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PROTECTION OF MINORITIES

Fortieth session

SUMMARY RECORD OF THE 8th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 12 August 1988, at 3 p.m.

Chairman: Mr. BHANDARE

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The meeting was called to order at 4.15 p.m.

REVIEW OF THE WORK OF THE SUB-COMMISSION (continued)

1. Ms. KSENTINI said that there was no conflict, but rather complementarity, between the Commission on Human Rights and the Sub-Commission, whose special status as a subsidiary body of the Commission, composed of independent experts, was unique in the United Nations system. Those experts, chosen for their integrity by Governments selected by the Commission on an equitable geographical basis but working in their individual capacity, sent recommendations to the Commission, which was a political body. That system seemed to be a breach in the impregnable wall of politics. Being a subsidiary body of the Commission strengthened rather than weakened the Sub-Commission's action, because it was doubtful if the report of an autonomous body would be even read, let alone acted on. The impact of the Sub-Commission on the Commission and other United Nations organs, including the General Assembly, stemmed from its hybrid nature and the organic bonds linking it to the United Nations system. It was therefore important that those bonds should be retained. It was also important to preserve the second characteristic of the Sub-Commission, namely the quality of its experts.
2. The Commission's guidelines should not be viewed as an attempt to control the Sub-Commission's activities. The need to rationalize the Sub-Commission's methods of work should be recognized and the Commission's exhortations to do so were made in a spirit of dialogue.
3. She did not think the proposed deletion of the agenda item under discussion would be a means of protecting the Sub-Commission against control by the Commission. The contents of the Commission's resolution 1988/43 must be discussed and a report made to the Commission.
4. With regard to the working paper presented by Mr. van Boven and Mr. Eide (E/CN.4/Sub.2/1988/WP.1), she agreed that the Sub-Commission should not duplicate the Commission's work but pointed out that because of its special nature, the Sub-Commission had much to contribute through its expertise and by drawing attention to new elements and situations relating to human rights. The reference to new elements did not mean that the Sub-Commission should not take up items already under consideration by the Commission. Firstly, the Commission might need further studies and advice from experts; secondly, the Sub-Commission might consider more specific aspects of the same questions; and thirdly, the Commission might decide to cease discussion of a case which the Sub-Commission might think should be pursued.
5. The proposal made in the working paper pursuant to Commission resolution 8 (XXIII) concerning the preparation of a report on violations of human rights based on information from all available sources was an original one. As the authors pointed out, the procedure could not be introduced until 1989, so there was time to reflect on it. She wondered how such a report could be produced in the light of the procedures and methods of work of the Sub-Commission, how the information provided would be checked and by whom in order that members could assume responsibility for quoting it in an official document, and if there would be time to prepare such a report. The procedure proposed appeared simple but seemed to resemble the confidential procedure instituted by Economic and Social Council resolution 1503 (XLVIII). Rationalizing the Sub-Commission's methods of work in that way might lead only

to an imperfect copy of the confidential procedure and distract attention from that set forth in resolution 1503, which had proved its worth because of the confidentiality involved and the supreme sanction represented by the decision to make alarming situations public.

6. Mr. RIVAS POSADA expressed disagreement with some members' reaction to the contents of Commission resolution 1988/43, which recalled the purposes of the Sub-Commission and the reasons for its establishment not in order to draw attention to faults or deficiencies but to facilitate by very necessary clarification the full attainment of its aims. That resolution contained three principal ideas which it was good to repeat at intervals in order to counter the natural tendency of all bodies to extend their field of action and duplicate work done by similar bodies. Those ideas were: first, that the Sub-Commission was an instrument of the Commission of a specialized and technical nature because it was composed not of government representatives but of independent experts; secondly, that it should therefore complement the Commission and try to concentrate its work within the bounds of such complementarity; and thirdly, that, as a corollary, the chief danger to be avoided was duplication of the work of other bodies.

7. Attentive reading of the resolutions of the Economic and Social Council and the Commission over the years showed the importance of always maintaining close relations between the work of the Commission and the Sub-Commission, the former being an organ of a political nature and the latter a technical body working for it.

8. In order to facilitate concentration on the fundamental work of the Sub-Commission, it was necessary to stimulate by all possible means the formulation of new proposals and specific recommendation for the promotion and protection of human rights through international co-operation. A motto for the Sub-Commission's activity might be: "Less diagnosis and more treatment".

9. Many failed to appreciate the importance of the studies and reports requested of the Sub-Commission but their usefulness was illustrated by those submitted at the current session under agenda item 15, for example, which made practical suggestions for future action. The question of reports and studies could also provoke reflection on the contribution which could be made by observers and non-governmental organizations to the work of the Sub-Commission. Their statements at its meetings should not be a repetition of those made in other parts of the United Nations system but should be pertinent to its specific nature and thus enable it to help the Commission. One example was to be found in the comments on the role of the Sub-Commission as an instrument of the Commission in relation to the establishment of an organization in Namibia for the protection and promotion of human rights. Such fresh proposals, aimed at making full use of the technical capabilities of the Sub-Commission, fully justified its existence.

10. He shared the opinion expressed in the working paper (E/CN.4/Sub.2/1988/WP.1) that the two fundamental criteria for the Sub-Commission's work were its specialized nature and the need to complement rather than duplicate the work of the Commission. The organizational suggestions made in the paper merited careful reflection. The machinery proposed for the preparation of a report as referred to in Commission

resolution 8 (XXIII), paragraph 2, might be debatable but the emphasis laid in the paper on concentration on the basic areas entrusted to the Sub-Commission was certainly justified.

11. Mr. CHERNICHENKO said that the Sub-Commission's methods of work raised a number of problems which should be given careful attention. He agreed that its role as a body of experts under the Commission was a valuable one. However, the main criticisms of its work and the references to duplication belonged to the past. It was therefore perhaps not necessary to include the item "Review of the work of the Sub-Commission" in the agenda for every session, but it should be included at regular intervals since problems could build up with time.

12. By developing new concepts in the field of human rights, the Sub-Commission could make a substantial contribution not only to the work of the Commission and other bodies in the United Nations system, but also to the entire international community. The Sub-Commission had not considered individual cases as a matter of principle but substantial progress in that respect had recently been made. It was possible to consider certain individual cases but there should be strict limitations, because no international body should become a court of appeal.

13. An important question which required study with a view to clarification was the role of United Nations procedures for considering violations of human rights, bearing in mind that the principles of respect for human rights and non-interference in the internal affairs of countries were closely linked and should be studied in the light of current developments in international co-operation.

14. Another important question was the indivisibility of human rights. Initially there had been a negative reaction to the question, but in discussions in a working group of the Commission in 1987, there had been certain changes in the views of countries that had previously rejected the idea out of hand.

15. With regard to working paper E/CN.4/Sub.2/1988/WP.1, while he was not yet in a position to comment in detail, he welcomed any document that stimulated discussion and the search for truth. However, Commission resolution 8 (XXIII) was out of date, having been adopted long before at a time when special rapporteurs had not existed. In his opinion, the authors of the working paper were not quite correct in separating paragraph 2 of the resolution from paragraph 6, since all the paragraphs were related. They had tried to present the resolution as a totally autonomous document whereas, as far as he recalled, it was the first of a sequence of resolutions - including Council resolution 1235 (XLII) - setting up the 1503 procedure and should be viewed in the light of those resolutions, each of which referred to one or more of the others.

16. The working paper was proposing to revive attempts to set up procedures for dealing with gross violations of human rights in open session. If the 1503 procedure was retained, it would be logical to consider improving it. Perhaps the Sub-Commission should discuss in open session only human rights violations which had previously been discussed in closed session under the 1503 procedure and in respect of which the Sub-Commission had recommended that

the Council should lift confidentiality. It was obviously not a question of taking up situations already discussed in public session, such as South Africa and Chile. But to establish parallel procedures for discussing gross violations of human rights in public would be pointless if the 1503 procedure was not revised. Perhaps the Sub-Commission should not be considering human rights violations as such but should be exchanging experience in the solution of problems arising in the field of human rights, first on a voluntary basis, but with every State submitting in alphabetical order a report on its own implementation of human rights. Then the Sub-Commission could discuss the question of open discussion, which raised many problems.

17. Mr. DIACONU supported the views of Ms. Ksentini and Mr. Chernichenko. Relations between the Commission and the Sub-Commission were well established and should not be changed. The only problem was rationalization of work, so as to avoid duplication. Mr. Eide and Mr. van Boven had posed the problem in the working paper. The Sub-Commission could make suggestions itself or ask the Commission to consider the question, particularly when deciding on the Sub-Commission's future work.

18. He was not certain that the proposal in the working paper to set up a new group of five would really eliminate duplication. There were already two similar groups in existence, one within the Commission and the other within the Sub-Commission. The Sub-Commission must examine the problem carefully and perhaps submit suggestions to the Commission.

19. Mrs. DAES said that the debate in the Sub-Commission was important and useful, especially for new colleagues who might not know the background. She was grateful to the Chairman of the Commission for his valuable contribution and his understanding of the Sub-Commission's difficult and complex work. She was also grateful to Mr. van Boven and Mr. Eide for their constructive ideas, a number of which she supported, such as the proposal in paragraph 5 that the Sub-Commission should prepare a report for the Commission containing information on violations of human rights from all available sources, with a summary of information presented to the Sub-Commission by government observers. She suggested that that report should also contain a summary of information presented to the Sub-Commission by non-governmental organizations. On the question who should prepare the report, a sessional working group would be better than one rapporteur.

20. Regarding the report contained in document E/CN.4/Sub.2/1988/6, she agreed with many of the points made by Mr. Khalifa. The dialogue between the Sub-Commission and the Commission was very useful but in her opinion there was no need for the two bodies each to devote three or four meetings a year to it. She proposed that the dialogue should be pursued every two years.

21. Mr. JOINET said that the proposal to ask Governments in alphabetical order to submit a report on the human rights situation in their country was a good one, but might conflict with the idea of avoiding duplication of work, on which there seemed to be a consensus. In any case, obtaining such reports was a statutory obligation of the Commission so that if the Sub-Commission urged all Governments to ratify the International Covenant on Civil and Political Rights, the problem might be resolved.

22. With regard to the idea in the working paper submitted by Mr. Eide and Mr. van Boven, that the Sub-Commission should be instructed to prepare and approve for transmission to the Commission a kind of panorama of the world human-rights situation, he felt that such a task would be wellnigh impossible, bearing in mind the time it took to approve the Sub-Commission's normal report on its proceedings. Indeed, the Sub-Commission had not had time to approve the report on its thirty-ninth session at all. It would be better to keep to what was practicable, namely, the status quo, which should be improved wherever possible. He wondered if in the long-term it would not be in the interests of the victims of violations for the Sub-Commission to continue on its existing path which, despite the difficulties, was the best and the most desirable, original and effective. For that reason, he had doubts about the idea of autonomy. Relations with the Commission might be difficult, but any body of experts which wished to cut itself off from politics was condemned to become academic - and he doubted whether that was what the victims wanted. He preferred the existing relationship with the Commission, which was sometimes complicated but always involved a constructive dialogue. For all those reasons, he had reservations about Mr. Chernichenko's proposal and opposed the idea of altering the present situation.

23. Mr. CAREY said that, whereas some discussions in the past were now felt to have been a waste of time, the present discussion was definitely useful, for unless the Sub-Commission looked at the origins and sources of its authority to act in the field of human rights' violations, it would be proceeding without a firm foundation.

24. Some members had implied that Commission resolution 8 (XXIII) was ancient history and not very important, but it must be remembered that that resolution was the sole basis on which the Sub-Commission could adopt resolutions naming particular States as violators of human rights. In 1966 and earlier, only South Africa could be named by name. No other State had ever been named because the Sub-Commission had had no authority to do so. In 1967, however, as would be seen from paragraph 59 of the annotated agenda (E/CN.4/Sub.2/1988/1/Add.1), the Commission had adopted resolution 8 (XXIII), in paragraph 2 of which it "requested the Sub-Commission to prepare a report containing information on violations of human rights and fundamental freedoms from all available sources for the use of the Commission", and in paragraph 6 it "invited the Sub-Commission to bring to the attention of the Commission any situation which it had reasonable cause to believe revealed a consistent pattern of violations of human rights and fundamental freedoms, in any country".

25. Paragraph 6 served as the foundation for the Sub-Commission to adopt any of the many resolutions it had adopted in recent years stating that the governments of specific countries were permitting violations. Without it, the Sub-Commission would still be forbidden to condemn Governments. It was important to keep that in mind, because resolution 8 (XXIII), which gave the Sub-Commission authority to name names, also requested it to report. The Sub-Commission had exercised that authority for the first time in autumn 1967, in a resolution which named three countries other than South Africa - one in Africa, one in the Caribbean and the other in Western Europe. The proponents of that resolution had thought that all they had to do was to bring the three countries to the Commission's attention and leave it at that. Others had said

that that was only half the job: the Sub-Commission had also been asked by the Commission to prepare a report to back up the naming of the three countries. In 1967, therefore, some members of the Sub-Commission had prepared what they considered to be a report, as defined in the context of resolution 8 (XXIII), consisting of a list of various sources of information pertaining to each of the three countries concerned. The proponents of the resolution listing those countries had at first been reluctant to include the report, but the report had ultimately been approved.

26. That had been the first report implementing both paragraphs 2 and 6 of the resolution. More recently, the Sub-Commission had not bothered to do more than mention the names of countries, using only paragraph 6 of the resolution, and that was what some people in the Commission and elsewhere regarded as a mere duplication of what happened in the Commission, the Economic and Social Council or the General Assembly. The question was what kind of original contribution the Sub-Commission could make, what it could do to add to the consideration at all levels of alleged violations of human rights. The answer was that the Sub-Commission could do what it was asked to do - namely, to prepare a report. He did not consider it necessary to have a new working group for the purpose. It was open to anyone to draft a resolution under the present agenda item, either under paragraph 6 of resolution 8 (XXIII) or, if they wanted to go further and make a greater contribution, exercise the authority provided in paragraph 2 and append to the draft resolution a report giving information on sources and stating in detail why the Government concerned was thought to be violating a particular human right. It was an option that the Commission had made available to the Sub-Commission. In his opinion, it was not a matter of principle: any member of the Sub-Commission who was drafting a resolution under agenda item 6 could not only state the case against a particular Government, but go further and append a report.

27. Mr. DESPOUY congratulated Mr. van Boven and Mr. Eide on their working paper, which had led to a constructive debate in which the depth of the issues involved in an examination of the work of the Sub-Commission had been emphasized. The main issue which had emerged related to how the Sub-Commission should interpret its role under Commission resolution 8 (XXIII) in the supervision of violations of human rights.

28. The new proposal contained in the working paper was incompatible with existing procedures. A major feature of the United Nations system was that its procedures were basically functional and pragmatic, consistent with Anglo-Saxon rather than Continental practice. In that connection, Mr. Carey's statement had been very apposite. The supervision of human rights violations had, over the years, become increasingly rigorous and complex. The Sub-Commission formed part of the supervisory network established by the United Nations. It had moved pragmatically from the preparation of reports on countries to reports on issues, and thence to ad hoc and working groups to deal with the increasing complexity of the work of supervision. Against that background, the working paper was a step in the right direction.

29. He welcomed Mr. Chernichenko's statement, which was of historic importance. Mr. Chernichenko came from a country which had always expressed reservations regarding the viability and results of Council resolution 1503 (XLVIII).

30. The debate was an auspicious augury for a productive examination of the Sub-Commission's methods of work. Clearly there was a need for in-depth reflection. He had, in particular, noted the fraternal spirit in which the discussion had been pursued. It would be important to set up in 1989 a group which would reflect on the development of a specific mechanism to make the Sub-Commission's work more effective.

31. At the most recent session of the Commission, he had informed the Commission of the work done by the Sub-Commission. In that connection, the comments of the Chairman of the Commission had, in his view, reflected the correct interpretation of the Commission's position. In concluding his own statement to the Commission, he had pointed out that the Sub-Commission was always open to suggestions but that the Commission itself must meet the challenge of deciding what it wanted from the Sub-Commission. The Sub-Commission was a body of experts and needed guidelines on what was required of it.

32. Mr. EIDE said that he greatly appreciated the comments of members on the working paper (E/CN.4/Sub.2/1988/WP.1) prepared by Mr. van Boven and himself and, in particular, the very practical suggestion which Mrs. Daes had made on ways to improve relations between the Sub-Commission and the Commission. It was clear from the discussion that hardly anyone wanted to sever relations with the Commission.

33. He wished to draw attention to a typing error in the working paper: in the eighth line of paragraph 5, the words "members and representatives of non-governmental organizations and" should be inserted after the words "presented to the Sub-Commission by".

34. Mr. Carey had pointed out that Commission resolution 8 (XXIII) of 16 March 1967 formed a very basic part of the Sub-Commission's mandate. The point had also been raised by Mr. Chernichenko and others. In recent years, when the Commission had drawn up its guidelines for the Sub-Commission, it had always recalled the terms of reference of the Sub-Commission as set out, in particular, in Commission resolution 8 (XXIII) and Council resolution 1503 (XLVIII). Those resolutions formed the basis on which the Sub-Commission worked. During the first few years following the adoption of Commission resolution 8 (XXIII), there had been a number of ambiguities as to how it should be construed. From 1974 on, it had been established that two procedures existed, namely, the confidential procedure regulated under Council resolution 1503 (XLVIII) and the public procedure regulated under Commission resolution 8 (XXIII).

35. The purpose of the working paper was simply to ask whether the public procedure was working in the most efficient manner. For that reason, Mr. van Boven and himself had felt that it would be useful to re-examine the mandate on which it had been built, namely, Commission resolution 8 (XXIII). A working paper submitted to the Sub-Commission in 1984 had pointed out that there were two elements in that resolution covered by paragraph 2 and paragraph 6 respectively. During the first year, paragraph 2 had been applied but had run into difficulties. Subsequently paragraph 6 had been used as the basis for the public procedure. That procedure had not proved very satisfactory and had been somewhat chaotic in many ways. There were, for example, non-governmental organizations which brought to the attention of the

Sub-Commission conditions in a number of countries which they would like the Sub-Commission to investigate and reflect in resolutions. Many such resolutions had been adopted. The procedure had, however, led to the increasing politicization of the Sub-Commission; the number of non-governmental organizations had proliferated and there had been a corresponding increase in the number of government observers to respond to the allegations made. Only a limited amount of time was available and there was no way of examining the evidence in meaningful detail or of reaching appropriate conclusions. Some cases had led to resolutions but others had been dropped, either because there was not sufficient support for them or because they could not be sufficiently substantiated. The question currently before the Sub-Commission was whether it could devise a more formalized procedure for the receipt, proper organization and adequate clarification of information received, so that a well-structured factual report could be prepared for submission to the Commission. The Sub-Commission might also forward to the Commission a very limited number of cases by way of specific country resolutions under paragraph 6 of Commission resolution 8 (XXIII). Mr. Joinet had expressed the view that such an approach would involve a considerable amount of work and that there would not be sufficient time to do it properly. It had been suggested that a working group might be appointed to handle the issue and Mr. Carey had made a concrete proposal in that connection.

36. The first question to be addressed was whether the Sub-Commission wished to have a more formalized public procedure or, as Mr. Joinet had suggested, to retain the status quo. He would like to suggest as a practical approach that members of the Sub-Commission should try to draft a model report based on information presented during the current year, not for the purpose of adopting such a report, as it would be premature in 1988 to work on the basis of a new untried procedure, but with a view to seeing what such a report would look like; it could then be rejected out of hand or formalized for adoption in 1989. The alternatives before the Sub-Commission would then be whether to continue with the public procedure in its current haphazard form and only have a formal procedure for the confidential proceedings under resolution 1503, or to try to improve and formalize the public procedure also. In that connection, he recalled that Commission resolution 8 (XXIII) was one of the resolutions to which the Commission referred most frequently when it reminded the Sub-Commission that it should keep within its terms of reference.

37. Mr. TEITELBAUM (International Federation for Human Rights) said that despite the encouraging signs that many regional disputes were coming to an end - thanks, in many cases, to United Nations mediation, the Organization was facing a severe financial crisis. One hundred and twelve Member States, chief among them the United States of America, were in arrears with their contributions, and the Secretary-General had announced that the Organization would have exhausted its operational capital by the beginning of November 1988. Budget reductions alone would not be sufficient to solve the problem, and the General Assembly had rejected the possibility of contracting commercial loans. The Secretary-General had met President Reagan and senior United States officials in July 1988, but no positive results had been achieved.

38. The most obvious solution to the financial crisis was for Member States to pay their contributions in full. It was true that many of them were in serious financial difficulties, but the entire United Nations budget amounted

to a mere fraction of the world's annual expenditure on arms. The United States of America had deliberately withheld its contributions in order to exert pressure on the Organization and achieve changes such as a voting system weighted in favour of the major contributors. In order to prevent the recurrence of such unacceptable pressure in the future, his organization suggested that the General Assembly should greatly reduce the United States assessment for the next biennium and increase the assessments of other countries. The payment of \$US 100 million promised by the United States for November 1988 would do nothing to solve the problem in the long run.

39. His organization also suggested that the Sub-Commission might issue a statement pointing out the positive role played by the United Nations in safeguarding human rights and making the following recommendations: the Secretary-General should publish a complete list of the arrears of contributions owed by Member States; the General Assembly should modify the scale of contributions; States in arrears should lose their right to vote in the General Assembly, in accordance with Article 19 of the Charter; and the Secretary-General should publicize the existing situation in order to expose the Governments concerned to criticism from their own public opinion.

40. Mr. CHERNICHENKO recalled Mr. Eide's suggestion that the Sub-Commission might draw up a model report based on Commission resolution 8 (XXIII). Did Mr. Eide propose to include in such a report the States currently being considered under the confidential 1503 procedure? Mrs. Daes had suggested that the report should also cover statements made by non-governmental organizations (NGOs). However, it would be impossible to compile a report of all NGO statements, which covered almost every country in the world, without applying criteria of some sort.

41. Mrs. WARZAZI called upon the representatives of NGOs to keep to the agenda item under discussion, namely, the working methods of the Sub-Commission.

42. Mr. BARSH (Four Directions Council) said that the Sub-Commission's debates on the agenda item under discussion rarely extended to structural or managerial issues or ways of improving the existing human rights machinery. His organization wished to suggest some areas where the Sub-Commission's expertise might make a valuable contribution to the entire United Nations human rights system.

43. The Sub-Commission might draw up a set of guidelines to make the 1503 procedure fairer for the authors of the communications and for the States concerned and, in particular, to speed up the handling of cases. The existing procedure did not take account of any sharp increase in the number of communications originating from a particular State, which was a valuable early sign of a deteriorating human rights situation. In order to provide a more effective response to individual cases, the authors of the communications should be afforded the opportunity to respond to the explanation given by the State party, which could be done without sacrificing confidentiality on either side. Both States and authors should be able to appear in private before the Sub-Commission and answer any questions which might be put to them.

44. An annual global report on the status of human rights would present essential information on both problems and positive developments in a format accessible to the public. Such a document might consist simply of an index of the summary records of the debate on the violation of human rights and fundamental freedoms, under item 6 of the Sub-Commission's agenda, together with any observations the experts might wish to make. The authority for such a report was already available under Commission resolution 8 (XXIII).

45. The Sub-Commission might draw up guidelines to decide whether proposed new human rights standards should take the form of new conventions, or of amendments or declarations referring to existing conventions. The current trend towards overlapping and often inconsistent instruments and supervisory committees increased the administrative burden on the human rights system without increasing its effectiveness. The Sub-Commission might also examine the relative effectiveness of periodic reporting by States and investigations by special rapporteurs. The reporting system was extremely expensive both for States parties and for the United Nations itself. The work of special rapporteurs was perhaps less systematic, but they were able to respond quickly and focus on the most urgent situations, while attracting greater public attention. The system could be further strengthened by selecting special rapporteurs more carefully, increasing the length of their mandates and giving their work the greatest possible publicity within the United Nations system.

46. It was essential to increase practical co-ordination between the human rights work of the United Nations bodies concerned with social affairs and those concerned with development. The Centre for Human Rights, the Centre for Social Development and the Department of International Economic and Social Affairs frequently worked on the same problems independently of one another and with conflicting results. The Sub-Commission might help to improve the links between the Centre for Human Rights and programmes such as UNDP by, for example, preparing statements on the human rights impact of proposed development projects.

47. It was essential to enhance the effectiveness of the advisory and public information services in order to improve the implementation of existing human rights standards. The Centre for Human Rights should target its information and educational activities on the most vulnerable groups in order to increase their ability to exercise their rights. The Sub-Commission should devote more of its expertise and energy to studying standard-setting and implementation machinery - in other words the process of creating new standards, rather than their content. It was, after all, the process of implementation which determined whether standards would succeed or fail in practice.

The meeting rose at 6.15 p.m.