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PROTECTION OF MINORITIES

Forty-first session

SUMMARY RECORD OF THE 3rd MEETING

Held at the Palais des Nations, Geneva,  
on Tuesday, 8 September 1989, at 3 p.m.

Chairman: Mr. YIMER

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The meeting was called to order at 3.15 p.m.

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

1. Mr. ALFONSO MARTINEZ said that the paper submitted by Mr. van Boven and Mr. Eide (E/CN.4/Sub.2/1989/47) was the result of serious thought and shed light on a whole range of issues raised at the fortieth session by the members of the Sub-Commission as well as by observer Governments and representatives of non-governmental organizations in respect of the working paper (E/CN.4/Sub.2/1988/43) submitted by the same authors under agenda item 3. He was not, however, won over by the specific proposals contained in the paper which, in his view, might well introduce far-reaching changes in the work of the Sub-Commission in respect of the promotion and protection of human rights throughout the world as well as in that of other bodies dealing with the same issues within the United Nations system.

2. One should not lose sight of the fact that resolution 8 (XXIII) had been adopted by the Commission on 16 March 1967 when none of the international human rights instruments or the mechanisms set up under those instruments had come into existence. Lacking suitable machinery, the Economic and Social Council had been obliged to assign a number of specific tasks to the Commission and to the Sub-Commission in response to the concern aroused by the allegations concerning human rights violations throughout the world. Commission resolution 8 (XXIII) thus constituted an integral part of the process which had culminated in the adoption of Economic and Social Council resolution 1503 (XLVIII) establishing the confidential procedure for considering situations that revealed human rights violations. Consequently, there was no sense in taking Commission resolution 8 (XXIII) out of its political and historical context and asserting that it had not been properly implemented. That fact that the Sub-Commission had presented only one report containing information on violations of human rights and fundamental freedoms from all available sources, pursuant to paragraph 2 of the resolution, was because the provisions of that paragraph had become obsolete as a result of the introduction of new machinery for considering the human rights situation. He was consequently surprised to read, in paragraph 4 of document E/CN.4/Sub.2/1989/47, that the Sub-Commission did not fully perform its own distinctive and complementary role which it was supposed to carry out in matters of violations of human rights and fundamental freedoms.

3. In his view, there were no grounds for that assertion. On the contrary, he considered that the Sub-Commission had, as far as possible, always fully performed and continued to perform the task it had been assigned in accordance with the public procedure for considering situations that revealed human rights violations and the confidential procedure established by Economic and Social Council resolution 1503 (XLVIII).

4. He also had a number of reservations in connection with specific aspects of the proposals made by Mr. van Boven and Mr. Eide. In paragraph 5 of their paper, they stated that it was not the intention to create new procedures for the Sub-Commission. However, quite the opposite impression was given by paragraph 6. The new system proposed would disrupt the working method of the Sub-Commission based on the implementation of the public and confidential procedures, which came under items 6 and 8 respectively of the Sub-Commission's agenda. Further, to the extent that the information

contained in the first part of the report to be prepared by the Sub-Commission, pursuant to that proposal, in implementation of paragraph 2 of Commission resolution 8 (XXIII) would not be presented again in the debate on other agenda items, except for the purpose of illustrating thematic issues, the debate on other substantive issues would be restricted.

5. With regard to the working group that would be responsible for preparing the report, he wished to know how much time it would have, after the debate on each issue, to summarize the information provided and how it would be able, in so short a time, to prepare an objective and balanced overview of the proceedings. Furthermore, the Sub-Commission would then have to assess the objectivity of the views expressed by the working group, thereby adding to its work at a time when it was already overburdened, in particular at the end of the session. Those were genuine practical problems to which due attention should be paid. It would also be helpful to know what information would be used by the working group. Would it simply be information provided orally in the course of the deliberations or also written information normally transmitted to the Secretary-General through the Centre for Human Rights? Would the information be studied as part of the public or the confidential procedure? Furthermore, by whom could such information be submitted? It should be borne in mind that only non-governmental organizations with adequate financial and human resources could provide the Sub-Commission with information, a fact which also created some uncertainty about the actual possibility of utilizing the method of work proposed.

6. Finally, it was not clear to him what the second part of the proposed report, described at the end of paragraph 6 of document E/CN.4/Sub.2/1989/47, would contribute that was new, in the light of the Sub-Commission's usual procedure, when considering the human rights situation in specific countries, under agenda item 6 and the recommendations of the Working Group on Communications, under item 8. He also feared that the system might lead to the disappearance of the set of guarantees provided to Governments by the procedure established under Council resolution 1503 (XLVIII). No country would wish to forego the possibility of communicating its views before the Commission examined cases concerning it in the context of the public procedure. Finally, it seemed contradictory to assert, in paragraph 5, that it was not the Sub-Commission's function to duplicate the work of the Commission and then go on to propose, in paragraph 6, that in its report the proposed working group could point to country situations which were already under consideration by United Nations bodies.

7. In view of the scale of the potential repercussions which the adoption of the proposals in document E/CN.4/Sub.2/1989/47 might have on the work of the Sub-Commission, he thought that the matter should be given careful consideration. He expressed the hope that its authors would provide explanations or further clarifications, not only to dispel doubts but also to enable the Sub-Commission to take a decision which would be favourably received by the Commission.

8. Mr. KHALIFA recalled that at the thirty-fourth session of the Sub-Commission, in 1981, he had proposed that its role and status, should be reviewed. In order to increase its independence, he had proposed that it should become a committee of human rights experts elected by the Economic and Social Council and reporting directly to it. His proposal had received broad

support from several members of the Sub-Commission, including Mrs. Warzazi and Mr. Yimer. As a result the Sub-Commission had decided to include the issue in its agenda as a separate item and to set up a working group to study it. Following two meetings held in 1984 and 1985, the Working Group had proposed many reforms, and had even requested that the international rules regarding diplomatic immunity should be applied to the members of the Sub-Commission. All those proposals, however, been flatly rejected by the Commission which had subsequently adopted a large number of decisions and resolutions, such as resolutions 1987/24, 1988/43 and 1989/36, reasserting the initial role of the Sub-Commission as a body answerable to the Commission. In view of that historical background, it was reasonable to conclude that any attempt to reorganize the Sub-Commission was in vain.

9. The proposals made in document E/CN.4/Sub.2/1989/47 were worthy of study, although they did not correspond to the initial objective. However, in his view, it would be premature to decide at that juncture to turn them down or to adopt them. As Mr. Alfonso Martínez had rightly observed, they posed a number of practical problems. After all, it was necessary to ascertain whether it was materially possible to give fresh impetus to the provisions of paragraph 2 of Commission resolution 8 (XXIII). The debate on that matter should be continued as part of the review of the future work of the Sub-Commission. For the time being, the Sub-Commission had a choice of two solutions: the first and most radical, would be to delete the item from the agenda on the grounds that it no longer served any purpose. The second would be to continue to consider it until 1991, when it would be possible to decide whether there was any reason to retain it in the light, in particular, of the conclusions of the meeting of rapporteurs planned for 1990, pursuant to the recommendation made by the Commission in resolution 1989/48.

10. Mr. JIN, referring to paragraph 4 of the document under consideration, noted that it stated that the Sub-Commission had presented only one report containing the information referred to in paragraph 2 of Commission resolution 8 (XXIII). He was not fully aware of the way in which that resolution had been implemented and would like to have some explanations. As the report stated that the Sub-Commission had only acted once on the basis of paragraph 2 of Commission resolution 8 (XXIII) he would like to know what it had actually done, whether it had prepared a report and, if so, when and at what level it had been adopted and whether the secretariat could distribute copies to the members of the Sub-Commission.

11. However, the issue was clearly a complex one for which no rapid solution was available. The statements by those members who had already taken the floor on the matter, especially Mr. Joinet and Mr. Chernichenko, had helped him to form a better understanding of the work of the Sub-Commission. In order to follow up the proposals by Mr. van Boven and Mr. Eide, the Sub-Commission's working methods would have to be changed; that would undoubtedly involve protracted discussions and take a good deal of time.

12. Mrs. ATTAH recalled that various resolutions adopted by several United Nations bodies had provided a number of general and specific directives concerning the Sub-Commission's role and methods of work. The Sub-Commission had, on various occasions, been criticized for embarking on studies already undertaken by other United Nations organizations. That criticism had, in some instances, been found to be valid in view of the Sub-Commission's workload.

Consequently, the Sub-Commission had little time to devote to some important items on its agenda and that state of affairs had probably led to the discussion of some agenda items on a biennial basis.

13. Thus, by its resolution 1285/34, the Sub-Commission had decided to consider such important topics as the new international economic order and the promotion of human rights on a biennial basis. However, the annals of the work of the Sub-Commission clearly showed that the overwhelming majority of cases of human rights violations occurred in the developing countries whose population accounted for between three fifths and two thirds of the world's population. Efforts to promote and protect human rights had, therefore, focused particularly on the developing countries. Despite that, the situation of human rights in the developing countries had grown ever more precarious. In contrast, in the developed countries civil and political rights were taken for granted while there was also much greater enjoyment of economic, social and cultural rights. That observation was instructive as it pointed to the indisputable link between the realization of human rights, especially economic, social and cultural rights, and the level of economic development of a State.

14. The fragile economic condition of the vast majority of developing countries, which lay at the root of the denial of economic and social rights, was a product of the inequitable nature of the economic relations between States. That had been recognized by the inclusion of the item on the Sub-Commission's agenda since 1979. However, after considering it annually for a period of seven years, the Sub-Commission had decided to consider it merely on a biennial basis. There was need to review that decision and to revert to annual consideration of the item because of the seriousness of the problem and the importance that the Sub-Commission ought therefore to attach to it. She therefore intended to submit a draft resolution calling for the consideration of that important agenda item on an annual basis. She hoped that the draft resolution would receive unanimous support.

15. The paper prepared by Mr. van Boven and Mr. Eide needed very careful study and she suggested that the Sub-Commission should be given further time for thought on the matter.

16. Mrs. KSENTINI said that the proposals appearing in documents E/CN.4/Sub.2/1988/43 and E/CN.4/Sub.2/1989/47 undoubtedly had the commendable objective of strengthening the machinery for protecting human rights and improving the Sub-Commission's methods of work. Their authors thus deserved credit for initiating an instructive discussion on its role and methods of work.

17. Like other members who had already spoken on the item, she drew attention to the fact that the cumbersome procedure set forth in Commission resolution 8 (XXIII) made it outdated. The current trend was towards simplifying procedures. However, the current reporting system was cumbersome, bureaucratic, unreliable and even subject to compromise for the purpose of maintaining a degree of balance in the reports submitted. In addition, their preparation took a very long time, with consequent financial implications and delays. The system was therefore no longer suited to the Sub-Commission's role of drawing the attention of the Commission to serious violations of human rights; that role did not boil down to transmitting information, but involved genuine analysis and research. The Sub-Commission was required to adopt

specific solutions and to give its opinion after a thorough study of the situations submitted to it. Consequently, the task was not merely one of compilation, as suggested by the document under consideration, whereby the Sub-Commission merely transmitted information and communications without giving its opinion, as an expert body, on the nature and merits of the information submitted by it. In addition, she could not see the point of such a task, as, first of all, the non-governmental organizations and other bodies that testified in the Sub-Commission could also testify in the Commission. Secondly, the situations reported might evolve before the report reached the Commission, and it would therefore be better for those who wished to testify to do so directly in the Commission. Thirdly, by submitting the proposed report, the Sub-Commission would be tacitly compelled to guarantee the information it contained and the question arose of whether a sessional working group, however qualified it might be, was capable of discharging the heavy task of compiling information and verify its authenticity. Fourthly, if it merely compiled information, the Sub-Commission would be failing to discharge the mandate assigned to it, which requested it to analyse and consider in detail information received by it. Fifth and last, the preparation of the proposed report would overlap with the specific resolutions adopted by the Sub-Commission on certain situations and specific countries after carefully considering the violations reported. In doing so, the Sub-Commission brought to the attention of the Commission those cases which it considered serious, by recourse either to the confidential or to the public procedure. In both cases, it assumed its own responsibility, as its role was not to transmit "raw" information, but to take an informed position on the situations brought to its attention.

18. In concluding, she stressed that the rejection of a procedure which, in many respects, appeared out of date and in any case superfluous, did not mean that an attempt was being made to restrict the role of the Sub-Commission, but in fact, to strengthen it.

19. Mr. CHERNICHENKO, said that he had not been able to study the paper submitted by Mr. van Boven and Mr. Eide in detail, and would merely make a few preliminary comments, reserving the right to speak at greater length subsequently.

20. He first of all wished to draw attention to the links between Commission resolution 8 (XXIII) and Economic and Social Council resolutions 1235 (LXII) and 1503 (LXVIII), as well as Council resolution 728 F (XXVIII), and to stress that those resolutions were not mutually exclusive, but contributed as a whole towards the gradual development of the procedure for considering human rights violations. They were mutually linked and complementary and each specified a particular point. As Mrs. Ksentini had pointed out, Commission resolution 8 (XXIII) showed the effects of time, but it had been corrected by a number of resolutions from a higher body. A comparison of those resolutions revealed that process of evolution, and it would be seen that paragraph 2 of Council resolution 1503 (LXVIII) referred to Council resolution 728 F (XXVIII) and Commission resolution 8 (XXIII). Thus, there was a linkage between those texts which needed to be borne in mind in order to form a clear idea of the existing procedures. Naturally, that did not mean that the procedure could not be improved. He considered that the Sub-Commission should give careful attention to the question of improving the texts and perhaps prepare a new

project based, however, on new factors. If it proceeded with the utmost caution, it might well be able to prepare for the Commission a recommendation containing a further recommendation intended for the Economic and Social Council, but after holding consultations.

21. The other issue he wished to broach was that of naming States in which flagrant and massive violations of human rights occurred. In his opinion, it was not always desirable to be in a hurry to point, in an open meeting, to those States in which such violations had occurred. Naturally, such situations were painful for everyone, but it was preferable not to take a hasty decision. To be sure, quick decisions were sometimes necessary, although in most cases they entailed a politicization of the debates and decisions. He was well aware that it was not always possible to avoid such politicization, but he considered that one should at least try. The Sub-Commission should act as a judicial "filter" and, in that respect, he cited, by way of example, United States criminal procedure, which contained a provision which he found remarkable, to the effect that a court might not consider evidence obtained by violating established procedure. He acknowledged with regret that there was no such a provision in Soviet procedure, since in its absence, it was difficult to arrive at an equitable judgement. He considered that a similar solution might be adopted by the United Nations for considering human rights violations, if only at the level of the Sub-Commission. It would of course slow down work, but if a choice had to be made between a fair examination and the politicization of debates and decisions, the first course should prevail.

22. Consultations were now needed and the document under consideration should be studied in greater detail. He also believed that a further working paper might be submitted shortly, and that it would then be possible to achieve a reasonable compromise and perhaps to prepare a draft resolution in 1989 or 1990. Be that as it might, the Sub-Commission would have an opportunity to revert to the problem, not only under item 3, but also under items 4 and 6.

23. Mr. JOINET said that the aim of the interesting working paper presented by Mr. van Boven and Mr. Eide was to allow the Sub-Commission to submit an annual report to the Commission on the human rights situation throughout the world, so as to compel the Commission, as it were, to assume its responsibilities in that respect. However, the debate revealed that a distinction should be established between the public and the confidential procedure. He wondered whether it would not be preferable to give priority to improving the confidential procedure, and subsequently the public procedure. In 1980 and 1981, he had not been in favour of the procedure established in Economic and Social Council resolution 1503 (XLVIII), but since then, his position had changed.

24. As to the question of whether the ballot should be secret or not under the confidential procedure, it would be recalled that as early as 1984, when questioned on the matter, the United Nations Legal Advisor had taken the view that it would suffice for the Economic and Social Council to complete the relevant article of the Sub-Commission's rules of procedure. If his advice were followed, it would therefore suffice to request the Commission to adopt such a resolution in order to settle the problem.

25. Furthermore, the confidential procedure seemed to have fallen somewhat into disrepute on account of the insufficient vigilance shown by the Sub-Commission and the Commission when Governments did not have the elementary courtesy to answer the questions transmitted to them. Three years earlier, he had drawn attention to the initiative taken by the Inter-American Commission on Human Rights and which was well worth considering: if the Government concerned failed to reply, or if its attitude was considered to be equivalent to failure to reply, presumption of responsibility was automatic. The Sub-Commission might very well follow the example of the procedure adopted by the Inter-American Commission and enhance the reputation of its own confidential procedure by having recourse to a secret ballot and by proposing more frequently that the Commission should change over from the confidential to the public procedure. Indeed, there had been occasions, when there had been a changeover to the public procedure, on which Governments criticized under the confidential procedure had reverted to the rule of law and therefore no longer needed to be subjected to the confidential procedure. A changeover from the confidential procedure to the public procedure might be a way of ensuring greater respect for human rights and of preventing the confidential procedure from allowing certain Governments to violate the rule of law with impunity. Consequently, in theory, he supported the project submitted to the Sub-Commission although in practice he considered that it was preferable first of all to reform the confidential procedure and then the public procedure.

26. Mr. DIACONU considered that the issue of the difference between the confidential and the public procedure, and which had already been raised, in particular by Mrs. Palley, should be settled first. At the previous session of the Commission on Human Rights, Mr. Ingles had demonstrated how the confidential procedure was frequently sidestepped and lost its confidentiality. Non-governmental organizations which had submitted communications under the confidential procedure sometimes referred to the same communications in public in conjunction with item 6 of the Sub-Commission's agenda. If a communication was confidential, it had to be confidential for everyone and in particular for its author, as otherwise it lost all raison d'être.

27. Mr. Joinet had pointed out that in some cases, States did not take the confidential procedure seriously. Such an attitude could only be deplored. Mrs. Attah had raised a question which was of considerable importance for the Sub-Commission. Its resolutions and debates should indeed reflect the human rights situation throughout the world, and in particular in the developing countries, at both the quantitative and qualitative levels. He therefore supported the idea that the new international economic order and the promotion of human rights should be considered on an annual basis.

28. Furthermore, the working paper presented by Mr. van Boven and Mr. Eide contained more questions than answers. Was it really intended to submit to the Commission a summary of the Sub-Commission's deliberations in conjunction with agenda item 6, together with the text of statements by the non-governmental organizations and the observer Governments? If such a summary were to be presented in the form of minutes, was there not a risk of infringing the relevant United Nations regulations? If it were an analytical summary, obviously any analysis entailed a political judgement and it was difficult to see how such a document, which would comprise some 40 pages, could be negotiated. Alternatively, was it to be a form of "super report" on all human rights problems and on all States, in which the relevant information would be presented under the 160 names of the Member States or under the 130



or 140 currently identified human rights? Finally, was there not a danger of the proposal before the Sub-Commission duplicating with the debate under agenda item 6, as there would be both an oral presentation and written documents on the same issues? In addition, if the proposed sessional working group was empowered to take all decisions in that field, how would it be possible for the other members of the Sub-Commission to submit draft resolutions? All of that seemed highly impractical. Even if the authors of the document under consideration did not put it in so many words, they certainly seemed to be suggesting that the Sub-Commission should adopt a new procedure. In conclusion, if the proposed procedure was intended to replace consideration of agenda item 6, for example, there was no reason to reject it outright, but if a parallel procedure was being proposed, it was difficult to see what the Sub-Commission would gain from it.

29. Mr. EIDE said that all the observations made, whether they contained criticism or guarded support, would undoubtedly help to provide a solution to the highly complex problem at issue.

30. It should first be recalled that even if some people considered the provisions of Commission resolution 8 (XXIII) to be outdated, the fact remained that the Commission referred to it every year. Contrary to what Mr. Alfonso Martínez, in particular, seemed to believe, the point at issue was not that of establishing a new procedure but of improving the implementation of the procedure established under Commission resolution 8 (XXIII). It should be underscored that in that resolution, the Sub-Commission was requested to prepare, for the use of the Commission, which gave annual consideration to violations of human rights and fundamental freedoms "in all countries", a report containing information on violation of human rights, without it being specified that they constituted a consistent pattern of gross violations. Furthermore, paragraph 6 of the same resolution invited the Sub-Commission to bring to the attention of the Commission any situation which revealed a consistent pattern of violations of human rights and fundamental freedoms. Consequently, there was no incompatibility between the confidential procedure established by Economic and Social Council resolution 1503 (XLVIII) and the submission of the report referred to in paragraph 2 of Commission resolution 8 (XXIII). However, it was possible to take the view that there was certain overlapping between the confidential procedure and paragraph 6 of Commission resolution 8 (XXIII), as he had himself pointed out the previous year. Nevertheless, the question should be approached from a different angle at the current session.

31. Mr. Chernichenko had pleaded in favour of observing due process in the field of human rights violations, to enable the Sub-Commission to evaluate the evidence in a responsible manner and to draw conclusions. However, it was hard to grasp why that concern should not apply to the confidential procedure as well as to the public procedure. In criminal cases, the trial was public, except in exceptional circumstances, although that in no way derogated from the principle of respect for due process. The difficulties in that area arose from political considerations and were not solely attributable to the non-governmental organizations, but also to the observers of Governments. Moreover, all the Sub-Commission experts unquestionably had their own preferences. He thus recognized that the Sub-Commission was confronted with an extremely delicate matter, although he wished to stress that, in accordance with the requirements of due process, contempt of court was inadmissible.

32. He reserved the right to take the floor at a later stage, in particular to explain to Mr. Chernichenko and Mr. Joinet how it would be possible to have a procedure with greater scope for argument and counter-argument, to make better evaluation of evidence and to make for the adoption of sounder conclusions by the independent experts.

33. Mr. ALFONSO MARTINEZ said that there was no confusion in his mind and he made a very clear-cut distinction between the provisions of paragraph 2 and those of paragraph 6 of Commission resolution 8 (XXIII). If the proposal before the Sub-Commission did not establish a new procedure, it nevertheless tended to introduce an unfamiliar procedure into the Sub-Commission. It would be up to Mr. Eide to explain why it was necessary for the Sub-Commission to perform better. The Commission indeed referred to resolution 8 (XXIII) each year, but it had never claimed that the Sub-Commission had failed to draw its attention to human rights violations.

34. The CHAIRMAN, replying to a question by Mr. van BOVEN said that he was sure that the list of documents available in the various languages would be published by the secretariat as soon as possible.

35. Mrs. PALLEY said that she had particularly appreciated the apt comments made by Mr. Alfonso Martínez on the relationship between the two procedures. Nevertheless, it now devolved upon the Sub-Commission to endeavour to rationalize those procedures. The confidential procedure had been introduced to fill a gap that existed at the time and to enable certain situations to be considered and a constructive dialogue to be initiated with States. It was quite clear that the States Members of the United Nations had no wish to be brought under scrutiny in international organizations if there was no conclusive evidence. After the confidential procedure had been introduced, the public procedure had been used for the most serious cases, or when the desired answers were not provided, or in the most flagrant cases which the Sub-Commission had a duty to deal with directly in public because the confidential procedure would be too protracted. She found it hard to understand how it would be possible to abide by the confidential procedure if, for example, the party against which a complaint was directed was a member of the proposed working group. It was vital to maintain the public procedure in order to avert such problems.

36. Furthermore, paragraph 1 of Economic and Social Council resolution 1235 (XLII) stated that the Commission on Human Rights should give annual consideration to the violation of human rights and fundamental freedoms "without prejudice to the functions and powers of organs already in existence or which may be established within the framework of measures of implementation included in international covenants and conventions on the protection of human rights and fundamental freedoms". Consequently, it was hard to see why the procedures should not co-exist. She considered that it was appropriate first to use the public procedure, and afterwards to take the relevant decisions in the context of the confidential procedure, under which the cases of individuals mentioned by the non-governmental organizations could, in particular, be discussed. At the previous session, she had taken the view that it was not desirable to bring the Republic of China under public scrutiny in respect of the situation in Tibet, as the Republic of China was engaged in a process of reform. In her opinion, it would have been more appropriate to consider the issue under the confidential procedure. Further,

it was unacceptable to argue, as some members had done at the previous session, that if a situation had been considered under one procedure, it could no longer give rise to a decision under the other procedure.

37. Mr. JOINET considered that the remarks made concerning the possible sidestepping of the confidential procedure could only be directed to the Commission itself as only States had the benefit of the confidential procedure, whereas non-governmental organizations were only informed by the Governments of States. However, no criticism seemed to have been made of the Sub-Commission in that connection.

38. With regard to the extremely delicate matter of evidence, it was clearly impossible to criticize the behaviour of a State without adequate concordant and reliably attested evidence although, in his view, care should be taken to avoid interpreting the expression "reliably attested" used in Economic and Social Council resolution 1503 (XLVIII) and in the rules of procedure of the Sub-Commission as meaning "judicial" evidence, since the Sub-Commission was not a court of law but was simply required to ascertain whether, in a given situation, sufficient indications could lead to such presumptions of human rights violations that it should refer to the Commission. Thus, the Sub-Commission was merely an investigative body and could not act in the same way as a court of law. In that connection, he emphasized that the problem was even more acute in the Human Rights Committee, where the procedure followed was close to that of a court of law whose members carried out what was akin to a cross-examination.

39. As regards the improvement of the procedure established by Council resolution 1503 (XLVIII) in respect of the consideration of communications in closed meetings, he inquired whether the question would be taken up under agenda item 3 or 8, as the annotated provisional agenda shed no light on the matter.

40. The CHAIRMAN said that he thought it would be better to take up the question under agenda item 3, as there would be a very full debate on item 8.

41. Mr. EIDE also considered that the question should be dealt with under agenda item 3, as it was a matter of general interest and not a question of a confidential nature.

42. Mr. ALFONSO MARTINEZ said, in reply to the comments made by Mrs. Palley, that it was particularly important to preserve the confidential nature of the procedure established by Economic and Social Council resolution 1503 (XLVIII). It was true that if the procedure were confidential, the Governments concerned could have greater freedom of action, but non-governmental organizations and private individuals should not be discouraged from having recourse to the confidential procedure. If firm steps were not taken, no one would feel obliged to observe the procedure established by Council resolution 1503 (XLVIII) and all parties would feel free to have recourse to the public procedure, which was more accessible, in order to bring to the attention of the Commission complaints that normally should be considered under the confidential procedure which in addition offered more guarantees to Governments.

43. Mr. JIN reminded Mrs. Palley, who had raised the issue of Tibet, that the name of his country was not the Republic of China, but the People's Republic of China, or China.

44. Mrs. PALLEY took note of Mr. Jin's correction.

45. On the substance of the debate, she remarked that, generally speaking, pressure was exerted less on Governments than on decision-makers, namely, the courts. As far as the Sub-Commission was concerned, in the same way as a court, it took its decisions in public and that was why, when important questions of gross violations of human rights were involved, it was necessary to demonstrate to the public that the Sub-Commission discharged its duties in full. She therefore considered that the Sub-Committee should first of all deliberate in public before meeting under the confidential procedure in those cases in which it deemed it to be preferable to have a discussion in private with the Governments concerned.

46. Mr. TEITELBAUM (International Federation of Human Rights) thought that the proposals contained in document E/CN.4/Sub.2/1989/47 went a long way towards resolving the question of the rationalization and effectiveness of the work of the Sub-Commission in accordance with paragraph 2 of Commission on Human Rights resolution 8 (XXIII) while preserving the irreplaceable role of the non-governmental organizations.

47. Some NGOs had been accused of misusing their right to speak and of failing to abide by the agenda in drawing attention, under various items, to specific situations of human rights violations. However, those "excesses" could be explained by the fact that NGOs had only very few opportunities of expressing themselves, whether orally or in writing in order to bring the human rights violations occurring throughout the world to the attention of the international community and to ensure that measures were adopted to combat those violations. Nor did they possess the right of reply, even when they were criticized by the representatives of certain States or treated with hostility, in particular by certain members of the Sub-Commission.

48. The proposal in paragraph 6 of document E/CN.4/Sub.2/1989/47 offered NGOs and, of course, Governments, other organizations and experts the opportunity of submitting to the secretariat of the Sub-Commission information on which the preparation of the two-part report proposed by Mr. van Boven and Mr. Eide would be based. It also illustrated the importance of agenda item 6, the consideration of which could provide an opportunity to update the information received by the Sub-Commission's secretariat during the year. The special importance accorded to agenda item 6 led him to suggest that the speaking-time allocated for NGOs should be extended to 15 minutes, a proposal which, together with those made by Mr. van Boven and Mr. Eide, would make it possible to avoid "excesses" and to comply strictly with the agenda, while maintaining the right of NGOs to shed light on certain points using specific examples. Further, it would be all to the good if NGOs could display their documents in the conference room so that they were available to all who wished to consult them; that would make it possible to shorten statements or even to dispense with others, and to have less recourse to the official documents of the Sub-Commission. In addition, the agenda could be drawn up in a more rational manner and in particular, item 9, which was overloaded, could be divided up.

49. Mr. ABRAM (Observer for the United States of America) observed, after a 26-year absence, a tremendous growth in the number of members of the Sub-Commission, as well as in that of the observers interested in its work, and thought that it would perhaps necessitate the use of formal and informal working groups whose recommendations could be analysed by the Sub-Commission.

50. From its inception, the Sub-Commission, of which he had been a member, had undertaken detailed studies to which all the experts had contributed in complete independence and objectivity. That concern for objectivity and truth had led him at the time to invite the members of the Sub-Commission to visit his native State, Georgia, to see for themselves the effects of segregation, which had happily been eradicated by law. He assumed that at the present time members would still welcome visits to their own countries by experts who would be able to evaluate serious human rights problems.

51. In the early 1960s, the Sub-Commission had divided its time between consideration of studies prepared by members and the drafting of international instruments to be forwarded to the Commission. Members had tended to do their own research and received only moderate outside assistance. When they had submitted their studies to the Sub-Commission, the debates had been critical and objective. When international instruments, such as the International Convention on the Elimination of All Forms of Racial Discrimination had been drafted, each member of the Sub-Commission had given the text line-by-line consideration. Furthermore, the Sub-Commission had always recognized its subordinate status to the Commission. That was the way it had been and was the way it should be.

52. He took note with interest of the working paper prepared by Mr. van Boven and Mr. Eide. With regard to methods of work, he urged the Sub-Commission to pursue its expert studies, following the example of those by Mr. Ingles on the right to leave one's country. In that connection, he mentioned that during the most recent Conference on Security and Co-operation in Europe, the Hungarian delegation had unexpectedly joined Austria and the United States in sponsoring an initiative calling for the elimination of all forms of exit visas. Of course, the roots of that initiative were to be found in the Universal Declaration of Human Rights, but they unquestionably also wound their way through the study of Mr. Ingles.

53. He trusted that the debates of the Sub-Commission were less political and more balanced, that its instruments were drafted and reviewed just as thoroughly, that lengthy polemical debates followed by resolutions which did nothing to alleviate genuine human rights problems were avoided, that the Sub-Commission did not stray from its terms of reference and still followed the guidance of the Commission and continued to devote its time to considering serious and massive human rights problems rather than marginal issues.

54. In view of the large number of resolutions recently adopted by the Sub-Commission, he would like to be informed in due course as to whether or not the Sub-Commission had attempted to address directly such matters as the tidal waves of refugees in South East Asia, the human rights violations by unelected Governments in third world countries, the torture and murder of children to bring pressure on their parents, the use of poison gas against civilians, violations of the right to leave, government relocation programmes and deliberate withholding of food supplies. In the present circumstances, the Sub-Commission should, of course, denounce the abomination of the seizure of hostages by terrorist organizations whose conduct was more reminiscent of a barbaric age than of the standards of civilization.

55. The Sub-Commission could only benefit from a regular review of its work by its members, Governments and non-governmental organizations. It should above all avoid the bargaining and trading which all too frequently characterized political assemblies in the United Nations system and should set as its goal the objective quest for truth.

56. Mr. JOINET expressed surprise that an observer for a country should have been authorized to speak to make observations on the work of the Sub-Commission. If such a practice had been adopted by the Commission, it was totally unacceptable in the Sub-Commission.

57. Mr. van BOVEN explained that the observer for the United States of America had been allowed to speak since, in his capacity as a former member, he could make a valuable contribution to the work of the Sub-Commission. However, his statement raised the overall problem as to whether observers could take up questions in which their country was not directly concerned as, unlike the Commission, the Sub-Commission was a body of independent experts.

The meeting rose at 5.50 p.m.