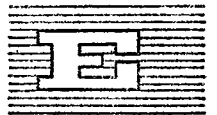


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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Thirty-first Session

SUMMARY RECORD OF THE 823rd MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 13 September 1978, at 10 a.m.

Chairman: Mr. BOUHDIBA
later: Mr. HOLGUIN HOLGUIN

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GE.78-9726

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

PROBLEM OF THE APPLICABILITY OF EXISTING INTERNATIONAL PROVISIONS FOR THE PROTECTION OF HUMAN RIGHTS TO INDIVIDUALS WHO ARE NOT CITIZENS OF THE COUNTRY IN WHICH THEY LIVE (agenda item 6) (E/CN.4/Sub.2/L.682 and Add.1) (continued)

1. Mr. CEAUSU said he had some comments to make on the revised draft Declaration submitted by the Special Rapporteur at the previous meeting (E/CN.4/Sub.2/L.682). First of all, he was not convinced of the usefulness of a declaration on the human rights of individuals who were not citizens of the country in which they lived; on that point he shared the opinion of Mr. Smirnov and Mr. Nettel. But if it was considered necessary to have such an instrument, the text should be improved. The amendments to articles 2 and 4 proposed by Mr. Smirnov should be given particular consideration.

2. He noted that several governments found difficulty in accepting the present wording of article 4 (iv) and (vi). Subparagraph (iv) provided that every non-citizen should enjoy the right to leave any country and return to his own country; in his opinion it would be preferable to follow the corresponding text of the Universal Declaration of Human Rights (article 13, paragraph 2). As to subparagraph (vi), which stated the right to own property alone as well as in association with others, he pointed out that there were countries in which foreigners were not allowed to own real property. For instance, collective ownership was a recognized right in Romania; it was a form of socialist ownership; but it was unlikely that a foreigner could become a member of a production cooperative, for example. To take account of the diversity of legislation in force, a new paragraph should be added to article 4, stipulating that a non-citizen enjoyed the rights in question subject to the laws of the country in which he was living.

3. In article 9, paragraph 2 should be reworded as Mr. Smirnov had suggested, to provide that "Any non-citizen whose assets are expropriated in whole or in part shall have the right to adequate compensation in accordance with the national laws in force." The first change consisted in replacing the word "just" by the word "adequate" to qualify the compensation, thus adopting the terms of General Assembly resolution 1803 (XVII) concerning compensation in case of expropriation (section I, paragraph 4); the second consisted in placing the words "in accordance with the national laws in force" at the end of the paragraph, to show that those laws applied to the compensation as well as to the expropriation.

4. In paragraph 87, the text of the statement made by Mr. Cristescu at the 783rd meeting of the Sub-Commission had been cut, thus altering the sense and showing a regrettable ignorance of the property laws of socialist countries. In Romania, there was a right to individual and collective property, and anyone who had been to socialist countries knew that the citizens of those countries could own private property.

5. Mr. BAHNEV said that, judging from the replies of certain governments, particularly those of Austria and the USSR, he had come to the conclusion that the draft declaration was not really needed, since international agreements

protecting the rights of everyone, including non-citizens, already existed. He noted that in article 9 the transposition of the words "in accordance with the national laws in force" did not affect the general principle stated in the article, namely, the payment of adequate compensation. Furthermore, he would like the Special Rapporteur to recast paragraphs 57 and 87, or to delete all the references to the situation in socialist countries, which had clearly been misunderstood.

6. Mr. CHOWDHURY said he thought that article 4 (iv), establishing "the right to leave any country and return to his own country", should include a reference to the "country of residence", but that it was not necessary to adopt the exact wording of article 13 (2) of the Universal Declaration of Human Rights. The object of his proposal was that people who left their country of residence for a short period should be entitled to return to it.

7. He noted with satisfaction that the difficulties of migrant workers were taken into account in article 8. The arbitrary confiscation of assets, referred to in article 9, paragraph 1, called for several comments. The first was a point of **drafting**: the English word "confiscation" implied an arbitrary act in law, so the adjective "arbitrary" was superfluous, though it could be retained. In paragraph 2 of the same article, it had been proposed that the word "just" should be replaced by the word "adequate" to qualify the compensation. In legal terms, "compensation" meant the equivalent of what had been taken; thus neither of those adjectives added anything to the meaning of the word or took anything away from it. In general, compensation was paid by virtue of a law authorizing such payment. Finally, still with reference to the right to compensation in case of confiscation, it might be asked whether provision should be made for special protection of foreigners, thus making a distinction between non-citizens and citizens. All things considered, he thought the text of the article could remain as it stood.

8. Mrs. DAES expressed her satisfaction that in the draft Declaration the Special Rapporteur had taken account of the comments made by members of the Sub-Commission at its previous sessions and of the replies of governments, in order to prepare a text which could be universally acceptable. It was with that aim in view that the Special Rapporteur had avoided, wherever possible, any reference to the concept of "national law", thus recognizing the diversity of legal and social systems in the world community.

9. Several comments had been made on the definition of the term "non-citizen" in article 1, and it had been proposed that the Declaration should apply to all foreigners, including tourists. In her opinion, the definition was in conformity with the mandate given to the Special Rapporteur in Economic and Social Council resolution 1790 (LIV), which referred to "individuals who are not citizens of the country in which they live". With regard to the concrete proposals made by previous speakers, she supported those relating to the wording of article 9 and hoped that the Special Rapporteur would redraft that article in the light of the comments made.

10. In conclusion, she wished to emphasize that, by approving the recommendations and conclusions in the Special Rapporteur's study and the draft Declaration, the Sub-Commission would be making a great contribution to the development of contemporary United Nations law on an important and complex legal and social question, namely, the protection and treatment of aliens. That question had been discussed for many years in competent United Nations bodies such as the International Law Commission, and in international law institutions such as the American Society of International Law, the Harvard Institute of International Law and the Hague Academy of International Law where, earlier in the year, the draft Declaration had been favourably received.

11. Baroness ELLES (Special Rapporteur), replying to the comments and suggestions made during the discussion, said that, first of all, she wished to clear up a misunderstanding about Mr. Nettel's position on the draft Declaration. She understood from his remarks that, all things considered, Mr. Nettel thought that it was perhaps necessary to have a draft Declaration on the human rights of individuals who were not citizens of the country in which they lived.

12. Several points had been raised during the discussion. First, some members considered that there was still no need for a draft Declaration on the question under study. She wished to point out that she had already given a number of reasons in favour of the draft Declaration, referring to Economic and Social Council resolution 1790 (LIV) and to Sub-Commission resolution 4 (XXX) (see the introduction to document E/CN.4/Sub.2/L.682).

13. Article 1 defined the expression "non-citizen". The reason why that term had been chosen in preference to the term "foreigner" was that, in law, they expressed two different notions and that the first was clearer. In the Commonwealth countries, for example, the rights of a "national" were not the same as those of a "citizen". Moreover, the wish had been expressed that the Declaration should apply to tourists and travellers. But a person who was resident in a country had acquired rights which a person passing through it did not have, and those rights had to be protected. To include persons passing through a country in article 1 of the draft would mean recasting the whole text, and she did not think that was the wish of the Sub-Commission.

14. In regard to article 2, Mr. Smirnov had made a proposal which she accepted. The text would read as follows:

"Article 2

"1. Non-citizens shall observe the laws in force in the State in which they reside and refrain from illegal activities prejudicial to the State.

"2. Every State is entitled to expect that non-citizens will respect the customs and traditions of the people of the State."

15. There seemed to be a misunderstanding about article 3. She did not think that Mr. Smirnov had requested the deletion of that article and would like him to clear up the point.

16. It had been suggested that article 4 (iv) should follow the wording of article 13 (2) of the Universal Declaration of Human Rights, but did not think the result would be very satisfactory. Mr. Chowdhury had been right to point out that the country referred to in that paragraph was the country of residence. She therefore proposed the wording: "the right to leave the country and to return to his own country", it being understood that "the country" meant the country of residence.

17. She was surprised that Mr. Smirnov, Mr. Bahnev and Mr. Ceausu had asked for the deletion of article (vi), since it reproduced the exact terms of the International Convention on the Elimination of All Forms of Racial Discrimination, which had been ratified by their countries. There seemed to be no reason why the right to own property should not be granted to non-citizens, when it was granted to all persons without distinction of race, colour, or national or ethnic origin. She did not think she could omit that right from the draft Declaration, especially as the members who had criticized subparagraph (vi) had also stated that the right to own private property existed in their countries. It would seem unfair to discriminate against non-citizens on that particular point, when States could invoke the limitations provided for in article 29 of the Universal Declaration of Human Rights, which was expressly mentioned in the introduction to article 4.

18. With regard to article 9, she explained that in English legal terminology there was a difference between "confiscation", which was illegal, and "expropriation", which was legal, at least in common law countries.

19. The main differences of opinion seemed to relate to article 9, paragraph 2. She understood that countries could adopt laws governing the nationalization and expropriation of the property of citizens and of non-citizens, but, as Mr. Nettel had observed at the previous meeting, the property rights of aliens should be protected as well as those of citizens. There had always been a difference in that respect in customary international law. Perhaps it should also be pointed out that many countries had recently introduced special legal provisions to protect the rights of aliens, in particular, in order to encourage investment. Hence she thought there was full justification for making that distinction in article 9, paragraph 2.

20. On the other hand, she saw no need to replace the word "just", in that paragraph, by the word "adequate", which expressed a very subjective idea. In her opinion, the word "just" covered a general international standard which took the economic situation of different countries into account. As to the proposal of some members that the words "in accordance with the national laws in force" should be placed after the word "compensation", she pointed out that, in view of the present interdependence of economies in the world, most countries recognized that the compensation was determined not by the individual country concerned, but by the international bodies responsible for arranging an amicable settlement. She therefore considered that the present drafting of article 9, paragraph 2, should be retained.

21. She could well understand the objections raised by Mr. Ceausu and Mr. Smirnov concerning paragraph 87 of document E/CN.4/Sub.2/L.632, but must point out, as Mr. Whitaker had done, that there were different forms of socialism; and whereas the third sentence of that paragraph applied exclusively to those countries with a socialist economy in which private property was prohibited, it was quite evident that private property was not prohibited in all socialist countries.

22. In conclusion she expressed the hope that the draft Declaration would contribute to the development of international law and, above all, to the protection of the rights of foreigners in all countries and in all situations. She hoped the draft would be transmitted, for consideration to the higher organs of the United Nations.

23. Mr. SMIRNOV said he was not proposing that subparagraph (vi) of article 4 should be deleted; for such a proposal would be inappropriate in view of the laws in force in his country and the international instruments it had ratified. He merely thought that the words "subject to the limitations provided for in article 29 of the Universal Declaration of Human Rights", which appeared in the introduction to the article, were inappropriate, and proposed that at the beginning and the end of article 4, it should be stated that the rights referred to in that article were granted to every non-citizen, in accordance with the national laws in force in the country where he resided, subject to certain limitations concerning, in particular, public health and the security of the State.

24. He thanked the Special Rapporteur for accepting his proposed amendment to article 2.

25. With regard to the third sentence of paragraph 87, he thought that in the light of the explanations given it would be better to delete the words "with socialist economies", so as to remove all uncertainty about the countries referred to.

26. The CHAIRMAN said that the Sub-Commission had concluded its discussion on item 6. Before it took up item 9, some members wished to raise a particular matter.

27. Mr. SADI said that the newspaper Le Monde had that day published an article which infringed the secret and confidential character of the Sub-Commission's work in the consideration of communications. It was deplorable that such leaks of information could occur and that a newspaper should help to destroy the foundation of the Sub-Commission's work. He hoped that in view of that article stronger security measures would immediately be taken, with the assistance of the Secretariat and the members of the Sub-Commission, in order to put an end to the leakage of confidential information and to maintain the secrecy of the Sub-Commission's procedure for the consideration of communications.

28. Mr. SINGHVI said that all the members of the Sub-Commission were concerned about the violation of the confidentiality of its work. The fact that the article which had appeared in Le Monde was signed, showed that its author assumed full responsibility for it.

29. Moreover, in spite of the differences of opinion on the method of voting by secret ballot, which some members had advocated, but others thought it impossible to put into effect under the existing procedure, all members were agreed in recognizing that that method of voting would prevent the work of the Sub-Commission from being held in derision, as it had been in the article in Le Monde.

30. He proposed, first, that an inquiry should be made to discover how the leak had occurred and who was responsible for it, which was a very difficult task, because journalists were not required to reveal their sources of information. Next, appropriate machinery for voting by secret ballot should be provided for in the rules of procedure.

31. Mr. AMADEO, speaking on a point of order, said that consideration of the matter in general, and of the question of voting by secret ballot, in particular, should take place at a closed meeting. He therefore moved that the debate should be suspended immediately.

32. Otherwise, he fully supported the comments and proposals made by Mr. Sadi and Mr. Singhvi.

33. The CHAIRMAN said that two motions had been proposed. Giving effect to the second, he suspended the discussion on the matter forthwith. With regard to the first, he invited the views of members of the Sub-Commission and would give the floor to two speakers, one in favour of the motion and the other against.

34. Mr. NETTEL said that as the same discussion recurred practically every year, he supported the proposal that the matter should be considered at a closed meeting.

35. Mr. SMIRNOV said it was of little importance to him whether the matter was considered at a public or a closed meeting, since in any event the confidentiality of the work was not respected. Mr. Nettel was right in saying that leakage of confidential information occurred regularly every year. Information was passed to the press, which exploited it to make the facts, deliberately rendered public, throw discredit on a Member of the United Nations, namely, the Soviet Union. Thus the leakage of confidential information had much more serious consequences than a mere violation of the provisions of Economic and Social Council resolution 1503 (XLVIII). It should be obvious to all the members of the Sub-Commission that the article published in Le Monde had a political bias corresponding to the intentions of whoever had given out the information and whoever had published it.

36. He supported Mr. Singhvi's proposal that the Secretary-General of the United Nations should be asked to make a detailed inquiry, in order to discover the origin of the leaks. Since, as Mr. Nettel had said, such leaks occurred every year, their origin might always be the same, and he thought the Secretary-General, the Secretariat and Mr. van Boven would be able to discover it by an inquiry. But he was not convinced that voting by secret ballot would be the best means of ensuring the confidentiality of the Sub-Commission's work; he thought that question could be considered later.

37. The CHAIRMAN said that the discussion was on Mr. Amadeo's motion that the substance of the matter should be considered at a closed meeting. He asked the Sub-Commission to give its opinion on that point.

38. Mr. AMADEO said he withdrew his motion, which had become pointless because the substance of the matter was already being discussed. He nevertheless supported the concrete proposal by Mr. Smirnov that a thorough inquiry should be made by the Secretariat.

39. Mr. CARTER said that as his name had been mentioned in the article in Le Monde, he was prepared to be held publicly answerable for his actions; he thought that was the price which had to be paid for the decisions adopted by the Sub-Commission. Voting by secret ballot would be an ideal solution, but he doubted whether it could be adopted with the procedure followed at present.

40. Nor did he think that an inquiry would produce any conclusive results. The Sub-Commission could certainly ask the Secretary-General to conduct an inquiry, but it would be in vain, because journalists had a right not to reveal their sources of information. The best way to avoid leakages of confidential information in future would be for the members of the Sub-Commission themselves to be more careful. He would support any proposals the Sub-Commission might make in that regard.

41. Mr. BAHNEV said that systematic violation of the confidentiality of the Sub-Commission's work was undermining the foundations of the procedure established by Economic and Social Council resolution 1503 (XLVIII). Consequently, while supporting the proposal by Mr. Singhvi and Mr. Smirnov that an inquiry be made, he suggested that the Secretariat should also report on the matter to the Commission on Human Rights, so that it would be aware of the Sub-Commission's concern about the situation.

42. Mr. HOLGUIN HOLGUIN pointed out that although the author of the article in Le Monde had succeeded in learning what had happened in the Sub-Commission's Working Group in spite of the confidentiality of its proceedings, she did not know how he had voted and she also said that the Working Group had not been able to reach agreement. She had left matters in some doubt, so that the public would not really be acquainted with the Sub-Commission's proceedings. He had long been concerned about the violation of the confidentiality of the work not only of the Sub-Commission, but also of other international bodies, and though he shared Mr. Carter's scepticism as to the possible results, he thought an inquiry should be made by the Secretary-General. Lastly, he believed that voting by secret ballot was the only means of protecting at least one aspect of the confidentiality of the Sub-Commission's work.

43. Mrs. WARZAZI said that in her opinion, what should be considered at a closed meeting was the measures to be taken in the future, and what should be done in public was to condemn the attempts to endanger all the Sub-Commission's work and to upset the balance achieved by the international community, through the Sub-Commission, for the defence of human rights. She supported the proposal to ask for an inquiry and to put the matter before the Commission on Human Rights; for the members of the Sub-Commission did not meet to play the political game of those who sought to achieve their aims under the cover of promoting human rights. If the people in charge of Le Monde had any concern for human rights, they would have censored the article as a matter of course.

44. Mr. van BOVEN (Director of the Division of Human Rights) said that the Sub-Commission was once again faced with a situation which it could only deplore and to which the attention of the Commission on Human Rights should certainly be drawn. Like Mr. Bahnev and Mrs. Warzazi, he saw it as a threat to the very foundations of the confidential procedure established by Economic and Social Council resolution 1503 (XLVIII), which all should be concerned to preserve. The Secretariat, and the Division of Human Rights, in particular, took all the necessary precautions, and if there was to be an inquiry, it was only fair that it should extend to the Secretariat as well as the members of the Sub-Commission.

45. The Sub-Commission had before it a draft resolution (E/CN.4/Sub.2/L.702), which should make it possible to avoid such incidents in the future.

46. The CHAIRMAN said that the situation should not be unduly dramatized.

47. It was regrettable that the mass information media should seek sensation rather than means to serve the cause of human rights defended by the Sub-Commission. The media had an important, though different role to play in that sphere, by educating the public, and the Sub-Commission should find a modus vivendi with them.

48. Mr. SMIRNOV said he agreed with the Chairman that the press had an important part to play in making the Sub-Commission's work known to the public, but he feared that it was too eager for sensational stories. The article in question was not only tendentious, as Mrs. Warzazi had pointed out, but completely untrue.

49. Things had scarcely changed since the incident at the twenty-ninth session, and the Sub-Commission should now request the Secretary-General to conduct an inquiry into the way in which the leaks occurred, to take specific measures to prevent them in the future and to report to the Sub-Commission on the matter. A draft decision to that effect could be prepared after consultation between the members of the Sub-Commission.

50. The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission accepted that suggestion.

51. It was so decided.

Mr. Holguin Holguin took the Chair.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 9) (E/CN.4/Sub.2/414 and Add.1 to 7; E/CN.4/Sub.2/418)

52. Mr. van BOVEN (Director of the Division of Human Rights) pointed out that item 9 had been on the agenda of the Sub-Commission and of the Commission on Human Rights for more than ten years, that was to say, **ever** since the adoption by the Commission on Human Rights of resolution 8 (XXIII) and the adoption by the Economic and Social Council of resolution 1235 (XLII) which, contrary to resolution 1503 (XLVIII), established procedure for consideration of such situations in public. Those situations raised urgent and often difficult problems,

to which it was impossible to remain indifferent. As had often been pointed out, it was not sufficient to consider them: their cause must be investigated.

53. The Sub-Commission had before it, on that item, documents concerning Democratic Kampuchea, pursuant to decision 9 (XXXIV) of the Commission on Human Rights. It was for the Sub-Commission to decide whether it wished to confine itself to transmitting those documents to the Commission on Human Rights or whether it should also study them and formulate recommendations. In that connexion, he pointed out that the note from the Ministry of Foreign Affairs of Democratic Kampuchea (E/CN.4/1295-E/CN.4/Sub.2/418) was not, strictly speaking, a reply to the Secretary-General's request, since it had been received before the documents and summary records of the meetings at the Commission's thirty-fourth session dealing with the human rights situation in that country had been communicated to its Government.

Mr. Bouhdiba resumed the chair.

54. Mrs. QUESTIAUX said that when considering violations of human rights and fundamental freedoms, the Sub-Commission should not sit as a court, but try to find means of being useful. It could be useful in three ways.

55. First, it appeared from the evidence that it would be in the interest of the Government of Democratic Kampuchea to have an impartial body investigate the allegations concerning the situation in that country which had been brought to the attention of the Sub-Commission.

56. Secondly, with regard to the situation in Argentina, in her capacity as an expert she had met relatives of missing persons, and she wondered whether the Sub-Commission might not, by consensus, request the Government of Argentina to provide information about such persons, a list of whom she could give to the Secretariat. If not, she would submit a draft resolution to the same effect.

57. Lastly, referring to the case of Steve Biko, who had died in detention a year ago, she thought the Sub-Commission should study the problem of detainees and she therefore supported Mr. Khalifa's proposal to set up a working group to deal with that question.

58. The CHAIRMAN said that he too had received complaints concerning persons arbitrarily detained or abducted in Argentina; he had transmitted them to the Secretariat, which had itself received similar communications. The communications received by the Secretariat must be examined by the confidential procedure, unless the Sub-Commission decided otherwise.

59. Mr. CEAUSU said he was surprised to note that the Secretariat itself had infringed the confidential procedure by stating in paragraph 7 of document E/CN.4/Sub.2/414 that it had received communications concerning Democratic Kampuchea: in his view, the Secretariat had no right to divulge the names of countries about which communications had been received under that procedure, and the paragraph should therefore be deleted.

60. He wished to make some comments about the distribution of documents E/CN.4/Sub.2/414 and Add.1-7 and E/CN.4/Sub.2/418.

61. First, the reason why the Commission on Human Rights had entitled its decision 9 (XXXIV) "Human rights situation in Democratic Kampuchea", which it had considered under the item of its agenda entitled "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories", was that it had been unable to reach a substantive decision on the subject. Logically, any document issued in pursuance of decision 9 (XXXIV) of the Commission on Human Rights should have been issued under an agenda item other than item 9, normally under item 10 relating to communications concerning human rights.

62. Secondly, by decision 9 (XXXIV) the Commission on Human Rights had requested the Secretary-General to transmit to it, through the Sub-Commission, the comments and observations of the Government of Democratic Kampuchea, together with all the information that might be available about the situation in that country. He regarded the reply of the Government of Democratic Kampuchea (E/CN.4/Sub.2/418) as official, even if it had been received before the Secretary-General had sent his request. The information on the situation (E/CN.4/Sub.2/414 and Add.1-7), submitted by member States and non-governmental organizations required checking by a competent organ of the United Nations before it could be regarded as trustworthy. And indeed, the Government of the United States of America had explained that it could not confirm the truth of the information it had submitted (E/CN.4/Sub.2/414/Add.4, page 2).

63. He did not see why it was proposed to examine the communications concerning Democratic Kampuchea in public, whereas those concerning all the other countries had been dealt with by the confidential procedure.

64. As to the substance, in virtue of paragraph 7 of article 2 of the Charter of the United Nations, neither the Sub-Commission, nor other United Nations organs were competent to consider matters which were essentially within the domestic jurisdiction of any State. It was inadmissible to seek to censure the domestic policy of a State which had been the victim of foreign armed intervention and had suffered greatly, which had experienced civil war and which had initiated profound political, economic and social changes. Some people associated with the former state of affairs resorted to violence in an attempt to halt the process of social change, and when they found that their efforts inside the country were doomed to failure, they took refuge abroad. But political refugees had a duty to refrain from all political activity in their host country, whereas in the present case they were indulging in slanderous propaganda and seeking the aid and support of the United Nations to regain their lost positions. It was on their lies that some communications before the Sub-Commission were based.

65. It was true that every revolution had its victims. Although he did not wish to justify violence, he recognized that when individuals or groups of individuals rejected the political and legal order of a State and tried to change it by force, the Government in power naturally had to defend itself, which started repression and produced victims, as after the great October Revolution, during the civil war or during the French Revolution.

66. An attempt was now being made to transform the United Nations into a new Holy Alliance to oppose social revolution in one of its Member States. But what was even sadder was the attempt to make use of that campaign of calumny against Democratic Kampuchea in an ideological quarrel between two great Powers. In that situation, truth no longer counted; what mattered was to score points against the adversary.

67. The real question was whether a country had the right to choose its line of political, economic and social development in full freedom? The Sub-Committee had already answered that question when it had considered the items on its agenda relating to the right of peoples to self-determination. The right of peoples to choose their political, economic and social regime was the basic component of the principle of self-determination. It should be respected by all: by States Members of the United Nations and by the Organization itself. The Sub-Commission, as an organ of the United Nations, was also required to respect that right and above all the provisions of Article 2, paragraph 7, of the Charter.

68. Mr. CARTER said he thought the massacres perpetrated in Democratic Kampuchea were not compatible with what could be understood as "social changes". To a greater extent than any other matter before the Sub-Commission, the question of the violation of human rights in Democratic Kampuchea required its attention and appropriate action.

69. The documents under consideration showed that the leadership of Democratic Kampuchea had the clear intention of replacing the traditional society by a society which conformed to their own ideology. They were following policies inimical to any concept of human rights. They were forcing the population to abandon family and marriage customs. The land tenure system had been abolished in favour of collectivization, work was done in groups and the population was forced to work the land. The constitution of Democratic Kampuchea prohibited "reactionary religions"; but what could a "non-reactionary" religion be? The introduction of criticism and self-criticism sessions and the practice of giving warnings followed sometimes by execution in cases of "bad" behaviour - such as asking for more food - showed that the leadership was trying to change basic values through intimidation rather than education. The decision to execute whole classes of people reflected the belief that such people were uneducable or too steeped in the old ways to live in the new society. It was clear that the authorities had chosen brutality as the fastest way to bring about the changes they wanted. Possibly the lack of experienced cadres, able to use judgement rather than blindly follow orders, had influenced the decision to act uncompromisingly. But in any event, there was no doubt that the decision to use force and violence had been taken at the highest level. Consequently, the Sub-Commission should take public action as a contribution towards re-establishing respect for human rights in Democratic Kampuchea.

70. The leadership had shown itself sensitive to international pressure on the issue of human rights, and continuing that pressure might result in improving the human rights situation in Democratic Kampuchea. So far the authorities had responded to international pressure with bluster, as in their letter of July to the Secretary-General, and with propaganda, as in the film shown to the General Assembly of the United Nations at its last session. But the Sub-Commission had no evidence of real improvement in that country.

71. As a body of experts not representing any government, the Sub-Commission could speak with independence and authority, particularly in such serious cases as that of Democratic Kampuchea. Evidence of improvement of the human rights situation in that country could come only from the visits of impartial observers. The few and well-chaperoned diplomats who had had a chance to visit the country acknowledged the limits of their information. The reporting by a Yugoslav press team a few months previously was at best disquieting.

72. Even though there might not be complete agreement on the extent of human rights violations in the country, it must nevertheless be conceded that the situation called for an inquiry. So far, the authorities had not responded to the request of the Commission on Human Rights to send the Sub-Commission their observations on the accusations made against them. He hoped that the Sub-Commission would draft a resolution urging the Commission on Human Rights to request the authorities of Democratic Kampuchea to agree to an impartial inquiry in their country.

73. Mr. AMADEO, referring to Mrs. Questiaux's proposal that the Sub-Commission should address itself direct to a Government to obtain information on the human rights situation in its country, said that at first sight that proposal appeared contrary to the confidential procedure for considering communications set out in Economic and Social Council resolution 1503 (XLVIII).

74. Mr. WHITAKER said that, on the anniversary of the death of Steve Biko, it would be well for the Sub-Commission to decide by consensus to show its disapproval to the South African régime, especially as members of Biko's family had just been arrested - a sign that repression by the South African authorities was increasing. The study of an individual case like that of Steve Biko might help the Sub-Commission in its future work; while examining the circumstances of his death, the Sub-Commission could familiarize itself with the problems raised by apartheid and human rights violations by the police, with a view to providing safeguards.

75. With regard to Argentina, he thought that, in order to clear itself, the Argentine Government would be well advised to accept the list of missing persons and to provide information on their fate as soon as possible. The Secretariat might help the Sub-Commission to draw up as accurate a list of missing persons as possible. Any delay would be harmful, not only to the victims of human rights violations, but also to Argentina itself.

76. In the case of Democratic Kampuchea, it was not the policy of the country that worried him, but the reports - which had not so far been denied - that between 100,000 and 3 million people, most probably half a million, had been massacred there. Those massacres, which were said to be continuing, were not the result of civil war. Since it was useless to repeat the allegations in the documents before the Sub-Commission, he wished merely to draw attention to the way in which it should proceed in the face of human rights violations on such a scale. Perhaps it should appoint an ad hoc working group to make an inquiry since, in the case of Chile, for example, that method had finally proved effective. It was in the interests of the Government itself to agree to an inquiry, and he reminded the Sub-Commission that at its last session the Commission on Human Rights had endorsed that procedure (E/CN.4/1273, paragraph 38). The Third Committee and the General Assembly itself had also been in favour of measures of that kind. But perhaps it would be even more effective to appoint one member of the Sub-Commission - he was thinking of Mr. Chowdhury - to analyse the documents before it and present them at the next session of the Commission on Human Rights. For the members of the Sub-Commission could not, in the time at their disposal, make a proper study of the 1,000 pages, at least, concerning Democratic Kampuchea.

77. Mr. NETTEL said he fully supported the views expressed by Mr. Carter and Mr. Whitaker.

78. Mr. CHOWDHURY said that in view of the seriousness of the human rights situation in Democratic Kampuchea, it would be better to set up an ad hoc working group than to appoint one member of the Sub-Commission to study the situation in that country.

79. Mr. PONCHAUD (Observer for the Minority Rights Group), speaking at the invitation of the Chairman, stressed that the human rights violations in Democratic Kampuchea were on a scale seldom seen.

80. It was not his intention to challenge the plan for a very special type of completely egalitarian rural society or to defend an international economic order based on the exploitation and domination of poor countries by the great Powers. No doubt the authorities of Democratic Kampuchea wished to ensure the sovereign independence of their country and take charge of its destiny, but then they should let the people express their will. On the pretext that the new society must be built on a new type of man, they had not hesitated to liquidate an unbelievable number of their countrymen. It was reliably known from concordant testimony that nearly all the officers, senior officials and intelligence agents of the former régime had been executed in the first few weeks after the victory of the Khmers Rouges. In 1976 it had been the officers and the minor officials who had been executed. Any one who showed any disapproval of the present way of life in Democratic Kampuchea was severely punished, sometimes by death. The Cambodians who had taken refuge abroad were not traitors, they had simply fled from death. It was impossible to determine the number of victims accurately, but the real issue for the Sub-Commission was whether such executions or disappearances, the extermination of a whole stratum of the population, was the work of irresponsible local elements or a crime organized in cold blood. He thought it was the latter.

81. The Cambodian revolution was proceeding by stages: 1975 had been the year of the national revolution which had sought to drive the United States imperialists out of the country and eliminate all those which had collaborated closely or remotely with the former régime. In 1976 had come the democratic revolution, during which the intellectuals, teachers and students had been eliminated, like the soldiers in 1975. In 1977, following internal disputes probably due to the conflict with Viet Nam, the communist party had crushed all the rival factions. Many former supporters of the revolution had then fled the country. Democratic Kampuchea had now entered a third phase, that of the socialist revolution: the Government wished to preserve only the poor workers and peasants and to eliminate all the other strata of the population. It was, indeed, to be feared that a large part of the adult population would be exterminated by hunger, forced labour or other means. The aim of the authorities, was that only those entirely loyal to the régime, and the children, should survive.

82. All those facts were confirmed by the concordant stories of Cambodian refugees, by information from the group of Yugoslav journalists who had visited the country and by the Cambodian propaganda films, which showed far more women than men and extolled the role of the children as representing the sole future of the revolution.

83. The charges against the régime of Democratic Kampuchea were not based on political or ideological considerations, but on the facts reported by refugees. The Sub-Commission could not remain indifferent to the situation, for by so doing it would make itself an accomplice of the régime and stain the honour of States Members of the United Nations and of a whole generation.

84. Mr. van BOVEN (Director of the Division of Human Rights) explained that document E/CN.4/Sub.2/414 had been distributed when agenda item 9 had been under consideration, in accordance with the public decision taken at its last session by the Commission on Human Rights concerning the human rights situation in Democratic Kampuchea, when it had been considering an item on its agenda which was virtually the same as item 9.

85. Furthermore, the note received from the Government of Democratic Kampuchea (E/CN.4/1295-E/CN.4/Sub.2/418) had been distributed under a separate symbol because it had reached the Secretary-General when the Economic and Social Council had been considering the report of the Commission on Human Rights. But the Secretary-General had been able to implement decision 9 (XXXIV) of the Commission on Human Rights only after the Economic and Social Council had considered the Commission's report. The note in question made no reference to decision 9 (XXXIV) of the Commission, but since it concerned the item under consideration, it had been thought appropriate to bring it to the attention of the Sub-Commission.

The meeting rose at 1.10 p.m.