

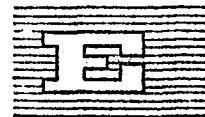
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COMMISSION ON HUMAN RIGHTS

Thirty-eighth session

SUMMARY RECORD OF THE 35th MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 24 February 1982, at 10 a.m.

Chairman:

Mr. GARVALOV

(Bulgaria)

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Report of the Sub-Commission on Prevention of Discrimination and Protection of
Minorities on its thirty-fourth session (continued)

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The meeting was called to order at 10.25 a.m.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS THIRTY-FOURTH SESSION (agenda item 20) (continued) (E/CN.4/1512; E/CN.4/1982/NGO/5; E/CN.4/1982/L.28)

1. Mr. HUTTON (Australia) recalled that, at its previous session, the Commission had decided for the first time to accord some priority to its consideration of the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. During the debate, a number of delegations had criticized the work of the Sub-Commission at its thirty-third session and expressed the view that certain of its members had not abided strictly enough by their terms of reference. Other delegations, including his own, had expressed their confidence in the Sub-Commission and in the value of its work for the protection of human rights.
2. The discussion had proved constructive and the Sub-Commission's report on its work at its thirty-fourth session (E/CN.4/1512), which was more effectively presented, clearly indicated the specific matters on which action or consideration by the Commission was requested. A very interesting discussion had also taken place in the Sub-Commission on the nature of that body, its proper role and its relationship with the Commission.
3. As to the nature of the Sub-Commission, his delegation had expressed the previous year its strong reservations about the practice among Sub-Commission members of appointing alternates. Other delegations had expressed concern at the previous session that the practice seemed to persist although the Commission had deemed it unsuitable in its resolution 17 (XXXVII). The appointment of alternates had an adverse effect on the nature and quality of debate, particularly where alternates were drawn from the staff of permanent missions at Geneva and, with some exceptions, lacked the requisite expertise to make a useful contribution to the work of the Sub-Commission.
4. As to the role of the Sub-Commission, his delegation was pleased to observe that many members of the Sub-Commission thought that their work should complement that of the Commission within the over-all joint effort by both bodies to promote human rights. The Sub-Commission had therefore been right to introduce, by its decision 2 (XXXIV), a new item on its agenda to permit more detailed discussion on its status and activities.
5. At the last session of the Sub-Commission, one member had stated that it had become too political a body in that it had taken upon itself the task of encouraging governments towards certain actions. According to that member, it was not for the Sub-Commission to pass condemnatory judgements on the actions of individual governments, that was the prerogative of a Government body such as the Commission. In other words, the Sub-Commission should focus its efforts on the study of the obstacles facing the realization of human rights and on the encouragement of measures to promote enjoyment of those rights.
6. All those ideas were very interesting. The tasks of the Sub-Commission had been formally defined in general terms only, so as to allow that body maximum flexibility of action compatible with its purpose. Under its terms of reference,

the Sub-Commission was responsible for undertaking studies and making recommendations on human rights questions within its competence; preparing reports for use by the Commission in its examination of human rights violations and bringing to the attention of the Commission through confidential or other procedures those situations seeming to reveal a consistent pattern of gross violations of human rights.

7. It was quite obviously intended, when those terms of reference were drawn up, that the Sub-Commission should be a forum in which independent experts might investigate general problems and developments relating to violations of human rights, in part so that the Commission could proceed with a more expert and constructive examination of the main human rights issues. In his own delegation's view, the Sub-Commission perhaps performed its most useful task when it carried out such investigations, when it drew the attention of the Commission to worrying situations or when it prepared reports as an information base for Commission discussion of basic human rights issues.

8. At its last session, the Sub-Commission had proposed three resolutions for adoption by the Commission. The problem of the exploitation of child labour, which was the subject of Sub-Commission resolution 13 (XXXIV) was a very serious one and it was desirable that it should be given further consideration by the Sub-Commission. His delegation had more difficulty in accepting Sub-Commission resolution 16 (XXXIV) on the question of slavery, regarding which it had to reserve its position.

9. Sub-Commission resolution 2 (XXXIV), on the study of the problem of discrimination against indigenous populations, was of particular interest to his delegation as well as to other delegations and non-governmental organizations. The Director of the Division of Human Rights had rightly stated, in his opening address to the Sub-Commission, at its thirty-fourth session, that indigenous peoples might be counted among the world's most vulnerable groups. It was timely, therefore, that the international community should turn its serious attention to the problems of those peoples, which differed considerably from nation to nation. The Sub-Commission was right to recommend, in operative paragraph 2 of its resolution, that the working group on indigenous peoples to be set up should give special attention to the evolution of standards concerning the rights of indigenous populations. The working group should begin by identifying and defining, in co-operation with the bodies concerned, and particularly the World Council of Indigenous Peoples, the range of needs and aspirations of indigenous peoples so that their problems were clear from the outset.

10. Among other matters to which the Sub-Commission had drawn attention in its report, his delegation was particularly concerned by the increasing scale of politically motivated executions, the continuation of disappearances and the need to extend the mandate of the Working Group on Enforced or Involuntary Disappearances; generally speaking, it was concerned by the number and scale of gross violations of human rights which made the establishment of a post of High Commissioner for Human Rights highly desirable. In conclusion, his delegation fully supported Sub-Commission resolution 8 (XXXIV) on the perilous situation facing the Baha'i community in Iran. Unfortunately, the reports concerning that situation seemed well-founded and his delegation reserved the right to raise the issue again.

11. The Australian delegation thought that, with its manifold activities, the Sub-Commission was playing a very useful role in promoting human rights. Since the mandate of the Sub-Commission covered a large range of issues, it would perhaps be desirable to modify its title so as to reflect that diversity more adequately.

12. Ms. DERMENDJIEVA (Bulgaria) said she was surprised that, when introducing the agenda item, the Chief of the Research, Studies and Prevention of Discrimination Section had seen fit to give a biased assessment of the Sub-Commission's resolutions. In its resolution 17 (XXXVII) the Commission had requested the Sub-Commission to take into account, when drawing up its next report, certain suggestions regarding all matters requiring the approval of the Commission, including all resolutions and decisions of the Sub-Commission other than those bearing on internal procedural questions or those which followed up previously approved or specifically mandated courses of action.

13. Although some progress had been made in that respect, it should be noted that the Sub-Commission's report on the work of its thirty-fourth session (E/CN.4/1512) still had certain deficiencies. She recalled that, in accordance with the mandate entrusted to it in 1949, the Sub-Commission was responsible for undertaking studies and making recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind and the protection of minorities and also for performing any other function entrusted to it by the Economic and Social Council or the Commission. It was quite clear therefore that the Commission was the parent body of the Sub-Commission and pre-eminently the instance in which the results of its work should be evaluated. Any change in the duties of the Sub-Commission should therefore be given careful study by delegations.

14. The representative of Brazil had already analysed the Sub-Commission's report (E/CN.4/1512) in considerable detail. Without reverting to the document as a whole, her delegation nevertheless wished to lay some stress on the points it considered the most important. Within its terms of reference, the Sub-Commission had made a significant contribution to the activities of the United Nations in the field of the promotion of human rights, particularly by the studies it had recently prepared on discrimination against indigenous populations, the exploitation of child labour, the discriminatory treatment of racial, ethnic, religious or linguistic minorities, the adverse consequences for the enjoyment of human rights of assistance to the colonial and racist regimes in Southern Africa, the protection of persons detained on the grounds of mental ill-health, and the new international economic order and the promotion of human rights. All those studies had been carried out at the request of the General Assembly, the Economic and Social Council or the Commission.

15. The Sub-Commission had also discussed, at its thirty-fourth session, several important questions, some of which were on the Commission's agenda for its current session. In so-doing, the Sub-Commission provided the Commission with relevant additional information.

16. However, certain delegations had voiced criticisms which were endorsed by her delegation. The Sub-Commission had made some recommendations which went beyond its terms of reference. Such was the case with decisions 2 and 3 (XXXIV) and resolution 12 (XXXIV). Her delegation was categorically opposed to any discussion by the Sub-Commission of a question which had never been entrusted to it and which, in any case, was currently being discussed by the Commission on Human Rights and by the Third Committee of the General Assembly. Her delegation had already stated its position on the matter clearly when the Commission had discussed, under agenda item 11, alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms. The Sub-Commission was not competent to consider proposals for the establishment of new organs. As a subsidiary body of the Commission, the Sub-Commission should deal with matters within the scope of its mandate or which had been entrusted to it by the Economic and Social Council or the Commission.

17. Without the prior approval of the Commission, it did not have the prerogative to examine issues such as the review of its status and activities or its relationship with the Commission and other United Nations bodies (E/CN.4/1512, para. 381). The only aspect of that question that it might discuss was its relationship with its parent body, namely, the Commission. She wondered what exactly was implied by the expression relationship of the Sub-Commission "with other United Nations bodies". If it related only to the exchange of information concerning the activities of the various bodies, that would appear to have been done to date through the Commission, whenever the latter had deemed it necessary. If however, the Sub-Commission had the intention of expanding its direct relationship with other United Nations bodies, such as the Secretary-General, the specialized agencies and United Nations organs other than the Commission, it was exceeding its mandate and placing itself above the Commission.

18. If, moreover, the Sub-Commission was trying to compete with other expert bodies, such as the Human Rights Committee or the Committee on the Elimination of Racial Discrimination, it should be stated that those committees had been established in accordance with specific human rights instruments and had been entrusted with explicitly defined tasks. The Sub-Commission was of a completely different nature. Although it was an expert body, it was at the same time subordinate to the Commission, with a clearly defined mandate.

19. Item 16 of the provisional agenda for the forthcoming session of the Sub-Commission entitled: Encouragement of Universal Acceptance of Human Rights Instruments (E/CN.4/1512, para. 381) also gave rise to concern. Her delegation did not recall that the Commission or the Economic and Social Council had ever requested the Sub-Commission to set up a working group to deal with problems relating to the universalization of international human rights instruments. That question could be considered elsewhere, in the Commission for example.

20. Her delegation hoped that, in the future, the Sub-Commission would abide strictly by its mandate.

21. Mr. JAHN (Federal Republic of Germany) said that the Sub-Commission's report on the work of its thirty-fourth session (E/CN.4/1512) showed that the Sub-Commission was an important instrument for the protection of human rights. Although the prevention of discrimination and the protection of minorities had long figured on the agendas of human rights bodies, reality showed that cases of violations of human rights had become more numerous and more serious. The Sub-Commission had an important task which it could perform more easily if it undertook fewer studies of a largely academic nature that required several years of work. His delegation hoped, therefore, that the Commission and the Sub-Commission would be more realistic and concentrate on questions that could be dealt with more rapidly.

22. Among the various issues which deserved attention, his delegation wished to highlight the idea of establishing a post of High Commissioner for Human Rights, the study on the status of the individual and contemporary international law (E/CN.4/1512, paragraph 365) and the interim report on the implications for human rights of recent developments concerning situations known as states of siege or emergency. The perilous situation facing the Baha'i community in Iran was particularly disturbing and his delegation thought that the Sub-Commission had quite rightly, in its resolution 8 (XXXIV), urged the Secretary-General to continue his efforts to persuade the Government of Iran to prevent further attacks on the Baha'i community and to grant it religious freedom.

23. It was regrettable that, year after year, the Commission gave less and less time and attention to the Sub-Commission's report. It was desirable that it should devote more time to that report at its future sessions, perhaps selecting one or two items every year for an in-depth discussion. For its part, the Sub-Commission could facilitate the discussion of its work by including in its future reports a list of all the studies that had been prepared. Such measures would strengthen co-operation between the Sub-Commission and the Commission.

24. Viscount COLVILLE of CULROSS (United Kingdom) said that his delegation wholeheartedly supported the Sub-Commission and its work, and endorsed the decision to consider its report as a separate item of the Commission's agenda.

25. The Sub-Commission had covered many of the human rights issues which were of deepest concern, including particular country situations, generic violations of human rights such as disappearances, and ways of improving the United Nations human rights machinery. His delegation generally welcomed the discussions that had taken place in the Sub-Commission and the resolutions that had emerged from them.

26. Some of the criticisms levelled at the Sub-Commission the previous day, particularly by the delegation of the USSR, were unacceptable. The representative of the Soviet Union had, for example, criticized the Sub-Commission for deciding that it would consider at its next session the positive role a High Commissioner for Human Rights could play in the enjoyment of human rights; his criticism was that the Sub-Commission should consider the possible negative aspects also. The previous week, however, the delegation of the USSR had introduced a draft resolution whereby the Sub-Commission was asked to undertake a study of the negative consequences of the arms race for human rights, especially the right to life. It had not, however, asked the Sub-Commission to consider the possible positive consequences of the arms race also. His delegation shared the view of the Sub-Commission in the matter.

27. On the other hand, his delegation wished to express reservations about certain elements in resolution 16 (XXXIV), on the question of slavery, submitted by the Sub-Commission to the Commission. In particular, it found operative paragraph 5 unacceptable and irrelevant to the main thrust of the draft resolution as a whole. It did not, however, in any way challenge the right of the Sub-Commission to come to conclusions that it could not endorse.

28. The unique importance of the Sub-Commission derived not so much from the issues it covered as from its very nature. Unlike the Commission, the Sub-Commission was not a body of government representatives but of independent experts. The Commission and the Sub-Commission itself should study ways of strengthening the latter's dual nature, namely, both expert and independent. His delegation welcomed the Sub-Commission's intention to consider with a high priority at its next session its status and activities and its relationship with the Commission and other United Nations bodies. Unlike the delegation of the USSR, which had discouraged the Sub-Commission from going ahead with that study, his own delegation considered that the issue merited a study which would be all the more profound in that it would be carried out by the Sub-Commission itself.

29. However, his delegation recommended that the Sub-Commission should not seek to change the nature of its relationships with other United Nations bodies, particularly those with the Commission. The Commission and the Sub-Commission had complementary roles to play and it was essential that the relationship between them should be maintained.

30. Other reforms could, however, enable the Sub-Commission to perform its role more effectively. The practice of using government representatives as alternates to the members of the Sub-Commission undermined its independent role and should be firmly resisted. However, the institution of secret balloting would strengthen the Sub-Commission's independent status, since the members of the Sub-Commission as independent experts were answerable to no Government. Those opposed to that reform were apparently motivated solely by a desire to keep the Sub-Commission's members on a tight governmental leash, and that represented a denial of all the Sub-Commission stood for.

31. His delegation hoped that the Sub-Commission would, at its next session, give urgent consideration to those reforms and that all delegations would be able to work together on measures designed to make the Sub-Commission more effective in its role.

32. Mr. MARTINEZ (Argentina) recalled, with reference to the report of the Sub-Commission, that the Commission had recognized by its resolution 17 (XXVII) the importance of the Sub-Commission's work and had laid down some basic principles regarding the way in which it should carry out its mandate as a subsidiary organ of the Commission and of the Economic and Social Council. The Sub-Commission had taken account of those recommendations only with regard to the organization of its work when discussing whether or not the members could designate alternates. That point had been discussed in the Commission itself and the Governments had not made

any final pronouncement on the subject. However, the Director of the Division of Human Rights had stated to the Sub-Commission that, according to rule 13 of the rules of procedure of the functional commissions of the Economic and Social Council, each member of the Sub-Commission might, with the consent of his Government and in consultation with the Secretary-General, designate an alternate. Alternates were designated to replace the member at any moment during the session or to replace experts unable to attend the entire session as a whole. That had put an end to the discussion on the issue, the more so since the members of the Sub-Commission had also received from the Secretariat an unofficial document on the role and competence of the Sub-Commission which had not been communicated to the members of the Commission. For its part, his delegation considered that, apart from some exceptional cases, the experts of the Sub-Commission should not be entitled to designate alternates. The Sub-Commission had not given that problem all the attention it deserved and, generally speaking, it did not accord to the Commission's work the same importance as it did to its own. The value of the Commission's discussions might well be questioned, when it was seen that the experts of the Sub-Commission took no account of them when reaching their own decisions; that was particularly true in instances of criticism by the Commission. In fact, the Commission was a political body whose decisions should not be under-estimated by the Sub-Commission.

33. Over and above its basic mandate, the Sub-Commission had, as should be recognized, been entrusted with a considerable number of extra tasks by the Commission, the Economic and Social Council and the General Assembly. Consequently, there was no question of minimizing its importance; it was rather one of stressing the need for a constructive dialogue between the Sub-Commission and the Commission which could not ignore one another's tasks.

34. With regard to the independent status of the Sub-Commission's experts, it should not be forgotten both that they served in a personal capacity and that, while they naturally had personal opinions on the different problems addressed, that did not authorize them to act outside the terms of reference governing the Sub-Commission.

35. With regard to the important issue as to whether the experts should be forbidden to belong to one of the missions accredited to the United Nations, experience had shown that the two roles were not incompatible and that members of the missions acted quite independently of their Governments when serving as experts, or indeed as Chairman of the Sub-Commission. When the Commission appointed new members to the Sub-Commission, it carried out a detailed examination of the qualifications and the curriculum vitae of each candidate; it was perfectly well aware that each expert would be called upon to act in a personal capacity. Generally speaking, therefore, the objectivity and impartiality of the experts constituted a principle which the Commission owed it to itself to defend.

36. Moreover, consideration of the type of decision which the experts might be required to take, revealed that the most diverse subjects could be involved, which could equally well be humanitarian, legal or eminently political. In the last-mentioned case, while it was difficult to require total objectivity from the experts, it was important that they should make an effort not to adopt political standpoints.

37. With regard to the question of deciding, for example, whether the Sub-Commission had or had not the competence to open inquiries regarding the situation of human rights in certain countries - a proposal opposed by the majority of the members of the Commission - his delegation took the view that nothing could prevent the experts from expressing their opinions on the political situations in the countries concerned, but they should not be empowered to take decisions in that sphere, still less as the result of a vote. Incidentally, the Commission would find it useful if the Sub-Commission were to report to it any divergent opinions that might have been expressed on a specific subject, rather than just the majority opinion of its members. The Commission, for its part, should consider the Sub-Commission's decisions and proposals in greater detail.

38. The Commission too, should be self-critical. It might well be asked if a general debate was the best way of considering the Sub-Commission's report and if it would not be better for the comments made by the members of the Commission to be reproduced in its report and even in a final resolution. In either case, he thought that the consideration of the Sub-Commission's report would still be incomplete, and that the Commission should establish as a matter of priority a suitable method for considering it.

39. It would be useful to consider what exactly were the tasks and mandate of the Sub-Commission. It was essential, in fact, to decide whether it defined its own responsibilities or whether its mandate derived from political decisions taken by the competent bodies of the United Nations. His own delegation thought that the Sub-Commission should organize its work solely on the basis of such decisions by other bodies, and should not broach new subjects until they had been submitted to the Commission. The latter for its part should take prompt decisions whether to authorize the Sub-Commission to undertake new studies, designate rapporteurs or make contact with Governments.

40. It should also be borne in mind that the issues submitted to the Sub-Commission were becoming more and more numerous, that the number of experts was growing and that several issues were sometimes entrusted to the same rapporteur. That multiplication of tasks caused delays which meant that the Sub-Commission's reports on urgent issues did not reach the Commission or other bodies which had requested them in time. The Commission and its organs should not be satisfied with partial information or with preliminary reports addressed to the experts.

41. It was also necessary to decide how the Commission was to deal with the recommendations made by the Sub-Commission's experts, when they did not correspond to a specific item of the former's agenda. The Commission should establish some criteria in that regard so as to be able to examine the communications of the Sub-Commission if they corresponded to a specific mandate given by the Commission, the Economic and Social Council or the General Assembly.

42. Lastly, the Commission should also consider the programme of work which the Sub-Commission established for itself between sessions so as to determine how it could contribute to its own work. The interdependence and complementarity of the Sub-Commission and the Commission would thus be respected, without prejudice to the fact that one of those bodies was subsidiary to the other. The delegation of Japan had submitted a chronological list of the bodies involved in preparing the work on human rights. That calendar should follow a certain order, beginning with the Sub-Commission, followed by the Commission, the Economic and Social Council and, lastly, the General Assembly.

43. Mr. MAXSIMOV (Byelorussian Soviet Socialist Republic) said he noted, from his reading of the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its thirty-fourth session (E/CN.4/1512), that the Sub-Commission had adopted a series of useful decisions on current issues. In its resolution 6 (XXXIV) it had invited the Special Rapporteur, Mr. Khalifa, to continue to update subject to annual review, the list of banks, transnational corporations and other organizations assisting the colonial and racist régime in South Africa. His delegation would have preferred that list to be a little more detailed and, in particular, to include a description of the activities of those banks, transnational corporations and other organizations in South Africa and their assistance to the South African régime. Sub-Commission resolution 9 (XXXIV) was another relevant and useful decision.

44. For some years, however, the Sub-Commission had had a tendency to go beyond its mandate by adopting decisions in disregard of the directives of the Commission, to which however it was subordinate. At its thirty-third session, it had proposed that a special machinery be set up to collect information on the situation of human rights throughout the world, and to enable visits to be made to any country where there were violations of human rights; it had also gone so far as to address the Secretary-General directly as well as the President of the General Assembly or the President of the Economic and Social Council. At its thirty-fourth session, it had adopted decisions which called in question its own relations with the Commission. He wondered whether that meant that the Sub-Commission's status and its relations with the Commission had yet to be defined. Moreover, in its resolution 12 (XXXIV), it had declared its support for the creation of the post of United Nations High Commissioner for Human Rights. In fact, a number of the Member States were resolutely opposed to the creation of such a post, which would be equivalent to a violation of the Charter.

45. His delegation noted that the Sub-Commission did not always carry out the studies which the Commission asked it to undertake; such was the case with the review, which was to have been made, in the light of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, of the relevant research on that question, and also with the study of the use of the results of scientific and technological progress for the realization of the rights to work and to development.

46. In the opinion of his delegation, decisions taken by the Sub-Commission had no legal force if they had not been approved by the Commission.

47. Mr. INCISA DI CAMERANA (Italy) said he welcomed the decision taken by the Commission at its previous session to allocate a high priority to consideration of the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Commission was thus in a position to give sufficient attention to the remarkable evolution in the functions and activities of the Sub-Commission that had occurred over the last 10 years. That evolution had been such that the Sub-Commission was wondering whether its name accurately reflected all the duties entrusted to it by the Economic and Social Council and the Commission, the fields in which it operated and its role - unique of its kind - as a body consisting of expert members elected in their personal capacities. The Commission should help its subsidiary organ to answer that question in the context of a constructive dialogue.

48. At the last session of the Commission, different opinions had been expressed about the way in which the Sub-Commission was implementing its mandate as it implicitly emerged from Commission resolution 17 (XXXVII). His delegation hoped that, at its current session, the Commission would succeed in adopting decisions intended to achieve a more effective integration of the functions and activities of the two bodies, with due regard for their different nature and their common commitment to the cause of human rights.

49. The Commission had first of all to bear in mind the broadening of the Sub-Commission's mandate. With regard to violations of human rights, the Sub-Commission was required to interest itself in all types of violations which might occur in all countries and to make use to that end of all available sources of information. Consequently the Sub-Commission had been led to adopt at its previous session resolutions 7 (XXXIV) to 13 (XXXIV) on violations of human rights - all of them relating to situations or questions which were being considered or likely to be considered by the Commission. In so doing, it had not exceeded its mandate; on the contrary, it was making available to the delegations of the States members of the Commission the invaluable assistance of independent experts.

50. His delegation wished to make some specific comments on two resolutions and two decisions adopted by the Sub-Commission at its thirty-fourth session. With regard to resolution 7 (XXXIV) it would like to ask the Secretariat to recapitulate the work that had been done to date. It welcomed resolution 12 (XXXIV) and decision 3 (XXXIV), in which the Sub-Commission had indicated that the post of United Nations High Commissioner for Human Rights would be highly valuable in advancing the promotion and protection of human rights in the world and had decided to consider at its thirty-fifth session the positive role a High Commissioner for Human Rights as a United Nations official should play in the full enjoyment of human rights. His delegation also thought that the Commission should speed up and conclude consideration of the two proposals intended to enable it to act in urgent cases of violations of human rights, namely, that of a possible intersessional role for the Bureau of the Commission and that of convening special sessions of the Commission. Lastly, his delegation applauded decision 2 (XXXIV) whereby the Sub-Commission had decided to introduce into the agenda of its next session a new item entitled: "Review of the status and activities of the Sub-Commission and its relationships with the Commission and other United Nations bodies", and to give it a high priority. It looked forward with great interest to the results of that review. The decision thus taken gave evidence of the deep sense of responsibility of the Sub-Commission.

51. Mr. LOPATKA (Poland) recalled that, at its previous session, the Commission had requested the Sub-Commission in resolution 17 (XXXVII) to bear in mind the tasks assigned to it. The Commission had also drawn the attention of all States and all the members of the Sub-Commission to the nature of the work of the Sub-Commission as a body of experts. In its report (E/CN.4/1512), the Sub-Commission had shown that it had taken resolution 17 (XXXVII) into account and had applied it in some respects, but not on a number of important points. In particular it perpetuated the error of trying to become an organ independent of the Commission. That unacceptable attempt was reflected in particular in decision 2 (XXXIV), which the Commission should not approve. The Sub-Commission had also exceeded its mandate in its comments on the

programme and working methods of the Commission, as could be seen from its decision 3 (XXXIV), in which it stressed the "positive role" which a High Commissioner for Human Rights could play, and also in its resolution 12 (XXXIV). Generally speaking, the Commission should not approve the resolutions and decisions of the Sub-Commission which went beyond its mandate. His delegation wished to associate itself with the general attitudes contained in the statements made on the subject by a number of delegations and particularly the delegations of Brazil and the Soviet Union.

52. Mr. BHAGAT (India) said that, first of all, the Sub-Commission on Prevention of Discrimination and Protection of Minorities - which was composed of experts dedicated to the cause of human rights - was a unique body of its kind in the United Nations system which had given the Commission effective assistance.

53. With regard to participation in the work of the Sub-Commission, it should be noted that, more and more frequently, its sessions were being attended by alternates rather than by the elected members themselves. Although that practice was permitted by the rules of procedure, it should remain an exceptional one. At its most recent session, the Sub-Commission had considered that question and it would appear from paragraph 26 of its report (E/CN.4/1512) that it hoped that the Commission would indicate criteria for determining when that practice might become excessive. His delegation proposed that the following criteria be adopted: if a member of the Sub-Commission did not participate in the Sub-Commission's work throughout an entire session and if he was unable to attend the following session, he should indicate the fact before the end of that second session so that his seat could be declared vacant. The vacancy should be notified immediately and the Commission, at its subsequent session should, in accordance with the rules of procedure, elect another member from the same country or from some other country. Indeed, if a member elected for three years could not participate in the work of two consecutive sessions, with one year in between, he either did not have the necessary time, or he did not attach sufficient importance to the Sub-Commission's work. Moreover, when appointing alternates, Governments should exercise care not to put forward government representatives: the Sub-Commission should retain its character as an independent body so as to preserve not only its nature but also its reputation for impartiality and objectivity.

54. In its resolution 12 (XXXIV) the Sub-Commission had expressed the opinion that it would be highly valuable to create a post of United Nations High Commissioner for Human Rights, but nowhere in its report did it mention that question. In fact, that proposal was being considered regularly, but was not accompanied by any supporting arguments. Such a proposal called for a serious discussion, during which those who supported it should clearly explain why that post should be created, define the functions the High Commissioner would perform and his role vis-à-vis the existing institutions in the United Nations system and, more important, vis-à-vis the institutions already created under the various human rights instruments.

55. Those who defended the creation of that post justified it by the existence of violations of human rights. It might logically be deduced from that statement that violations of human rights occurred because the post did not exist, or that, if the post were created, there would be no more violations of human rights. It was the Member States themselves which, in one way or another were responsible for violations of human rights. For those violations to cease, the Member States had themselves to adopt measures. The international community could indeed help them - and had done so - by setting standards, creating supervisory mechanisms, etc. However, the international community was based on the system of nation States, of sovereign jurisdiction: a State could not defend that system when it came to protecting its industries, its trade, employment within its borders, its strategic interests, and reject it when it came to human rights. As long as the system existed, the international community would have to take it into account, even in the field of human rights. It was impossible to bypass States completely and to have an international entity deal directly with individuals under sovereign jurisdictions. In those circumstances, therefore, it was doubtful whether the High Commissioner could do anything at all which the Secretary-General or any other body authorized by the international community, such as the Commission, for example, could not do. The debates on that question were also inclined to give the impression that those in favour of creating that post included some who wanted to free themselves from all responsibility and others who merely wanted to assuage their consciences. For example, certain countries which had refused to co-operate with special rapporteurs, working groups or the Sub-Commission were among the most ardent supporters of the proposal. In his delegation's view, a country's devotion to the cause of human rights should be measured by the situation of human rights within that country. It was easy to preach to others the standards that should be followed; it was more difficult to accept and apply them at home. However, that was much more important for the cause of human rights than ceaseless advocacy of the creation of new institutions without any very clear idea of what they were supposed to do. He wondered whether the Secretary-General would agree to create such a post and, if so, whether the post would have any meaning or its holder any authority, whether, in fact, the High Commissioner himself, if appointed, would have any credibility.

56. In the view of his delegation, the multiplicity of studies undertaken by the Sub-Commission was not a healthy practice. The Sub-Commission should concentrate its efforts on a limited number of subjects at any given time. The studies undertaken should be completed within a maximum period of three years and, once completed, should be considered by the Commission itself.

57. With regard to the Sub-Commission's agenda, it was more or less the same as that of the Commission. However, the Commission and the Sub-Commission should complement rather than duplicate each other's work.

58. The Sub-Commission had repeatedly requested that its name be changed to the "Committee of Experts on Human Rights" (E/CN.4/1512, para. 23). His delegation could see no need for that change. The effectiveness of the Sub-Commission depended largely on its relations with the Commission; to change its name and character was not only unnecessary but might also disturb the pattern of work of the United Nations system in the field of human rights. Lastly, he thought that there would be no point in changing the name if the functions were not changed and that, if the functions were to be changed, that should not be done in the guise of a change of name.

59. Mr. FERNANDEZ-BALLESTEROS (Uruguay) said that, in examining agenda item 20, he would try to help render the Sub-Commission's work more effective. The work of that subsidiary body would better serve the cause of human rights if it took more account of certain parameters and certain correlations between the different bodies which formed the structural system of the United Nations. As had already been pointed out during the debate, especially by the representative of Brazil, the Sub-Commission, a subsidiary body of the Commission, should change its attitude towards its mandate. It was true that it had made some progress at that level, as compared with the preceding year, but it nevertheless continued to adopt resolutions which went beyond its authority: as examples, he took resolution 4 (XXXIV), in which the Sub-Commission requested the Commission to condemn the violations committed by a State; resolution 12 (XXXIV), in which it requested the Secretary-General to inform it of certain deliberations of the Commission; and resolution 16 (XXXIV). The Sub-Commission thus revealed a desire for independence which was adversely affecting the harmony of its work and which in other respects was even dangerous.

60. The Commission knew the members of the Sub-Commission and their qualifications, since it had appointed them. Incidentally, some of them had pointed out that the Sub-Commission should follow the directives of the Commission, as appeared from paragraph 24 of the report (E/CN.4/1512). However, some proposals were surprising and difficult to accept, such as those reflected in paragraph 23, where it was suggested, that the Sub-Commission should become a "committee of experts on human rights", or again in paragraph 28, which referred to the introduction of voting by secret ballot on sanctions which might be applied against certain States. In fact, paragraph 28 was only a pale reflection of a prolonged discussion in the Sub-Commission, during which it had even been suggested that a draft resolution should be submitted to the Commission on the idea of voting by secret ballot. It was surprising that experts, who had been so carefully selected, could propose such a dangerous thing. He was also surprised that some members of the Sub-Commission had stated that the death penalty was still necessary in certain countries, as was indicated in paragraph 161 of the report: such a thing had never been said in a United Nations body and ran counter to the very principle of the right to life, on the basis of which his own country had abolished the death penalty.

61. Although the Commission appointed to the Sub-Commission experts whose qualifications were known to it, it did not know the qualifications of their alternates. As the representative of Brazil had observed, such alternates, who often attended entire sessions, should not be appointed as was currently being done.

62. With regard to the treatment of communications, it was necessary to change the current procedure, which consisted in having a small working group select for analysis a certain number of communications out of thousands. Furthermore, with regard to the confidential procedure for examining communications provided for in Economic and Social Council resolution 1503(XLVIII), he referred to a note verbale addressed to the Chairman of the Sub-Commission by the Permanent Mission of Uruguay to the Office of the United Nations at Geneva, which was mentioned on page 26 of the report in document E/CN.4/1512 and of which he read out the entire text.* In that

*/ Note verbale circulated as a document of the Sub-Commission under symbol E/CN.4/Sub.2/480.

note his delegation stated, among other things, that "the honour conferred upon the members of the Sub-Commission does not allow any of them to refer gratuitously and publicly to a country with impunity, repeating false and partial information, information which should be dealt on an absolutely confidential basis at the closed meetings devoted to the special case which that country represents."

63. Mr. O'BRIEN (Observer for New Zealand) said that, at its last session, the Sub-Commission had given considerable time to the rights of indigenous populations, and had asked that an annual working group should be established to deal with that question. In the draft resolution submitted on that subject to the Commission, (E/CN.4/1512, chapter I, draft resolution I), it was proposed that that working group should give special attention to the evolution of standards concerning the rights of indigenous populations, taking account both of the similarities and of the differences in the situations and aspirations of indigenous populations throughout the world. In that connection, he emphasized that the situations of those populations were not only widely different but were also not static; it was therefore necessary to take care not to express conclusions on the basis of out-of-date or inaccurate information. Secondly, the indigenous peoples themselves should be involved in considering the goals and objectives.

64. Since Mr. Martinez Cobo, the Special Rapporteur, had visited New Zealand in 1973 and completed his study on that country, the situation of the Maoris there had undergone some important changes. The Maoris had found that they could preserve their racial identity while being citizens of a modern State, and they had regained confidence in themselves. The future pattern which was envisaged for the Maoris had been worked out by the Maoris themselves, according to their concept of "tu tangata" ("to recognize the stance of the people"). At the heart of that concept lay the belief that the Maoris had natural and human resources of which more use should be made for the good of the Maoris and of the nation as a whole. From that concept, fully endorsed by the New Zealand Government, had developed a dynamic series of interrelated development policies: Maori language promotion; vocational training, including new fields such as computers; land development, for example by introducing horticulture; the creation of new Maori business enterprises; the building and expanded use of Maori community meeting places, etc.

65. Like other indigenous minorities, however, the Maoris were in several respects still relatively disadvantaged: in comparison to the New Zealand mean average, they had a lower educational level; there were more of them in the lower income groups; and they represented an excessively high percentage of prison offenders. In the past, New Zealand had already carried out educational and social programmes which had contributed to the progress of the Maoris, but it had been recognized that those programmes were in some respects unsuitable and many of them had been changed. It would be necessary to do even more in order to assure the Maoris of positive growth and not merely of social welfare.

66. Race relations, therefore, were not static in New Zealand. The mass media sometimes considered the protests of the Maoris against land abuses as a criterion of race relations; there were undoubtedly some abuses, but the situation should be considered in a wider perspective. The majority of the Maoris were living harmoniously with other races and in fact considered themselves to be the true

New Zealanders; they were proud of their endeavours and of their contribution to national life. However, the non-Maori New Zealanders, for their part, needed to show more appreciation of the potential and views of the Maoris, and his Government was acutely conscious of that need. The New Zealanders wanted to create an integrated society, characterized not by a single culture but by a social order in which all cultures would be able to flourish. They were convinced that the situation of race relations in the country was basically sound and that the various communities would continue to work towards eradicating anything which might endanger it. He concluded by recalling his introductory remarks and by emphasizing that, in that respect, the Sub-Commission's proposal currently before the Commission was a step in the right direction.

67. Mr. BJORN DAL (Observer for Norway) said that his delegation attached the greater importance to the question of the rights of indigenous populations, in that those rights were systematically violated in many countries and the victims lacked the necessary resources and assistance to defend themselves. The United Nations had been preoccupied with that question for several years and, in 1981, Mr. Martínez Cobo, Special Rapporteur, had presented a report which constituted a landmark in that respect and which had contributed to the protection of the rights of indigenous populations. However, the Norwegian authorities considered that more needed to be done, and they welcomed the Sub-Commission's proposal to create a working group to study the situation with regard to the promotion of the rights of indigenous populations and the evolution of standards concerning those rights. His delegation hoped that the draft resolution submitted on that subject by the Sub-Commission (E/CN.4/1512, chapter I, draft resolution I) would be adopted by the Commission, and that the working group so created would be able to carry out its important functions with the full co-operation of all the parties concerned.

The meeting rose at 1.0 p.m.