmental organizations in some way representing groups of individuals, that followed the work of the international human rights bodies with great interest. The question that arose was whether the individual could be a subject from the viewpoint of the procedures existing in international law or, in other words, whether an individual could invoke international law in order to assert his rights. It was true that various mechanisms for that purpose were already in existence: the procedure for complaints that could be brought before regional bodies, the system of communications that could be submitted to the Human Rights Committee, and the procedure established under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. All those mechanisms illustrated the ongoing process of development in respect of which he considered that it was hardly possible to make any conclusive judgement.

66. With regard to the Recommendations submitted by Mrs. Daes (op. cit., paras. 566-568), he would not be very much in favour of amending the Statute of the International Court of Justice, whose role was mainly to deal with the relationships among States. It seemed to him that it would be far better to set up and strengthen institutions, courts and other international mechanisms specifically responsible for the protection of human rights. For example, the procedures of the Human Rights Committee as well as those of the European and inter-American systems for the protection of human rights should be developed. It might also be necessary to envisage an African system of protection of human rights and, in the context of the East-West discussions held in the Conference on Security and Co-operation in Europe, to develop procedures which would enable individuals to submit complaints and to obtain satisfaction.

67. In conclusion, he thought that Mrs. Daes' study gave a good description of the process of change currently taking place and provided a very useful historical overview which gave the reader points of reference for following that process. He supported the proposal to transmit the study and the comments made on it by members of the Sub-Commission to the International Law Commission.

68. With reference to the working paper prepared by Mrs. Palley on possible ways and means to facilitate the peaceful and constructive resolution of situations involving racial, national, religious and linguistic minorities (E/CN.4/Sub.2/1989/43), he recalled that the Sub-Commission had often speculated on ways and means of protecting minorities and had frequently come up against the problem of defining the term "minority". It was much more useful to proceed selectively by attacking certain aspects of the problem, as had been done when standards for indigenous people or religious intolerance had been prepared. Currently, there was even a question of making provision for linguistic standards.

69. Mrs. Palley had studied ways and means of settling conflicts or situations which were sources of tension in a peaceful and constructive way, since the point at issue was the avoidance of situations which might destroy the territorial integrity of the country in question, which might notably give rise to very serious international tensions. For example, it was known that the tensions which had preceded the Second World War were closely bound up with the issue of minorities in Europe.

70. The problem of minorities could not, however, be spirited away; it really existed and had to be faced. It was therefore worth taking up Mrs. Palley's proposal to consider ways of resolving the problem of the relationship between a national society and the various minorities that made it up so as to enable the latter to preserve their cultural and linguistic traditions while playing a important role in the country's development as a whole. He hoped that the working paper under consideration would enable the Sub-Commission to open up an area that had been largely neglected and to follow the lines traced by Mrs. Palley.

71. With regard to the prevention of discrimination and the protection of women (item 15 (c)), he recalled that that particular aspect of human rights had been entrusted to the Commission on the Status of Women and was no longer part of general human rights activitites. In view of the limited time available and the Sub-Commission's very heavy agenda, he did not really see how the latter could have a genuine debate on that important issue.

72. Mrs. BAUTISTA stressed the interdependence of all the topics considered by the Sub-Commission under items 9 and 15 of its agenda, and the need to continue the studies undertaken on all the subjects. Mrs. Daes' report on the status of the individual and contemporary international law (E/CN.4/Sub.2/1989/40) was of particular topical interest because, although there were instruments to protect the individual, the latter was not always in a position to assert his rights under those instruments. In that respect, Mr. Mazilu's absence from the current session of the Sub-Commission might well form the subject of a study since the problem involved was in fact respect for the rights of an individual and the effective implementation of international instruments.

73. Mrs. Daes' working paper on the rights of indigenous peoples (E/CN.4/Sub.2/1989/33) and the report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1989/36) should serve as a basis for continuing the study of the autonomy of ethnic and cultural groups, which usually lay behind the armed conflicts which broke out in the world.

74. Mrs. FATIQ (Bahá'í International Community) said that the recommendations made by Mrs. Daes in her study on the status of the individual and contemporary international law (E/CN.4/Sub.2/1989/40) had enabled the community which she represented, to identify the areas on which it intended to concentrate more particularly, namely, the relationship between the process of development of international law and the evolution of society, the balance between the rights and duties of the individual, the adoption of human rights standards and their effective application and the recognition of the primacy of the law in the promotion of justice and peace.

75. The Bahá'í International Community hoped to be able to intensify its co-operation with the Sub-Commission at its next session on all those points.

76. Mr. CHERNICHENKO, referring to Mr. Mazilu's report (E/CN.4/Sub.2/1989/41 and Add.1), noted that the opinions expressed in it were essentially of a political nature; that was regrettable in view of the fact that the Sub-Commission was making every effort to depoliticize its debates. He appreciated Mr. Mazilu's particular situation, but considered that a special rapporteur should be able to rise above certain occurrences. At the procedural level, the Sub-Commission wait for the International Court of Justice to deliver the advisory opinion which had been requested of it before considering Mr. Mazilu's report.

77. Mr. TÜRK said that Mrs. Daes' report on the status of the individual and contemporary international law (E/CN.4/Sub.2/1989/40) provided the Sub-Commission and other interested agencies a most useful basis for continuing the study of a problem which arose constantly, namely, the conflicts existing between an individual's aspirations and legal status and the rules of international law.

78. The majority of States had recognized that the individual could be subjected to the rules of international law, in particular by ratifying the Optional Protocol to the International Covenant on Civil and Political Rights. The Sub-Commission could perhaps help to encourage more States to ratify the Optional Protocol, particularly by assisting them in overcoming internal problems which they might come up against.

79. In the excellent working paper prepared by Mrs. Palley (E/CN.4/Sub.2/1989/43), he took note of paragraph 20 in particular and considered that the Sub-Commission should indeed recognize that there was still much to be learned from contemporary national practice and that it was important not to react reflexively to symptoms such as claims or conflict. Methods employed in the past must evolve and the international community should draw on positive national experiences in order to help to settle situations involving minorities. With reference to the guiding principles set out in paragraph 26 of Mrs. Palley's document, he proposed the insertion at the end of paragraph (c) of the phrase: ", and for the exercise of the human rights of the individual". Paragraph (f) could then be deleted.

80. Mr. Mazilu's report (E/CN.4/Sub.2/1989/41) naturally gave rise to some reflections, but it was important to make it clear that it was mandatory for all reports to be considered in the presence of the Special Rapporteur and for comments to be addressed directly to him. As a result, the consideration of Mr. Mazilu's report should be postponed until the Sub-Commission's following session in which it was hoped that Mr. Mazilu would be able to take part.

The meeting was suspended at 6.05 p.m. and was resumed at 6.40 p.m.

SLAVERY AND SLAVERY-LIKE PRACTICES

(a) QUESTION OF SLAVERY AND THE SLAVE TRADE IN ALL THEIR PRACTICES AND MANIFESTATIONS, INCLUDING THE SLAVERY-LIKE PRACTICES OF APARTHEID AND COLONIALISM

(b) EXPLOITATION OF CHILD LABOUR (agenda item 14)

(E/CN.4/Sub.2/1989/37; E/CN.4/Sub.2/1989/38; E/CN.4/Sub.2/1989/39)

81. Mr. EIDE, introducing the conclusions of the Working Group on Contemporary Forms of Slavery, said that two draft resolutions were being submitted to the Sub-Commission, one of which called on the Commission to adopt a comprehensive programme of action to combat the sale of children, child prostitution and child pornography; the other called on the Commission to appoint a Special Rapporteur to provide the Commission annually with information in that field.

82. In conformity with the three-year programme of work approved by the Sub-Commission at its fortieth session, the Working Group had mainly focused in 1989 on issues connected with the sale of children, child prostitution and child pornography, issues which were the most serious violations of the human rights of the most vulnerable of all human beings. Extensive information had been brought to it both on the occurrence of those phenomena in different parts of the world and on the measures adopted to prevent them. The Working Group had benefited from the contribution of a number of extremely competent non-governmental organizations and the collaboration of governmental observers.

83. The sale or other forms of traffic in children might be for the purposes of adoption when profit motives were involved, prostitution, pornography, child labour, criminal activities or organ transplants. The discussions of the Working Group had centred on the traffic in children for purposes of sexual exploitation, but had also briefly discussed the problem of the exploitation of child labour, and that of adoption for the purposes of profit. In its consideration of the sexual exploitation of children, the Working Group had had the benefit of the participation of an observer from INTERPOL and had once again noted that international co-operation, particularly between law enforcement agencies, was essential in fighting that phenomenon.

84. Lastly, he pointed out that the Working Group would also submit a third draft resolution concerning a Convention on the Rights of the Child. He hoped that the Commission, on the recommendation of the Sub-Commission, would take the appropriate steps to adopt a comprehensive programme of action and implement it in co-operation with UNICEF and UNESCO.

The summary record of the second part of the meeting appears as E/CN.4/Sub.2/1989/SR.35/Add.1.
