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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-sixth session

# SUMMARY RECORD OF THE 11th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 August 1994, at 3 p.m.

Chairman: Mrs. ATTAH

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GE.94-13535 (E)

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The meeting was called to order at 3.15 p.m.

PROTECTION OF MINORITIES (agenda item 18) (continued) (E/CN.4/Sub.2/1994/36 and Corr.1; E/CN.4/Sub.2/1994/NGO/1 and 3; E/CN.4/Sub.2/1993/34 and Add.1-4)

1. Mr. AKTAN (Observer for Turkey) said that attempts were still being made to abuse the principle of self-determination by condoning terrorist violence. Some non-governmental organizations defended self-determination for ethnic groups which were living neither in "non-self-governing territories" nor "illegally occupied territories" but "in a Sovereign State". That attitude was legally wrong and politically dangerous. The recent pronouncements in two resolutions on Turkey, under the heading of self-determination, made by the Parliamentary Assembly of such an important organization as the Conference on Security and Cooperation in Europe (CSCE) were thus most distressing.

2. Mr. Eide's working paper (E/CN.4/Sub.2/1994/36 and Corr.1) rightly made allowance for a "handful of ethnic or religious entrepreneurs who would mobilize for violence". Violence caused by "ambitious entrepreneurs" led to bloodshed and human rights violations in countries, especially when they were materially backed by neighbouring countries trying to promote their own interests and morally supported by those trying to redeem their own personal and societal wrongs at the expense of others.

3. Frustration was not, in fact, confined to ethnic groups. General frustration caused by poverty could be easily exploited by "ambitious entrepreneurs" to mobilize a minority against its Government. The frustration would not necessarily be connected with "belonging to a group". An influential segment of the international community which was predisposed, for reasons of its own, always to see the fault of the Government or of the majority in any "minority situation" encouraged the proliferation of such situations.

4. The causes of ethnic violence were much more deeply rooted and the relationship between social factors and ethno-nationalism was far from direct or obvious. Multi-ethnicity and multireligiousness were traditional characteristics of the non-Western world, the nation State being a Western invention which had badly affected ethnic harmony.

5. It was not always true that ethnic terrorism resulted from the suppression of ethnic identity. The PKK leader was, quite naturally, an enemy of the tribal structures in south-eastern Turkey; he was also opposed to the family structure of the Kurds. As part of his self-hatred, he despised the Kurdish people and, consequently, had a very narrow sociocultural base on which to build a stable and healthy ethnic identity. Violence was apparently the only solution to his identity crisis. The Government of Turkey should not be expected to recognize the criminal ethnic identity which the PKK was fighting for; it was socio-pathological and represented a return to tribalism.

6. There was no ready-made solution to ethnic conflicts. Efforts of the international community in the name of preventive diplomacy might encourage ethnic groups to revise their claims excessively upwards, dangerously destabilizing political regimes and the peace and security of entire regions.

7. Mr. FASEHUN (Observer for Nigeria) said that Nigeria was a country of minorities, though all of its ethnic groups were indigenous to the country. It had, consequently, chosen an adaptive federal system which currently contained 30 states. None the less, the process of political meiosis could not go on indefinitely. It could not but weaken administration, undermine effective government and place an unnecessary burden on the people whom the local governments were to serve. Mr. Eide's categorical statement of the need for all members of society to accept the legitimacy of the State, the limitations on self-determination in post-colonial societies and the dangers of ethnic territorial decentralization was thus a welcome one, particularly in societies seeking to create ethnic bonds from inherited colonial boundaries and structures.

Statements equivalent to a right of reply

8. Ms. ABBAS (Observer for Pakistan) said, with respect to the statement by the representative of the Indian Institute for Non-Aligned Studies, an organization funded almost entirely by the Government of the country in which it had its headquarters, said that her Government welcomed constructive criticism from all quarters, particularly in the field of human rights.

9. Such criticism was not possible, however, when the motivation was to divert attention from the condition of human rights at home, such as regular communal riots between the majority and the ethnic, linguistic and religious minorities; the horror of the caste system, which had dehumanized some 200 million people to the status of untouchables; repressive laws and frequent resort to the use of force; "cultural cleansing", manifested, for example, in the destruction of the holy places of the religious minorities; and other types of well-documented atrocities committed in the territories forcibly occupied over the past 50 years against the wishes of the local populations and the international community at large.

10. Mr. SIMONI (Observer for Albania) said he wished to reply to the statement made by the representative of the International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities concerning the human rights of the Greek minority in Albania. Albania was an open country; anyone could go there and see for himself or herself the situation of the Greek minority and judge the truth of assertions that it was "ignoring all international norms and agreements" or that the Albanian authorities were "terrorizing the Greek population".

11. That NGO had referred to the "closing of Greek schools", at a time when there were 68 primary Greek-language schools with 4,400 pupils and 511 teachers, 3 vocational schools, 1 Greek teachers' training college and a chair of Greek at the University of Gjirokastra. It had also asserted that there were "restrictions in practising the Orthodox faith", despite the fact that the Greek Bishop heading the Albanian Orthodox Church had made no such complaint. As to the allegations that Albanians of Greek nationality had been dismissed from civil service or other government posts, it was common knowledge that there were six deputies of ethnic Greek origin in the Albanian Parliament, representing several political parties, as well as many mayors, etc.

12. It was untrue that six minority leaders had been arrested on trumped-up charges; they had been indicted for illegal possession of arms and secessionist and anti-constitutional activities. The CSCE High Commissioner on National Minorities, who had visited them, had stated he had heard of no complaints from those leaders concerning their treatment. Their trial, which was to take place on 15 August 1994, would be a public one, and representatives of the mass media, both local and foreign, had been invited to attend.

13. Mr. MOTTAGHI-NEJAD (Observer for the Islamic Republic of Iran) said he wished to reply to the statement by the representative of the Movement against Racism and for Friendship among Peoples regarding the situation of Baha'is and Christians in Iran. The religious minorities recognized in his country's Constitution were Christians, Jews and Zoroastrians and, as such, they enjoyed all the rights and even, in some instances, certain privileges provided for them according to law. An example was the fact that those minorities, with a population of less than 200,000, had five representatives in the Iranian Parliament. They could also vote for the candidate of their choice outside their own constituency.

14. Baha'ism was a political cult, invented artificially, and shrouded in the guise of religion. Its founder had claimed to be a prophet and to be God. No Islamic State or scholar recognized Baha'ism as a religion. Moreover, Baha'is did not constitute a minority either, as there was no basis whatsoever for describing them as an ethnic, racial or linguistic minority. As individuals, they were certainly entitled to freedom of conscience and personal belief, and they enjoyed constitutional guarantees under the law of the land.

15. Mrs. SABHARWAL (Observer for India) said she was at a loss to understand why the observer for Pakistan had attacked India in the guise of responding to a non-governmental organization. She was amazed that the organization in question had been described as a "government NGO", considering that the tradition of an independent, critical and free NGO community in India was well known.

16. That description was, perhaps, due to the lack of a democratic tradition in the observer's country, or perhaps a reflexive application of the standards practised by its Government in using NGOs to further its own political or territorial ambitions. By resorting to that method, the observer in question, with her extraneous allegations about India, was seeking to avoid the real issue under consideration, namely, the human rights situation of minorities in her own country.

17. Ms. ABBAS (Observer for Pakistan) said that, while it was unclear why the observer for India should have decided to reply to her own reply to the representative of the Indian Institute for Non-Aligned Studies, the fact that she had done so served to confirm the widely held belief that the Institute, whose funding was almost entirely provided by the Indian Government, was operating to serve the interests of the Indian Government in international forums. The allegations against her country were made only to divert attention from the situation of minorities at home. It was not through the Constitution but by force of arms that India dealt with its own minorities and with the population of territories that it had forcibly occupied.

18. Mrs. SABHARWAL (Observer for India) said she had no intention of engaging in polemics with the observer for Pakistan, but felt constrained to respond to the entirely irrelevant and extraneous issues raised in that observer's statement. It was only to be expected of a country where discrimination against minorities was legally and constitutionally mandated and entrenched in apartheid proportions in the name of religion.

19. The NGO in question, which had consultative status with the Economic and Social Council, had raised some genuine concerns, and the observer for Pakistan would have done better to respond to them. They included the violations of human rights of minorities in Pakistan, which were of a systemic nature, institutionalized by the State; the promulgation of laws and amendments to the Constitution which were aimed against minorities and violated their human rights; violation of the human rights of Mohajirs; persecution of minorities for political ends; blasphemy laws; and so on. The instances were innumerable and well documented.

20. Mr. EIDE said that the observations concerning his report and working paper on the protection of minorities had been most interesting. They had clearly brought out the need for the Sub-Commission to go deeper into that core element of its mandate. The purpose of his study had been to emphasize the need to strengthen the protection of minorities by encouraging cultural, religious and linguistic diversity. It also underlined the dangers arising from challenges to multiculturalism, whether by Governments or minority groups. Many "conflict entrepreneurs" were operating on both the minority and majority - or Government - sides, as had been brought out by the situation in Rwanda.

21. He fully agreed with Ms. Daes that the fact that some leaders had exploited ethno-nationalism as a vehicle for seizing power should not deter the Sub-Commission from examining justified minority claims which were not based on ethno-nationalism.

22. There had been general agreement on the urgent need to find peaceful solutions to potentially violent ethnic conflicts within the framework of general international law and human rights law and in keeping with democratic principles. Difficulties in achieving agreement on definitions should not be allowed to impede progress.

23. A number of speakers had drawn attention to the apparent inadequacy of the existing statutory provisions in the area of minority rights. There were, however, some important instruments available which provided a basis for further work in the area, including the International Convention on the Elimination of All Forms of Racial Discrimination, whose terms of reference included discrimination based on ethnic origin (art. 1, para. 1). A number of speakers had endorsed the idea that States should be encouraged to withdraw their reservations to article 4 of that Convention, thus making it easier to react effectively to any incitement to racial or ethnic hatred, and he suggested that the Committee on the Elimination of Racial Discrimination (CERD) was well placed to identify the "ethnic entrepreneurs" operating in a given conflict at an early stage and request that appropriate action be taken against them under article 4.

24. In that context, wider use could also be made of article 20, paragraph 2, of the International Covenant on Civil and Political Rights, which prohibited "Any advocacy of national, racial or religious hatred". In that regard, the Human Rights Committee, too, had an important role to play. On the other hand, it was regrettable that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families had not been widely ratified; the Sub-Commission should call upon Governments to ratify it as speedily as possible.

25. Another important point raised by several speakers had been the need for effective enforcement of minority rights not simply in terms of constitutional and statutory provisions but in terms of ensuring that those provisions were effectively implemented in actual fact. There were often serious discrepancies between apparently enlightened constitutional and statutory provisions and practical experience, and that often led to the kind of frustration and anger which could have tragic consequences.

26. Mr. Bossuyt had made a number of valuable comments on the nature of minority rights in relation to traditional (general) international law and human rights law and had highlighted the difficulty of formulating precise standards in that area; however, international law contained a number of elements which could serve as valuable guidelines in the protection of minority rights, including article 27 of the International Covenant on Civil and Political Rights and the 1992 Declaration on Minorities.

27. It had also become very clear that any attempt to resolve group conflicts had to be based on mutual respect by the parties concerned for the human rights of others; there was always a danger that the assertion by a given group of its own rights might engender a positive hostility within that group to the legitimate rights of others.

28. With regard to the future course of action by the Sub-Commission, he noted the general consensus that the two elements of the Sub-Commission's mandate, the prevention of discrimination and the protection of minorities, had to be linked in conceptual and practical terms and that the Sub-Commission would have to reorganize its agenda to ensure a thematic discussion on questions of racism, xenophobia and minorities. It was also essential that the Sub-Commission collaborate with the various treaty bodies and rapporteurs, and with the High Commissioner for Human Rights.

29. Many speakers had endorsed the proposal in paragraph 39 of his working paper (E/CN.4/Sub.2/1994/36 and Corr.1) that a working group on minorities be established along the lines of the existing Working Group on Indigenous Peoples. He fully agreed that the two working groups should be kept separate and that an organization claiming to represent a particular group should not be allowed to attend meetings of both working groups. A working group of the kind he had proposed would provide a valuable forum for peaceful discussion between disputing parties, with the members of the working group acting as "honest brokers", in which minorities would be encouraged to recognize the rights of others as well as asserting their own.

30. It would allow cases to be examined in the proper context and on their own merits, rather than placing undue reliance on general solutions, and would provide a means of getting at the objective facts and resolving conflicting allegations. It would also enable the participants to learn from and apply the constructive solutions that had been found in other parts of the world. It would also permit a more specific form to be given to the general wording of the 1992 Declaration through an examination of different situations. The working group would also facilitate interaction with other United Nations bodies, specialized agencies and other organizations. Its terms of reference would certainly include the promotion of the 1992 Declaration, the exploration of different practices affecting minorities, "bridge-building" activities and the promotion of tolerance.

31. Apart from a working group, other useful measures might include the appointment of a special rapporteur whose main task would be to act as a link between Governments and minority groups in order to find more constructive solutions to conflicts, based on an understanding by the parties of their rights and responsibilities. The High Commissioner for Human Rights would also have a vital role to play, in particular in situations where a serious escalation of conflict appeared likely. The Sub-Commission would also have to cooperate with the Commission on Human Rights to ensure that there was no duplication of effort. It would, in general, need to devote more of its efforts to the prevention of hatred and the protection of minorities.

32. Lastly, he wished to clarify his position with regard to the matter of self-determination which appeared to have been misinterpreted by certain NGOs. His comments in the working paper needed to be seen in the context of his 1993 report (E/CN.4/Sub.2/1993/34 and Adds.1-4) which went into greater detail on the matter (paras. 81-88). He suggested that a distinction had to be drawn between the right of secession, which was a very narrow concept and could apply only in extreme circumstances, and the more general right to self-determination. The 1993 Vienna Declaration, which was quoted in paragraph 24 of his working paper, emphasized the right of a State to preserve its territorial integrity on condition that the Government concerned conducted itself in compliance with the principle of equal rights and self-determination of peoples. In cases where an ethnic group was not properly represented, it might have a legitimate claim to some form of local autonomy, as he had pointed out in his 1993 report (para. 88); however, there were serious dangers inherent in excessively narrow concepts of ethnic separatism, with all the potential connotations of ethnic cleansing, and it was wrong to believe that there was any absolute right of secession.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 6) (continued)
(E/CN.4/Sub.2/1994/L.2)

Situation in Rwanda

33. The CHAIRMAN invited the members of the Sub-Commission to comment on draft resolution E/CN.4/Sub.2/1994/L.2.

34. Ms. WARZAZI said that Mr. Fan had become a sponsor of the draft resolution. Basing herself on the original French text, she said that a number of revisions should be made to the draft resolution before it was put to a vote.

35. In the case of paragraph 2, the sponsors felt it was appropriate to include a clause acknowledging the tremendous humanitarian efforts which had been made by the United Nations personnel on the ground.

36. In paragraph 7 after "war crimes" she proposed to add "including the murder of bishops and nuns". In paragraph 10, she proposed to add a reference after "including" to the attack on the aircraft transporting the Presidents of Rwanda and Burundi. On the other hand the phrase "or in the broadcasting ... the political assassinations" which followed "illicit traffic" was superfluous and could be deleted.

37. Mr. JOINET said that while, in principle he accepted the revisions that had been made he had some reservations about the appropriateness in a general statement of the addition to paragraph 7 of a specific reference to the murders of bishops and nuns. In paragraph 10, he suggested that the overall readability would be improved by inserting a colon after "to the need" and putting each of the subsequent items on separate lines.

38. Mrs. PALLEY said she agreed that it was vital to acknowledge the humanitarian efforts made by everybody working in the field. She had, however, a number of reservations with regard to the wording of the draft resolution. In the first preambular paragraph, the phrase "at the extent and seriousness" might better be replaced with "by the convincing and appalling evidence". In the third preambular paragraph, the accusation levelled against "certain States" and the reference in paragraph 1 to the "complicity of certain States" appeared far too broad and might set a bad precedent.

39. Mr. ALFONSO MARTINEZ said he was able to accept the changes made in paragraph 10 and shared the reservations expressed by Mrs. Palley with regard to the sweeping accusations in the third preambular paragraph and paragraph 1. With regard to the final clause of paragraph 2, he suggested amending the text to read "yet takes note of the efforts made to provide humanitarian assistance" which would be more specific. He also shared Mr.Joinet's concern that the specific reference added in paragraph 7 to the murder of bishops and nuns might be out of place in a general statement. However, if the other members of the Sub-Commission found the draft resolution acceptable, he would not object to its being adopted without a vote.

40. Ms. WARZAZI said she thought that the sponsors might be able to accept Mrs. Palley's amendment to the first preambular paragraph and the amendment to the final clause of paragraph 2 proposed by Mr. Alphonso Martinez.

41. The CHAIRMAN asked whether the word "pernicious" could be deleted from the third preambular paragraph.

42. Mrs. PALLEY said that the sponsors seemed to be unable to accept her proposal that the words "by certain States" should be deleted from the third preambular paragraph. While she did not want to divide the Sub-Commission, she was concerned that, in the future, references should not be made to unspecified States; they should be named if necessary.

43. Mr. EL HAJJE supported Mrs. Palley's proposal that the words "by certain States" should be deleted. Either the States concerned should be named, or no reference should be made to them at all.

44. Mr. YIMER said that he could not accept the Chairman's suggestion regarding the deletion of the word "pernicious", since the role played by the States concerned had to be so described.

45. Mrs. GWANMESIA agreed with Mr. Yimer that the word "pernicious" was needed. Moreover, if the States concerned were named, difficulties would arise with regard to paragraph 10. The States could be named and their punishment called for only after the investigation mentioned there had been carried out.

46. Mr. ZHONG Shukong said that the text of the third preambular paragraph should be left as it stood, since it was the product of intensive consultations.

47. Mr. JOINET, commenting on Mrs. Palley's amendment to the first preambular paragraph, pointed out that to include the word "evidence" there and then, in the operative part, to request the expert commission to collect evidence would be contradictory.

48. Mr. YIMER said that it had been his understanding that the Sub-Commission would adopt the draft resolution on Rwanda without a debate. As it was, 500,000 persons had been killed, a massive tragedy was occurring, and the Sub-Commission was still debating. The sponsors could not accept the deletion of the word "pernicious" or of the words "by certain States", but they could accept the other amendments.

49. Mrs. PALLEY said that, after hearing Mrs. Gwanmesia's convincing explanation, she wished to withdraw her proposal that the words "by certain States" should be deleted from the third preambular paragraph.

50. The draft resolution, as orally revised and amended, was adopted.

51. Ms. WARZAZI thanked members for agreeing to adopt the resolution and requested the Chairman to transmit it to the Chairman of the Commission on Human Rights as soon as possible.

52. Mr. JOINET said that the text should also be sent to the chairman of the expert commission of inquiry.

CONTEMPORARY FORMS OF SLAVERY (agenda item 16) (E/CN.4/Sub.2/1994/33, 34 and 41)

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS:

(a) PREVENTION OF DISCRIMINATION AND PROTECTION OF CHILDREN: HUMAN RIGHTS AND YOUTH;

(b) HUMAN RIGHTS AND DISABILITY (agenda item 17) (E/CN.4/Sub.2/1994/35)

53. Mr. MAXIM, Chairman-Rapporteur of the Working Group on Contemporary Forms of Slavery, introducing the Working Group's report (E/CN.4/Sub.2/1994/33), said that the Working Group had held its nineteenth session, consisting of 14 meetings, from 25 April to 4 May 1994. It had first examined the status of the conventions on slavery, slavery-like practices and other existing instruments and machinery and had been highly concerned that the increase in the number of ratifications of them had been so slight. The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others had not yet been ratified by 119 States, and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery had yet to be ratified by 76 countries.

54. The Working Group had examined possible measures which might produce positive results in that regard. It had decided that its Chairman should contact the Governments of a number of the States which had not yet ratified the conventions in order to obtain first-hand information. The representatives of some of those States had met the Chairman and members of the Working Group during the session. The Working Group had further decided to request the Secretariat to prepare for the Working Group and for the Sub-Commission a list of the States which had not yet ratified the Conventions.

55. The Working Group had also reviewed the information received regarding the implementation of the conventions and the Programmes of Action. Several suggestions and proposals aimed at improving the legal framework had been made. The observer for the International Abolitionist Federation had expressed support for the drafting of an additional protocol to the 1949 Convention to deal with one of its major deficiencies - the client/prostitute relationship. The protocol should punish the client, not the prostitute. Other proposals had been concerned with the establishment, pursuant to Commission on Human Rights resolution 1949/90, of the open-ended intersessional working group, to elaborate guidelines for a draft optional protocol to the Convention on the Rights of the Child relating to the sale of children, child prostitution and child pornography.

56. The Working Group had also discussed the question of reporting on the ratification of the international instruments. It had been emphasized that no mechanism for the verification of their implementation had been foreseen in the slavery conventions but that something should be done in that respect. The representative of the International Abolitionist Federation had supported the idea of establishing a monitoring committee for the implementation of the

slavery conventions. Such a body could call upon States to explain their practices at the national level, and the Committee might be requested to submit annual reports to the General Assembly.

57. The representatives of the non-governmental organizations (NGOs) had presented a joint statement on establishing an effective mechanism for the implementation of the slavery conventions. They had emphasized the need to strengthen the mandate of the Working Group through the direct search for information, the need to have continuity of membership in the Working Group, and the need to raise its profile in order to improve cooperation among NGOs, specialized agencies and government representatives.

58. The NGOs had felt that a working group of the Commission on Human Rights, with a stronger mandate, would bring the issues into greater relief, but they had added that the existing Working Group could well continue its activities with a reinforced mandate. It had been pointed out that a new mandate should cover the need for increased cooperation between the Working Group, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women.

59. One member of the Working Group had stated that, in order to reinforce the Working Group's activities, the Commission and the Sub-Commission should authorize it to examine the information received on the ratification and implementation of the slavery conventions. The need for a mechanism for the implementation of those conventions had been emphasized.

60. In the discussions on the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery, concern had been expressed about the lack of financial contributions. The Working Group's members and the NGO observers had agreed that, because of the reluctance of Governments to contribute to the Fund, financial resources would have to be found elsewhere. Several concrete suggestions had been made in that respect. Public information and efforts to publicize the existence and objectives of the Fund had been considered to be of primary importance. In order to clarify the mandate and objectives of the Fund, the Working Group had adopted a proposal for an amendment to General Assembly resolution 46/122.

61. The Special Rapporteur on the sale of children, child prostitution and child pornography had made a statement in which he had recommended that the Working Group should cooperate with all States and with national and international organizations to promote a positive link between the child and the family and to counter child abuse and exploitation; that adequate existing laws and policies should be implemented in a more committed manner; that priority should be given to prevention, and that, since one of the root causes of child exploitation was poverty, States should reconsider their development strategies, policies and programmes with a view to integrating child development and protection into them.

62. The Working Group had also reviewed developments in other fields of contemporary forms of slavery. The participating NGOs had made statements on the enslavement of indigenous peoples through such practices as serfdom and debt bondage, on slave labour in various countries, and on the bonded labour of women and children.

63. The Working Group had expressed concern regarding forced and bonded labour, particularly in situations where children were involved on a large scale. It had been proposed that States should provide the Working Group with the same information that they provided to the ILO Committee of Experts on the Application of Conventions and Recommendations of the International Labour Conference.

64. The representative of the World Federation of Methodist Women had made a statement on the sexual exploitation of children and had expressed deep concern regarding the continuing reports that citizens of developed countries travelling abroad might be encouraging the use of children in prostitution and pornography.

65. The members of the Working Group and other participants had also expressed deep concern regarding the continuing reports of transplants of children's organs. One member of the Working Group had stated that the Special Rapporteur on the sale of children, child prostitution and child pornography, should encourage Governments to undertake information campaigns in order to discourage demand for organs and had suggested that a declaration against illegal organ transplants should be drafted by the Working Group in cooperation with UNICEF and WHO.

66. The Working Group had heard several statements by individuals who had been subjected to forced labour by the Japanese Army during the Second World War. It had also discussed the issue of "comfort women" and the competence of the United Nations, and of the Sub-Commission in particular, to deal with it. One member of the Working Group had expressed the view that, since the lack of any compensation created a further injury to the victim, the Sub-Commission might again request an opinion from the United Nations Office of Legal Affairs. The observer for the International Fellowship of Reconciliation had recommended that the Working Group should stress the need for a study on slavery-like practices in wartime.

67. The review of the information provided to the Working Group and of the problems brought to its attention had shown that, despite the progress made in the protection of human rights, various forms of slavery and slavery-like practices still existed all over the world and were even increasing. Having carefully examined all the issues and being fully aware of the persistence of the phenomenon and its dramatic consequences, the Working Group had made pertinent recommendations covering all the questions brought to its attention. They were contained in its report.

68. He wished to express the Working Group's gratitude to those Governments and NGOs which, by their active participation, had made an important contribution to its activities. Thanks were also due to UNICEF for its active

participation, but unfortunately no representative of ILO, WHO, INTERPOL or UNESCO had attended the session. The Working Group hoped that those organizations would resume their cooperation with it.

69. Mr. KOHLI (Indian Institute for Non-Aligned Studies) said that contemporary forms of slavery covered not only traditional slavery and the slave trade but also a wide range of abuses including the exploitation of child labour, the sale of children, child prostitution, child pornography, the sexual mutilation of female children, the use of children in armed conflicts, debt bondage, the traffic in persons, the sale of human organs and the exploitation of prostitution. The factors responsible for those practices were social, economic and cultural. The victims of slavery-like abuses generally belonged to the poorest and most vulnerable social groups. Fear and the need to survive prevented them from speaking out about their problems.

70. According to ILO estimates, 100 million children were being exploited for their labour, a significant proportion of them being in South Asia, where their services were in great demand because they were cheap and easier to discipline than adults. Children were preferred in certain industries such as carpet-making and as domestic servants. They were often subjected to sexual as well as other abuses.

71. A series of international instruments adopted by the United Nations and various ILO conventions and recommendations had tried to provide a better world for children, but the situation had not changed much. Those international instruments had, however, resulted in the adoption of a great deal of social legislation relating to children in various countries, including India. Although such legislation provided an infrastructure, it could not resolve the problem, which had assumed the proportions of a menace to Indian society, where it had a great potential for creating further conflict.

72. Deep-rooted attitudes and customs were obstacles to change. Recent studies, seminars, conferences and reports by social action groups working on child labour had identified a new dimension to the problem. Social scientists in South Asia took the view that a total abolition or prohibition of child labour would lead to a worse situation for children. Needless to say, the basic human rights of children included the rights to life, to health services, to education, to enjoyment of their own culture, to protection from exploitation and to protection in armed conflicts. Given the existing resources and budgetary allocations for development programmes, it would probably not be possible for Governments in South Asia, even with the best intentions, to provide those rights to all the children in need of help.

73. In developing countries, peace and adequate security were preconditions for the solution of all problems. The tension in South Asia needed to be defused for the benefit of the masses in general and of vulnerable social groups in particular. Countries in South Asia should increase their development expenditure to combat the threat of slavery-like abuses because the cost of rehabilitating the victims was much higher. The appropriate forum for launching such an initiative would be the World Social Summit.

74. United Nations agencies were providing a great deal of development aid to countries in South Asia, but there was an urgent need to examine how that aid was being used and what objectives it was serving. His organization suggested to the Sub-Commission that the exploitation of child labour in South Asia should be studied in its cultural context and could be eliminated only if the children in the region were provided with total protection by national or international organizations; that an effective monitoring of development projects should be carried out by specialized institutions; and that, since a strong grass-roots movement supported by the mass media was essential, for the eradication of slavery, the Working Group on Contemporary Forms of Slavery should make a special effort in that regard.

75. Mr. LINDGREN ALVES said that it was entirely proper for the Working Group on Contemporary Forms of Slavery, in reviewing the implementation of the relevant conventions, to receive communications and request information from Governments. He was thus in favour of the draft resolution which the Working Group recommended for adoption by the Sub-Commission in page 29 of its report.

76. He considered, however, that in so doing, the Working Group would become one more thematic instrument, with a non-conventional character, in the machinery of the United Nations. The Working Group could not be envisaged as the official legal mechanism for the implementation of the conventions on slavery. Such a legal mechanism could be established only by the States parties by means of a formal instrument. The Working Group, as a thematic instrument of control, should have its mandate more clearly defined, the scope of its actions being limited to facts that fell strictly within the concept of contemporary forms of slavery, such as forced or bonded labour.

77. The Working Group, as a monitoring mechanism, should not enter areas which were being efficiently covered by other thematic instruments, such as the Special Rapporteur on the sale of children, child prostitution and child pornography.

78. On the issue of the removal and sale of organs, the report showed clearly that no proof had been obtained anywhere concerning the existence of such a phenomenon. He therefore had reservations about the decision that the Working Group should continue to examine the matter in depth and, in particular, that it should consider the advisability of drafting United Nations standards to ensure protection against unlawful organ transplants. If INTERPOL and the national police forces of States, in isolation or in cooperation, had never been able to prove the existence of such an abhorrent crime, it was impossible to believe that the Working Group could perform such a task.

79. He fully agreed with the comment that, in some countries, incest was one of the principal factors leading to child prostitution and that the perpetrators of incest formed a significant group among child abusers. The recommendation that the Working Group should consider ways to combat incest and the sexual abuse of children inside the family was, however, totally unrealistic.

80. The concept of crimes against humanity, which stemmed from the Nürnberg Tribunal, was a very serious issue and he would therefore like to clarify whether slavery had been legally characterized as a crime against humanity in any international instrument. If not, he believed that the Working Group should avoid the use of the term.

81. Mr. YIMER, commenting on the criticisms voiced by Mr. Lindgren Alves, said he considered that the Working Group was doing an excellent job in identifying phenomena which could be regarded as contemporary forms of slavery. In the preamble to its decision on the removal of organs from children, the Working Group did not state that such a practice existed; it simply said that the matter should be looked into. A phenomenon which might resemble a contemporary form of slavery did not have to be established in order to be investigated. The same consideration applied to the issue of incest.

82. Organ removal was not, however, just a wild rumour. He himself believed that it existed in certain countries. In investigating the matter further, the Working Group would be doing something on an issue which the world, stimulated by the media, was talking about. It was to investigate such possibilities that the Working Group had been established.

83. Mrs. SPALDING (International Association of Educators for World Peace) expressed appreciation of the report of the Working Group on Contemporary Forms of Slavery. It was to be hoped that, in the future, an even greater number of committed NGOs would participate in the Working Group's sessions; in the meantime it was the intent of her own organization to continue its support throughout the year.

84. Her organization had cooperated in a recent fact-finding mission undertaken by a United States congressman on the subject of child labour, in preparation for a "deterrence-type act" to be considered by the United States Congress. In July 1994, a follow-up meeting had been held in Washington D.C. with Senator Harkin's top staff. At that meeting a proposal for "incentive action", on ethical economic development, including the issue of child workers, had been submitted under the title "PROCEED"; the same proposal would be submitted to the Sub-Commission under items 7 and 8.

85. That development had been the direct result of her organization's support for a database indicating the positive human rights factor in business practices. PROCEED had also been submitted for consideration by the World Bank and by several other members of the United States Congress, including Senator Feinstein of California. The Director of International Trade for the Mayor's Office of the City of Los Angeles was currently presenting the incentive proposal to key leaders in the business world with a view to establishing a business council to assist in its implementation.

86. In her view, the lack of money for the voluntary funds was a continuing scandal which must be corrected. Advantage should be taken of the various events planned for the fiftieth anniversary of the United Nations in order to turn that unacceptable situation around.

87. Her organization had also had an opportunity of meeting Ms. Alvarez of the Human Rights Division of the United States Department of State who was concerned with the issue of human, especially child, organ stealing. Ms. Alvarez had promised to cooperate in giving the issue the attention it merited and had asked to be kept informed.

88. There was an alarming report that the International Neurological Association had been considering changing its policy so as to allow the removal of organs from persons, including children, in a Stage II coma. One of her own doctors had had repeated experience of enabling Stage II victims to return to conscious and functional life so that such a change in policy, if allowed to go ahead, would be tantamount to murder. She hoped that the Sub-Commission would keep itself informed about such a possible change in global medical policy.

89. Ms. LEE Sunghwa (Liberation) said that her organization and the Fact-Finding Team on the Truth about Forced Korean Laborers supported the suggestion by the Working Group on Contemporary Forms of Slavery that the issues connected with the sexual exploitation of women and forced labour by Japan during the Second World War should be submitted to the Permanent Court of Arbitration as a way of assisting the victims of those violations of human rights. That suggestion accorded with the basic principles and guidelines proposed in his report (E/CN.4/Sub.2/1993/8) by the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms.

90. The Government of Japan had always rejected such statements on the grounds that United Nations must not deal with issues in the past and that the relevant resolutions of the Commission on Human Rights and the Sub-Commission were not applicable to Japan, the implication being that Japan might repeat those gross violations of human rights again at some point in the future.

91. The Charter of the Nürnberg International Military Tribunal had introduced into international law the concept of war crimes as "murder, ill-treatment or deportation to slave labour or for any other purpose, of the civilian population of, or in, occupied territory". In paragraph 19 of his report on the human rights dimensions of population transfer (E/CN.4/Sub.2/1994/18), the Special Rapporteur had found that population transfer was clearly unlawful and prohibited where its purpose or effect constituted or amounted to genocide, torture and its related elements, slavery, racial and systematic discrimination, and interference with the legitimate exercise of the right to self-determination.

92. The archives showed that, in 1932, the first "comfort girls" had been drafted and that later, during the Second World War, Japan had imposed sexual exploitation and forced recruitment on huge numbers of Asian people.

93. Former Japanese prime ministers had apologized in words for the Japanese colonization of Korea, but there had been no positive discussion with the Japanese Government on the issue of compensation for the ex-victims of forced labour and sexual exploitation. The Japanese Government still insisted that

the Japanese colonization of Korea had been lawful under the 1905 Protectorate Treaty and that the recruitment for forced labour, including sexual exploitation had thus been quite legal.

94. Moreover, the Japanese Government was discriminating against Korean residents in Japan in the application of the disability and old-age-pension system which represented the major pillar of the Japanese social-security system. Serious crimes were also being committed against Korean children in Japan. Since April 1994, 160 cases had been confirmed in which Korean children, wearing Korean costumes as school uniform, had been publicly assaulted. All of those children were the descendants of the former victims of forced displacement and labour during the Japanese colonial rule over Korea.

95. His organization accordingly requested the Sub-Commission to respond actively to the suggestion made by the Working Group regarding the sexual exploitation of women and forced labour during the armed conflict. It also asked the Sub-Commission to initiate further studies of the currently unresolved problems flowing from Japanese policies of domination, colonization and forced displacement originated by the 1905 Protectorate Treaty. It requested the Sub-Commission to take up the issues of discrimination in Japan against Korean former victims of gross violations of human rights in the application of the Japanese social-security system and the abuse of their children and grandchildren on the way to and from school.

96. Mr. LINDGREN ALVES said that his earlier statement might have been misunderstood. His purpose had been to emphasize that it was the duty of the Working Group to monitor the slavery conventions. Its approach could not be a formal one, as it did not stem from the conventions themselves. Its effectiveness lay in its ability to report and to obtain information from Governments.

97. Sales of human organs, if indeed they were taking place, represented a horrible crime of torture and aggression against the individual. They did not seem, however, to represent a form of slavery. Incest on the other hand did represent a form of slavery, as it involved rape and violence and could lead to future prostitution.

98. He believed that the Working Group would be more effective if it confined itself to issues which could really be considered to be contemporary forms of slavery.

99. Mr. YIMER said that the sale of human organs meant that somebody had been forced to sell part of his or her body. Such sales were slavery-like practices. The mandate of the Working Group was a broad one and was intended to cover all new developments which could be termed slavery-like practices.

100. Mr. EIDE said he agreed with Mr. Yimer. Mr. Lindgren Alves had not been a member of the Sub-Commission when it had discussed the mandate of the Working Group several years previously. At that time "similar practices" had been defined as the extreme exploitation of vulnerable persons.

101. Mrs. PALLEY said that, as a member of the Working Group for three out of the last four years, she had found that ideas could change in the light of experience. When she had first become a member, she, like Mr. Lindgren Alves, had been sceptical on the issue of the sale of human organs. Over the years however, evidence had been presented by NGOs bearing on the existence of such a practice. She recalled in particular seeing a particularly vivid film of people who had been victims of organ transplantation. The Special Rapporteur on the sale of children, child prostitution and child pornography had also reported that he had knowledge of, and had collected cases regarding, the practice.

102. She felt that the issue was a very difficult one for police forces to investigate. In a number of countries, the police investigating such matters were usually low-level and possibly corruptible, in view of the great deal of money involved. They were not, therefore, the best monitors of the practice. The time for action was before such practices developed, not after, when they might already have become well established. The Working Group should investigate before that happened.

103. There was no binding instrument yet on crimes against humanity but the International Law Commission was currently considering the possibility of such an instrument. The Nürnberg and Tokyo Tribunals were currently the only sources. By 1939 however, the law of crimes against humanity had already developed as customary law. It was therefore perfectly proper to talk about crimes against humanity.

104. Incest would certainly represent a crime against humanity if in fact it was one of the causes of child prostitution. It was up to the Working Group to look at national practices that would discourage that phenomenon. A similar approach should be taken to the issue of child pornography. All those practices represented trading in persons and were therefore proper subjects for investigation by the Working Group.

The meeting rose at 6.05 p.m.