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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Fortieth session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 24 August 1988, at 10 a.m.

Chairman: Mr. BHANDARE

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GE.88-13042/7485G

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The meeting was called to order at 10.20 a.m.

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS (agenda item 11) (E/CN.4/Sub.2/1988/21 and Add.1 and 2, E/CN.4/Sub.2/1988/22; E/CN.4/Sub.2/1988/NGO/1 and E/CN.4/Sub.2/1985/21)

1. Mr. MARTENSON (Under-Secretary-General for Human Rights), introducing item 11, said that, although scientific and technological progress constituted one of the principal factors in the development of human society, it could also pose threats to the enjoyment of human rights. The United Nations had drawn attention to steps to be taken to ensure that such progress was used exclusively in the interest of international peace, for the benefit of mankind and of individuals and to promote and encourage universal respect for human rights. Consequently, the organs concerned with human rights had endeavoured to determine the effects of scientific and technological developments on the realization of human rights, as well as the safeguards needed to ensure their enjoyment.

2. Firstly, with regard to the questions of persons detained on the grounds of mental ill-health, he referred to the study that the Commission had entrusted to the Sub-Commission and the task that the Sub-Commission had assigned to Mrs. Daes, which consisted in the elaboration of guidelines and principles for the protection of such persons. Mrs. Daes had submitted her final report to the Sub-Commission in 1983. Since 1982, the Sub-Commission had established at each of its sessions a working group for the examination of a draft set of principles, guidelines and guarantees. In its resolution 42/98, the General Assembly had urged the Commission and, through it, the Sub-Commission, to expedite their consideration of that draft. In its resolution 1988/62, the Commission had requested the Sub-Commission to take action pursuant to General Assembly resolution 42/98. During the present session, the above-mentioned working group had continued its task and its report would be submitted by Ms. Palley, its Chairman-Rapporteur.

3. Secondly, the Sub-Commission had also been requested to continue its study of the guidelines for the use of computerized personal files, which had been entrusted to Mr. Joinet, the Special Rapporteur. In its resolution 1985/14, the Sub-Commission had requested the Secretary-General to continue to seek the comments and suggestions of Governments in that connection. Accordingly, the Secretary-General had sent a note verbale dated 18 November 1985 to Governments and letters dated 15 February and 11 April 1988 to specialized agencies and non-governmental organizations. The Sub-Commission had requested the Special Rapporteur to submit his final report to its fortieth session; that report had, in fact, been submitted in document E/CN.4/Sub.2/1988/22.

4. Thirdly, in accordance with Commission resolution 1984/27, the Sub-Commission had recommended that the Commission should prepare studies on unlawful human experimentation and on the implications for human rights of recent advances in computer and microcomputer technology. In its decision 1985/104, the Commission had requested the Sub-Commission to reconsider those studies in the light of the work that the Commission and the Sub-Commission had undertaken on that question.

5. Fourthly, in its resolution 1985/7, the Sub-Commission had requested the Secretary-General to submit to it, at its fortieth session, a report based on relevant information received from Governments concerning the hazards to human life that were inherent in processes, products and technologies of transnational corporations and enterprises operating under the jurisdiction of those Governments. The information received by the Secretary-General had been incorporated in documents E/CN.4/Sub.2/1988/21 and Add.1 and 2.

6. Finally, it should be noted that, in its resolution 1988/61, the Commission had requested the Sub-Commission to undertake, as a matter of priority, a study on the use of the achievements of scientific and technological progress to ensure the enjoyment of the right to work and development, and to submit that study to its forty-sixth session in 1990.

7. Mr. JOINET, Special Rapporteur, introduced his report on guidelines for the regulation of computerized personal data files (E/CN.4/Sub.2/1988/22). The purpose of that work, the background of which had already been described by the Under-Secretary-General, was as follows: firstly, to identify the main trends and study the amendments resulting from the consultations undertaken; and, secondly, to submit draft guidelines for consideration by the Commission, and subsequently by the Economic and Social Council, with a view to their adoption by the General Assembly.

8. The general outline of that work had already been described in the report that he had submitted on that subject in 1983. Governments had continued to show an interest in a variety of preparatory tasks and international, governmental and non-governmental organizations had also shown their interest through numerous replies. It was particularly noteworthy that the guidelines concerning the use of computerized personal data files had already been incorporated in the internal regulations of several organizations, which had not even awaited the final adoption of the draft. That step had been taken by Interpol, an important organization in the field under consideration and with which he had personally negotiated, by UNHCR, the representative of which would be making a statement on that subject, by the United Nations Advisory Committee on Administrative and Budgetary Questions, by UNESCO, which had established a working group on the personal data of its staff members, by OECD, by the Council of Europe, by ICRC, and by Amnesty International, a representative of which would also be addressing the Sub-Commission.

9. To deal with that question, some preferred general legislation, while others favoured sectoral legislation. The first approach was more widely preferred in Europe in general, and the second in the Anglo-Saxon countries.

10. In that connection, the International Federation for Human Rights had proposed the drafting of a protocol to article 12 of the International Covenant on Civil and Political Rights. The Yugoslav Government had also submitted a proposal to that effect. The Sub-Commission would be able to assess the usefulness of such a step after the adoption of the guidelines.

11. The proposed amendments to the draft guidelines that he had received were set forth in detail in the second part of the report E/CN.4/Sub.2/1988/22; accordingly, he intended to refer only to the most substantial. It should be noted that, among the principles on which national legislation should be based, he had identified a principle of lawfulness and fairness, a principle

of accuracy, a principle of purpose-specification, a principle of interested-person access, a principle of non-discrimination, a principle of the power to make exceptions, a principle of security and principles concerning supervision and penalties, transborder data flows and field of application. Those various principles were also listed in the second part of the report. He emphasized that the key principle was that of purpose-specification. In that connection, he indicated that, while serving as Chairman of the French Commission on Data Processing and Freedoms, he had been able to trace, by deliberately writing his own name incorrectly, the path that had been followed, unknown to him, by his personal data, which could be traced back to advertising and marketing companies etc.

12. With regard to the principle of access, it would have to be decided whether that should be free of charge. In countries such as Sweden and France, the owners of data files usually granted such access. With regard to supervision and penalties, the International Confederation of Free Trade Unions had made a proposal aimed at averting the risk of misuse of purpose-specification; employees should be protected from the possibility of dismissal for refusal to become a party to infringements concerning the use of files.

13. The field of application of the guidelines was both public and private and concerned computerized as well as manual files. The risks of infringement of privacy and freedom were greater in the case of a computerized file, although they also existed when files were processed manually. In that connection, he had carried out a simulation, in France, with the archives of the former Department for Jewish Affairs, the files of which had been used by the Nazis for deportations during the Second World War. That simulation had shown that a computerized file would have considerably reduced errors and omissions. Viewed in retrospect, the result that would have been obtained thereby was horrific: whereas, during the famous Vélodrome d'Hiver raid, 25 to 30 per cent had escaped, mainly due to the help of French policemen, the simulation indicated that computerized files would have made it possible to disclose the names of the victims only a few minutes beforehand, thereby excluding all possibility of warning the persons concerned. That example made it easier to visualize the increased danger created by computerization.

14. Concerning the principle of non-discrimination, it might be feared that the compilation of files indicating the political or religious beliefs or the origin and race of persons might increase the likelihood of discrimination. On the other hand, however, such files were useful for the protection of human rights in some cases, as illustrated by the file on missing persons that had been compiled by the Centre for Human Rights and which showed the background and political beliefs of those persons. Amnesty International, a non-governmental organization, had pointed out that the prohibition of the collection of data on origins and beliefs etc., could impede the protection of human rights. Redress for the harm done to the victims of human rights violations also required the maintenance not only of medical files but also of files on disputes involving those persons. Various comments of that type had shown the need to make provision, on humanitarian grounds, for exceptions to the principle of non-discrimination. That question had been considered in paragraphs 23 et seq. of Mr. Joinet's report. To take into account that humanitarian clause, which possibly constituted the principal innovation since his last report, he had revised principle 6 as follows:

"6. POWER TO MAKE EXCEPTIONS

Departures from the application of Principles (1) to (5) may be authorized only if:

(a) They are specified in a law and/or an equivalent regulation promulgated in accordance with the internal legal system which expressly states their limits and sets forth appropriate safeguards;

(b) They constitute measures necessary to protect:

national security, public order, public health or morality;

the rights and freedoms of others, particularly in regard to (humanitarian clause) the protection of human rights and of persecuted persons or humanitarian assistance to such persons.

Furthermore, such departures may be authorized only within the limits prescribed by the International Bill of Human Rights and the other relevant instruments in the field of the protection of human rights and the prevention of discrimination."

15. He hoped that, after their adoption, the guidelines applicable to computerized files containing data of a personal nature would be promptly applied by the United Nations, in consultation with the staff associations. He indicated that other organizations had already begun that process. The application of the guidelines to the internal staff files should not pose too many problems, although the situation might be different in the case of external files concerning, for example, victims of human rights violations, missing persons etc. In fact, the regulations for external files were a more complex matter and, in that regard, the aims pursued also varied from one organization to another. For example, UNHCR was not pursuing the same aims as WHO. In the case of the United Nations, it would be advisable for the Organization to set an example while proposing guidelines for its Member States.

16. In addition to the dangers that could be posed by computerized files, he also emphasized the advantages that data processing could offer for the protection of human rights. Microcomputers, in particular, would make it possible to establish extremely useful data banks. A number of separate initiatives had already been taken to that end. That was an area which the Sub-Commission should explore. In conclusion, he once again indicated that representatives of Amnesty International and UNHCR wished to make statements concerning the guidelines on which he had just commented.

17. Mrs. JAMES (Amnesty International) said that her organization acknowledged the fundamental importance of privacy and data protection, especially in the context of the new technologies. She therefore welcomed the steps taken at the national and international levels to provide safeguards in that respect and, in particular, the compilation of United Nations guidelines, with which Mr. Joinet had been entrusted, on behalf of the Sub-Commission.

18. As indicated by the Special Rapporteur in his report, for several years Amnesty International had expressed concern that legislation to protect the privacy of the individual against any infringement involving computer

technology might infringe other internationally recognized human rights. In particular, her organization had advocated recognition, in international data protection instruments and in national legislation, of the need to allow for appropriate exceptions to the restrictions placed on the collection, storage, processing and disclosure of data for humanitarian and human rights organizations acting in the interest of persecuted individuals. Amnesty International's work was largely based on the accumulation and assessment of highly sensitive information concerning thousands of individuals throughout the world who were victims of human rights violations and who were often in a very vulnerable position in which their very lives could be at stake. Individuals who gave information to organizations also often did so at considerable personal risk. Data protection provisions could constitute a serious obstacle to humanitarian and human rights organizations if those provisions failed to take into account the fact that such organizations needed to collect sensitive personal data, to use such data for the furtherance of the human rights of the individuals concerned, to protect their sources by exercising discretion in the disclosure of data and to make full use of modern information technologies. Amnesty International had recently held discussions with a Working Party of Data Protection Commissioners, representing the Conference of Data Protection Authorities, with a view to formulating guidelines to ensure that the implementation of data protection principles took into account the legitimate needs of organizations working to promote international principles of human rights.

19. Amnesty International welcomed Mr. Joinet's report (E/CN.4/Sub.2/1988/22), and the guidelines it contained. In general, it supported the basic principles set forth in clauses 1 to 5 of the guidelines. It had already in 1985 adopted internal guidelines applicable throughout the movement, which embodied the same basic principles of privacy and data protection. However, experience in some countries had shown that, sometimes, the provisions of national data protection laws were too rigid. It was essential to make provision for exceptions to those principles when that was required in the legitimate interests of the human rights of individuals on whose behalf human rights and humanitarian organizations were working. Accordingly, Amnesty International especially welcomed the inclusion of a "humanitarian clause" in the guidelines. It believed that, without such a clause, data protection legislation would unduly restrict the valuable work carried out by those organizations, to the detriment of the rights of victims of human rights violations. Amnesty International believed that the adoption by the Sub-Commission of the guidelines under consideration would be a valuable addition to the work that was being done in that important area.

20. Mr. THOOLEN (Office of the United Nations High Commissioner for Refugees) stressed the importance that UNHCR attached to the question of data protection and confirmed its support for the revised guidelines. The High Commissioner had replied in detail to the circular letter of 15 February 1988, which had been sent to him on behalf of the Special Rapporteur. UNHCR was maintaining two types of computerized personal data files: one on its staff and another on individual refugees. For the first type, for some time the Office had been following the common policy developed at United Nations Headquarters in New York. For the second type, the increasing computerization of individual files had led UNHCR to review its policy, and a consultant had been engaged to develop a coherent policy, in keeping with the principles proposed by the Special Rapporteur. The draft submitted by the consultant was currently under

consideration at UNHCR, which hoped that the Special Rapporteur would also be personally involved in the development of that policy. In particular, the Office welcomed the reformulation of principle 6, concerning the power to make exceptions, and the inclusion of a "humanitarian clause" in principle 11, without which it would be difficult for UNHCR to fulfil its mandate.

21. Mr. N'CHAMA (International Movement for Fraternal Union Among Races and Peoples (UFER)) thanked Mr. Joinet for his excellent report. He expressed the view that the defenders of human rights should have access to computerized personal data files in order to ensure that they were not being used to violate the fundamental rights of the persons concerned.

22. Illicit traffic in toxic and dangerous products and waste constituted another problem of acute concern to his organization. In a report to the Economic and Social Council published in document E/1988/72, the Secretary-General of the United Nations had already alerted the international community to that problem. That report showed that no region of the world was safe from that illicit traffic. For example, during the last summer, the population of New York had been unable to enjoy the sea, which was polluted with pharmaceutical waste and the residue from experiments carried out in hospitals on highly contagious diseases. Other examples were the recent accident at Puerto Rico, which had cost the lives of 23 female employees working in an area in which toxic gas fumes escaped, and the events that had occurred at Chernobyl.

23. If such accidents occurred in industrialized countries, it was not difficult to imagine what could happen in the developing countries, which lacked the technical and material means to ensure safety in that regard. The International Movement for Fraternal Union among Races and Peoples had submitted a written communication on that subject, which had been published in document E/CN.4/Sub.2/1988/NGO/1. In that communication, it had referred to the dumping of toxic and dangerous waste on the island of Annobon, which formed part of the Republic of Equatorial Guinea. In that connection, he drew the attention of the Sub-Commission to the manner in which European and American companies were disposing of their toxic and dangerous waste in Africa. In fact, those companies, taking advantage of the lack of legislation in that respect in the African countries and of the lack of economic resources in some of them, signed contracts with the Governments of those countries or simply dumped their noxious waste clandestinely in their territory. The Governments which had signed such contracts should therefore be called upon to cancel them, since they were detrimental to human life and polluted the earth, the water, the atmosphere, the flora and the fauna. Equatorial Guinea, Liberia, Nigeria and Sierra Leone had discovered toxic waste that had been dumped on their territory by companies in Europe and United States, which had thereby violated the national sovereignty of those countries, as well as their populations' right to life and health.

24. It was essential to put an end to such practices and an appeal to that end should be made to all the Governments of Europe and North America, since there was a risk that the example set by the companies that were currently dumping toxic and dangerous waste on the African continent might be followed by Governments themselves. The African continent was being transformed into a dumping ground for dangerous and toxic refuse. Meat that was unfit for human consumption and pharmaceuticals that were prohibited in Europe and

North America were already being sent to Africa, in addition to the waste that he had already mentioned. If that situation continued, that continent would become totally depopulated and uninhabitable. Since no one knew the exact number of African countries in which toxic and dangerous products and waste had been dumped, the United Nations and its specialized agencies should identify the precise location of the dumps and their contents, because the lives of millions of persons were at stake. The United Nations, acting through UNEP, should draft, without delay, an international convention to control the transboundary movement of toxic and dangerous products and waste. He recommended that the Sub-Commission should adopt, by consensus, the draft resolution contained in document E/CN.4/Sub.2/1988/L.4. Finally, he appealed to the States whose companies were engaged in that illicit traffic to prohibit it for the good of mankind.

ORGANIZATION OF WORK

25. Mrs. NOLL-WAGENFELD (Senior Legal Officer) said that the Legal Liaison Office at Geneva had just received a telefax from Headquarters in reply to a request for a legal opinion on the applicability of the Convention on the Privileges and Immunities of the United Nations to the situation of Mr. Dumitru Mazilu, who had been instructed by the Sub-Commission to prepare a report on human rights and youth. The full text of that opinion could be consulted at the secretariat.

26. In substance, it indicated that the members of the Sub-Commission, during their terms of office, were accorded the legal status of experts on mission for the United Nations, within the meaning of article VI of the 1946 Convention on the Privileges and Immunities of the United Nations. In 1984, the Commission on Human Rights, by secret ballot, had elected Mr. Mazilu, as a member of the Sub-Commission for a term of three years, expiring on 31 December 1986. Subsequently, having instructed him to prepare a report on a topic that it wished to study, the Sub-Commission had made the usual arrangements needed to facilitate the expert's work. In response to a request by the Sub-Commission, the United Nations Legal Adviser had studied that case and given the following opinion:

> "... it appears that the Sub-Commission considers that Mr. Mazilu, though now an ex-member, still has a valid assignment. It also appears that this would not run counter to the established practice of the Sub-Commission, which on several occasions has charged former members with the completion of reports that had been assigned to them as members (for example, Mrs. Odio Benito on religious intolerance, Mr. Mubanga-Chipoya on the right to leave one's country and to return to it, and Mr. Bossuyt on the abolition of the death penalty). Consequently, Mr. Mazilu appears to have a valid assignment from the Sub-Commission and, when working or attempting to work on that assignment, is, therefore, performing a task or mission for the United Nations. From this, it follows that he should be considered an 'expert on mission for the United Nations' within the meaning of article VI of the Convention on the Privileges and Immunities of the United Nations. As Romania became a party to that Convention on 3 July 1956, without any reservation to article VI, Mr. Mazilu, inter alia, is entitled under section 22 to the 'privileges and immunities necessary for the independent exercise of his functions'

during the period of his assignment, including the time spent on journeys in connection with his mission, and he is also to be accorded immunity from legal process even after completion of his assignment".

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

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT (E/CN.4/Sub.2/1988/13, 14, 15 and 16; E/CN.4/Sub.2/1988/NGO/10; E/CN.4/1988/15, 17 and Add.1, 22 and Add. 1 and 2; E/CN.4/1988/NGO/51; E/CN.4/Sub.2/1987/15, 16, 19, Rev.1 and Add.1 and 2, 20; Sub-Commission resolution 1985/25 and A/RES/42/103)

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY (E/CN.4/Sub.2/1988/18 and Add.1)

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES (E/CN.4/Sub.2/1988/19)

27. Mr. ZHANG (Observer for China) noted that the representative of Amnesty International had accused China of holding opponents of the Government, without trial, for long periods and of sending them to concentration camps. Those accusations were totally unfounded, since no one in China was held without trial for long periods and there were no concentration camps. China was currently endeavouring to modernize its institutions and to speed up democratization by reviewing its policy in various fields, which it was doing in a very open-minded manner. Consequently, it deplored the statement by Amnesty International.

28. With regard to Tibet, for some time the handful of advocates of secession, encouraged by the clique of the Dalai Lama, had been organizing demonstrations, which were frequently violent, destroying Government installations, burning vehicles, causing damage to private property and attacking the police. In order to maintain order and enable the population to continue to live normally, the security and law-enforcement authorities had arrested and questioned the instigators of those disturbances. Two hundred persons had been detained, most of whom had been found guilty of minor offences and had been released after re-education. Only about 20 persons remained in detention. At all events, the detention and interrogation of criminals was a sovereign right of States. Tibet formed part of Chinese territory, as everyone was aware. The separatists were seeking to re-establish the former reactionary régime, under which 90 per cent of the population had been in bondage. At the present time, the Tibetans were free and enjoyed all their human rights. Moreover the separatist movement consisted solely of a small group, which was not surprising, since no free person wished to return to slavery. Moreover, the standard of living of the population had improved during the last 30 years after the reunification of Tibet with China, and that was fundamental.

29. Mr. ALFONSO MARTÍNEZ said that the annual reports submitted by the Secretary-General, transmitting the information communicated by Governments, specialized agencies, intergovernmental organizations and non-governmental organizations on the human rights situation of persons subjected to any form of detention or imprisonment (contained in sessional documents E/CN.4/Sub.2/1988/13, 14 and 15 respectively) were very useful for the

assessment of current international trends in that regard. A new phenomenon, namely the question of the privatization of prisons, had appeared in many countries. That phenomenon, which had significant ethnic, practical and legal implications, certainly merited careful examination. An overall deterioration in the conditions of detention throughout the world had also been observed, particularly in the developed Western countries; in other words, in societies which, at least in theory, had considerably greater resources than other countries. The Sub-Commission should also consider that problem and the measures that could be taken to solve it.

30. With regard to administrative detention without charge or trial, he was fully satisfied with the analysis prepared by Mr. Joinet (E/CN.4/Sub.2/1988/12). He hoped that the final report would help the Sub-Commission to understand the particular characteristics of that phenomenon, which undoubtedly merited in-depth study.

31. On the question of the detention of staff members of the United Nations and the specialized agencies (E/CN.4/Sub.2/1987/17), he emphasized that, although those staff members were obviously protected by the regulations governing the privileges and immunities of the United Nations, it should not be forgotten that, in the exercise of their functions, they must respect the law of the host country or the country in which they were working. However, in the relevant report, reference was made to the provisions of the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, but not to the headquarters agreements concluded between international organizations and the host country. An important factor, which should be taken into account, had therefore been omitted. Moreover, it should be borne in mind that various conciliation procedures could be applied in the event of differences of interpretation between Governments and the Secretary-General of the United Nations in regard to the legal provisions concerning staff members.

32. He welcomed the fact that the Sub-Commission had entrusted Mr. Bossuyt with the task of studying the proposal concerning the elaboration of a second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Mr. Bossuyt had discharged that difficult task with a high degree of impartiality, regardless of his personal ideas and principles. The Special Rapporteur had done well to emphasize that he had confined himself to taking note of the growing trend towards the abolition of the death penalty, to be seen in the contemporary world, and to identifying the questions to which that highly controversial problem gave rise (see E/CN.4/Sub.2/1987/20, para. 182). The abolition of the death penalty should not be confused with the question of the timeliness of a second optional protocol aiming at the abolition of that penalty. Mr. Al Khasawneh had rightly pointed out that States always had the option of abolishing or maintaining capital punishment, with or without an optional protocol. From that standpoint, a second optional protocol aiming at the abolition of the death penalty was of no real practical utility for Governments. However, he had no objection to the Sub-Commission's transmission of Mr. Bossuyt's study to the Commission on Human Rights, so that the latter could take a decision.

33. With regard to the draft declaration against unacknowledged detention, the draft body of principles for the protection of all persons under any form of detention or imprisonment, the question of incommunicado detention and international standards for adequate investigations into all cases of

suspicious deaths in detention as well as adequate autopsy, he preferred to wait until the findings of the Working Group on Detention had been submitted, before making his comments. The problem of the individualization of prosecution and penalties, and repercussions of violations of human rights on families also merited the Sub-Commission's full attention. He hoped that, at its next session, the Sub-Commission would be able to study all aspects of the emotional, economic, financial and legal problems facing the families of victims.

34. Finally, with regard to the problem of the prevention of the disappearance of children, particularly the Argentine children who had been located in Paraguay, he welcomed the fact that such a delicate study had been entrusted to Mr. van Boven, whose personal integrity had been duly recognized when he was Director of the Centre for Human Rights. Mr. van Boven's report was quite clear: the Argentine and Paraguayan Governments had adopted different positions in regard to the Special Rapporteur's mission. As indicated in his report (E/CN.4/Sub.2/1988/19, para. 5), whereas the Argentine authorities had been willing to receive Mr. van Boven, the Paraguayan authorities had refused to do so. In the final analysis, the object was to ascertain who could have helped to solve those cases, who had helped and who had not helped. The Argentine Government had adopted an absolutely clear-cut position through the diplomatic representations and steps that it had taken within the framework of the Organization of American States, and also by assisting the "Grandmothers of the Plaza de Mayo". The Sub-Commission should now consider what could be done when a Government refused to co-operate.

35. Mrs. LIANG (Observer for Singapore), speaking in exercise of the right of reply, said that the International Commission of Jurists, Amnesty International and Pax Romana had alleged that the Singapore Government had misused the practice of administrative detention under its Internal Security Act. They had referred to the arrest of 22 persons under that Act in May 1987, as well as the arrest of eight persons and two lawyers in April-May 1988. The Singapore Government reaffirmed that it had acted in accordance with the principles of the Universal Declaration of Human Rights and that the authorities had arrested the Marxist conspirators in May-June 1987 only after ascertaining that there were sufficient grounds to justify their arrest under the above-mentioned Act.

36. The main facts of the conspiracy had been published in Government statements and media interviews with the detainees. The persons arrested were not legitimate political opponents, since they were involved in a Marxist conspiracy to destabilize the country with a view to the establishment of a Marxist State. Vincent Cheng, a central figure in the conspiracy, had said on television that he had been setting up a Marxist network and systematically infiltrating religious and other organizations and building up pressure groups for confrontations with the authorities. The process was to start with peaceful demonstrations and culminate in riots and violence. It had subsequently been confirmed that that Marxist plot, far from being an independent attempt at subversion, was a covert operation by the Communist Party of Malaya (CMP) to infiltrate English-educated groups.

37. The Singapore authorities had already explained why preventive detention was necessary in Singapore, which had been a State only for 23 years, and whose multi-racial and multi-religious society was vulnerable to powerful centrifugal forces and volatile emotional tides. Like many developing

countries, Singapore was endeavouring to remain a viable nation, united in the face of repeated subversive threats from within and without, particularly in view of the communist threat. The normal judicial procedure had proved totally inadequate in view of the clandestine nature of those operations, which precluded the collection of the requisite evidence. That was why the British Government of colonial Singapore had introduced the practice of preventive detention, without which Singapore could not be governed.

38. The threats to Singapore's security and the measures taken by the authorities to counter them must be viewed in that context. No Singapore Government could allow Marxist conspiracies to develop without taking action. Her Government was acting in full conformity with the laws and the Constitution, which expressly provided for preventive detention. Moreover, article 29, paragraph 2, of the Universal Declaration of Human Rights recognized that the exercise of rights could be subject to such limitations as were determined by law for the purpose of meeting the requirements of public order and the general welfare. The Internal Security Act was applied solely in the event of attempted subversion, and not to suppress dissent, as had been alleged. In Singapore, about 20 legal opposition parties were operating freely and participating regularly in the general elections. During the general elections of 1963, 1968, 1972, 1980 and 1984, the Communists, their fellow travellers and some opposition members of Parliament, had campaigned against that Act, and had been rejected by the electorate, which had endorsed the Government's position.

39. In their statements, the three above-mentioned non-governmental organizations had affirmed that detainees had complained of ill-treatment. The Singapore authorities denied having tortured or ill-treated detainees. The latter were examined by doctors before and after each interrogation and there was nothing in their medical reports to suggest that detainees had been subjected to ill-treatment. On 18 April last, nine former detainees had issued a joint statement alleging, inter alia, that they had been tortured, but without specifying who had been tortured, by whom and in what way, and without providing proof. Eight of those persons, the ninth no longer being in prison, had subsequently retracted their statements when the authorities had asked them for further details concerning their allegations. None of them had been able to substantiate those vague allegations and five had explicitly declared, under oath, that they had not been subjected to ill-treatment.

40. The illegal use of force was a criminal offence and the authorities had repeatedly stated that persons who had been tortured should lodge a complaint with the police, produce evidence in court and seek redress. Although the detainees in question and their lawyers were aware of that procedure, they had remained silent for four to ten months after their release, before making the above-mentioned joint statement.

41. Amnesty International had also mentioned the case of Chia Thye Poh, who had allegedly been detained without charge or trial for more than 21 years. In actual fact, the person concerned was living in a house in large grounds, which he was obliged to share with an internal security officer and his family, who prepared his meals. He was permitted to move freely around the house and to grow vegetables. Chia also had a television, a video recorder and a radio cassette player. The authorities were willing to release him

immediately and to allow him to settle in a country of his choice, provided that he formally undertook to renounce his activities. However, he always refused to appear before the authorities concerned. Accordingly, the termination of his detention was a matter that lay wholly in his own hands.

42. The three non-governmental organizations in question had also referred to the arrest of eight former detainees and their lawyers on 19 April 1988, which, according to them, was due to the fact that former detainees had claimed to have been subjected to ill-treatment. That was incorrect. On 18 April 1988, the former detainees had made a joint statement denying their involvement in the Marxist conspiracy and affirming that all their activities had been totally innocent and legitimate. They had retracted their previous statements concerning their involvement in the Marxist plot. The authorities had arrested eight of the nine signatories, who were in Singapore, to prevent them from resuming their subversive activities and to determine why they had retracted their earlier statements. The investigations had subsequently shown that the allegations made on 18 April 1988 were false and had been intended to damage the credibility of the Singapore Government in the forthcoming election. Only six of those persons were still in detention.

43. Mr. YOUSSIF (Observer for Iraq), speaking in exercise of the right of reply, said that his delegation wished to reply to the allegations made by the International Commission of Health Professionals for Health and Human Rights concerning his country. He reaffirmed that the use of chemical weapons in a certain region, as referred to by that non-governmental organization, was linked to military operations. The representative of the non-governmental organization concerned had claimed to have visited the region last April with the help of the Iranian authorities, which were occupying it at the time.

44. An article published in the French daily Le Monde on 19 March 1988 confirmed that the town in question had actually been occupied by Iranian forces from 15 March to the end of July 1988. It was hardly surprising that the representatives of that non-governmental organization had not been able to obtain a visa from the Iraqi authorities to enter a town occupied by Iranian forces. Accordingly, that organization's report, which had been prepared under the supervision of the Iranian authorities, offered no guarantee of objectivity and the accusations that it made against Iraq formed part of a propaganda campaign the aim of which was obviously to inject political issues into the debates and to exacerbate tension at a time when a cease-fire had been proclaimed and peace negotiations were about to begin at Geneva.

45. Mr. GOMPERTZ (Observer for France), speaking in exercise of the right of reply, said that he wished to comment on the statement made by the Indigenous World Association concerning the department of Guadeloupe. As that NGO itself had admitted, the arrest of four pro-independence activists in the island of Saint-Vincent had been declared lawful by the Court of Cassation (decision of the Criminal Division of 22 December 1987). Although those activists had subsequently lodged an appeal on the ground of legitimate suspicion against their examining magistrate, their appeal had been declared inadmissible by the Criminal Division of the Court of Cassation on 3 February 1988.

46. The length of the prison sentence imposed was due to the fact that those persons had been convicted of several serious criminal offences such as conspiracy, contravention of the legislation on firearms and bomb attacks. Of the 15 persons facing charges, 6 had been released by court order. The

centralization of investigation procedures had not been called into question. In fact, it had been explicitly provided for in the Act of 9 December 1986 and applied to terrorist actions wherever they occurred on French territory. However, the shortness of the time-limits could have posed problems. The examining magistrate, with the agreement of the Department of Public Prosecutions at Paris, had taken the necessary steps to overcome those difficulties. The rights of defence had been scrupulously respected in that matter, as in all others, and the lawyers in Guadeloupe could also arrange to be represented by correspondents in Paris during the preliminary examination.

47. All legal proceedings, in Guadeloupe and elsewhere, were conducted in complete conformity with the International Covenant on Civil and Political Rights and with the European Convention on Human Rights, which France had ratified. France was a constitutional State; all its citizens were equal before the law and no discrimination would be tolerated in regard to persons facing prosecution.

48. Mr. DAYAL (Observer for India), speaking in exercise of the right of reply, said that the representative of the International Commission of Jurists had affirmed, in his statement, that the proclamation of the state of emergency under the fifty-ninth amendement to the Indian Constitution would entail an increase in the number of arbitrary arrests, cases of torture and missing persons.

49. It should be noted that the amendment had not incorporated emergency provisions in the Constitution, since those provisions already existed. It had merely adapted the existing provisions to the situation in the Indian province of Punjab. During the debate on that amendment in the Indian Parliament, it had been clearly stated that the Government did not intend to extend the provisions in question to other regions. Moreover, they could be applied only for a maximum period of two years. The Sub-Commission was well aware of the tragic situation prevailing in the Indian province of Punjab where, contrary to what was sometimes alleged, violations of human rights were not committed as a result of clashes between Sikhs and Hindus, but rather by a handful of terrorists. In that connection, he pointed out that, in his statement on agenda item 6, Mr. Eide had said that, in his opinion, the Sub-Commission should give more attention to human rights violations that were committed by non-governmental entities and which were undoubtedly just as reprehensible as violations committed by Governments. In the Indian province of Punjab, the fundamental rights of innocent civilians were being violated, in a very serious manner, by terrorists and the sole purpose of the application of the fifty-ninth amendment was to protect those rights. Even when a state of emergency was proclaimed under the fifty-ninth amendment, the constitutional guarantees remained in force and the decision to proclaim the state of emergency had to be re-examined periodically by the Indian Parliament. Accordingly, it was evident that the allegations made by the International Commission of Jurists, to the effect that India had acted in breach of its obligations under the International Covenant on Civil and Political Rights, were unfounded.

50. Mr. SALIM (Observer for the Syrian Arab Republic), speaking in exercise of the right of reply, said that he wished to refute various allegations that a non-governmental organization representing international Judaism had made against Syria. That organization would do better to read what had been written by a Jewish journalist in the United States concerning the situation

of Jews in Syria which, in his opinion, was far better than that of numerous Jews in Israel or of the Arabs in the territories occupied by Israel. It was high time that Sharon, Shamir and many others were judged for their acts of terrorism. He regretted that some organizations were using the Commission and the Sub-Commission to propagate ideas emanating from the defenders of Zionism, a doctrine that the international community had condemned as a form of racism. It was the Zionist entity that had introduced terrorism into the region, as admitted by the Zionist Begin himself in his book entitled "The revolt of Israel", in which he had said that the State of Israel had been born in blood and fire with an iron fist and a powerful arm. It was hardly surprising, therefore, that Israel was currently employing violence against the Arabs.

51. Moreover, it was not normal that non-governmental organizations should refer to questions that were unrelated to the agenda or the objectives of the Sub-Commission, particularly when those organizations were merely transmitting ideas and promoting policies that the international community had been combating for many years.

52. Mr. KAMINAGA (Observer for Japan), speaking in exercise of the right of reply, referred to the allegations made by a non-governmental organization concerning capital punishment in Japan and pointed out that, in his country, the death penalty was applied very strictly and carefully, and solely for the most serious crimes. The majority of the Japanese were currently in favour of maintaining the death penalty in those particular cases. Moreover, the legal system in Japan guaranteed the right to a fair trial by an independent court as well as the right to be presumed innocent, the right of defence, the right to appeal to a higher court and other legal procedures. Those guarantees were applied at trials in which the death penalty was imposed. However, the death penalty was executed in Japan only on the basis of an order by the Minister of Justice, which must be issued within six months from the date on which the judgement had become final. In cases in which a request for the re-opening of a procedure or an amnesty had been filed, the law also stipulated that the period for the completion of that procedure should not be included in the six-month time limit. The Minister always carefully examined all aspects of the question, particularly the decisions of the court or the National Offenders Rehabilitation Commission and requests for a retrial. In the event of a petition for amnesty or a review of the proceedings, the decisions of the authorities concerned were always taken fully into account.

53. Mr. WAYARABI (Observer for Indonesia), speaking in exercise of the right of reply, said that he did not intend to dwell on the situation in Indonesia at the time of the coup d'état in 1965 and in subsequent years, as his Government had already had occasion to state its position on that question. However, his Government was willing to provide fuller information on that subject on request. With regard to the allegations made by an NGO concerning so-called "discrimination" against former detainees, he emphasized that, as clearly stipulated in the 1945 Constitution, the Republic of Indonesia was a State based on law and not on arbitrary power. Consequently, the human rights and fundamental freedoms of all its citizens, such as the right to work and to a livelihood, the right to freedom of association and assembly and the right to freedom of expression and of religion, were fully guaranteed. It should not be forgotten that the events preceding the coup d'état in 1965, which was the second since Indonesia's independence, and the social and political

upheavals that had followed had seriously impeded the country's development and had threatened the very survival of the State and the nation. Accordingly, the Government and people of Indonesia had to be extremely vigilent and careful to avoid the recurrence of such events.

54. To deal with the problems arising from the coup d'état, the Indonesian Government always respected the laws and regulations in force, as well as the humanitarian principles embodied in its Constitution. It had taken steps to facilitate the social rehabilitation of persons who had been detained during the coup d'état because, in spite of their acts of treason in the past, those former detainees, like other citizens, must participate in the country's development efforts, which had been made difficult by the diversity of the ethnic groups, dialects, traditions and religions in Indonesia. All the detainees who had been released had regained their rights and obligations as Indonesian citizens. They had employment commensurate with their professional capabilities, they had exercised their right to vote at the general elections in 1987 and they benefited from the protection of the law in the same way as all other citizens. If some of them had not found work, that was attributable to the general employment situation in the country, since the labour market could not absorb all the available manpower. That problem was also being faced in many other developing countries, and even in some developed countries.

55. In conclusion, he pointed out that the representative of the NGO in question had left the country more than 10 years ago and had since engaged in a systematic campaign to besmirch Indonesia's international reputation, under cover of various non-governmental organizations. It seemed evident, therefore, that her allegations were grossly exaggerated and highly motivated by political considerations.

56. Mrs. SINEGIORGIS (Observer for Ethiopia), speaking in exercise of the right of reply, said that her delegation had already clearly explained its position in regard to the issue raised by the representative of the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), about which that representative knew absolutely nothing and which, at all events, did not fall within the competence of his organization.

57. In view of the malicious accusations made against her country, she felt obliged to inform the Sub-Commission that, during the session, her delegation had been subjected to intimidation and harassment by representatives of some non-governmental organizations. Some members of so-called NGOs had also engaged in political propaganda by distributing subversive and sometimes anonymous documents detrimental to the unity and territorial integrity of her country. The secretariat should be able to put an end to such behaviour, which was unprecedented in a United Nations body and jeopardized the security of representatives of sovereign States.

58. Contrary to the allegations of the representative of EAFORD, the Ethiopian Government was willing to co-operate and to establish a dialogue with responsible, dedicated and objective NGOs, as it had already done in the past, although it refused to accept the unwarranted meddling of some NGOs in matters that did not concern them and of which they knew nothing. Moreover, the NGOs were not infallible and their statements could not be taken for gospel. If they wished to contribute to the work of the Sub-Commission, the NGOs must respect the commitment that they had made to act in accordance with

the spirit, the purposes and the principles of the United Nations and they must refrain from making unfounded accusations against some States without taking into account the situation prevailing in those countries. All non-governmental organizations should conduct themselves in accordance with the provisions of Economic and Social Council resolution 1296 (XLIV), which governed their consultative status.

59. With regard to the statement made by Pax Christi, she merely hoped that that organization would show proof of its impartiality and integrity. In conclusion, she reiterated her hope that the NGOs would henceforth exercise caution and refrain from repeating false allegations that might cause them to lose credibility in the eyes of the international community.

60. The CHAIRMAN invited all the persons present in the room to notify the secretariat immediately of any incident of the type to which Mrs. Sinegiorgis had referred. He also pointed out that no document should be distributed in the room without the approval of the secretariat.

61. Mr. BOSSUYT thanked the members of the Sub-Commission, as well as the non-governmental organizations, for their kind words in his regard, for their constructive comments on his explanatory paper (E/CN.4/Sub.2/1987/20) and, above all, for their full support, their tolerance and their open-mindedness. He was especially gratified that a clear distinction had been made between the advisability of abolishing capital punishment in a given country and the advisability of drafting an optional protocol on that question, since those issues were frequently confused.

62. He saw no need to draft an instrument designed to minimize misapplications of the death penalty, as had been proposed by Mr. Al Khasawneh, Mr. Yokota and Mrs. Bautista. In fact, to avoid any misuse, it would be sufficient to respect the provisions of article 6 of the International Covenant on Civil and Political Rights, which provided the requisite safeguards by stipulating, inter alia, that sentence of death should not be imposed for crimes committed by persons below eighteen years of age and should not be carried out on pregnant women. Furthermore, as stated in article 6 of the draft Protocol itself (loc.cit., p. 48), the provisions of the Protocol applied as provisions additional to the Covenant and, consequently, article 6 of the Covenant should be respected even by States that expressed the reservations provided for in article 2 of the Protocol under consideration.

63. In reply to the questions raised by Mr. Türk and Mr. Yokota, concerning exceptions in regard to war crimes, he said that it had been planned to refer, in article 2, to "crimes specified in military codes" but, in view of the fact that several countries did not have a military code that was distinct from their ordinary penal code, it had been deemed preferable to use the expression "crimes of a military nature" which, although fairly vague, nevertheless offered advantages. In the same article, the expressions "time of war" and "state of war" had also been preferred to "state of armed conflict" and "war", because they were more common and of a more general nature.

64. Finally, with regard to the question raised by Mr. Eide in connection with article 1, paragraph 2, of the draft Protocol, he admitted that paragraph 1 of that article was more explicit and more direct than paragraph 2, since it recognized the right of individuals not to be executed.

Paragraph 2 dealt with the other aspect of the problem, namely the obligation of States. Those that did not have a constitutional system would have to adapt their domestic legislation to bring it into conformity with the provisions of the Covenant and the new optional protocol.

65. In conclusion, he said that, in his opinion, the Sub-Commission had done everything that it was capable of doing on that question and the governmental bodies must now take the requisite decisions.

66. Mrs. WARZAZI hoped that the Sub-Commission would adopt a position on the question of the terrible events that had occurred in Burundi, as a result of which between 20,000 and 50,000 persons had died.

The meeting rose at 1 p.m.