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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-first session

SUMMARY RECORD OF THE 2nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 8 August 1989, at 10 a.m.

Chairman: Mr. YIMER

CONTENTS

Organization of work (continued)

Review of the work of the Sub-Commission

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The meeting was called to order at 10.15 a.m.

ORGANIZATION OF WORK (continued)

1. The CHAIRMAN informed the Sub-Commission that the Bureau had discussed the organization of the Sub-Commission's work and recommendations for the conduct of business at its meeting on the previous afternoon.
2. First, the Bureau recommended a tentative timetable for the consideration of agenda items; the draft had been circulated to members of the Sub-Commission, and took into consideration, among other things, availability of documentation and arrangements for rapporteurs to present their reports.
3. The Bureau also recommended the establishment of a sessional working group on detention, composed of Mr. Ilkahanaf (Africa), Mrs. Bautista (Asia), Mr. Türk (Eastern Europe), Mr. Alfonso Martínez (Latin America) and Mr. Joinet (Western Europe). The working group would be open ended, and other interested parties could participate in its work as observers.
4. In accordance with established practice, the Bureau recommended that the following two Special Rapporteurs, not members of the Sub-Commission, should be invited to attend the session in order to present their reports and take part in the discussions relating to them: Mr. D. Mazilù on prevention of discrimination and protection of children: human rights and youth (agenda item 15 (b)) and Mr. Mubanga-Chipoya on the right of everyone to leave any country, including his own, and to return to his own country (agenda item 16).
5. The Bureau made the following recommendations on the conduct of business: meetings should start on time and meetings not dealing with voting might be called to order on time, subject to the question of a quorum raised by any member; in accordance with established practice, the floor would be given as a general rule to members of the Sub-Commission at any time, to observers for organizations and to observers for States. It recommended the following time-limits for statements: 10 to 15 minutes for members of the Sub-Commission, 10 minutes for observers for organizations or States. A second statement of 6 minutes might be allowed on, for example, composite items 9 and 16; 5 minutes to observers of States for a first right of reply, with 3 minutes for a second right of reply. Special Rapporteurs might be asked not to exceed 20 minutes for introductory statements and 15 minutes for concluding statements.
6. On the question of statements by observer States before action on relevant draft resolutions, the Bureau recommended that the practice advised by the United Nations Office of the Legal Counsel should be followed, namely that a State which was the subject of a draft resolution had a right to be invited by the Sub-Commission to participate in its deliberations on that draft resolution, prior to the start of voting. The Chairman would indicate when the voting procedure had begun.
7. Mrs. DAES proposed that an additional week should be allocated to agenda item 15 and that it should be discussed during the third week of the session. Item 15 was one of the most important questions on the agenda, but the Sub-Commission never had enough time to give it due consideration. She understood that the study for which she was responsible would be ready in time, in English at least.

8. Mrs. PALLEY asked what action had been taken on Sub-Commission resolution 1988/35 in which the Secretary-General was requested, in co-operation with the United Nations Educational, Scientific and Cultural Organization (UNESCO) and other competent organizations to prepare a global programme for the preparation of teaching materials for all levels. There was no mention of the resolution in the annotated agenda.

9. Mrs. WARZAZI inquired whether the Bureau's proposal that agenda item 5 (a) should be discussed in the third week, whereas item 5 (b) should be discussed in the first week was due to the situation regarding availability of documentation.

10. The CHAIRMAN said that the reason for the proposal that item 5 (b) should be taken first was that Mr. Eide's report on item 5 (a) would not be available until the third week of the session.

11. Mr. KHALIFA said that the timetable proposed by the Bureau was a departure from the logic and reason on which the provisional agenda was based. In his opinion, the agenda should start with items 3 and 4. The order of the agenda had been changed because of the problem of documents. That was serious for items 6 and 8, which were linked and which were both important. Both items ought to be dealt with as soon as possible, but were now postponed until the third week. He noted that only five meetings had been allowed for item 6. He also stressed the need to limit speaking time and said that he would limit his introduction to his report under agenda item 5 (b) to 40 minutes, although he would normally require between 50 and 60 minutes. It was important to ensure that draft resolutions were submitted and discussed in good time.

12. The CHAIRMAN, replying to Mr. Khalifa, said that he understood from the secretariat that sufficient documents were available, so that items 5 and 4 would be transposed. With regard to item 8, however, the Bureau had discussed the matter and it did not appear to be humanly possible to have the voluminous document, which involved nearly 200,000 communications, ready before the dates indicated in the timetable.

13. The Bureau had also discussed the possibility of taking up draft resolutions earlier and had agreed that they could be discussed as and when they were ready, probably starting in the second or third week.

14. It would be difficult to meet the request by Mrs. Daes, because prior to the fourth week the documents would be available only in English. If the Sub-Commission was prepared to discuss the item with English documents only, the Bureau would reconsider the timetable. The Bureau had also considered the possibility of allowing more time for agenda item 15 - and had indeed discussed items 13, 14 and 15 at length - but had concluded that at the present stage it would be difficult to do so.

15. Mr. EIDE said that he was satisfied with the proposed working arrangements and appreciated the difficulty of achieving a compromise between logic and practicability.

16. With regard to the timing of discussion of working group reports, he pointed out that working groups were attended by representatives of many non-governmental organizations, who had come, at great cost to themselves, to provide information and would be glad of an opportunity to attend such meetings. As Chairman/Rapporteur of the Working Group on Contemporary Forms of Slavery, he had been asked whether item 14 could be discussed earlier. An ambitious action programme was being prepared and it was hoped that documents would be ready by the end of the second week or the beginning of the third week. He would, of course, understand if there were unsurmountable difficulties.

17. On the problem of items 5 (a) and 5 (b), referred to by Mr. Khalifa and Mrs. Warzazi, he understood that it would be difficult for the secretariat to produce his voluminous report on the decade against racism in time for earlier discussion and would only point out that his report gave extensive coverage to South Africa. He hoped that the Bureau would bear in mind the problem of the gap in time between discussion of items 5 (a) and (b), both of which dealt with South Africa.

18. He also appreciated the concern expressed by Mrs. Daes about item 15. He saw no problem in dealing with item 8 towards the end of the session: indeed there were advantages since there would be no need for the presence of governmental and non-governmental organization observers. Item 6, on the other hand, involved Governments and non-governmental organizations and should therefore be dealt with early. He understood that there were no problems regarding documents.

19. Mrs. PALLEY recalled that at the 1988 session it had been decided to discuss the relationship of procedures under Council resolutions 1235 (XLII) and 1503 (XLVIII). There had been an attempt to argue that if a country was involved in both procedures it might be in double jeopardy and that a country could not be considered under both procedures. Those arguments had been used in an attempt to block consideration of certain countries.

20. She wondered whether that discussion would take place because unless it did, she did not see how the Sub-Commission could establish its agenda. She did not want procedural - or phoney legalistic - arguments to be put forward about double jeopardy: if the situation in a country needed to be examined, the Sub-Commission should examine it, whatever the channel through which it came to the Sub-Commission. She suggested that the Sub-Commission should consider and vote on public complaints first and then look at communications which, as Mr. Eide had suggested, could be dealt with when government observers were no longer present. There would be no question of double jeopardy, since all concerned would know that the Sub-Commission had considered them in a proper way.

21. She also asked whether the discussions on item 4 during the first week would include the subject of chemical weapons. She was anxious that the Secretary-General's report (E/CN.4/Sub.2/1989/4) should be discussed at a time when the Sub-Commission was well attended and not when many people had disappeared. She had some valuable and up-to-date expert information to contribute.

22. The CHAIRMAN said that the discussions under item 4 in the first week would deal with traditional item 4 issues. The report on chemical weapons would not be discussed until the afternoon of 23 August because the documents would not be ready before then.

23. He suggested that the question of double jeopardy might be discussed under agenda item 3.

24. Mr. JOINET said that the Bureau's proposal was probably the best that could be expected. He hoped that it would be changed as little as possible.

25. He had no objection to item 8 being discussed in the third week provided the documents were available at least two days in advance, if possible.

26. On the relationship between items 6 and 9, he agreed with Mr. Khalifa on the importance of item 6, but stressed the historical importance of item 9, under which the Commission on Human Rights asked the Sub-Commission to continue making proposals. He suggested that a better balance would be established if the number of days allocated to item 9 were increased from three and a half to four and the number of days allocated to item 6 were reduced from five and a half to five.

27. The CHAIRMAN said that the Bureau would meet from time to time to review progress and that Mr. Joinet's views would be taken into account.

28. Mrs. WARZAZI agreed that item 4 of the agenda should be considered before item 5 and that voting on draft resolutions should start as soon as possible.

29. Moreover the secretariat should make every effort to provide all the documents before the start of the session even if overtime had to be paid.

30. The CHAIRMAN assured members of the Sub-Commission that the documents for agenda item 8 would be available well in advance of the discussion.

31. Mr. VARELA QUIROZ suggested that the Sub-Commission should adopt the Bureau's recommendations concerning the schedule of work. Under rule 8 of the rules of procedure it could always revise the agenda.

32. While agreeing with Mrs. Warzazi as to the desirability of having all documents available before the session, he pointed out that a tremendous amount of work was involved and that the secretariat was already doing its best, particularly with respect to the provision of documentation in Spanish.

33. Mrs. KSENTINI supported the Bureau's proposals, but was concerned that the Sub-Commission was organizing its work on the basis of the availability of documentation. She thought that the agenda items were spread out rather too much, with item 5 (a) being considered in the first week and item 5 (b) in the second.

34. Mr. van BOVEN requested that a list of the documents available in each language should be made available that day.

35. The CHAIRMAN said that if there was no objection, he would take it that the Sub-Commission wished to approve the timetable, with the amendment that item 4 would be considered before item 5 (b).

36. It was so decided.

37. Mr. EIDE, referring to the procedural issue of the right of observers of Governments to speak when the Sub-Commission dealt with resolutions, said that he believed that natural justice would be achieved if observers from States directly affected by a draft resolution were given the opportunity to state their views. He would also like the representatives of non-governmental organizations to have the right to speak when the Sub-Commission was discussing draft resolutions, but would not press that point since others disagreed.

38. His understanding was that when a draft resolution was introduced by a member of the Sub-Commission, the observer of the State concerned should be given the possibility of commenting on it, after which the Chairman would close the discussion and the vote would be taken. Members of the Sub-Commission could request the right to explain their vote either before or after the vote.

39. A slight confusion had arisen the previous year when at the 35th meeting Mrs. Palley had asked for a roll-call vote and he had opposed the Chairman's suggestion to give the floor to an observer who had asked to speak. He had not, however, understood that the vote had started. The legal opinion, together with the discussions had clarified the issue and he therefore approved the Chairman's proposed course of action.

40. The CHAIRMAN said he wished to make it clear that it was only during the discussion of a draft resolution that an observer of a State particularly concerned by that resolution would be given the floor. The debate on the draft resolution would then be closed and the vote taken. The floor would not be given thereafter to the observer of any State even if the resolution directly concerned that State.

41. Mrs. WARZAZI, supported by Mr. ALFONSO MARTINEZ, requested the Chairman to ensure that incidents like the one that had taken place the previous year were not repeated. No governmental observer or non-governmental organization should be allowed to express an opinion on the position adopted by an expert submitting or sponsoring a draft resolution. Indeed, no one, including another expert, should be allowed to make such comments.

42. The CHAIRMAN endorsed that view.

43. Mr. JOINET suggested that after a resolution had been introduced the floor might be given to the government observer concerned before the discussion, so that both views were heard.

44. Mr. ALFONSO MARTINEZ did not think that government observers should be required to speak at a given juncture. They should be informed by the Chairman that they had the opportunity to speak, but should be left free to choose the time, which might even be after the vote although not during the explanation of vote.

45. Mr. VARELA QUIROS said that he was surprised by the change in the position of Mr. Eide, who, in the case of the roll-call vote requested by Mrs. Palley, had opposed giving the floor to a government observer at that stage of the debate, but in the case of El Salvador had objected to the observer making a statement for reasons of principle and of logic.

46. To clarify matters for the future he proposed the Sub-Commission should take a vote to reverse its earlier decision and to establish the principle that government observers should be allowed to take the floor before a vote.

47. The CHAIRMAN considered such a step unnecessary. There would be no problem in applying the legal opinion in practice since once the Sub-Commission had accepted the Bureau's recommendation, that recommendation became a decision of the Sub-Commission. He appealed to members not to reopen the debate.

48. Mr. EIDE suggested that the Chairman should make it quite clear when the voting had started on a given resolution and that from then on only members of the Sub-Commission had the right to speak in explanation of vote, either before or after the vote had taken place. However, he was not clear as to whether in the discussion on a draft resolution, the representatives of non-governmental organizations would be allowed to take the floor.

49. The CHAIRMAN replied that the legal opinion, based on rule 69 of the rules of procedure, did not cover interventions by non-governmental organizations. They took part in the general discussion on the item, but they could not be given the floor to give their opinions on draft resolutions.

50. Mrs. KSENTINI said that there were differing views as to when a vote had started.

51. The CHAIRMAN replied that since there were no further deliberations once a vote had started, only members of the Sub-Commission could give explanations of vote. He would announce the start of the vote in every case.

52. Mr. JOINET said that he did not believe that the legal opinion covered non-governmental organizations and wondered if, when government observers referred specifically to a non-governmental organization in a discussion on a draft resolution, that organization had the right of reply.

53. The CHAIRMAN pointed out that only observers of Governments directly concerned by a draft resolution and not those of other governments, would be given the right to speak. Concerning the scope of the legal opinion, the question of non-governmental organizations was irrelevant since such a body would not be mentioned in a draft resolution.

54. Mrs. PALLEY fully concurred with the Chairman's ruling on States, but pointed out that it was nowhere stated that non-governmental organizations could not speak during the deliberations, before closure of the debate. It would be an infringement of the rights that the Sub-Commission had been tending to accord the non-governmental organizations if they were denied such a right.

55. She asked why the Chairman took such a narrow view regarding States. States themselves must be the best judges of whether they were concerned in the matter. It was important to take a very broad view, and to be generous to States that wished to speak, provided they spoke before the voting. Non-governmental organizations should also be allowed to speak in that debate.

56. The CHAIRMAN gave it as his view that non-governmental organizations and States were present for different purposes. The former provided information on the human rights situation in particular countries world wide. They participated in the debates under item 6 and under other items. Observer States were present essentially to defend themselves. It was for that reason that the language of rule 69 relating to member States differed from that of Part XIII of the rules of procedure (Consultation with and representation of non-governmental organizations).

57. With regard to his giving a broad interpretation to the phrase "matter of particular concern to that State", such an interpretation was precluded by the wording of rule 69, whose drafters had intentionally striven to ensure a narrow interpretation by their use of the word "particular".

58. There was no controversy regarding the question of giving the floor to observer States before adoption of the draft resolution. If there was any objection to the second part of his ruling, on the point not addressed in the legal opinion, then the matter would have to be put to the vote.

59. Mr. DIACONU supported the Chairman's view that observer States should have the floor only during the deliberations preceding adoption of the draft resolutions. If the adoption process itself was transformed into an adversarial proceeding, the nature of the Sub-Commission's debates would be radically changed, and its resolutions would cease to emanate solely from its experts. While it was established United Nations practice that any State concerned had the right to a hearing, non-governmental organizations did not have the same need to defend themselves against accusations.

60. Mrs. WARZAZI supported the Chairman's position and disagreed with the views expressed by Mrs. Palley and Mr. Joinet. Non-governmental organizations should not be allowed a right of reply to States. She intended to ask the secretariat to circulate the pertinent Economic and Social Council resolution, from which it would be seen that non-governmental organizations had no right of reply.

61. Mr. VARELA QUIROS said that where the Sub-Commission was intending to question a specific Government, it was logical that that Government should be allowed to participate. Such was not the case with the non-governmental organizations, whose presence during the adoption process would imply that they themselves were proposing the draft resolution. Only members of the Sub-Commission had the right to propose draft resolutions and to give explanations of vote. Under rule 60 of the rules of procedure, not even co-sponsors were entitled to speak in explanation of vote.

62. Mr. EIDE asked for clarification of Mr. Varela Quiros' last sentence, regarding co-sponsoring. If such were the case, the Sub-Commission's established practice would have to change.

63. It was wrong to say that a country was present in order to defend itself. Countries had often provided additional information or contributed observations on the best way of proceeding. Government observers, like non-governmental organizations, provided information.

64. The CHAIRMAN said that under the rules of procedure of the General Assembly and of other organizations, it was standard practice that co-sponsors were not allowed to vote. That practice was borne out by rule 60. There was no logical justification for a co-sponsor explaining its vote, since it was itself the author of the proposal.

65. Miss ATTAH supported the Chairman's interpretation, and also Mrs. Warzazi's point of view. In her opinion, the Sub-Commission was wasting too much time on hypothetical situations.

66. Mrs. PALLEY asked for a legal ruling on the right of non-governmental organizations to participate in the debate. Mr. Joinet had been right to say that the question was not addressed in the legal opinion. It would be helpful to have a legal ruling, rather than to debate the question within the Sub-Commission. The question was, to what extent a non-governmental organization could participate in the debate immediately prior to the voting. A cut-off point was reached just before voting, after which only Sub-Commission members had a right to participate. Prior to the voting stage, the non-governmental organization was simply addressing the issue on the Sub-Commission's agenda, rather than defending itself or explaining its vote. She cited the example of Amnesty International's report the previous year. That organization ought to have been given the chance to clear up certain misunderstandings that had arisen.

67. The CHAIRMAN took it that Mrs. Palley was objecting to his ruling, and proposed putting it to the vote once all those who had expressed a wish to speak had done so.

68. Mrs. WARZAZI opposed Mrs. Palley's proposal. It was the task of non-governmental organizations to provide information: they had no right to intervene in the drafting of resolutions. Some organizations were in the habit of providing experts with resolutions. She opposed such practices, which compromised the impartiality of the Sub-Commission's work. She again asked for the instructions issued by the Economic and Social Council regarding the non-governmental organizations' role to be circulated. If there was a vote on the question of a legal ruling, she would oppose the proposal.

69. The CHAIRMAN said that his ruling was based on the rules of procedure on the legal opinion, and on the role of the non-governmental organizations as defined in the Economic and Social Council resolution.

70. Mr. DESPOUY felt that all members supported the Chairman's interpretation of the legal opinion, in so far as States were concerned. The role of non-governmental organizations in the debate was open to question: views differed, though the majority seemed to consider that they did not have the right to participate. He asked the Chairman to provide the Sub-Commission with his interpretation of the latter issue at the opening of the afternoon meeting, and to include the question of whether the same weight should be given to rule 70 as to rule 69, in view of the fact that many national liberation movements were directly concerned by resolutions.

71. The CHAIRMAN said that he did not intend to open a debate on the question of national liberation movements. He had made a ruling to the effect that non-governmental organizations had no right to make statements on draft resolutions. There was an objection to his ruling, which, under rule 42, could be overruled. He would put the objection to the vote as soon as the list of speakers was exhausted.

72. Mrs. DAES wished to clarify certain statements made in connection with the non-governmental organizations. The Sub-Commission should be very grateful to the non-governmental organizations for the valuable contribution they made to its work. She wished to propose that the Sub-Commission should take no formal decision at the present time regarding statements by non-governmental organizations on draft resolutions, but that it should have the right to invite any non-governmental organization to provide clarifications, or additional information, regarding draft resolutions. Regardless of their quality, the draft resolutions she proposed were her own work, and not that of non-governmental organizations. She hoped that the Chairman would not call for a vote every time he made a ruling.

73. Mr. ALFONSO MARTINEZ suggested that members might like to give some thought to the latter part of rule 74, which drew no distinction between the types of organization.

74. Mr. CHERNICHENKO said that from a psychological point of view it would be better to avoid a vote, since that situation would smack of confrontation. Regarding Mrs. Palley's proposal, Economic and Social Council resolution 1296 (XLIV) laid down the legal situation of non-governmental organizations. It clearly stated that such organizations could make statements on substance, but did not say that they had the right to comment.

75. Mrs. BAUTISTA supported the Chairman on both counts. She felt that, if possible, it would be better to avoid a vote on the issue of participation by non-governmental organizations.

76. Mr. van BOVEN pointed out that much progress had been made since the days when non-governmental organizations had been ruled out of order if they tried to address particular situations. It was now the practice to be generous to such organizations during the general discussion, in which they had ample opportunity to state their position. On the other hand, the situation was different when draft resolutions were under discussion: while it was fair to give a State the opportunity to state its views when its policies and practices were being discussed or criticized, the policies and practices of non-governmental organizations were not usually being called into question. Consequently, such discussions should involve only the Sub-Commission and the member State directly concerned. In the event of a vote, he would support the Chairman's position, but he hoped that such a vote could be avoided.

77. Mr. KHALIFA said that he was with the silent majority. He asked Mrs. Palley not to press her objection. It was established practice that only members and the State directly concerned should participate in the deliberations on the draft resolution. It would not be possible to expand participation without a breach of the fundamental legal principle whereby the final word should be given to the accused. In such cases, the State was in a

sense the "accused", whereas the non-governmental organization was the "prosecution". If the latter was allowed to participate, the State concerned would then have to be permitted another final word, and there would be no end to the proceedings. He suggested setting the question aside until such time as the Sub-Commission was actually confronted with such a situation. In the event of a vote, he would abstain.

78. Mr. JOINET supported Mr. van Boven's view. He had been alluding only to the highly exceptional situation in which, during the debate on a draft resolution, a Government directly challenged statements made by a non-governmental organization. He proposed that, should such a situation ever arise, the Chairman should ask the speaker to moderate his criticisms of the non-governmental organization.

79. The CHAIRMAN said that the Sub-Commission was clearly not in a mood to vote although the outcome of such a vote, if taken, was quite clear. There was a formal proposal by Mrs. Palley that a legal opinion should be sought and the Sub-Commission must take a decision.

80. Mrs. PALLEY said that the only reason why she had raised the issue was that the Chairman had made a ruling which seemed to be unnecessary. In order to stop the ruling coming into play she had asked for a legal opinion by someone outside the Sub-Commission, bearing in mind that members had different views on the issue. Such an opinion was not necessary at the present time but the advantage of obtaining such an opinion would be that it would be on record for future guidance. She therefore suggested that the Sub-Commission should take a decision on the one point on which the first ruling had been made, namely, that concerning the position of Governments.

81. Mrs. WARZAZI said that there was no need for a legal opinion.

82. Mr. TREAT did not think that a vote was necessary. He wished however to stress that there should be full and active participation by non-governmental organizations which made an enormous contribution to the Organization. That point had already been made. Like Mrs. Daes, he had never presented a draft resolution which had been submitted to him by a non-governmental organization; he did, however, welcome the views of such organizations and they should be encouraged to participate as fully as possible.

83. He saw no objection to Mrs. Palley's request that at some point the Sub-Commission should be given the benefit of a legal opinion. There was no reason to vote as the outcome was obvious.

84. The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission approved the recommendations of the Bureau regarding the timetable for the consideration of items and the other recommendations which he had read out at the beginning of the meeting.

85. It was so decided.

86. Mr. DIACONU requested that the report of the Sub-Commission should reflect his opinion that the invitation to the Special Rapporteurs was not appropriate in connection with item 15.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (E/CN.4/Sub.2/1989/37 and 47; E/CN.4/Sub.2/1988/43)

87. Mr. MARTENSON (Under-Secretary-General for Human Rights), introducing the item, said that, since 1982, the Sub-Commission had reviewed its working methods, its programme of work and its relationship with the Commission and, in considering the item, had also examined a wide range of complex issues relating, inter alia, to the name and terms of reference of the Sub-Commission, its role and functions, the programming of studies and other fields, and the rationalization of its procedures and methods. The need for a thorough review of those issues had repeatedly been emphasized by members and a number of proposals had been made. In order to ensure better complementarity and co-ordination between the activities of the Sub-Commission and those of the Commission, the Commission on Human Rights has also referred some issues and proposals to the Sub-Commission for its attention.

88. Subsequently, the Economic and Social Council and the Commission had adopted a number of resolutions by which they had recalled the terms of reference of the Sub-Commission and had issued directives concerning the Sub-Commission's role, title and methods of work, as well as the election of its members and the alternates. At its thirty-seventh and thirty-eighth sessions, the Sub-Commission had established a sessional working group to study the matter; it had however decided, in resolution 1985/24, to discontinue its work in order to ensure the full participation by all members of the Sub-Commission. At its forty-fourth session, the Commission had elected the members of the Sub-Commission in accordance with the new procedures established in Economic and Social Council resolution 1986/35. At its next session, in 1990, the Commission would also elect half of the members of the Sub-Commission; three members from African States, three members from Asian States, three members from Latin American States, one member from the Eastern European States and three members from Western European and other Member States.

89. At its forty-fourth and forty-fifth sessions, the Commission had reconsidered the work of the Sub-Commission and had adopted resolutions 1988/43 and 1989/36 which contained a number of directives and issues concerning the Sub-Commission's role, its programme and organization of work and its standard-setting activities. The Commission had recalled previous decisions taken by it and by the Economic and Social Council in that area to promote an even workload and the expeditious performance of the Sub-Commission's tasks. The Chairman of the fortieth session of the Sub-Commission, Mr. Bhandare, had presented a report (E/CN.4/1989/37) to the Commission on Human Rights on the implementation of the guidelines provided by the Commission's resolution 1988/43.

90. At its last session, the Commission, in its resolution 1989/48, had expressed its appreciation to the Special Rapporteurs and other fact-finding and monitoring mechanisms established by the Commission for their contributions in implementing universally recognized standards of human rights and had emphasized the need to increase the effectiveness and objective contribution of the mechanisms established by the Commission and to make constant improvements in the procedures. In that resolution, the Commission had requested the Secretary-General to consider convening a meeting of Special Rapporteurs and representatives, representatives of other mechanisms

established by the Commission, the Chairman of the Commission, and the Chairman and five rapporteurs representing the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It was anticipated that such a meeting would be convened in 1990 and the Sub-Commission might therefore wish to consider which of its rapporteurs should participate.

91. Concerning the question of standard-setting activities, the Sub-Commission might wish to recall Commission resolution 1987/24, by which the Sub-Commission had been invited, when engaged in developing international instruments in the field of human rights, to bear in mind the guidelines established in General Assembly resolution 41/120. Those guidelines were to be found in paragraph 18 of the annotations to the provisional agenda (E/CN.4/Sub.2/1989/1/Add.1).

92. In conclusion, he recalled that, in its decision 1988/104 of 25 August 1988, the Sub-Commission had decided that, after its forty-first session, in 1989, the item "Review of the work of the Sub-Commission" would be considered on a biennial basis.

93. Mr. van BOVEN, introducing the working paper contained in document E/CN.4/Sub.2/1989/47 on behalf of Mr. Eide and himself, said that the document followed the working paper which had been prepared the previous year (E/CN.4/Sub.2/1988/43) and that the two documents should be read together.

94. A regular review of the Sub-Commission's work was necessary. The Commission on Human Rights reviewed the Sub-Commission's work annually, but it was up to the Sub-Commission itself to review its own work, bearing in mind in particular its relationship with the Commission. The Under-Secretary-General, in his introductory statement, had placed the Sub-Commission within the totality of the human rights programme and the Sub-Commission must be mindful of its position in that respect. It was also necessary that the Sub-Commission should bear in mind its own identity as a body of independent experts or "think-tank". There was also a need for the Sub-Commission to respond to the needs of the times; in that connection, it should guard against falling into routine activities and instead seek out relevant new aspects for consideration.

95. The Commission on Human Rights had emphasized the complementary role of the Sub-Commission in relation to the work of the Commission and other subsidiary bodies. The Sub-Commission should, however, try to make its own contribution as a body of experts. It was already pursuing many tasks in its own field and was also undertaking new tasks, particularly in the fields of contemporary forms of slavery and the rights of indigenous peoples. The Sub-Commission had also been given mandates on communications under Economic and Social Council resolution 1503 (XLVIII) regarding those to be handled in a confidential manner and under paragraph 2 of Commission resolution 8 (XXIII) concerning the preparation, for the use of the Commission, of a report containing information on violations of human rights and fundamental freedoms. The Sub-Commission had also fulfilled its mandate under the latter resolution which required it to bring to the notice of the Commission any situation which it had reasonable cause to believe reflected a consistent pattern of threats to human rights. Finally the Sub-Commission might be given a mandate to fulfil any other functions by the Commission or by the Economic and Social Council.

96. One major problem which arose was how the Sub-Commission should handle questions relating to alleged violations of human rights, particularly those relating to agenda item 6. Such issues had provoked public interest and, in particular, non-governmental organizations were currently in a position to make a substantial contribution to the Sub-Commission's work as they enjoyed freedom of access to it in contrast to the situation which had prevailed in the 1960s and 1970s. The Sub-Commission also welcomed the presence of representatives of Governments at its meetings as well as of others interested in its work.

97. An attempt had been made in the working paper to analyse how the Sub-Commission could play its role; it was not a tribunal but rather a collegial body which could identify trends and phenomena which would assist the Commission in its work. The intention of the working paper was not to propose new procedures but to develop current practices which had not been fully utilized. On the issue of its functions on communications, the Sub-Commission as well as the Commission had always acted upon the premise that Council resolution 1503 (XLVIII) had not overtaken Commission resolution 8 (XXIII). The confidential and the public procedures were two separate procedures and that situation was also reflected in the Sub-Commission's agenda where they constituted two separate items. Since the adoption of Commission resolution 8 (XXIII), new procedures, such as working groups and special rapporteurs with monitoring and fact-finding duties, had been set up by the Commission. The Sub-Commission's function was not to duplicate the work of those mechanisms but rather to play a complementary role in recognizing patterns, situations, phenomena and trends involving violations of human rights wherever they might occur.

98. The most radical proposal in the working paper was contained in its paragraph 6 in which it was proposed that the Sub-Commission should prepare an annual report, on the basis of its work and in the light of its mandate under Council resolution 8 (XXIII). In that connection, two issues were important, namely, how was such a report to be prepared and what should its contents be. The working paper suggested that the Sub-Commission should at its next session set up a sessional working group of five members which would start to function after the public debate. The report would consist of two parts. The first part could be prepared with the assistance of the secretariat and could contain a survey of the information presented by members of the Sub-Commission, by representatives of non-governmental organizations and by observers from Governments regarding alleged violations of human rights. The second part of the report could be of a more analytical character and should represent an assessment of how the Sub-Commission could assist the Commission. It might comprise the following three elements: first, it could identify phenomena and trends relating to violations of human rights which might merit the attention of the Commission; second, it could point to country situations already under consideration by United Nations bodies and warranting continued attention by the Commission; and, third, it could refer to the Commission other country situations which, in its view, gave rise to serious concern.

99. The suggestions contained in the working paper were intended as a means of enabling the Sub-Commission to make a further valuable and distinctive contribution in a process which would help to broaden and deepen the United Nations human rights programme. The authors had been greatly encouraged by the reactions of their colleagues to their previous working paper submitted in 1988.

100. Mr. BARSH (Four Directions Council), commenting on the working paper contained in document E/CN.4/Sub.2/1989/47, said that a single global report transmitting information received on situations everywhere in the world could add substantially to the quality and comprehensiveness of the Sub-Commission's study of gross violations of human rights. Such a report would not replace country-specific resolutions, but would rather provide the factual background for them and, even more significantly, place resolutions in the context of reported violations in all other parts of the world. That would add balance and perspective to the Sub-Commission's work.

101. The format proposed in the working paper for such a report represented an ideal which might not yet be practical in terms of current procedures and methods of work. The preparation of the first part could be quite straightforward and mechanical, as long as no attempt was made to edit, condense or editorialize on the record of the public debate. It could be essentially a cut-and-paste task. The second, analytical, part of the report would require the establishment of a sessional working group to negotiate the draft of a text for adoption by the Sub-Commission as a whole; such a procedure could lead to a lengthy debate in the Sub-Commission and failure to adopt the report as a whole.

102. While his organization fully supported the idea of a two-part report as a future ideal, he would suggest that, as an experiment, the Sub-Commission should first agree to a purely factual report which would repackage the information received in a more useful and accessible form than was contained in the summary records. It would be a substantive, analytical report of the debate in the Sub-Commission, but it would not editorialize or draw conclusions as such. If such an experiment succeeded, then a more ambitious kind of report could be contemplated.

103. As an exercise, his organization had prepared a substantive analytical report on the Sub-Commission's 1988 debate on gross violations of human rights. It consisted of about 35 printed pages and was therefore too lengthy to be circulated as a United Nations document. Copies were however available for any members who might be interested. His organization had worked from original speeches and the summary records and had done only minimal and largely stylistic editing. The work required had amounted to about three person-weeks and was of a nature that could largely be entrusted to interns at the Centre for Human Rights with minimal supervision by the professional staff.

The meeting rose at 12.55 p.m.