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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND  
PROTECTION OF MINORITIES

Forty-first session

SUMMARY RECORD OF THE 9th MEETING

Held at the Palais des Nations, Geneva,  
on Friday, 11 August 1989, at 4 p.m.

Chairman: Mr. YIMER

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The meeting was called to order at 4.10 p.m.

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 REGIME OF SOUTH AFRICA (continued) (E/CN.4/Sub.2/1989/9 and Add.1)

1. Mrs. PALLEY said that she had recently spent more than three weeks in South Africa and found herself in agreement with virtually everything Mr. Khalifa had said. Although she was "white" and had been born in South Africa, she would try to be as objective as possible.
2. As she had last been to South Africa in 1986, she had been able to see major changes. Sanctions had had an amazing effect on the attitudes of white South Africans and the brave demonstrations by the majority of the African population, starting with the events of Soweto in 1976, had also helped to bring about change.
3. It was, however, difficult to say whether what was portrayed as a reform process was genuine or whether it was merely a cosmetic exercise for international consumption. She personally believed that the dismantling of apartheid had really begun.
4. It was clear that many Afrikaners, not only young people and intellectuals, but also some members of the establishment, now believed that apartheid was evil and that the Afrikaners were acting as colonialists and treating the African people as they believed the United Kingdom had treated them in the past.
5. The South African Government Law Commission had recently published a report drawn up for consultative purposes and circulated in April 1989. After a detailed analysis of the situation, the Law Commission proposed a bill of rights modelled on the United Nations Covenants and other regional instruments, such as those applicable in Europe and America. The most striking feature of the report was the Law Commission's affirmation that such a bill of rights would be meaningless unless there was universal suffrage.
6. The situation was therefore evolving, but it was also true that early in the nineteenth century, the Afrikaners had become a nation and a nation which felt that it was persecuted and had fought for its independence. But that legacy was still with the Afrikaners of today. They were bitter and obstinate, defiant fighters who, feeling themselves threatened, were ready to fight to the death.
7. However, further evidence of change was seen in the proposal recently made by an important leader of the National Party in the "white" Parliamentary Chamber, that there should be a South African federation, with universal suffrage for the lower house and some form of "group" representation in the upper house which would have the power of veto. He had made it clear that he was not proposing a phony federation, as a device to perpetuate white domination, so-called black independent States or tribal trust lands, but genuine federal units. Anyone familiar with the demography of South Africa knew that however federal units were drawn it would be impossible to create

even one with a white majority. There was no white majority in a single magisterial district. That leader had been booed by the Afrikaner MPs of the Conservative Party. He would have certainly been criticized by the Sub-Commission also for advocating the incorporation of racist elements in his proposals for a constitutional settlement.

8. Afrikaners in general and those of the extreme right wing who supported the Conservative Party and the neo-Nazi parties in particular tended to become even more entrenched in their attitudes when change occurred. In the strange, oligarchical and perverted democracy of South Africa, elections were scheduled for the following month and, in view of that type of reaction, it would be advisable that any resolution the Sub-Commission passed did not give those extremists material to exploit. She hoped that the National Party would be re-elected, even on the basis of its current minimalistic reform programme and that Mr. de Klerk would be appointed to lead the Government and would be able to enter into negotiations with the leadership of the ANC and all the leaders representing the South African population. South Africa was at a turning point and should be helped to take the road to democracy and respect for human rights.

9. Sanctions should be maintained and events closely scrutinized. If Mr. Nelson Mandela was willing to negotiate, the Sub-Commission should take note of that evolution and, if negotiations seemed to be successful, it would then be necessary to consider whether sanctions should be suspended temporarily.

10. She wished to make the point that changes in a political system would not transform it overnight into an ideal system. There was usually a series of transitional phases, without which there was a danger of instability, violence and total anarchy with consequent loss of human life and destruction of the economic sub-structure. South Africa was possibly the only State in Africa which had an extensive first world economy as well, of course, as a third world economy. She hoped that the first world economy would be handed over in reasonable condition to all the people of South Africa.

11. She thought that one way of obtaining that result would be a genuine federation in which South Africa was reunified as a single State, even if not as a unitary State. The members of the Sub-Commission who came from federations were aware that federalism was a very effective way of making the principles of democracy and constitutionalism work. Provided there was universal suffrage, the party which had majority support would be democratically elected as the central Government and would have nothing to fear.

12. With regard to the proposal that there should be a system of "group" representation in South Africa, such a system should not be rejected outright, since group rights had to be recognized at certain times and in certain countries. Group rights had been recognized successfully in Zimbabwe and they should be recognized in Cyprus. Ideally, everyone should have the same rights, with no one category enjoying special rights, but in practice, the fears of those who were in power and the aspirations of those who were oppressed had to be taken into account.

13. If there was to be a peaceful settlement, even though the white minority in South Africa had gravely abused its position and was still abusing it, she

thought that the leaders of the long-suffering majority could afford to be generous and, provided they controlled the future Government and enjoyed universal suffrage, could agree to negotiate with those currently in power. That would be a pragmatic and far-seeing attitude because otherwise the "wolf", according to Mr. Khalifa, might well, if forced into a corner, unleash a catastrophe.

14. In conclusion, she stressed the fact that her positive evaluation of ongoing events did not mean that she was totally satisfied, but she thought that the white leaders should be encouraged to try still harder and to acknowledge openly the immediate need to introduce universal suffrage, to repeal all discriminatory laws and to adopt a bill of rights.

15. Mr. EIDE said that he would deal with the question in greater detail when he introduced his report under item 5 (a) but, for the moment, would merely make a number of preliminary comments.

16. First of all, he wished to make it clear that he did not believe that any process of reform was currently under way in South Africa and that there was any indication that the leaders in power intended to take such a course. It should be remembered that apartheid had not begun in 1948 but much earlier. Two dates were very important in that connection: 1910, the date of the establishment of the Union of South Africa, following which the existing limited voting rights had been abolished and, more important still, 1913, the year of the adoption of the Land Act attributing 87 per cent of the territory to the small minority of white South Africans and only 13 per cent to the overwhelming majority of black South Africans. On the basis of that division of the country and the subsequent policy known as the "homelands", the territory had been divided up and the white minority still hoped that it would be possible to induce a sufficient number of Africans to accept a political system in which most of them would be foreigners who might be allowed to work in the industrialized centres of South Africa as migrant workers. The white minority was clinging desperately to the hope that such an arrangement might constitute a solution. He would only be able to believe in ongoing reforms when the fundamental factor of apartheid had been abolished, and not before.

17. Turning to the report by Mr. Khalifa, he recognized that changes were indeed occurring, some of them extremely important. Those changes stemmed partly from external forces and partly from internal forces. Sanctions, in particular, were producing increasing effects. Since he had been a member of the Sub-Commission, he had repeated time and again that apartheid was based essentially on economic exploitation, and that the best way of overcoming it was therefore economic confrontation. The maintenance of sanctions therefore seemed to him to be necessary and Mr. Khalifa should be requested to continue his study of the question.

18. Moreover, internal forces were also coming to the fore. They were increasingly strong and courageous and the number of whites who belonged to them was steadily increasing and, as Mrs. Palley had pointed out, even some Afrikaners had joined them.

19. In view of ongoing developments, the international community should endeavour to co-operate with the anti-apartheid forces in South Africa since they were gaining ground steadily and needed encouragement rather than

harassment such as the cultural boycott which, although intended to undermine the pillars of apartheid, also affected those who supported the anti-apartheid movements.

20. He also found the change of attitude encouraging, but thought that one must be careful not to play into the hands of those who, behind the facade of a new system, sought only to maintain the advantages and privileges stemming from outdated structures.

21. He firmly supported Mr. Khalifa's moving closing remarks and agreed with him that East-West détente and reconciliation, which were extremely positive, should not create a new North-South divide. South Africa could offer that new alliance an opportunity of demonstrating its ability to resolve one of the most acute of contemporary problems.

22. Mr. HATANO said that he was confident that Mr. Khalifa's latest report (E/CN.4/Sub.2/1989/9 and Add.1) would have a considerable impact on the companies to which it referred and would cause much difficulty to the Government of South Africa. It must, however, be admitted that it was easier to condemn apartheid when one had no personal or economic relations with South Africa, as in his own case, than when one had important interests in that country.

23. Nevertheless, he had been disagreeably surprised to find 94 enterprises from his own country, Japan, included in Annex I among the names to be added to the list of companies that co-operated with the South African régime, and not a single Japanese enterprise in Annex II which contained the names of enterprises to be deleted from that list. The criteria selected by the Special Rapporteur in deciding which enterprise should be added to or deleted from the list might of course be debatable, but he did not intend to take up that question since, on the one hand, he represented neither his Government nor Japanese enterprises and, on the other hand, since the Sub-Commission was already behind its schedule.

24. Stylistically, in the interests of consistency it would be better to delete the article "The" preceding the names of Japanese companies on pages 17 to 20 of the English version of document E/CN.4/Sub.2/1989/Add.1, and before two American companies listed on pages 21 and 25. On page 17, the name of the company "Dai-Ichi Hangyo Bank Ltd." should read "Dai-Ichi Kangyo Bank Ltd." and the name of the enterprise "Hanchin Electric Railways Co. Ltd." should be changed to read "Hanshin Electric Railways Co. Ltd.". On page 18, the fifth company from the top of the page should read "Myekawa MSG Co. Ltd.". Since the name of "Nihon Tokushan" on the same page was entirely unfamiliar to him, he would like the Special Rapporteur to check his data. On page 19, the name of the third company from the top of the page should read "Pioneer Electronic" and in the middle of the same page the word "Suminoto" which appeared on three occasions should read, of course, "Sumitomo".

25. Mrs. ATTAH said that Mr. Khalifa's most recent report showed that since 1984, many transnational corporations had sold their South African affiliates or announced their intention of doing so. However, it was very clear that most of those companies maintained economic ties with the apartheid régime, thus defeating the very purpose of the disinvestment measures.

26. Out of 1,226 transnational corporations identified as operating through affiliates in South Africa, 563, or 46 per cent of them, had disposed of their equity interests between 1984 and 1988. Today, slightly more than 51 per cent of them continued to have equity interests in South Africa and Namibia. United States enterprises had disinvested almost 62 per cent, the United Kingdom 31 per cent, the Federal Republic of Germany 22 per cent, Canada 80 per cent, Australia 70 per cent, Sweden 59 per cent, Netherlands 45 per cent, France 42 per cent and Switzerland 14 per cent.

27. That development was most welcome from the statistical viewpoint, although transnational corporations were maintaining their interests, if not their presence, in South Africa by other means. In effect, of the 563 transnational corporations that had disinvested, only 32 had totally shut down their operations. The remainder retained their interests in South Africa through dubious sales, sometimes including buy-back clauses, and mainly by licensing agreements or contracts with local companies, i.e. by the method called the "Japanese model", tested by Japan. Thus, Japanese motor car manufacturers had concluded franchise agreements with South African manufacturers, who used Japanese-supplied parts and manufacturing technology. Those enterprises had even extended their activities to computers, chemicals and electronics.

28. Licensing agreements also offered the advantage of allowing royalty and licence payments to be remitted at a higher "commercial rand" rate. They also assured the racist régime access to the important technologies it desperately needed to sustain itself. Those companies that claimed to have disinvested and yet retained still more profitable business links than direct investment could not be taken seriously. Far from weakening the economic base of apartheid, the so-called disinvestment measures of most transnational corporations were in fact strengthening it.

29. The addendum to Mr. Khalifa's report (E/CN.4/Sub.2/1989/9/Add.1) showed that a total of 552 enterprises should be added to the list of companies doing business with South Africa, whereas only 156 had disinvested.

30. Sanctions had not produced any dramatic disruption of the South African economy not because they were ineffective, as some would claim, but because they had not been seriously implemented. In his oral introduction, Mr. Khalifa had disclosed that the legislation on trade with South Africa adopted in Japan had been formulated in language so imprecise that Japanese countries had been able to circumvent it. In some countries, the competent authorities had not fully grasped the need to enforce sanctions. It was also discouraging to find that companies in certain south-east Asian countries, such as the Republic of Korea, Singapore and the province of Taiwan, moving into South Africa to take over from some of the transnational corporations. In contrast, she wished to express her appreciation to those countries in Europe and America which had prohibited by law any new investments in South Africa and to appeal to those countries that had enacted legislation to plug any existing loopholes.

31. The so-called reforms of the apartheid régime demonstrated that while sanctions had not disrupted the South African economy they had nevertheless had some effect. She also wished to express her appreciation to those countries which had tried to persuade the South African Government to

negotiate with the black population. Further efforts were needed in that domain and the African countries urged the international community to continue to exert pressure on the economy of South Africa until that country dismantled apartheid.

32. Mr. van BOVEN hoped that the South African authorities would finally issue a visa to the Special Rapporteur to enable him to visit South Africa and to submit a report based on his own experience.

33. Although he personally had no direct experience of the situation in South Africa, he found that although some reforms had been made to the South African régime, the latter continued to be based on a racial classification which the Special Rapporteur had rightly described as immoral, irrational and unacceptable. The black population still had no opportunity to take part in political life, racial discrimination and equality persisted and the state of emergency remained in effect as did the system of "homelands". That was the background to the study which the Special Rapporteur was compelled to submit to the Sub-Commission year after year.

34. In view of that situation, non-violent means of pressure must be mobilized, mainly by supporting the political organizations that were striving for change, the non-racial trade unions and the religious leaders and lawyers who were combating apartheid. In view of the genuine impact of selective sanctions, the United Nations bodies involved in combating apartheid, and primarily the Sub-Commission, should continue to act along those lines.

35. He particularly regretted that many companies in his own country, the Netherlands, appeared on the list of companies that maintained links with the South African régime. He drew attention to an error on page 12 of the English version of document E/CN.4/Sub.2/1989/9 in the statement, in the reply from Greece, to the effect that there were only two small Greek companies in South Africa with a total of only "19 employees, of whom 39 are black".

36. The new approach adopted by the Special Rapporteur, of interpreting the lists presented, was interesting and reflected the situation more accurately. He hoped that the Special Rapporteur would in future develop his study of the economic interests in South Africa.

37. Mr. CHERNICHENKO thanked Mr. Khalifa, the Special Rapporteur, for his report, whose quality and impartiality he had already been able to appreciate at the previous session of the Sub-Commission.

38. The developments described in the report spoke for themselves and could leave no doubt as to their interpretation. The members of the Sub-Commission could deduce that the racist régime of South Africa was maintaining its policies of apartheid, repression and segregation. Those facts were, moreover, proven and were not reported by individuals but by the South African authorities themselves who did not conceal the events that occurred in the country. The so-called ongoing reforms were only cosmetic and were not helping in any way to change the basic situation.

39. Although they were only partly effective the sanctions currently being applied against the South African régime were a reliable means of pressure which should, however, be increased. Accordingly, an appeal should be made to all political, economic and humanitarian circles. If, as had been said,

comprehensive sanctions might harm the South African population, it was a fact that partial sanctions could produce positive results and could be gradually implemented on a wide scale.

40. It was understandable that some United Nations experts had warned against measures that might lead to a blood-bath in South Africa, but in view of the absolute necessity to be rid of the apartheid régime and the South African's unwillingness to make concessions in order to achieve a peaceful settlement, the possibility of armed struggle could not be ruled out. Although the first steps towards a political solution were being taken in southern Africa, for example in Namibia, and although the foundations of the apartheid régime appeared to be weakening, it was by no means certain that the reforms promised by the South African Government would yield all the anticipated results.

41. The transnational corporations were continuing to collaborate with the apartheid régime and their private militias were co-operating mainly with the South African police with a view to destroying the opposition to the régime. The expert bodies responsible for human rights issues, including the Sub-Commission, should at least draw the attention of their parent bodies to certain crucial questions. He hoped that Mr. Khalifa would be able to continue his study and that the latter would induce the international community to seek ways of resolving the problems stemming from the harmful consequences of the assistance furnished to the racist and colonial régime of South Africa.

42. Mr. JOINET said that he wished to pay a tribute to the memory of a personal friend, Dulcie September, the representative of the African National Congress, who had been murdered.

43. He stressed that in the assistance provided to the South African régime the investments of transnational corporations were less important than the granting of credits, an area in which it was easier to evade sanctions.

44. Mrs. GABR (Observer for Egypt) congratulated the Special Rapporteur on his efforts since 1983 to shed full light on the human, political and economic aspects of assistance granted to the racist régime of South Africa.

45. Mr. Khalifa's report and the annex thereto showed clearly that a large number of companies continued to maintain links with the apartheid régime and that some had only partially terminated their activities in South Africa.

46. The existence of the apartheid régime was an insult to the dignity of the population of South Africa and to human dignity in general. Accordingly, countries should combine their efforts in a context of international solidarity to ensure that mandatory economic sanctions were implemented, since they were the only solution unanimously approved by all Governments for dismantling the apartheid régime.

47. Her Government was particularly anxious that all peace-loving countries should ensure that the enterprises within their competence discontinued exports of oil and petrochemical products to South Africa and that the disinvestment carried out by certain companies did not open up the possibility of other economic activities by other companies. Only the mandatory boycott of exports to South Africa would provide a peaceful solution to the economic, social and political problems of the black majority.



48. The co-operation of the various United Nations agencies was crucial, as the General Assembly had emphasized in resolution 43/92, when it had invited the Special Rapporteur to intensify direct contacts with the United Nations Centre on Transnational Corporations, the Centre Against Apartheid and the United Nations Council for Namibia.

INTERNATIONAL PEACE AND SECURITY AS AN ESSENTIAL CONDITION FOR THE ENJOYMENT OF HUMAN RIGHTS, ABOVE ALL THE RIGHT TO LIFE (agenda item 12)  
(E/CN.4/Sub.2/1988/2)

49. The CHAIRMAN invited the Deputy Director of the Centre for Human Rights to introduce agenda item 12.

50. Mr. NYAMEKYE (Deputy Director, Centre for Human Rights) recalled that agenda item 12 entitled "International peace and security as an essential condition for the enjoyment of human rights, above all the right to life" had been considered in 1982 and 1983 under a separate item but that at its thirty-seventh session, in 1984, the Sub-Commission had considered the matter under item 6 entitled "Question of the violation of human rights and fundamental freedoms". When adopting the provisional agenda for its thirty-eighth session, the Sub-Commission had decided to consider the issue as a separate item.

51. At its thirty-eighth session, in 1985, the Sub-Commission had, by resolution 1985/1, requested the Secretary-General, in the light of the comments and views of Member States, organizations of the United Nations system and non-governmental organizations, to submit to the Sub-Commission at its thirty-ninth session a report on the contribution of the Sub-Commission to the strengthening of international peace and security and the achievement of the objectives and tasks of the International Year of Peace. The report had been submitted to the Sub-Commission in document E/CN.4/Sub.2/1987/11.

52. Some resolutions adopted by the General Assembly at its forty-third session might also be of relevance for the consideration of agenda item 12. For instance, in resolution 43/125, the General Assembly had recognized, inter alia, that international peace and security were essential elements for the full realization of human rights, including the right to development, and had affirmed that a primary aim of international co-operation in the field of human rights was a life of freedom, dignity and peace for all peoples and every human being.

53. In resolution 43/111, the General Assembly had reaffirmed that all peoples had an inherent right to life and that the inherent dignity and the equal and inalienable rights of all members of the human family were the foundation of freedom, justice and peace in the world.

54. Finally, in resolution 1985/34, the Sub-Commission had decided, inter alia, to consider on a biennial basis, starting at its thirty-ninth session, the item entitled "International peace and security as an essential condition for the enjoyment of human rights, above all the right to life".

The meeting rose at 5.35 p.m.