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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-seventh session

SUMMARY RECORD OF THE 14th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 10 August 1995, at 10.30 a.m.

Chairman: Mr. MAXIM

later: Mr. EIDE

later: Mr. MAXIM

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GE.95-13353 (E)

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The meeting was called to order at 10.50 a.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1995/3, 4, 5 and 6; E/CN.4/1995/81)

1. Mr. ROSADA GRANADOS (Observer for Guatemala) said that the peace process now under way in his country presented a tremendous opportunity for Guatemalan society to achieve a lasting peace. A sustained and determined process of pacification was required, involving systematic measures to combat poverty, to reduce internal violence and to create consensus through dialogue and negotiations. A durable settlement to the internal armed conflict was also required as a prelude to the reconstruction of the country.

2. The fight against poverty would involve measures to strengthen internal security, as well as measures to promote investment, create jobs and raise levels of income and living standards. Only through such measures would it be possible to create stable conditions in which people could live in security and dignity.

3. The national reconciliation so vital to the creation of a stable and prosperous society would require decisive measures to eliminate discrimination and social exclusion. The prevalent "sectional" views of the crisis had to give way to a vision of Guatemalan society as a whole, which took into account the interests of all its different communities. Without such a national vision, it would be impossible to formulate the overall strategies needed to overcome Guatemala's many problems.

4. The armed conflict could be ended and a durable peace established only if all the various sections of society fully understood the aims of the negotiations now under way between the Government and the Unidad Revolucionaria Nacional Guatemalteca (URNG). The negotiations, which had been initiated following the Oslo Agreement, were directed at a package of structural changes, including basic reforms in the area of democratization, a comprehensive agreement on human rights, a coherent policy on the treatment of populations uprooted by the conflict, an agreement on the identities and rights of indigenous peoples, agrarian reforms, measures to strengthen civil authority, and a consensus on the role of the military in a democratic society. The ultimate aim was to create an electoral system and a national political pact which would reinforce the constitutional order.

5. The effects and consequences of negotiations, as well as their aims, had also to be understood if Guatemalan society was to be rebuilt on a sound basis and if Guatemalans were to develop a sense of themselves as a nation. Great determination would be needed to implement whatever agreements were reached.

6. The work of reconstruction implied the development of a national programme which would also promote and strengthen democratic reforms. Guatemala had begun to abandon authoritarian structures in 1982 and 1983, and while much progress had been made since that time, with basic democratic and judicial institutions now established, much remained to be done to consolidate those reforms and strengthen the democratic foundations which had been laid.

7. The opportunities presented by a successful conclusion to the negotiations now under way between the Government and the URNG could not be exaggerated. The Government was inclined to think that those negotiations had passed the point of no return and would be concluded successfully. However, their ultimate success would depend on the establishment of a system which promoted democratic participation and led to greater transparency in political life. A determined and consistent implementation of the agreements reached in the negotiations would create the opportunity to rethink Guatemalan society as one in which all citizens, irrespective of their origins, had a place. It would allow the definition of a national agenda and the formulation by one Government of Commitments which would be legally binding on future Governments. It would also help to create an ethos of governability, in which agreements and decisions might be fully implemented. It was vital that the beneficial consequences resulting from agreements should be immediately apparent, so that ordinary people would understand that they had an immediate impact on their lives in terms of ending the armed conflict and human rights violations and raising living standards.

8. Given the diversity of the groups which made up the Guatemalan population, the Government would need to show a great capacity for synthesis in order to reconcile the many conflicting demands. It was important not to allow one particular section of society to dominate at the expense of others.

9. The implementation of the recent Agreement on the Identity and Rights of Indigenous Peoples was a real challenge. It permitted the acceptance of customary law and new forms of political struggle. Answers had been found to agrarian problems, involving restitution and compensation. The law had been brought into a more objective relationship with culture, and 21 indigenous languages had been recognized for official purposes, laying the basis for acceptance of indigenous values. Similar agreements might be used to advantage in other countries having similar characteristics.

10. All in all, the negotiations opened up the prospect of finding non-violent solutions to the country's conflicts, leading to its political transformation and social regeneration. Office-holders would be seen to have duties, and not just privileges. Every effort would be made to conclude the negotiations as soon as possible in the best interests of the nation, so that the abuse of public authority would become a thing of the past.

11. The CHAIRMAN invited a representative of the Guatemalan opposition to take the floor.

12. Mr. ROSAL (International Educational Development Inc.) said that since 1982 Guatemala had been one of the most complicated and controversial cases dealt with by the Commission on Human Rights and the Sub-Commission, owing to the difficult human rights situation obtaining there, which, together with structural factors that had produced an unjust society in which the great majority of the population was marginalized, had led to the 30-year-old internal armed conflict. Violations of political, economic, social and cultural rights and racial discrimination affected mainly the Maya people, which constituted more than two thirds of the country's population. Since 1987, the URNG had been engaged in a serious process of negotiation

with the Government and Army of Guatemala in search of a political solution to the armed conflict and the establishment of a real, functional and participative democracy providing social justice.

13. The negotiating process had really come to life with the Oslo Agreement in 1990, which had made it possible for URNG to hold talks with all sectors of civil society and to achieve the first great national consensus - namely, that in order to guarantee a just and lasting peace in Guatemala it was not sufficient to end the armed conflict but would also be necessary to reach, through negotiations between UNRG and the Government and the Army, agreements to resolve the problems that had given rise to it. Since then civil society had insisted on participating, and URNG had supported that possibility.

14. There was some concern, both nationally and internationally, over the slowness of the negotiating process. Nevertheless, it must be borne in mind that solutions had to be found for problems which had existed for over 500 years and that in a polarized society such as that of Guatemala there were sectors tenaciously opposed to any agreement which might change the privileges which they had enjoyed for many generations, constituting an obstacle to the establishment of a democratic society. The negotiations had been held with three successive Governments. The difficulty of reaching agreements with the Government of Guatemala and the Army was reflected in the fact that more than two years had been required to finalize the Comprehensive Agreement on Human Rights; although universally accepted human rights were not being negotiated, an attempt was being made to carry out measures to guarantee the operation of such rights as were recognized in international instruments and which the State of Guatemala had a constitutional duty to promote and implement. In order to achieve positive results in such a complicated and tortuous negotiating process, assistance had been given by the Secretary-General of the United Nations through the moderator for the process and the technical teams that were supporting it, by the Group of Friendly Countries (Colombia, Spain, the United States of America, Mexico, Norway and Venezuela) and by the so-called "Four Councils" (World Council of Churches, United States National Council of Churches of Christ, Latin American Council of Churches, and World Lutheran Federation), which had offered their good offices to support the negotiating process at the most critical moments when it had been on the verge of being broken off.

15. The presence of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA) provided a window on the international community; it promoted confidence among the population most affected by human rights violations and had been important in protecting human rights organizations. Nevertheless, the two reports by MINUGUA and the reports by the independent expert, Ms. Monica Pinto, indicated that human rights were still being violated with alarming frequency, mostly by the State security forces, whose impunity the Government had been unable to combat.

16. It had to be acknowledged that significant progress had been made in the negotiations, the most important advance being the signing of the Agreement on the Identity and Rights of Indigenous Peoples. As a result, after several decades of advocating abstention, URNG had now called upon the population to participate in the general elections convened for 12 November. Security and

freedom were inadequate, but it was necessary for the people to exercise its democratic right through the vote. There was confidence that the people would elect representatives capable of implementing the agreements reached in the negotiations, a possibility that had been absent from the traditional political panorama.

17. Popular participation was being hampered by the militarization of society. The independent experts appointed for Guatemala by the Commission on Human Rights had drawn attention to the civil self-defence committees as sources of unmitigated violence by means of which the military controlled the rural population with impunity. Their immediate dissolution, together with the abolition of military commissioners, as recommended by the independent expert, could help to promote clean and transparent elections free from fear and threats.

18. The general elections were important but their effects were limited in time. The negotiating process was aimed at making profound changes in society in the medium and long term. The two were not mutually exclusive. The appropriate bodies of the United Nations, the Organization of American States and the European Union should provide the operational support needed to guarantee a clean and transparent election, including voter registration, freedom of organization, expression and mobilization, the casting and honest counting of votes, and respect for the election results. It was imperative that the international community should support the effort being made by Guatemalans to guarantee the building of a new multi-ethnic, multicultural and multilingual nation.

PROTECTION OF MINORITIES (agenda item 17) (continued) (E/CN.4/Sub.2/1995/33 and Add.1-2, 34 and 40; E/CN.4/Sub.2/1995/NGO/13,14 and 15)

FREEDOM OF MOVEMENT:

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

(b) POPULATION DISPLACEMENTS

(agenda item 18) (continued) (E/CN.4/Sub.2/1995/35; E/CN.4/1995/NGO/10 and 16)

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO RACISM, XENOPHOBIA, MINORITIES AND MIGRANT WORKERS (agenda item 20) (continued) (E/CN.4/Sub.2/1994/36 and Corr.1)

19. Ms. GUILLET (International Federation of Human Rights), speaking on agenda item 18, drew the Sub-Commission's attention to her organization's concerns regarding serious restrictions on freedom of movement within the European Union.

20. Even for citizens of the European Union, freedom of movement was far from being a reality. Under the terms of article 8A of the Treaty of Rome, which had been brought into force by the Treaty on the European Union on 1 November 1993, any citizen of the Union had the right to move freely within the territory of the Community. In reality, border controls within the Union were still carried out, particularly in respect of air or sea travel.

On 12 July 1994, the European Commission had submitted proposals to the Council aimed at eliminating such border checks within the Community. Again, although the provisions had been due to take effect by 31 December 1994, they were a long way from being implemented, since any decision by the Council had to be unanimous. Furthermore, those proposals also allowed a member State to reintroduce border controls for 30 days in the event of a serious threat to public order or internal security.

21. Another aspect of the problem was the failure to implement the Convention on the Application of the Schengen Agreement, which envisaged the phasing out of border controls between certain European Union States. The Convention had entered into force on 26 March 1995 for a trial period of three months. Italy and Greece, although signatories to the Convention, were insufficiently prepared and temporarily exempted from its provisions. Austria had signed the Convention on 26 April 1995 but would not participate fully in the system for another two years. Although the trial period had now expired and the Convention was theoretically fully operative between the six signatories, France had decided to invoke article 2 which allowed the temporary suspension of the Convention's provisions on grounds of national security or the maintenance of public order.

22. The degree of freedom of movement enjoyed by Community nationals thus depended on whether they were citizens of one of the Schengen area States and on whether or not the Convention had entered into force in a particular country. That clearly led to discrimination between community citizens of different nationalities.

23. Furthermore, the freedom of movement proclaimed in article 8A of the Treaty of Rome was enjoyed only by persons who were economically active or those who could prove that they had adequate health insurance or resources, or both. The most disadvantaged citizens were thus excluded from the enjoyment of freedom of movement.

24. The system led to a further type of discrimination between Community nationals and citizens from outside the Community residing legally within the territory of a member State. In principle, citizens of a non-Community State residing legally within the territory of a member State of the Union were confined to that territory. The freedom of movement proclaimed by the Treaty of Rome thus clearly discriminated against non-Community nationals. Non-Community nationals in possession of a valid residence permit for one of the State parties to the Convention could not move freely within the Schengen area for a period no longer than three months and were legally required to register with the authorities when entering a State in the area.

25. The entry into force of the Convention had also been affected by technical problems, in that the computer system used for external border controls did not always function satisfactorily. Those technical problems affected predominantly non-Community nationals required to undergo external border checks, apply for visas or register with the authorities in a country in the Schengen area. They were often obliged to wait for long periods and sometimes even detained without any guarantee of legal assistance.

26. With regard to employment, a meeting of Ministers of Justice and of the Interior on 20 June 1994 had adopted a resolution aimed at limiting the number of people entering the Union from countries outside it for the purposes of employment. According to that resolution, preference would be given to Community citizens, thus discriminating against people from outside the Community. That discrimination might conceivably be extended even to non-Community nationals already residing legally in one of the Community's member States.

27. Migrant workers would also suffer from restrictions imposed on family reunion. Ministers responsible for immigration in member States in a meeting in Copenhagen held on 1 and 2 June 1993 had adopted a resolution according to which the right to family reunion could be subject to the condition that the applicant was able to support his family without recourse to public assistance. Such provision appeared to violate the provisions of article 16 of the Universal Declaration of Human Rights, concerning the right to marry and found a family and the right of the family to protection by society and the State. It also violated articles 17 and 23 of the International Covenant on Civil and Political Rights and articles 9 and 10 of the Convention on the Rights of the Child concerning the right of children not to be separated from their families.

28. While recognizing the right to freedom of movement in theory, the Treaty on the European Union charged the Council with the task of drawing up a list of countries outside the Union whose nationals required a visa for admission to any member State. That practice amounted to a severe restriction on access to non-Community nationals, since a visa requirement imposed by one member State automatically applied to all other member States.

29. Another particular cause of concern was the recent trend towards harmonization within the European Union in policies relating to asylum. Recent developments had tended to restrict the scope of the 1951 Geneva Convention relating to the Status of Refugees. At a meeting in London on 1 December 1992, the immigration authorities of the European Community member States defined a number of concepts such as safe countries, manifestly unfounded applications and third party host country, although those concepts were not mentioned anywhere in the Geneva Convention, whose provisions had now been widely implemented in national legislations concerning asylum procedures.

30. The safe country concept implied that an accelerated procedure could be applied, without any of the safeguards provided for by the Geneva Convention. The distinction drawn between manifestly unfounded or inadmissible applications and the rest was also tantamount to operating an accelerated procedure. The concept of third party host country allowed European Union member States to exclude an asylum-seeker from the usual procedure on the grounds that he could or should have applied for asylum in another country and then return him to the country through which he had passed on the way.

31. By the same token, Ministers of Justice and Foreign Affairs at a meeting held on 9 March 1985 had signalled their agreement on a resolution concerning the minimum safeguards to be applied in asylum procedures. Under the terms of that resolution, an asylum-seeker whose application had been turned down as manifestly unfounded or because of a third party host country could be denied

the right to an appeal to stay proceedings. At the same time, the resolution gave no guarantee that all asylum applications, particularly those made at a border, would be dealt with by a competent specialized central authority. Finally, it denied nationals of one member State applying for asylum in another member State any right to go through the normal procedure.

32. FIDH was also concerned by moves to define a harmonized interpretation of article 1 of the 1951 Geneva Convention relating to the Status of Refugees; that article defined the term "refugee". The 1951 Convention was an international treaty and subject to the terms of the 1969 Vienna Convention on the Law of Treaties. Under the terms of article 35 of the 1951 Convention, the Office of the United Nations High Commissioner for Refugees was responsible for supervising the application of the provisions of the Convention. There could be no question of a group of States parties to the Convention, such as the member States of the European Union, agreeing on one particular and fixed interpretation of a text which was also binding on other States. Such "harmonization" was in all likelihood only a pretext for a general lowering of standards of protection for asylum-seekers to the level of the lowest common denominator.

33. FIDH hoped that the Sub-Commission would undertake a detailed study of the serious violations of freedom of movement in the European Union with a view to drafting specific recommendations to the Commission on Human Rights.

34. Mr. van WALT VAN PRAG (Pax Christi International) said that the United Nations had paid insufficient attention to the conflicts involving minorities, nations within States, conflicts between the rights of particular peoples and those of States and population displacements, which were often the root causes of many of the worst human rights violations. The establishment of the working group on minorities was a welcome development. It was to be hoped that the Working Group would be fully accessible to representatives of minority groups, since the important problems relating to minorities and other disenfranchised groups could not be constructively discussed without their participation.

35. That brought up the broader issue of the Sub-Commission's reluctance to act on human rights questions arising from conflicts involving minorities, peoples and occupied countries and territories. The Sub-Commission appeared increasingly loath to address even the worst human rights violations when they were committed in the name of preserving the "territorial integrity" of a United Nations Member State.

36. One example was the case of Tibet. In 1991, the Sub-Commission had expressed its concern at human rights violations which threatened the national, cultural and religious identity of the Tibetan people. Since then, however, events elsewhere had made some Sub-Commission members reluctant to take up the issue in those terms again because they could be accused by China of supporting the Tibetans' struggle for self-determination. The gross human rights violations perpetrated against individuals in Tibet were only symptoms of a much deeper problem. The cause of those violations lay in the colonialist nature of China's rule over Tibet, the violation of Tibet's right to self-determination and the continuation of the illegal occupation of that country. Members of the Sub-Commission must address the resulting human

rights violations. To pretend that the issue did not exist or to argue that condemning gross violations of human rights in Tibet was a political statement amounted to a refusal to act on the very kind of issue which the Sub-Commission had a duty to address.

37. It was therefore encouraging that the statement made by Mr. Fan Guoxiang under item 17, in which he addressed the political question, argued for real self-government for national or ethnic populations within multi-ethnic States. He had proposed that the central Government should essentially handle only defence and diplomatic affairs. If the Chinese Government were also to take such a position and implement it seriously, rather than increasing repression in Tibet and East Turkestan (Xinjiang), as it was doing at present, that would represent a major and positive reversal of policy.

38. A somewhat different example was the massive human rights violations perpetrated by Russian forces in Chechnya. Quite apart from the fact that Chechnya had been legally entitled under the Soviet Constitution to secede from the Union in 1991, Russian forces had grossly violated fundamental human rights and important provisions of humanitarian law. It was likely that more than 40,000 civilians had been killed by Russian troops, who had carried out indiscriminate bombing and shelling of civilian areas either to terrorize the population or to exterminate a large proportion of it and drive out the rest.

39. If the Sub-Commission failed to address such flagrant human rights violations, one might well ask what a Government had to do before the Sub-Commission would feel compelled to act. In the first two months alone of the Russian attack on Chechnya, more civilians had died than in the war in Bosnia and Herzegovina and the destruction of civilian homes and infrastructure in many cities and villages was a clear violation of the Geneva Conventions. The fact that negotiations were taking place in Grozny was no excuse for silence on the part of the Sub-Commission. On the contrary, the parties involved needed encouragement to continue the negotiations, despite strong pressure from various sides to abandon them. Silence on the part of the Sub-Commission would be interpreted as indifference, or worse, of support for Russia in its oppression of a Muslim people. The failure of the United Nations to condemn the massacre had led to most Chechens losing their faith in the United Nations and the feeling that they had been abandoned to their fate. While some still believed in negotiation as a way of saving their country, others were determined to fight for their survival. If the United Nations continued to send out signals that it had abandoned the Chechens and that Russia could flout the most fundamental principles of the Charter of the United Nations and other international treaties with impunity, it would be playing into the hands of those on both sides who wanted the war to continue. The Sub-Commission, whose independence placed it in a stronger position to speak out than other United Nations bodies, had a responsibility to send the right message. By failing to seize an opportunity to encourage negotiations, it would be encouraging further bloodshed.

40, Another appalling human rights situation had arisen from events in Bougainville, involving abuses by central government forces and the violation of a people’s right to self-determination. In that particular case, resolutions had been passed by the Sub-Commission and, subsequently, by the Commission, and they had resulted in the positive involvement of the

Secretary-General in efforts to achieve peace in the region. That example might serve to encourage the Sub-Commission to take such action in other cases. In particular, the worsening repression in Kosovo, the continuing repression by Indonesia in West Papua (Arian Jaya), where a massacre had occurred only recently, Acheh and the South Maluccas merited the urgent attention of the Sub-Commission. In Nagaland, the high levels of violence had caused suffering to ordinary people. The situation there would only be resolved by dialogue, not by armed force. The same was true of the situation in the Chittagong Hill Tracts of Bangladesh. Pax Christi noted the Bangladesh Government's statement that it had nothing to hide and looked forward to seeing the report of the National Inquiry Commission. Another situation to which the Sub-Commission had so far paid little attention was that of the Ogoni people in Nigeria.

41. The improved relations between Greece and Albania had fortunately created a better climate for resolving the grievances of the Greek minority in Albania and resulted in the release of their five leaders (the "OMONIA 5"). However, it was a matter of concern that the Albanian Parliament had still not passed legislation giving ethnic Greek children the right to be educated in their mother tongue.

42. With regard to population displacements, a question arose as to the rights of displaced persons and the obligation of States to promote the repatriation and rehabilitation of displaced populations. For example, what were Russia's obligations towards the Crimean Tatars whom it deported 50 years ago? One quarter of the population had perished, and members of that community had only recently been allowed to return to their homeland, the Crimea, where they faced the hostility of Russian settlers. There could be no doubt that Russia had a duty to rehabilitate the Tatars, restore their property and provide compensation for the consequences of the illegal deportation. That obligation applied to many other Governments responsible for deported or displaced communities.

43. Mr. KOTHARI (Habitat International Coalition), speaking on agenda item 17, drew attention to the denial of economic, social and cultural rights to communities that had deliberately not been given minority status. The situation of the Palestinians who had remained in the State of Israel after 1948 was a case in point. Those 850,000 Arab citizens of Israel were a forgotten community, and most of their villages did not even exist on Israeli maps. Even the few villages that had been recognized were not being fully provided with services. The inhabitants were subjected to house demolition, land confiscation, arbitrary eviction and the deliberate denial of services, like the Palestinians in the occupied Arab territories. The systematic violations of basic rights were particularly serious in the case of the Bedouin Arabs residing in the Negev. In the light of those disturbing facts, Habitat International Coalition was pleased to report the formation of an Arab Coordinating Committee for Housing Rights in Israel, a representative of which would now give further details.

44. Mr. KHALIL (Habitat International Coalition) said that, although Arabs represented 18 per cent of the population of Israel and were officially citizens, they were still subjected to discrimination. Arabs living in Israel were not considered to be a national minority. Many resided in villages that

were not officially recognized and were therefore denied basic services. The Government had expropriated their land and was planning to change the demographic composition of certain areas where Arabs constituted 50 per cent of the population but owned only 5 per cent of the land. Under national building regulations, Arabs were denied the right to construct their own housing, and some Arab houses built before the regulations had come into force had been demolished. In the Negev, Arabs had been forced to abandon their houses and everything in them, including livestock. Attempts were being made to increase the relative number of Jews in mixed populations. Government funds were available to subsidize housing for Jews, but Arabs had to rely on private sources. In some cases three Arab families lived in one tiny corrugated-iron dwelling. In July 1995, some 200 tribal Arabs had been forced to leave areas where they had been living since before the establishment of Israel.

45. In view of the foregoing situation, Habitat International Coalition urged the Sub-Commission to take the question up and called upon the Government of Israel to give equal rights to its Arab citizens, to end the discrimination with regard to housing, to stop forcibly evicting Arabs, to provide basic services for Arabs living in unrecognized villages, to stop preventing Arabs from building their own homes, and to recognize the rights of the Bedouin.

46. Mr. EIDE took the Chair.

47. Mr. FAN Guoxiang said that he was no longer an official representative of China and his status was accordingly that of an independent expert; any views expressed by him were therefore personal.

48. He had made a few general remarks under agenda item 18 without mentioning any particular country. A non-governmental organization had commented on those remarks and he would like to reply. The representative concerned had stated that Tibet was being illegally occupied by China. As had been made clear by representatives of China, Tibet had been part of China since the thirteenth century. There was no question of Chinese occupation. Tibetans were Chinese. China had 56 nationalities. Tibet was not a country and not a single United Nations member had recognized Tibet as such. That remark by the NGO representative was therefore irrelevant.

49. The NGO concerned had also confused self-determination and self-government. Self-government could involve different degrees of autonomy. In many States more than one nationality existed because of historical and cultural reasons. It was not extraordinary that more than one ethnic group should exist within the territory of a State. A redrawing of national boundaries on the basis of ethnology was not however practical.

50. The NGO representative had alleged that the ideas he had attributed to Mr. Fan would represent a reversal of Chinese policy. That statement was not true; he had not said anything about Chinese Government policy. The statement by the NGO was clearly designed to create confusion. Indeed he would not be surprised if there were policy ties between the NGO representative and the Dalai Lama.

51. He was ready to discuss any matter of common interest with any NGO provided the discussion was pursued in an open-minded way. If however the NGO was trying to do something in another direction, that would be difficult to accept.

52. Mr. CHERNICHENKO said that, at the previous session, the Sub-Commission had agreed that NGOs should not make statements relating to item 6 when another item of the agenda was being considered. He could not recollect whether that decision had related only to the previous session or whether it should be regarded as a permanent procedure. He had raised the issue as one NGO had spoken to item 18 but basically what he had said raised issues more appropriately handled under item 6.

53. The CHAIRMAN said that it was his recollection that the Sub-Commission had urged NGOs not to bring up violations under other agenda items but that it might be appropriate to refer to item 6 in order to illustrate issues under other agenda items. The Sub-Commission would require to maintain a careful balance.

54. Mrs. PALLEY supported the Chairman. She had indicated very strongly at the previous session that it might be essential to provide particular examples in order to illustrate principles and circumstances.

55. The CHAIRMAN said it was his understanding that the Sub-Commission would not rule such references out of order unless they were very clearly repetitions of item 6 issues. It was quite appropriate to illustrate problems under other agenda items by such references.

56. Ms. GRAF (International League for the Rights and Liberation of Peoples), speaking on item 17, said that her organization was deeply concerned about the widespread, global problem of the continued denial of the rights of minorities. Although in the Israeli occupied territories some effort to solve the situation had been made, there had been little improvement for Israeli citizens of Arab origin living within the cease-fire line of 1948. The Palestinian Arab citizens of Israel, with a population of 800,000, accounted for 17 per cent of Israeli citizens. Unlike many other minorities, they were not an immigrant population far removed from their homeland; Palestinians had had close geographical and historical ties to their land for countless generations and were the descendants of the devastated community of 150,000 people who had remained within the cease-fire lines after the events of 1948, to find themselves within the borders of the State of Israel.

57. Thousands of Israeli-Arab citizens lived, as they had been living for generations before the creation of the State of Israel, on their ancestral land in so-called "unrecognized" villages, without any infrastructure, social services, schools, water, electricity or sewage system. "Unrecognized" meant that those villages did not figure on Israeli maps.

58. The Land Laws passed by the State of Israel showed clearly the discriminatory policies towards the Arab minority. According to those laws, all the land in the State was the sole property of the Jewish people. In other words, not all the citizens of Israel could own land. "National" institutions served only nationals, or people of the Jewish faith, while

governmental institutions served citizens of Israel, both Jews and Arabs. National institutions owned 92 per cent of the land of Israel. Arab citizens of Israel, who constituted 18 per cent of the total population, were deprived of the use of that national land by the provisions of the Jewish National Fund Charter, which considered the land as redeemed by the Jewish people in perpetuity. As a result, the national lands of Israel not only belonged to Israeli Jews, but to all Jews residing anywhere, who were often the nationals of other countries. The national institutions developed 9 per cent of the land of Israel for agriculture, industry, social services, housing and settlements, which benefited only Israeli Jews, with the exclusion of the Israeli-Arab minority.

59. Since the lands on which the unrecognized Arab villages were located were excluded from the maps, those areas had been classified as agricultural land. That meant that the villages were automatically rendered illegal because the law did not permit building on agricultural land. Houses in the unrecognized villages were likewise illegal since they were not in approved areas, even though many of those houses had been built before the law was passed, or even before the State of Israel. According to the Planning and Building Law of 1965, there was only one solution for an illegal house, namely, evacuation and demolition. Demolition orders on Arab houses in the unrecognized villages in the North and in the Negev desert in the South continued to be issued. Those who opposed such orders were brought to court, fined, put in prison and their houses were demolished.

60. In the Negev region, 280,000 Jewish citizens lived in 180 settlements and towns all fully equipped and serviced, while under the pretext of development and modernization some 100,000 Bedouin from unrecognized villages were crowded together to live in only seven towns; of these, 50,000 were herded into makeshift towns without any infrastructure and were consequently unproductive because there were no employment possibilities. In the Al-Bukar area near Negev Hill, people continued to receive demolition orders. In 1992 seven families were evicted without a court order. The issue had been brought to the Knesset and in consequence the seven families had been transferred to another location, Abdat, with promises of a parcel of land in compensation for the land repossessed by the State. To date, those families continued to live without water, in a bordered compound, as in a ghetto. The 50 children had no school and had not received any education since 1992. The information research centre ROOTS estimated that in the Negev, 762,000 dunams of land were in Arab hands. Israel had offered to recognize the claims of only 20 per cent of that land and to alter the status of some unrecognized villages by supplying services as compensation.

61. Successive Israeli Governments had refused to provide the residents of the unrecognized villages with basic services, such as electricity, water, education, transportation and health-care centres. That policy had been continually reaffirmed despite repeated calls by the residents for access to such services in view of the fact that they were also citizens of the State. To make matters worse, in 1981 the Israeli Planning and Building Law had been amended to make it illegal for unlicensed buildings to be connected to basic services. One hundred and thirty populated areas were not connected to the water network. In addition to the fact that the cost of transporting water was high, a considerable effort was needed, the quantity of water available

was insufficient to meet the needs of the villagers and the water was sometimes unfit for drinking purposes. Consequently disease had spread among the residents, particularly among children. None of the unrecognized villages was connected to the sewage network while thousands of units built from corrugated iron or tents lacked bathrooms. Any attempt to build a bathroom outside the house was illegal and the owners were fined and demolition orders issued. None of the unrecognized villages was connected with the electricity network, apart from one which had been connected by mistake. Most of the unrecognized villages were located far from the main roads while the neighbouring Jewish settlements enjoyed road networks which could not be used by the Arabs. That often resulted in school children having to walk 20 kilometres to reach their school. Health services were lacking in the unrecognized Arab villages with the exception of the few established NGOs permitted by the Israeli Ministry of Health to provide health care for the Arab Israelis. There were only 10 elementary schools in the hundreds of unrecognized villages with the result that a huge number of students were forced to spend hours commuting every week just to reach the nearest schools.

62. The International League for the Rights and Liberation of Peoples requested that the rights of the Arab minority in Israel be guaranteed according to the international human rights instruments to which Israel was a party, ensuring equal citizenship, and that all the unrecognized Arab villages be officially recognized by Israel and be provided with all civic services.

63. Mr. NABI FAI (International Islamic Federation of Student Organizations), speaking on item 18, said that perhaps the purest expression of freedom was that of movement. The Berlin Wall had not been a defensive barrier to keep enemies of Germany out but rather it was a wall to keep ordinary citizens belonging to the same family away from each other. The Berlin Wall had crumbled but there were many more Berlin walls with different names such as the cease-fire line in the occupied State of Jammu and Kashmir.

64. Europeans had realized that freedom of movement was fundamental to all economic freedoms and had adopted legislative measures guaranteeing that very important right. That legislation had sought to ensure that a citizen of any member of the European community could live and work without restriction in the member State of his choice.

65. Unfortunately there were still areas of the world which restricted freedom of movement by the people. The leaders of the All Parties Hurriyet Conference who had wished to participate in the current session of the Sub-Commission had been prevented from doing so and held against their will by the Indian Government; three of them had been declared to be prisoners of conscience by Amnesty International.

66. It was difficult for people like the people of Jammu and Kashmir to comprehend the real significance of the Charter of the United Nations and the Universal Declaration of Human Rights. To them, the principles announced in those documents were never real. The reality was otherwise because people were arrested as long as their tormentors pleased and there was no recourse to legal defence. How could those people repose their trust in the principles of the United Nations when they saw that those who violated the will of the United Nations were not placed under the economic and political pressure

specified by article 13, paragraph 2, of the Universal Declaration of Human Rights and article 12, paragraph 2, of the International Covenant on Civil and Political Rights? The Sub-Commission should examine whether or not the behaviour of a member State was in accordance with the pledge it had made under Articles 55 and 56 of the Charter.

67. The United Nations had a stake in the substance of that right in Indian-occupied Kashmir. Since 1947 the people of that land had been unable to avail themselves of their right to internal and transnational movement. Instead they suffered the pain of four displacements, expulsions, exile and refusal to return. The Kashmiri refugees, overshadowed by international crises from Bosnia to Somalia, said that the world had forgotten them.

68. He urged the Sub-Commission to apply Economic and Social Council resolution 1990/78 for the benefit of those who had been denied their right of freedom of movement and to provide a coordinated response in alleviating their conditions. If a State was not in compliance with the will of the United Nations, effective steps should be taken to ensure that crimes against humanity were brought to an end. It was in the interests of a peaceful world order that no State should remain outside the jurisdiction of those civil laws.

69. He appealed to the Sub-Commission in the name of humanity and justice to help stop the atrocities afflicting the innocent people of Kashmir.

70. Mr. BISHOP (African Commission of Health and Human Rights Promoters), speaking on item 17, said that while California Legislative Proposition 187 might appear to be ethnically neutral, its effects would fall disproportionately on ethnic minority groups, thus compounding the climate of already existing hostility for its migrant workers and their families.

71. Supreme Court Ruling 1992 had found Proposition 187 to be unconstitutional in that it denied the child, although born in the United States - which constitutes citizenship - the right to an education and access to health care. It was a potential public health risk in its denial of health care to children risking their exposure to preventable and communicable childhood diseases. Its potential to compound the problem of infant mortality was evident in its denial of pre-natal health care to potential mothers who were alleged or proven to be illegal immigrants. Proposition 187 involved citizens, teachers and health-care providers, as agents of the State in the reporting process to the Immigration and Naturalization Service of cases of suspicion of a person’s immigration status. A potential danger was that suspicion of illegal status would be based on ethnic distinction and language as was often the case in California’s ethnic discrimination pattern.

72. The African Commission of Health and Human Rights Promoters also wished to invite the attention of the Sub-Commission to issues affecting ethnic, cultural and linguistic minorities of African ancestry in Belize, Central America and Guyana. Shifts in population composition in which persons of African ancestry had been grouped as minorities raised concern regarding the protection of their fundamental human rights. The growing incidences of discrimination as in the case of African ethnic minorities in Belize whose linguistic and cultural differences were the prime causes of

their marginalization from the culturally dominant groups warranted the attention of the Sub-Commission as well as that of the inter-sessional working group on minorities.

73. Guyana was also a country divided on racial, ethnic and linguistic lines. Its history of slavery and colonialism had left the country challenged by the racial conflict that was played out in its internal economic, social and political life. Reports on its recent election and government selection had raised concerns of racial discrimination and ethnic conflict.

74. The African Commission of Health and Human Rights Promoters recommended that the Sub-Commission appoint a country specific rapporteur to study the concerns of English-speaking and other minorities of African ancestry in Central and South American countries and the Caribbean. It also recommended that there be a coordinated effort to bring together the reports of Mr. van Boven (E/CN.4/Sub.2/1993/8), Mr. Eide (E/CN.4/Sub.2/1994/36) and Mr. Glélé-Ahanhanzo (E/CN.4/1995/78/Add.1). In conclusion it would recommend that the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance should return to the United States to continue his study.

75. Mr. CHAPMAN (African Commission of Health and Human Rights Promoters), speaking on item 20, said that Mr. Eide's 1993 report (E/CN.4/Sub.2/1993/34) had indicated that the purpose of affirmative action was to advance equality and the enjoyment of human rights within societies where in the past there had been systematic discrimination, whether social or political. A recent report reviewing the United States Government's affirmative action programmes had found problems with purchasing programmes which reserved federal contracts for companies owned by African-Americans. Further, the United States Supreme Court, which once had supported affirmative action programmes to offset past racial discrimination, was currently rejecting such programmes on the basis that they provided preferential treatment based on race. For example, in June 1995, the Court had held that the use of race as the main factor in drawing electoral district lines was unconstitutional.

76. Justice Ginsberg's dissent had argued that Georgia's redistricting plan was predominately based on other non-racial factors, such as keeping political subdivisions intact. Justice Ginsberg had further indicated that African-Americans had the same right to seek and secure group recognition in the delineation of voting districts as any other minority group, such as the Chinese-Americans. To treat African-Americans in a dissimilar fashion would shut out the very minority group whose history in the United States had given birth to the Equal Protection Clause. Justice Ginsberg had also stated that special circumstances justified vigilant judicial inspection to protect minority voters.

77. African-Americans had also suffered religious discrimination. In January 1994, Nation of Islam members had been injured when white police, allegedly responding to a robbery-in-progress call, had forced their way into one of their mosques in New York.

78. The systematic discrimination against African-Americans manifested itself most clearly in their inability to wield political, economic and social power because of gross educational disparities, resulting in a disturbing rate of unemployment. A lack of professional ability was not at issue, but the fact that the educational system had failed to prepare African-Americans and other minorities for the workplace.

79. His organization recommended that the Sub-Commission should investigate the situation of African-Americans and other descendants of enslaved minorities to determine if that past enslavement had created conditions rendering the exercise of their rights to self-determination and equality impossible within the context of the civil, legal and political systems in which they found themselves. Applauding the establishment of the inter-sessional working group on minorities, it requested that its meetings should be scheduled within a reasonable time prior to the convening of Sub-Commission sessions; and that the participation in the Sub-Commission of non-governmental organizations, especially those lacking consultative status with the Economic and Social Council, should be made less restrictive.

80. His organization also recommended that the Sub-Commission should draft a resolution requesting additional funding for the Centre for Human Rights, to assist treaty-monitoring bodies and special rapporteurs in their useful work, including follow-up visits to countries, of investigating and exposing acts of discrimination against minorities. The Sub-Commission should also draft a resolution establishing a cohesive minority-rights programme.

81. Mr. Maxim resumed the Chair.

82. Mrs. MARKIDES (Observer for Cyprus), thanking Mr. Eide for his working paper on enclaved groups (E/CN.4/Sub.2/1995/34), said that she wished to elaborate on the tragic situation of the few Greek Cypriots still remaining in the Turkish-occupied Karpas peninsula. It would be recalled that Turkey's responsibility in the north of the Republic of Cyprus, by reason of the presence of its armed forces there, had been established by the European Commission on Human Rights in its decision on the admissibility of the third application of Cyprus against Turkey.

83. Although about 200,000 Greek Cypriots had been expelled after the 1974 Turkish invasion, 22,000 had remained under Turkish occupation. Turkey, whose strategy was to change the demographic structure of the territory as a first step towards eventual annexation, had brutally expelled enclaved Greek Cypriots, replacing them with Turkish settlers. The Third Vienna Agreement had been reached in 1975 between the two communities, and had provided, inter alia, for the right to return of all those expelled and for the freedom of movement and improvement of the living conditions of enclaved Greek Cypriots, as well as educational, religious and health-care facilities for them. Further expulsions were to be terminated and priority given to the reuniting families; and the United Nations Force in Cyprus (UNFICYP) was to be given free access to those areas. The Turkish side, however, had never honoured any of those commitments, but had instead deliberately so pressured, intimidated and persecuted the enclaved Greek Cypriots that at the current time only 500 remained. It should be noted that the European Commission on

Human Rights had found Turkey responsible for refusing to allow the return of Greek Cypriots to their families. Those few enclaved persons who had remained lived under appalling conditions, with daily violation of their human rights, as attested to in the pertinent reports of the United Nations Secretary-General. Their movement outside their villages was severely restricted; they were forbidden to cultivate their land or to fish, and thus depended mainly on food supplies and financial aid sent through UNFICYP. The United Nations forces were also restricted in their freedom of movement and their access to the enclaved persons. Greek Cypriot doctors were not allowed to visit the enclaved persons and their medical treatment was primitive. There were no priests to help them practise their religion, and access to holy sites was restricted. Educational facilities were inadequate, with only three teachers remaining under continuous threat; textbooks were censored by the occupation regime, and all Greek Cypriot secondary schools had been closed. Children studying as a result in government-controlled areas were allowed to visit their parents only during vacations, or not at all beyond a certain age. Only a few days earlier, the occupation regime, in a further attempt to force them out, had imposed fines on any enclaved Greek Cypriots and Maronites who remained in government-controlled areas for more than five days.

84. She appealed to the Sub-Commission to proclaim to the international community that such continued violations of the human rights of Greek Cypriots in the Turkish-occupied area could no longer be tolerated. It should be noted that the previous week a bill had been introduced in the United States House of Representatives directing the President to take several actions to eliminate the restrictions on the freedom and human rights of the enclaved people.

85. Mrs. ANDREEVSKA (Observer for The former Yugoslav Republic of Macedonia), speaking under agenda item 17, said that freedom of religion and belief was constantly being infringed in Europe and throughout the world. Many countries had several national, ethnic, religious and linguistic groups within their borders. Such pluralism was an enrichment, and those groups must be included in all sectors of society without discrimination, as the necessary prerequisite for securing peace, justice, stability and democracy.

86. Her country believed that all national minorities had the right to be recognized and enjoy all legal rights and guarantees acknowledged by international treaties and by the final documents of the Organization for Security and Cooperation in Europe, especially the Copenhagen Final Document of 1990. The issue was of great importance for the new Europe, as evidenced by the adoption by the Council of Europe of the Framework Convention for the Protection of National Minorities, to which the Republic of Macedonia was prepared to accede. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the General Assembly in 1993 had set progressive standards and guidelines on minority rights. Moreover, General Comment No. 23 adopted by the Human Rights Committee in interpretation of article 27 of the International Covenant on Civil and Political Rights helped to explain several issues in connection with national minorities that were very important for pluralism and the participation of different groups. In order to monitor the implementation of the Declaration, her Government believed that it would be very helpful to

Governments if, along with a working group and a special rapporteur, a high commissioner on national minorities were appointed to assist them in their day-to-day work and facilitate a fruitful exchange of opinions.

87. She welcomed the Sub-Commission's opening of the session of the inter-sessional working group on minority rights to representatives of minorities, whether or not they had consultative status, and appreciated the attention the Sub-Commission was paying to the issue of national minorities. Clearly, the Centre for Human Rights was inadequately funded for the purpose.

88. A convention on national minority rights was needed in order to achieve the common goals of securing universal respect for the human rights and fundamental freedoms of all, regardless of national, ethnic, confessional, linguistic and religious affiliation, the recognition and protection of still unrecognized national minorities and of their ethnic, cultural, linguistic and religious identity, and the right to choose to belong to a national minority without detrimental consequences.

89. Ms. KALNIETE (Observer for Latvia) said that while her Government was open to reasonable and constructive criticism and recommendations for the strengthening of democracy, the rule of law and civil society, some of the remarks addressed to Latvia in the Sub-Commission needed to be clarified. During the five years since Latvia had re-established its independence much had been accomplished in the protection and promotion of the rights of minorities. A signatory of the European Convention on Human Rights and the Council of Europe's Framework Convention for the Protection of National Minorities, Latvia expected early ratification of the latter since most of its provisions were already contained in its 1991 Law on the unrestricted development and the right to cultural autonomy of Latvia's nationalities and ethnic groups. According to its 1994 Law on Citizenship, all persons, regardless of ethnic origin, who had been citizens of the independent Republic of Latvia in 1940, and their descendants, were citizens, thus establishing the principle of the Republic of Latvia's legal continuity. About 71 per cent of Latvia's registered residents were citizens, among them more than 35 per cent of all non-ethnic Latvians such as Russians or Poles. All legal permanent residents of Latvia, regardless of their ethnic, religious or social background could, moreover, apply for citizenship under the naturalization provisions of the Law on Citizenship. Restrictions applied only to individuals who had committed unconstitutional acts, had been members of foreign security or armed forces, had belonged to organizations hostile to the Republic of Latvia or had served certain types of criminal sentences. The law granted priority to residents born in Latvia or having entered as minors, but the general requirements were residence in Latvia for five years, knowledge of the language, Constitution and history, a loyalty oath, a legal source of income and renunciation of former citizenship. Before its adoption, the Law on Citizenship had been evaluated several times by the Council of Europe and the then Conference for Security and Cooperation in Europe and their recommendations had been taken into account. Its provisions had been determined to be in accordance with international norms, given Latvia's unique legal and historical framework.

90. The Government had created a Naturalization Board early in 1995 and no complaints had been received by international monitors of the Organization for Security and Cooperation in Europe. As of June 1995, the Naturalization Board had received almost 1,400 applications for naturalization, about 47 per cent of which from Russians, 19 per cent from Estonians and Lithuanians and 11 per cent from Belarusians.

91. In order to regulate the legal status of aliens resident in Latvia prior to July 1992, Parliament had in April adopted a law on the status of former citizens of the Soviet Union who were not citizens of Latvia or any other State. The law guaranteed the right of such individuals to reside freely anywhere in Latvia and to freely leave and return to Latvia as a place of permanent residence, to have family members reside with them, not to be expelled from Latvia except on legal grounds and unless another country agreed to admit them, to preserve their native language and culture, to receive the court assistance of an interpreter and to exercise the right of choice of language when communicating with State authorities. Their other economic and individual rights and freedoms were determined by the 1991 Constitutional Law on the Rights and Obligations of the Citizen and the Person.

92. Latvia was striving to integrate populations that had been transferred into its territory during 50 years by the Soviet occupying power. Ethnic Latvians constituted only 52 per cent of the total population, but due to its successful minority policies, Latvia could serve as an example. It had no ethnic conflicts or civil war, and its migration record spoke for itself. Her Government was confident that factors militating against democracy were under control.

93. Mr. TANDAR (Observer for Afghanistan), speaking on agenda items 17 and 18, said that for geographical and historical reasons, Afghanistan was a multi-ethnic, multicultural, multi-linguistic and multi-religious country. While it was not difficult to identify its minority groups, the majority posed more of a problem because its linguistic and ethnic distribution did not correspond to religious distribution, and its ethnic and/or religious distribution did not coincide with geographical distribution.

94. Nevertheless, the inter-ethnic and interreligious harmony of the Afghan people had been much in evidence during their resistance to the army of occupation. In fact, throughout its history, Afghanistan had never been confronted by ethnic or religious conflicts, despite certain simplistic statements bandied about in parts of the press. No minority group had ever faced any political, legal or constitutional obstacles to the speaking of its language, the practice of its religion and the enjoyment of its culture; and tolerance was deeply embedded in Afghan society. Since the resistance forces had taken over, the representatives of all the ethnic and religious groups had participated in the exercise of power. Provincial governments were run by those originating in the province. There was freedom for the religious minorities. The media carried articles and programmes in official and regional languages and in minority languages. Such plurality constituted an immense wealth for the country and it must be safeguarded at all costs.

95. No region had been spared by the invasion. Six million Afghans had gone into exile, but in the last three years since the resistance had come to power, 3 million exiles had returned, and people were returning in increasing numbers. That pointed to a clear improvement in the human rights situation in Afghanistan.

96. In the event of an armed conflict, there were three levels of intervention open to the international community, before, during and after the event. The first level concerned preventive measures. For example, at the first level, the satellite tracking of troop concentrations and military preparations could enable the United Nations Security Council to monitor and to take appropriate action to prevent a conflict. Mr. Joinet had pointed to the need for preventive measures to preclude a repetition of the Rwandan tragedy in Burundi. Afghanistan would support the draft resolution on that subject.

97. At the second level, the international community could also take action during the exile and displacement of populations through its various agencies dealing with refugees, as could non-governmental organizations, although some situations that were ignored by the mass media did not receive the kind of assistance they needed.

98. At the third level, the international community could act to facilitate the return of displaced persons or refugees. In political terms, it should ensure that return was voluntary, that human rights were guaranteed and that the individual incurred no risk in his country of origin. In material terms, emergency assistance was necessary but, in addition, the civilian populations who were always the primary target of military operations would need further assistance from United Nations agencies and non-governmental organizations in order to rehabilitate and rebuild health, educational, economic and social infrastructures. Had such programmes been undertaken in Afghanistan, a much greater number of his compatriots would have returned to the country.

The meeting rose at 1 p.m.