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AND PROTECTION OF MINORITIES

Forty-first session

SUMMARY RECORD OF THE 8th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 11 August 1989, at 10 a.m.

Chairman: Mr. YIMER

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

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMITTEE HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1989/2-3, 5-7, 26 and 45)

1. Mr. ALFONSO MARTINEZ expressed doubts as to the utility of keeping item 4 on the agenda since the documents under discussion could just as well be considered under other items or as separate ones.

2. He suggested that the note by the Secretary-General (document E/CN.4/Sub.2./1989/2) should in future be expanded to cover advisory services in the field of human rights. In connection with the section entitled "Structuring of the Centre for Human Rights" (paras. 48 and 49), he observed that 60 per cent of the professional staff of the Centre came from Western Europe and other States, other regions being under-represented. He hoped that that situation would be remedied.

3. With respect to the report of the Secretary-General on the movement and dumping of toxic and dangerous products and wastes (document E/CN.4/Sub.2/1989/3), he considered that the report should not merely have transcribed the reply received from the Executive Director of the United Nations Environment Programme (UNEP), but should also have elaborated upon a subject that was of great concern, in particular to the African continent.

4. The memorandum from the International Labour Office (ILO) (E/CN.4/Sub.2/1989/6) was interesting but varied little from previous reports. He noted from paragraph 1 that the Indigenous and Tribal Populations Convention, 1957 (No. 107) had received no further ratifications.

5. It would have been interesting for the Sub-Commission to know what conclusions and recommendations had been made by the three-man ILO mission to Israel and the occupied Arab territories mentioned in paragraph 11 of the memorandum.

6. The report by the United Nations Educational, Scientific and Cultural Organization (UNESCO) (E/CN.4/Sub.2/1989/7) had also become something of a routine exercise. UNESCO's work in the field of racism and all forms of discrimination was clearly of interest to the Sub-Commission, but it would also have been useful to have details of its work on cultural rights, and details of UNESCO's scientific research on indigenous populations in the Philippines and Australia would also be useful, in particular to the Working Group on Indigenous Populations.

7. He welcomed Mr. Varela Quiros' note pursuant to Sub-Commission decision 1988/111 (document E/CN.4/Sub.2/1989/5); it was a skilful and courageous report on a difficult matter of great legal, ethical and political importance. The key issue seemed to him to be how to ensure AIDS sufferers received protection of their rights equal to that enjoyed by other members of society.

8. However, some aspects of the note could be improved and should be taken into account if the Sub-Commission decided to make an in-depth study of the topic. He did not think that developing uniform rules and practices to reconcile the interests of society and respect for the essential rights of the

human being, mentioned in paragraph 4, was an appropriate premise. Different countries had widely differing public health services and not all had the money or political will to adopt uniform practices. There was no general idea of how to protect the human rights of society, let alone those of AIDS victims. An approach such as that advocated by Mr. Varela Quiros would result in polemics and complications.

9. The Sub-Commission's task was rather to look into the human rights aspect of preventing the spread of the disease. That could only be done by national legislation that took account of the individual circumstances prevailing in each country. Mr. Varela Quiros seemed to disapprove of isolating AIDS victims, but that was a perfectly logical proposition in a small country like his own, although it would not be possible in a large country like the United States where most AIDS victims were to be found. Such a policy did not run counter to World Health Assembly resolution WHA40.26 or to the London Declaration on AIDS prevention. It was true that paranoia against AIDS sufferers had developed in certain societies and every possible way must be found of fighting such discrimination. In many countries the isolation of an HIV carrier who was the sole wage-earner in the family had resulted in very difficult situations. In Cuba, such persons received their salaries in full, thus ensuring equality of the right to health, a point not taken up by Mr. Varela Quiros. It was important to see how AIDS had become a factor of inequality in certain societies, particularly those with a market economy.

10. A recent article in the International Herald Tribune had mentioned that the cost of a possible cure for AIDS was \$8,000 per year. Since, according to official statistics, some 14.2 per cent of the population of the United States was living below the poverty line, such treatment was clearly beyond the reach of many people. AIDS was affecting a disproportionate number of poor people. In the United States, Hispanics represented 8 per cent of the total population, but 15 per cent of them were affected by AIDS. That issue should be dealt with in any study by the Sub-Commission.

11. Mr. Varela Quiros seemed to be convinced that the spread of AIDS could be prevented through education and information. His own doubts about that approach were confirmed by an article in the American Journal of Public Health, volume 78, No. 4, of April 1988, on the history of attempts to prevent the spread of sexually transmitted diseases solely through information. The conclusions of that article were not very encouraging, and other methods were needed.

12. It was important not to create a majority of AIDS sufferers through respect for the human rights of the minority.

13. Referring to a comment made by Mr. Eide at a previous meeting in connection with two Soviet publications, Moscow News and Sputnik, he said that according to Radio Havana Cuba, national security was not the reason for the banning, but rather the protection of Cuba's relationship with the Government, people and party of the USSR. The two publications in question were daily becoming like those of the yellow press in market-economy countries and were depicting Soviet policy towards Cuba in a misleading manner. The ban had nothing to do with the free circulation of the press in Cuba. Indeed, it was very difficult for the citizens of the United States, for instance, to have access to Cuban publications because of State Department regulations.

14. Mr. EIDE said that, under article 19 (3) (b) of the International Covenant on Civil and Political Rights, the right of freedom of expression was subject to certain restrictions necessary for the protection of national security or of public order, public health or morals. He inquired into which category the information provided by Mr. Alfonso Martinez fell.

15. Mr. ALFONSO MARTINEZ pointed out that Cuba was not a party to the Covenant and that national legislation and articles 28 and 29 of the Universal Declaration of Human Rights were relevant.

16. Mr. LITTMAN (World Union for Profressive Judaism), speaking on the report by the Secretary-General on respect for the right to life: elimination of chemical weapons (document E/CN.4/Sub.2/1989/4), briefly traced the history of chemical warfare.

17. The relative conspiracy of silence by the international community on chemical warfare since the early 1960s had been shattered the previous year as a result of the Gulf War in which both sides had resorted to chemical weapons. Iraq, however, had used them first, both against Iran and against its own Kurdish citizens.

18. In his statement to the Sub-Commission on 17 August 1988, he had stressed that the lack of widespread international protest at the events in Iraq was an ominous precedent which should be addressed promptly by the Sub-Commission, the next Commission on Human Rights, and other qualified international forums. In his statement to the Commission on 6 February 1989, he had cited a letter published in the Times of London four days earlier, signed by five distinguished experts, one of whom had been Mrs. Palley. They had pointed out, inter alia, that human rights abuses in Iraq were not included on the agenda for public discussion at the Commission on Human Rights, and that in August 1988 the United Nations Secretary-General had himself reported on intensifying Iraqi use of chemical weapons, but that, by a majority vote, the Sub-Commission had failed publicly to condemn Iraq. The letter went on to say that within a week, the world's press revealed that tens of thousands of Iraqi Kurds, many of them bearing fresh wounds from chemical weapons, had begun to arrive in Turkey. Irrefutable proof had now come to light that poison gases had indeed been used by Iraq during the campaign of civilian slaughter. On 15 September 1988, the European Parliament had strongly, and quasi-unanimously, condemned the genocidal "extermination" by chemical weapons of thousands of Iraqi Kurdish civilians. By a curious coincidence, that same day, the United Nations representative of the Arab League, Mr. Clovis Maksoud, had proclaimed that Zionist interests had unleashed a campaign of hatred against Iraq and the Arab world. Since then, the massive transfer of the Kurdish population of Qala Diza and its region had continued.

19. The 149-nation conference held in Paris in January 1989 had produced a unanimous declaration against the use of chemical weapons, but little had been accomplished since then to ban their proliferation. Meanwhile, according to a number of reliable sources, particularly the testimony provided to the United States Senate Foreign Relations Committee on 1 March 1989 by the Director of the Central Intelligence Agency, Iraq, Iran, Syria and Libya continued to expand massively their chemical warfare capacity and to acquire the means to deliver chemical weapons to their chosen target.

20. In a recent article in Commentary, Dr. Michael Ledeen, President of ISI Enterprises, had stated that the Federal Republic of Germany was the keystone of the international operations through which those Middle-Eastern countries had developed their programmes. Forty-two West German firms had been publicly identified as participating in that business although, companies in Eastern and Western Europe, in South-East Asia, as well as China had also been actively involved in the sale of chemicals, technology and software for hard cash. The best known case was the German company Imhausen-Chemie, which had provided the Libyans with the crucial expertise for the construction of their main chemical weapons plant at Rabta. The main Iraqi chemical weapons facilities at Samarra, where Baghdad produced the blister agent mustard and the nerve agents tabun and sarin, had been constructed with the assistance of the Baghdad affiliate of another German firm, Kark Kolb-GmbH. German companies had also supplied Iran with crucial components for chemical weapons in 1987 and 1988. However, preventive actions had now been taken in the Federal Republic, and domestic legislation was being prepared to bar industries from producing atomic, biological and chemical weapons, either at home or abroad.

21. Iran, Iraq and Syria had Soviet SCUD B missiles with a 500-kilometre range (increased by Iraq to 1,000 kilometres), to deliver those chemical weapons to their targets. Damascus also possessed the CSS-21, the most accurate of Soviet missiles, which could be used for the same purpose. The Libyans had recently acquired Soviet SU-24 intermediate-range bombers complete with wind-air refuelling equipment. China had supplied Saudi Arabia with CSS-2 East Wind missiles with a range of up to 2,700 kilometres. All that was merely the tip of the iceberg. There was also a programme, financially backed by two Middle-east States, for a two-stage missile with a range of over 1,000 kilometres, and with a chemical warfare potential.

22. Since it would be virtually impossible to verify a treaty banning chemical weapons and their use, only one option remained. Those countries that had tolerated the traffic must put an end to any further supplies, including service and spare parts. Even the best hardware would break down, especially if expert maintenance was withdrawn, and stopping the traffic might still produce some significant improvement in the situation. He appealed to the Sub-Commission to address itself urgently to that horrendous problem, which concerned all mankind.

23. Concerning the right to freedom of opinion and expression, he recalled his statement of 7 March 1989 to the Commission, published integrally in his organization's journal Human Rights and Human Wrongs, concerning a book and the death sentence passed on its author.

24. Whereas the Special Rapporteur on Summary or Arbitrary Executions, Mr. Amos Wako, and the Human Rights Committee had reacted directly to the death threat, the Commission had thought fit to ignore it. He had no doubt that the Sub-Commission, composed of independent experts, would wish to address that issue since the death threats had not been withdrawn and, indeed, were regularly reiterated.

25. He concluded by referring to the poignant situation of Mr. Mazilu, from whom a letter had been published the previous day in Le Monde. The

Sub-Commission might lose credibility in its mission of helping others, if it proved incapable of helping its own members. Was it not now time to find some way of coming to the rescue of Mr. Mazilu?

26. Mr. HUMPHREYS (War Amputees of Canada) said that almost a quarter of a century had elapsed since he had occupied the Chair of the Sub-Commission, and almost half a century since he had been the first Director of the Division of Human Rights of the United Nations. In that time - relatively short, by international standards - the world community had built up a new body of international law in the field of human rights. It was a radical, revolutionary development, which was changing the very nature and structure of traditional international law, which had previously governed the relations of States only. That new "world" law of human rights reached down to individual men and women, to whom it granted rights and on whom it imposed duties.

27. For the first time in history, individuals had become not only the objects of international law, but also its subjects - something that might well prove to be the most important development in the history of international law in the twentieth century, and the most important factor in bringing about a radical change in a now obsolete system of international law. As such, it was a matter for pride. However, the fact remained that international mechanisms for the implementation and enforcement of that new law were weak, when indeed any existed. Law without remedies had little real meaning: the challenge now was to build up more efficient mechanisms of implementation.

28. On behalf of the War Amputees of Canada, he therefore wished to support the proposal by Mrs. Daes that the Sub-Commission should appoint a rapporteur to study the question of the right of all victims of gross violations of human rights to adequate compensation.

29. Mr. TEITELBAUM (International Federation of Human Rights) said that there was much common ground between the points of view expressed by Mr. Türk in his working paper on the right to freedom of opinion and expression (E/CN.4/Sub.2/1989/26), and those expressed by his organization in the Sub-Commission and the Commission. That fundamental human right was intimately linked with other fundamental rights, economic, political, social and cultural. He also agreed on the need to establish a link between the right to freedom of opinion and expression and political participation. Mr. Türk's approach was, in general, the right one.

30. However, his organization considered that the study proposed by Mr. Türk should devote a separate chapter to restrictions and limitations during states of emergency, when the right to freedom of opinion was most vulnerable. Restrictions and limitations on the freedom of opinion and expression should have constitutional status, and should be exhaustively listed in the Constitution. The Constitution should also prohibit the general suspension of the freedoms of opinion and expression during states of emergency. With regard to the sanctions imposed on persons expressing their opinion, legal or quasi-legal sanctions should be treated separately from de facto sanctions such as torture, confinement, extrajudicial execution, etc. Such sanctions, if they could be so described, were a case apart and deserved separate treatment on account of the frequency with which they occurred. According to

one independent institution, 39 journalists had been murdered world-wide, and a further 251 imprisoned in the course of 1988. Military censorship in Israel had intensified, with 36 foreign journalists detained, and 6 expelled.

31. Regarding legal sanctions, his organization had said that, irrespective of the legal interest protected, criminal law must not sanction the mere expression of opinions or ideas. Criminal norms sanctioning conduct injurious to particularly sensitive legally protected interests must be extremely explicit in their description of the conduct sanctioned, restricting the discretionary power of those responsible for applying the law to a minimum. The principle of nullum crimen, nulla poena sine lege must be strictly applied.

32. The third area of priority proposed by Mr. Türk, the question of the legislative, administrative and other measures to be taken to promote, safeguard and strengthen the right to freedom of opinion and expression, raised certain questions in his mind. Mr. Türk advised the Sub-Commission not to deal, at least initially, with the problems of the concentration of media ownership and concealed forms of prior censorship, since they would fall outside the scope of legal analysis and criticism. Yet, in paragraph 10 of his paper he had affirmed that legal norms relating to that right had to be seen against a background of the actual distribution of economic, political and military power in a given society. It would therefore seem indispensable to include that problem in the study. The 1969 American Convention on Human Rights referred to this question in article 13 (3), and the Spanish (article 20 (3)) and Portuguese (article 39) Constitutions also dealt with the question.

33. He recalled that, at the thirty-ninth session of the Sub-Commission, his organization had said that effective enjoyment of the right to freedom of opinion and expression was limited and even suspended, inter alia, when its exercise was basically the privilege of a political or economic elite. It had added that, in view of the dominating role of the media in the expression and dissemination of ideas in modern society and the enormous technical and financial resources they required machinery should be created to prevent monopolization and ensure democratic management of the media.

34. Finally, he considered Mr. Türk's proposal to appoint two members of the Sub-Commission to draft the study on the question to be reasonable, and indeed modest, in view of the scope and importance of the topic, and bearing in mind that as early as 1946 the Economic and Social Council had authorized the Commission on Human Rights to set up a sub-commission on freedom of information and of the press, with a status comparable to that of the present Sub-Commission.

35. Mr. TURK said that, despite the breadth and diversity of the subject, which inevitably gave rise to differences of opinion, the discussion had shown that opinions within the Sub-Commission were beginning to converge.

36. The terms used in the debates, such as "limitations" and "restrictions", which were used differently in different contexts, illustrated the variety of existing legal systems, as was recognized implicitly in the general comment made by the Human Rights Committee, cited in paragraph 34 of his paper. Speakers had been right to say that the Sub-Commission should not seek excessive uniformity. But the debate on the right to freedom of opinion and expression was taking place during a dynamic period. Systems were not static,

but dynamic. The variety of systems should help the Sub-Commission to stimulate change in the right direction. Certainly, the scope of the paper was not perfect: it did not cover every aspect of the question. He agreed that the Sub-Commission should discuss further the duty of States to protect the right to freedom of opinion and expression, since violators of that right were often non-State actors; and that freedom of opinion and expression should be seen as a personal as well as a societal value. The Sub-Commission should also try to benefit from the unprecedentedly favourable prevailing international climate, and to contribute to the rapprochement. More specifically, a study such as the one proposed could apparently help at least one country to bring about changes in its legislation and practices.

37. All members of the Sub-Commission appeared to favour the priorities for future work proposed in his paper, though their scope might perhaps be expanded as work proceeded. Perhaps it would be best to begin with the widely supported idea of a study prepared by two rapporteurs, in response to immediate needs. Mr. Joinet and himself would be among the candidates for the task. The idea of appointing a working group to consider various practical questions such as standard-setting might be considered once the initial study was complete.

38. Mr. VARELA QUIROS welcomed Mr. Türk's working paper (E/CN.4/Sub.2/1989/26) and expressed the view that most of the ideas it contained would be basically supported by all members of the Sub-Commission. He agreed that the subject required careful study. The right to freedom of opinion and expression was not enjoyed by all as the right, along with other civil and political rights, could only be exercised when there was a free press. Unfortunately the right was not respected everywhere. Governments imposed many limitations, as the Government of China had done on 4 June 1989 when thousands of students had died because they had disagreed with the Government and had expressed their opinions freely. The same situation continued to prevail.

39. He agreed with Mr. Türk that the right to freedom of expression was a corner-stone of the democratic system and should be exercised alongside the right to self-determination and the right to the free expression of the will of the people in elections which were truly free. That had been happening in free elections in Latin America during the past year and it was also happening in Poland where the exercise of freedom of expression had led to many positive political changes in recent months.

40. A distinction had been drawn between civil and political rights on the one hand and economic and social rights on the other. He agreed with Mr. Türk that, although those rights might be categorized separately, there was no basic reason to consider that respect for one set of rights detracted from the need to respect the others. There was a vital relationship between the development of society and the right to freedom of expression.

41. Referring to the issue of special rapporteurs, he considered that, although the Sub-Commission must await the ruling of the International Court of Justice which had been requested by the Economic and Social Council, it should nevertheless not forget the fate of one of its Special Rapporteurs, namely, Mr. Mazilu. Independently of the legal issue, the Sub-Commission should reiterate its appeal to the Government of Romania that it should not only respect the rights of the Special Rapporteur and allow him to submit his report but also guarantee his full right to freedom of expression.

42. On the issue of compensation to victims of violations of human rights, he recalled that, at the time when the Sub-Commission was adopting its resolution 1988/11, the Inter-American Court of Human Rights had established the responsibility of a Central American Government, namely Honduras, to pay compensation to the relatives of disappeared persons. That represented not only the first case in the Americas in which a State had been obliged to pay compensation but also the first in which the ruling had been accepted by the Government. Human Rights had thus become an international instrument against a Government which had violated them.

43. On the issue of traditional practices affecting the health of women and children, he looked forward to the final report of Mrs. Warzazi.

44. In connection with the brief which he had been requested to produce, he wished to place on record that he greatly valued the comments of members. In that connection he agreed with Mr. Joinet that medical records must be handled carefully in order to avoid information of a private nature becoming public. He had taken note of Mr. Bhandare's comment that there were customs in many countries which must be respected in the campaign to control AIDS. He also welcomed the comment of Mr. Alfonso Martinez on the medical and juridical context but, like Mrs. Warzazi, he considered that the matter must be viewed in an economic and political context. It was not an abstract question but one which arose in everyday life. He valued all the comments which had been made by members and would take them into account.

45. Mr. van Boven had referred to Commission resolution 1989/11 in which it had requested that the scope of the study should be extended to other kinds of discrimination against sick or disabled persons, in consultation with WHO. He had omitted reference to the issue deliberately and agreed with Mr. van Boven that the subject of AIDS should not be considered together with other diseases. It was for that reason that he had confined himself solely to the issue of AIDS.

46. Mr. ALDOURI (Observer for Iraq), speaking in exercise of the right of reply under rule 45 of the rules of procedure, said that the person who referred to Iraq and issued biased judgements in his statement was too well known to the Sub-Commission to merit a reply. He would have preferred the person in question to have confined his comments to events which had taken place in the period since the last session of the Sub-Commission, the most important of which were the events in Palestine, where Israel's acts of repression, and displacement of the population and torture of Palestinian children were continuing. He wished to reaffirm that Iraq, as an observer State, remained ready to hold a dialogue with the Sub-Commission on any points regarding the situation in Iraq which the Sub-Commission might wish to examine. He was also ready to listen to any intervention aimed at ascertaining the opinion of the Government of Iraq on any item in a context of objectivity and with a view to the protection of human rights. Consequently, he reserved the right to provide any necessary clarification on events taking place in answer to any points raised by any person who was entitled to speak.

47. Mr. OMAR (Observer for the Libyan Arab Jamahiriya), speaking in exercise of the right of reply, said that he did not propose to reply to the content of the statement made by the representative of the World Union for Progressive Judaism who represented the Zionist movement which had been defined by the General Assembly as a form of racial discrimination. The representative in

question had lost all credibility and was merely seeking to hold up the work of the Commission on Human Rights and its subsidiary bodies. The question which arose was how long the Sub-Commission was prepared to permit that individual to continue to detract from the role of non-governmental organizations.

48. Mr. EIDE, speaking on a point of order, said that it was inappropriate that statements attacking a representative of a non-governmental organization should be made in the Sub-Commission. He therefore requested that the observer for the Libyan Arab Jamahiriya should be ruled out of order.

49. The CHAIRMAN requested the observer of the Libyan Arab Jamahiriya to confine his remarks to the content of the statement of the non-governmental organization in question.

50. Mr. OMAR (Observer for the Libyan Arab Jamahiriya) said that he had merely wished to emphasize that certain people should not be permitted to undermine the high standing enjoyed by non-governmental organizations in the Sub-Commission. He considered that steps should be taken to prevent the undermining of the role of non-governmental organizations and to avoid lies and defamation.

51. Mr. GLAIEL (Observer for the Syrian Arab Republic), speaking in exercise of the right to reply, said that the Sub-Commission should be made aware of the real objective of statements made. Certain statements on occasion tended to undermine the work and objections of the Sub-Commission. Accusations should at least be proved.

52. Mr. EIDE asked whether replies had been received to the invitations issued to two Special Rapporteurs, namely Mr. Mubanga Chipoya and Mr. Mazilu.

53. Mr. NYAMEKYE (Deputy Director, United Nations Centre for Human Rights) said that so far there had been no reply from either of the Special Rapporteurs.

54. The CHAIRMAN said that the Sub-Commission had concluded its consideration of the first part of item 4.

ELIMINATION OF RACIAL DISCRIMINATION (agenda item 8) (continued)

(b) Adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the racist and colonialist régime of South Africa (continued) (E/CN.4/Sub.2/1989/9 and Add.1)

55. Mr. TIAN JIN thanked the Under-Secretary-General for his introduction and Mr. Khalifa for his continuing analysis of the plight of the victims of the racist and colonialist régime of South Africa as contained in documents E/CN.4/Sub.2/1989/9 and Add.1.

56. While it was true that détente had developed between East and West and there had been some positive developments in South Africa, Mr. Khalifa's report made it clear that, while a number of large transnational corporations had sold their South African affiliates or had announced their intention of

doing so, there was evidence that several of the disinvesting companies continued to maintain non-equity ties with the host country, thus defeating the very purpose of the concept of disinvestment.

57. Although the recent meeting of Foreign Ministers of the Commonwealth Countries had decided to continue sanctions against South Africa, substantial assistance in the economic and military fields continued to be provided to that country by certain Governments. Moreover, the economic conflict between North and South still continued. Part II of Mr. Khalifa's report contained a detailed analysis of the assistance which continued to be provided to the apartheid authorities. What had happened in fact was that many multinational corporations, while apparently disinvesting, were continuing to retain their position in South Africa by disingenuous means.

58. The Sub-Commission must continue to do everything possible to maintain pressure on the South African authorities. In that connection, he noted that a resolution of African Foreign Ministers, dated 22 July 1989, totally rejected the National Party's five-point reform plan which was clearly aimed at consolidating white rule. The South African authorities were continuing their abhorrent policy of apartheid while the Western Powers continued to show apathy on the issue. The Sub-Commission must demand that the Western Powers formulate a policy in the immediate future to ensure that the transnational corporations disinvested from South Africa in a comprehensive manner. He supported the just appeals for assistance to the black population of South Africa in their struggle to obtain their fundamental freedoms.

59. Mr. TREAT said that, recognizing the importance of first-hand information, he had visited South Africa to see conditions for himself and had met political leaders, journalists and members of the different races.

60. In reply to a question put to him by Mr. Khalifa, stressing his membership of the Sub-Commission in a personal capacity as an expert and not as a representative of his country, although most of his opinions probably coincided with its policy, he said that he had consulted the United States Mission and been informed that there was no legislation on South Africa currently before the United States Congress. A Bill was still pending but was unlikely to be acted on during the current session of Congress. He recalled, however, that in 1986 his Government had enacted legislation imposing sanctions of various types on South Africa; the executive branch had faithfully applied all the imperatives contained in the legislation. His country had been the first to impose sanctions on South Africa and had imposed an arms embargo in 1962. It had contributed millions of dollars and many people, through various volunteer agencies - foundations, universities, charitable organizations and so forth - in efforts to enhance the social and cultural situation of unprivileged people in South Africa. United States private industry disinvestment had probably been more speedy than that of Western industrial countries.

61. He was speaking on the South African Government's apartheid policies with a sense of urgency as he feared that time might be rapidly running out for a peaceful transition to majority rule and a violent transition must be avoided at all costs. The guiding principle of democratic government was self-determination, one person one vote. Any policy offering less could not be acceptable to those who valued freedom and equal access to participation in society. The Government in South Africa represented an immoral, irrational

and unacceptable form of rule, a system which was and would always be condemned by all who valued liberty and the inviolability of the individual citizen.

62. Because of the national elections scheduled for September 1989, it was difficult to gauge the content and outcome of the purported "reform" efforts currently being discussed. After so many years he was impatient with the rate of change and the minimal structural impact of "reform" efforts. Any system based on a multi-racial structure, or as currently by having three racially-segregated Houses of Parliament, was unacceptable to those who believed in one person one vote majority rule. The goal must be a totally non-racial democratic society. Those outside the system must assist those within, who seemed unable to see and solve the problems.

63. If South Africa was serious about reform, there were specific immediate steps which could signify a willingness to engage in peaceful transition to democracy. First, the Population Registration Act, which classified every person by race, should be repealed. Second, the Group Areas Act, which racially segregated areas where people might choose to live, should be repealed. Third, protection against indiscriminate arrest and detention must be guaranteed. Incommunicado detention and unlimited detention without charge or trial defied internationally accepted human rights standards and such powers subverted the independence of the Judiciary and respect for the rule of law. A society which prided itself on respect for the rule of law, as did South Africa, must also provide timely access to a lawyer for defendant and family, together with immediate judicial review of the detention. The absence of those legal safeguards provided fertile ground for the torture and abuse of detainees. Perhaps the problem was not so much the absence of the rule of law but the laws that had to be enforced. It was encouraging to note the work by volunteer lawyers in South Africa from countries including the United States of America, the United Kingdom and Australia, providing legal services to black people to preserve their legal rights, often with success in reversing government rulings. The greatest advance was a recent proposal by a governmental law commission for a South African Bill of Rights, an end to the apartheid laws, and equal votes for all South Africans. Those straws in the wind should encourage the international community to continue with actions which caused pain to the South African Government, as they were intended to, until more results were obtained. It would be wrong, however, to make an economic basket case out of South Africa, since that would leave a society not worth preserving and would also affect the economies of adjoining nations if such a policy were carried to unreasonable lengths.

64. Fourth, the state of emergency must be ended. The current regulations stifled open dialogue and legitimate non-political discourse and accentuated and fostered polarization. Bannings and other restrictions on people exercising their right to the non-violent expression of their beliefs should be lifted, and those under detention should be immediately released or should be charged and given a fair trial in conformity with internationally recognized standards.

65. In the fifth place, it must be recognized that there was one South Africa, one country. Recognition of the "independent" homelands for native black people had been rightly rejected by the world community. The strategy

of forcible removals continued to inflict immense hardship, often forcing families to live apart. The homelands concept should be abolished and those who resided in South Africa should be allowed to choose where they lived.

66. Those were some of the essential major reforms and ones that needed to be made. Change was coming and the community must not stand by and let events overwhelm it.

67. Regarding the world community's response to apartheid, the United Nations in general and the Sub-Commission specifically had long condemned the policy and its resultant disfranchisement of the overwhelming majority of the population. Some strategies had been set in motion. While economic sanctions and constructive engagement might play a role in fostering change towards a non-racial, democratic South Africa, neither approach was sufficient in itself. Many felt that reform efforts under constructive engagement had been infrequent and often purely cosmetic, and structural and legal barriers to equality of participation remained. A majority Government in South Africa would require a viable economy and a trained and educated middle class. A variety of pressure points must be used and selective sanctions might be a useful tool, but efforts must also be made to strengthen organizations within the country which were struggling for change, such as non-racial, democratic trade unions. It was also essential to encourage policies which transferred economic power to the disenfranchised segments of the population.

68. The people in South Africa needed help from those outside the system who were able to command a rational and humanistic view and it was incumbent upon the Sub-Commission to assist in setting up structures for that dialogue. Those on the outside had a role to play, serving as a bridge. They could not solve the problems: reform must come from within. It was not enough to write new statutes: cultural changes were necessary. The Soviet Union was going through a similar type of transition. Undue haste could be counter-productive. Balance and vigil were needed. True democracy occurred only when it was in the hearts and minds of the people and not merely in the Constitution. He appealed to all in the Sub-Commission and in the world to play their part in the solution. All resources and humanity must be brought to bear on that complex and difficult problem.

69. Mr. HARUN-UR-RASHID (Observer for Bangladesh) said that by keeping the present crucial issue under constant review since 1974, the Sub-Commission had been able to make its own contribution to the global efforts to deliver the oppressed millions of South Africa and Namibia from the universally condemned system of apartheid which was an affront to human dignity and a crime against humanity. The condemnation of apartheid voiced in the Sub-Commission and the resolutions adopted by it had sent appropriate signals to the racist régime of South Africa and had provided valuable moral support to the millions engaged in the struggle to overthrow the apartheid system.

70. His delegation welcomed the updated report contained in document E/CN.4/Sub.2/1989/9 and Add.1 which provided a clear understanding of issues such as disinvestment. He noted in particular paragraph 13 of the report and the information in paragraph 16 on countries maintaining links with South Africa. While the full impact of the universal condemnation and the actions taken by the Sub-Commission was yet to be seen, he was convinced that the Sub-Commission as a body of the Commission on Human Rights could not

afford to despair or to relax its efforts aimed at the elimination of apartheid. Rather, those efforts must be redoubled. Bangladesh firmly believed that the actions of the Sub-Commission in the field of elimination of apartheid from South Africa and Namibia could not achieve total success unless a comprehensive and mandatory system of sanctions covering all forms of trade, financial transactions and military, sports and cultural co-operation with South Africa was sincerely and strictly applied by the world in general and the industrialized countries in particular.

71. The claim that sanctions against South Africa did not work was refuted by a report from an independent consultant, commissioned by the meeting of Commonwealth Foreign Ministers in Lusaka in 1988, which called for tougher sanctions and stated that sanctions imposed so far had worked: for example, an oil embargo had lost Pretoria more than \$25 billion and sanctions imposed by nine industrialized countries had cut South Africa's foreign trade by 7 per cent. The report also dismissed the argument that sanctions would hurt black South Africans by creating unemployment.

72. Debates on the issue in the Sub-Commission and the Commission on Human Rights had brought into focus the elements that had sustained the present régime in Pretoria and indirectly encouraged it to continue its intransigence. The link between assistance provided to the Pretoria régime and resulting oppression of the non-white people had been clearly established in various studies undertaken within the United Nations system.

73. Bangladesh was fully committed to the cause of the oppressed victims of apartheid and had expressed its complete solidarity with the heroic South African people, constantly championing their just cause in all international forums. Bangladesh had no relations with the racist régime of South Africa; it supported complete mandatory and comprehensive sanctions against South Africa and totally rejected the argument in favour of graduated action, selective embargo or providing multinationals with guidelines for their operations in South Africa.

The meeting rose at 12.55 p.m.