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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND  
PROTECTION OF MINORITIES

Fortieth session

SUMMARY RECORD OF THE 17th MEETING

Held at the Palais des Nations, Geneva,  
on Friday, 19 August 1988, at 10 a.m.

Chairman: Mr. BHANDARE

later: Ms. PALLEY

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

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION ESTABLISHED UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 6) (continued)  
(E/CN.4/Sub.2/1988/8, 9, 10, 37, 38, and 40; E/CN.4/Sub.2/1988/NGO/31)

1. The CHAIRMAN reminded the Sub-Commission that members were given the floor for 10 to 15 minutes and that observers for member States were allowed 10 minutes. The right of reply was limited to 5 minutes on the first occasion and 3 minutes on the second occasion.
2. Mr. CASTELLON (Observer for Nicaragua) said that, by adopting various international instruments, the international community had established the right of peoples to self-determination as a requirement for the recognition of and respect for human rights. The promotion of human rights was inconceivable in a situation of foreign dependence, domination or aggression, since such a situation constituted a breach of international peace and security and consequently a breach of the provisions of the Charter of the United Nations.
3. Since the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples, many peoples had succeeded in freeing themselves and regaining their sovereignty and their dignity. But everywhere in the world there remained vestiges of colonialism and oppressive régimes. As a result of the efforts deployed by the United Nations, the war between Iran and Iraq and the problems of Afghanistan, Kampuchea, Angola and the Western Sahara were in the process of being resolved, and it was to be hoped that in the near future the Namibian people would at last be free and independent and that the Palestinians would exercise their right to self-determination.
4. Nicaragua had turned a new page in its history on 19 July 1979 when it had shaken off the yoke of the oppressor and set up a new democratic Government. Since 1981, however, it had been subjected to aggression by forces which placed no value on reason, dialogue and law and which were endeavouring to deny it its legitimate right to self-determination and to make it revert to its pre-revolutionary situation of dependence. The war waged in Nicaragua for over seven years had caused thousands of deaths and immense material destruction, and it had been condemned by the International Court of Justice in its judgement of 27 June 1986. The Nicaraguan Government had strongly supported the agreement signed in Guatemala by the Presidents of the five Central American States on 7 August 1987 and it had taken various measures with a view to a return to normality in Nicaragua. A number of people had been released under the amnesty law proclaimed in 1983 and regularly extended since then; the state of emergency had been lifted and the people's courts dissolved. The Government had also supported the repatriation programme for Miskito Indians, in co-operation with UNHCR. However, although it had accepted the cease-fire, the rebel forces were continuing their armed attacks which had claimed nearly 200 casualties in the month of July and, under pressure from the north, they had broken off the dialogue with the Government.

5. The so-called "humanitarian" aid with which the United States was proposing to furnish the contras violated the provisions of the Esquipulas and Sapoá Accords and was incompatible with the will of the peoples of Central America to settle the conflict by negotiation and to embark on a process of reconciliation. The aid would only intensify the war, because the contras would violate the cease-fire more frequently; that, in turn, would revive political tensions within the country and lead to an overall deterioration in the climate of the negotiations aiming at a definitive cease-fire and the integration of members of the rebel movements into the political life of the country. Nicaragua did not object to the contras receiving humanitarian assistance, provided it was dispensed through a neutral agency such as the OAS or the ICRC, but the contras had not agreed to that proposal.

6. In conclusion, the Nicaraguan Government was open to any proposal concerning a dialogue which might lead to peace; in that spirit, it would continue to participate in all the initiatives undertaken with that end in view.

7. Mr. ASADI (Observer for the Islamic Republic of Iran), after expressing his condolences to the people of Pakistan on the sudden death of President Zia-ul-Haq, called the Sub-Commission's attention to the fact that the mandate and function of United Nations human rights bodies was to promote those fundamental rights throughout the world; they should discharge that task impartially. No political considerations should impinge on their work and they should not allow States to discredit the procedure set up under Economic and Social Council resolution 1503 (XLVIII).

8. It was regrettable that all the decisions adopted by United Nations human rights bodies on the situation of human rights in his country had been based on completely unsubstantiated allegations. Some of the charges originated with organizations dedicated to violence whose activities were known to all and whose numerous crimes had been brought to the attention of the Sub-Commission. It was therefore unjustified and unacceptable that the Sub-Commission should heed such organizations.

9. A change of attitude could, however, be discerned on the part of certain people towards the Islamic Republic of Iran. The improved situation in the country had been acknowledged in the report of the Special Representative, with whom the Iranian Government had already begun to co-operate. Nevertheless, the resolutions adopted by the Sub-Commission at its previous session about the situation of human rights in the Islamic Republic of Iran had not been consistent with the logic and reason that should prevail in its work. He therefore hoped that in the current year it would adopt more balanced and objective texts. That would be the best way of showing that it genuinely wished to see a solution to his country's problems. His delegation was ready to co-operate with the members of the Sub-Commission.

10. Mr. WALDEN (observer for Israel) said that Israel was particularly concerned with the situation of Jewish minorities which, in certain countries, were unable to exercise their national, cultural or religious rights. Such was the case in the Soviet Union where, between 1948 and 1953, the Jews had been victims of widespread campaigns of repression and many attempts to deprive them of their cultural identity. Although their situation had subsequently improved, the injustice they had suffered had never been

rectified. The Jewish intellectuals murdered in the early 1950s had never been officially rehabilitated, although the Soviet Government was beginning to acknowledge their innocence. Furthermore, Jews were today isolated from their religious, linguistic and historical traditions. Only through the restoration of their rights and appropriate compensation for them could past discrimination against the Jews be rectified. The new climate now prevailing in the Soviet Union must be welcomed, along with the proposals recently formulated by the Communist Party of the Soviet Union recognizing the importance of the nationalities issue and the need to grant nationalities independence and responsibility in the social and cultural fields. The Jewish minority should benefit on the same basis as other Soviet nationalities from the programme and measures devised in that respect. Jews, like other ethnic groups, should be able to satisfy their cultural aspirations, particularly in the field of education, communication and art, practise their religion and use their language in various spheres of political, public and cultural life.

11. Moreover, it was necessary for the Soviet authorities to acknowledge the link between Israel and the Jewish national minority. Israel was the cradle of Judaism and the Hebrew language. The ties of a religious, linguistic and cultural nature must be recognized, particularly since the Jews in the Soviet Union had for so long been deprived of their institutions and of the possibility of developing their traditions. However, radio programmes from Israel, although of a purely cultural nature, continued to be jammed in the Soviet Union and there were many restrictions on the teaching of Hebrew and the publication and dissemination of works on Jewish subjects. Yet everyone knew that in order to protect minorities it was essential, inter alia, to make available premises and facilities where they could set up schools and libraries and engage in cultural activities appropriate to their identity. The Soviet leaders had certainly begun to relax their policy in that direction recently but only concrete progress with substantive changes could change the oppressed Jewish minority into a protected minority.

12. It was because they had no possibility of self-expression in the Soviet Union that many Jews wished to leave it. But that right was also refused them. There were currently many families which had been awaiting permission to emigrate for over 10 years. In June 1988, during a seminar hosted in Moscow by the Association of Soviet Lawyers, with the participation of representatives from Israel, the Soviet authorities had indicated that Soviet law was being restructured. But only concrete measures would allow the extent of the progress achieved to be evaluated. There must be deeds and not only words. For all the refuseniks (such as Yuli Kosharovsky who had first applied for an exit visa in 1971 and who would have to wait till 1991 to be able to emigrate to Israel) restructuring would be meaningless until it brought real improvement in the situation of the Soviet Jews.

13. In conclusion, he wished to call the attention of the Sub-Commission to the small Jewish community remaining in Ethiopia which wished to return to its ancestral land. He appealed to the Ethiopian Government to authorize on purely humanitarian grounds that group of persons to join their families in Israel.

14. Mr. DAYAL (Observer for India) said that unfounded allegations had been made by non-governmental organizations against the Indian Peace Keeping Force in Sri Lanka and he wished to re-establish the truth.

15. It had been widely acknowledged that considerable benefit to all parties to the conflict would accrue from the full implementation of the Indo-Sri Lanka Agreement of 29 July 1987. The Agreement was designed to meet the legitimate demands and aspirations of the Tamils of Sri Lanka within the framework of Sri Lanka's unity and integrity. It also constituted the basis for a fair and durable political solution to the Tamil problem. The Sri Lankan Government had already taken measures, such as the establishment of provincial councils to enable the Tamils to participate in the governance of their areas and to preserve their language, culture and other distinct ethnic characteristics.

16. It was regrettable that certain extremist elements in Sri Lanka were endeavouring to obstruct the efforts to implement the Agreement and that their acts of violence were compelling the Indian Peace Keeping Force to engage in military operations.

17. Allegations of human rights violations against the Indian forces were false and were the result of motivated propaganda by some interested parties. They also showed a complete lack of understanding of the situation. The Indian Peace Keeping Force had been sent to Sri Lanka under the provisions of the Indo-Sri Lankan agreement to enforce the cessation of hostilities and to bring about the surrender of arms by militants so that democratic processes were facilitated, and to ensure the implementation of the Agreement. But they had encountered the resistance of the LTTE which refused to give up violence and failed to respect the agreement reached after negotiations on 28 September 1987. Members of the LTTE massacred nearly 100 Tamils belonging to rival groups and 200 civilians belonging to different communities in the eastern province. They had even attacked units of the Indian Peace Keeping Force, which had been compelled to react in order to disarm the extremists and restore order.

18. Allegations regarding the effect of the operations of the Indian Peace Keeping Forces on civilians were basically aimed at diverting attention from the tactics and methods deliberately used by the LTTE to strengthen its position. It had deliberately chosen to fight in areas where there were civilians; it had literally used civilians as human shields and coerced them into performing combat roles. That was the reason why there had been so many civilian casualties. The Indian Peace Keeping Force had on the other hand endeavoured to protect civilians, avoiding the use of heavy artillery, and it had consequently suffered heavy casualties. Furthermore, it had participated with other Indian agencies in relief operations to the people of northern and eastern Sri Lanka, organized by the Government of India, and it had also taken steps to restore the supply of electricity and water and to repair the damaged infrastructure in Jaffna. The charges of human rights violations which had been made against the Indian Peace Keeping Force were fabricated. The competent authorities had investigated all the complaints about the behaviour of the Indian troops and in cases where the charges were proved, quick action had been taken to punish the guilty. There was no question of the Government of India or the Indian army accepting any action by its soldiers which would violate the rights of the very people whom they had gone to protect.

19. In conclusion, a durable peace in Sri Lanka could be achieved only if the LTTE agreed to lay down its arms and support the Indo-Sri Lankan Agreement whose objective was to satisfy the legitimate aspirations of the Tamils within a united Sri Lanka. No solution could be achieved by violence or by force.

His delegation appealed to all those who were opposed to the Agreement to see reason, renounce violence and join the peaceful democratic process which would enable all communities in Sri Lanka to live in peace, harmony, equality and dignity.

20. Ms. PALLEY recalled that on the previous day, in connection with agenda item 6, she had spoken out about two States, Israel and South Africa. It had been painful to condemn States where one had friends and relations. However she could not do other than be severely critical of Israel which was applying double standards. It was paradoxical that Israel, in view of its history and the history of its people, was treating the Palestinians as it did, in a way that was now fully documented, even from Israeli sources. It was shocking to observe the discrimination being practised against the Arabs, particularly the seizure of their land. The brutality of the Israeli soldiers made one shudder. Nevertheless, it would be an exaggeration to speak of a "holocaust", as some had done, in referring to what was happening in the occupied territories: what was historically "the holocaust" was on a quite different scale and had caused the death of 12 million people, including 6 million Jews. She would express her solidarity with the Palestinians by becoming a sponsor of the draft resolution on the subject.

21. She was also deeply concerned by Iraq's use of chemical weapons. It must not be forgotten that it was Iraq that had started the long and bloody conflict which now seemed to be on the way to settlement. Iraq's aggression should have been condemned at that time by the entire world, but certain Powers preferred to see two régimes, unacceptable to them, destroy each other. Iraq had used chemical weapons, particularly the notorious mustard gas, first against Iranian soldiers and then against its own Kurdish subjects. When the war with Iran ended, it seemed likely that the Kurds would continue to be subjected to that type of treatment. The Kurds were a minority to whom the Sub-Commission owed a special duty, a minority dispersed among several States, with dreams of building a nation. Even if the Kurds were crushed today, a new generation would take up the fight tomorrow as Mr. Khalifa had said about the Palestinians. She was not in favour of separatism or anything that undermined the integrity of States, but in a case like that of the Kurdish minority, access to autonomy should be encouraged. More generally, she hoped that the Sub-Commission would work for the adoption of a convention on minorities and the appointment of a High Commissioner for the Protection of Minorities. As a first stage, it could develop a study on the concept of internal autonomy for minorities.

22. In considering human rights violations, a distinction must be made between States which showed a spirit of co-operation and those which instead adopted an arrogant attitude and put forward convenient excuses. She had deliberately said nothing so far about the USSR, since, in her view, that country was embarking upon the path of democratization. She hoped that it would recognize the right to leave, especially that of dissidents and Jews. On the other hand, she thought the Sub-Commission should unequivocally condemn Romania, as it did South Africa and Israel, for its policy towards its Hungarian minority, which was manifestly in violation of its obligations. It was another country that had any sense of international obligation. It was a good thing that countries including Israel, where there were hypersensitive to such criticism but often refused to accept it, should not be intimidated. The United Kingdom, for example, preferred to refer to the massacres in the Balkans and to condemn the actions of the Government of Yugoslavia, but it was not always clear that it was not also a victim of human rights violations.

had been noted. In fact it was sometimes difficult for the great Powers to criticize other countries openly; they must then use their influence in private.

23. As for non-governmental organizations, they were in a different position from the Sub-Commission: they could criticize more freely. However, non-governmental organizations must moderate their criticism of States which were emerging with difficulty from a war or a dictatorship.

24. At the present time, various conflicts were approaching a political settlement. That must not, however, divert the Sub-Commission's attention from human rights violations in the countries concerned. The case of Cyprus was typical: a new atmosphere appeared to prevail which made it possible to envisage a settlement in the near future. Nevertheless, that should not be used as an excuse for not dealing with infringements of the human rights of both Turkish and Greek Cypriots.

25. Ms. Palley took the Chair.

26. Mr. CHERNICHENKO said it was difficult for the Sub-Commission to deal with all the situations submitted to it; however, that must not lead it to adopt a selective approach. Some countries gave rise to considerable discussion: South Africa, Israel and Chile. Mr. Khalifa had spoken eloquently of what Israel was doing in the occupied Arab territories and much had been said about apartheid in South Africa; at the preceding meeting, Mr. Varela Quirós had spoken in detail about Chile. He associated himself with what had been said about those countries, where large-scale violations of human rights had continued unabated for years and even decades. One felt that the authorities of those countries had come to hope that people would grow accustomed to the violations they committed. But the Sub-Commission was far from feeling any such disinclination to take action and it was preparing to adopt resolutions which would make it possible to bring more pressure to bear on those who perpetrated the violations.

27. However, human rights violations were occurring in many other countries; it was difficult to analyse them all in depth. The members of the Sub-Commission could not read all the documents submitted on the subject. In some cases, violations were committed directly by Governments; in others, Governments did not have the means to check them. The Sub-Commission must endeavour to exercise humanitarian pressure to put an end to both types of violation; however, the outcome of its efforts depended on political situations.

28. The two aspects could not be dissociated. Even when the Sub-Commission condemned South Africa, it could be argued that it was exercising political pressure. In certain cases, the Sub-Commission should perhaps leave matters to be settled by bilateral or regional action; its own representations might have an adverse effect and it should be cautious. Still more examples of that type of situation had occurred during the current session. With regard to the accusations of politicization sometimes brought against the Sub-Commission, he stressed the need for a clear definition: on one hand, it was difficult, as he had just said, to eschew politicization totally; on the other hand, the Sub-Commission must not be used as an ideological forum. Generally speaking, it must consider which effective measures could be adopted on the basis of

clear-cut procedures. It was currently reviewing its methods; that exercise would certainly enable it to come up with procedures which, if not perfect, would at least be more effective.

29. Mr. ALFONSO MARTINEZ said that the suggestions in the working document submitted by Mr. Eide and Mr. van Boven on agenda item 3 (Review of the work of the Sub-Commission), the reasons for which he appreciated, were also relevant to agenda item 6 currently under discussion. Every year that item caused a certain concern, which had just been voiced by Ms. Palley and Mr. Chernichenko. The Sub-Commission was somewhat overwhelmed by the number of allegations and issues submitted to it and found it very difficult to study all the documentation. It was obliged to choose and be selective. Nevertheless the situations brought to its notice in many parts of the world, such as Namibia, Puerto Rico, Palestine, Northern Ireland, and so on, reflected, on one hand the same aspirations of peoples and on the other hand, an irredentist attitude. Such situations brought into play the right to self-determination and independence, and therefore concerned the United Nations in the context of General Assembly resolution 1514 (XV) adopted 28 years ago. In view of the fact that South Africa and Israel were violently opposed to the right to self-determination, it was proper that they should incur considerable discussion.

30. With regard to Latin America, of which his country formed part, two cases were currently considered to be particularly disquieting, those of Chile and Paraguay, which had formerly been representative democracies. In the past, the Sub-Commission had frequently studied the two situations, but in the past year they had further deteriorated. Moreover, in Central America there was a situation of foreign intervention, by the United States of America, which was sending mercenary forces paid by funds approved by the Senate into the region. Certain countries were allowing those mercenary forces to use their territory. Some time previously, the Presidents of several countries in the region had taken decisions which had aroused a glimmer of hope. The situation might not have worsened to the point of being irreparable but hopes raised had been disappointed. In Guatemala, in particular, after the Commission had refrained the previous year from taking a decision so as not to hamper the peace process, torture, disappearances and extrajudicial executions were continuing. Accordingly, that year, the Sub-Commission must publicly express its concern; he would join in any draft resolution on Guatemala. The situation could be said to be deteriorating in El Salvador, because paramilitary groups and other death squads were acting more and more openly and committing violations every day. There again, the Sub-Commission must voice its concern.

31. He was particularly interested in the situation in Cyprus, since his own country was also an island country which had experienced foreign military intervention. There was currently talk of a settlement in Cyprus, but the human rights situation was far from satisfactory. Part of the country was under occupation and human rights violations continued, particularly against people who had been driven from their homes and their land. It was to be hoped that at the political level, the situation would soon be resolved in Geneva, but at the human rights level, the Sub-Commission would have to remain on the alert.

32. Mrs. BAUTISTA said that while listening to the recital of human rights violations affecting people everywhere in the world, she had been struck by the crucial importance of the Sub-Commission's mandate; she thought that the



current session might be a good opportunity for the Sub-Commission to draft proposals for the Commission on Human Rights on more effective methods to combat such violations. As well as alerting the Governments concerned, an attempt must be made to encourage them to conform to the principles ratified by many nations. She herself came from a country which through a non-violent revolution had restored a democratic system and which by united and sustained efforts had hoped to combat poverty and despair, while restructuring its institutions. However, her country was confronted with violence on the part of supporters of the former dictatorial régime which compelled it to fight for the survival of its recently restored constitutional democracy. She shared the view expressed by Mrs. Flores and she believed that the United Nations should show more understanding towards young democracies sincerely committed to recognizing and restoring the human rights of all their peoples, and particularly of the impoverished, miserable millions whose rights to freedom from hunger and freedom from fear and rights to security and economic and social rehabilitation should be assured, as a matter of priority. Those countries should be encouraged in their efforts and assisted with their problems.

33. The deadline for submitting resolutions for the Commission on Human Rights had passed and the Sub-Commission had addressed only a limited number of human rights violations affecting a few countries. It must find effective ways to address the violations that continued unabated in other countries. The question also arose of whether the work of the Sub-Commission on the problems submitted to it had been effective. The fact was that almost all victims, whose number increased daily, received no aid and continued to suffer without hope of receiving any. The Sub-Commission must therefore consider what it could actually do for those victims, as Mr. Varela Quirós had said. She recommended that the Sub-Commission and the Commission on Human Rights should study that problem. It was time for the Sub-Commission to concern itself with those who continued to suffer at the hands of oppressors. She joined the NGOs and the experts of the Sub-Commission who had advocated that assistance should be given to victims of human rights violations.

34. In conclusion, she paid a tribute to Mrs. Daes and Ms. Palley for the excellent presentation of their work. She fully shared their point of view about the continuing victimization of minorities in South Africa and Israel and of Greek minorities in other countries and she hoped that the United Nations would take more effective decisions to put an end to such gross violations.

35. Mr. CAREY said that Mr. Sobarzo Loaiza's idea about the useful role the Sub-Commission might play in Namibia in the near future deserved careful attention by its members. They had a wide range of expertise which could, if requested, be placed at the service of the new country when it began to draft its constitution, in finalizing those provisions guaranteeing the effective protection of human rights and fundamental freedoms. In his statement, Mr. Sobarzo Loaiza had stressed that the primacy of the law must be respected; the Sub-Commission must emphasize that rule for all countries, as without that pre-condition, human rights could not be protected. In that connection, he welcomed recent developments in the USSR which he found extremely encouraging. He read out the translation of a resolution adopted by the nineteenth Conference of the Communist Party of the Soviet Union advocating a thorough overhaul of the judicial system to ensure the primacy of law and the protection of the individual. He hoped that the resolution would

be implemented in the spirit that seemed to have motivated its sponsors. He was happy to see that the thousandth anniversary of Russia's conversion was being observed with particular solemnity and he hoped that the numerous small Christian sects would have better treatment than in the past. He also hoped that henceforward all religions, including the Jewish religion, could be practised freely and on equal terms, and that in the near future there would no longer be any obstruction to the development of Jewish culture and it would be possible to teach and study Yiddish and Hebrew.

36. The Sub-Commission had recently received a considerable amount of information about violations. Some of the information appeared reliable, other items were more difficult to believe and in certain cases they ran counter to what the experts thought to be the truth. Furthermore, there were gaps and, for example, he would like to be told whether a certain Nazi leader really did live in Damascus, as Beate Klarsfeld had asserted in the Commission in February. Generally speaking, the Sub-Commission must consider how to use the mass of information in the context of its mandate under agenda item 6. In resolution 8 (XXIII) the Commission on Human Rights had asked the Sub-Commission to report to it "any situation which it has reasonable cause to believe reveals a consistent pattern of violations of human rights". In certain cases, if a tragedy affecting human rights continued, it would be no bad thing to report that fact repeatedly. At the same time, the Sub-Commission should indicate clearly that it was ready to give assistance and it must display imagination and a constructive spirit whenever it was able, the Sub-Commission should respond to another request made by the Commission on Human Rights in resolution 8 (XXIII) and prepare a report containing information on violations from all available sources. He thought that if the Commission on Human Rights made that request to the Sub-Commission it was because it wished the Sub-Commission, as a body of experts, to tell it which of the new items of information it thought to be reliable. In its work under agenda item 6, the Sub-Commission must constantly bear in mind, on the one hand, Commission resolution 8 (XXIII) and, on the other, Council resolution 1503 (LXVIII), under which it studied the same questions, but in private. In that way it must take full advantage of the possibilities and authority the two procedures conferred upon it.

37. Mr. CHERNICHENKO thanked Mr. Carey for his statement. He was sitting in the Sub-Commission in his personal capacity, but as a member of the Communist Party of the Soviet Union, he was grateful for the publicity Mr. Carey had given to the decisions taken by its nineteenth Conference.

38. Mr. EIDE said that Ms. Palley's statement was in complete conformity with his own views.

39. The role of the United Nations organs in dealing with violations should be, first, to identify the violations and those responsible and, second, to find ways to co-operate with the Governments concerned to bring the violations to an end and provide redress for the victims.

40. When Governments were called on to co-operate, there were basically two kinds of responses: (a) some Governments refused to co-operate, but they were fewer and fewer. In so far as they reacted at all, those Governments engaged in various exercises to challenge the credibility the NGOs and their evidence or the competence of the United Nations; (b) other Governments agreed to co-operate more or less comprehensively and constructively. On occasion, they

did so in a rather defensive way agreeing only in principle in order not to be seen as entirely negative; in other cases, there was an encouraging will to co-operate, not only to bring past violations to an end but also to prevent future repression.

41. In the case of entirely non-co-operative Governments, it could be assumed that there was something structurally wrong, either because they were functioning as an occupying Power, in which case they could never become legitimate in the eyes of the peoples subjected to occupation or because they served the interest of only part of their population and used their power to repress the other part. In such cases, the Governments would have no inclination to ensure, on an equal basis, the enjoyment of human rights by all the population under its jurisdiction or occupation. The United Nations then had no alternative but to bring pressure to bear on the Governments concerned to such an extent that the continuation of their unjust policy towards a part of the population became more costly than to co-operate with the United Nations to stop the violations. The precondition for co-operation might be an end to an occupation or the acceptance of some degree of autonomy for certain ethnic groups or a change of Government in order to become majority-based and to move towards a genuine democracy.

42. When Governments were willing to co-operate, it was sometimes because they had difficulties in bringing the violations to an end, probably because they were unable to control extremist elements. They would like to develop a democratic society but they were not succeeding because their political situation was very unstable. Those conditions were the most promising for constructive co-operation with the United Nations. It was useful, in such situations, to discuss openly the violations that continued to occur and at the same time to help, for instance through advisory services, to strengthen the hands of Governments that were in trouble.

43. The trouble was often caused by certain military forces which had not yet learned that armed forces must obey the democratically elected authorities of their country. If there was one area in which the Sub-Commission should really provide advisory services it was in the training of military and security forces to understand and adhere to the fundamental democratic principles that should govern societies. He hoped that in the years ahead, the Sub-Commission would be able to develop a policy in that field.

44. Guatemala was a good case in point. The Guatemalan Government had indeed decided to conform to the rules of democracy, but part of the army still refused to submit to democratic discipline. That was an important reason why the Sub-Commission must continue to monitor the situation in Guatemala attentively. Haiti was a very dubious case, since the military had succeeded in resuming control unlawfully.

45. Addressing the most serious situations confronting the Sub-Commission, in which the co-operation of the Governments concerned was either non-existent or so superficial as to be useless, he said that South Africa was the first name that came to mind. He would not elaborate on that case which had been discussed at length and which had been before the Sub-Commission for a very long time. He would simply draw attention to the external dimension of the situation and recall in particular the support given by South Africa to the

terrorist movement Renamo or MNR which had perpetrated innumerable violations of human rights in Mozambique for which the South African authorities were thus indirectly responsible.

46. With regard to Israel, the world had followed with consternation the events which had taken place in the occupied territories in the spring and summer, until the flow of information had been curtailed which, of course did not in any way solve the problem. Not only the direct violations of human rights but also the measures, allegedly taken for security reasons which had the effect of preventing Palestinian Arabs in the occupied areas from enjoying their economic and social rights, and still less their civil and political rights, were deplorable. The time had come for the friends of Israel to speak out unequivocally. They were painfully aware of the terrible suffering of the Jewish population in recent history, the persecutions and the genocide. But that should not prevent anyone from warning Israel against putting itself in a situation in which it would consistently violate the basic human rights of persons in its power. The current human rights violations would continue until the occupation was brought to an end and the Palestinian Arabs had been able to exercise their right to self-determination and those among them who were presently abroad had been allowed to exercise their right to return. That of course would have to be combined with a full recognition of Israel by Palestinian Arab leaders and by the Arab States. The concepts, if not the details, of the 1947 United Nations partition plan should provide guidance. He was confident that both parties at some future date would reciprocally accept each other's right to exist and to pursue their own development based on their respective cultural values and preferences.

47. He had hoped that the statement by the observer for Israel would provide replies to the many allegations made against his Government, but unfortunately such had not been the case. The observer for Israel might do so later, in the exercise of his right of reply. In such an eventuality, he hoped that the latter would refrain from blaming the other party and that he would indicate his Government's willingness to co-operate with the United Nations in order to remedy the present situation.

48. The third obvious case of non-co-operation was Chile. Since the Commission was dealing with it, he would simply associate himself with everything that had been said by Mr. Sobarzo Loaiza and stress the need for the United Nations to continue its pressure without interruption on the Government until democracy had been restored and the military had accepted democratic principles.

49. The fourth case, which had not yet systematically engaged the attention of the United Nations, was that of Iraq. Admittedly, violations occurred both in Iran and Iraq but the former was already being dealt with under special procedures and it would appear that its Government was now willing to improve its human rights record and to co-operate with the Special Representative. Iraq, on the other hand, had neither in its response to the Sub-Commission nor in other ways indicated a willingness to co-operate, although it was known that crimes of a frightful nature had been committed against ethnic groups and political opponents. That meant that the United Nations must give increased attention to that country. While there was universal satisfaction at the willingness of the belligerents to bring the war to an end, they must show an equal willingness to bring human rights violations to an end.

50. Moving on to make a number of general comments, he said that he approved of the procedure advocated by the Chairman of the Sub-Commission for the consideration of agenda item 6, consisting of first giving the floor to NGOs, then to Government observers to reply to those organizations and finally to members of the Sub-Commission to enable them to state their views in the light of all that information as well as information obtained from other sources. When the Sub-Commission analysed the information, it should first assess its reliability and then consider the question of accountability. Government responses could be of assistance in clarifying whether the information was factually correct, but that could not be done simply by flatly denying the allegation, or by simply saying that the NGO concerned or a member of the Sub-Commission was politicizing the issue. To facilitate its work, the Sub-Commission needed factual responses; general denials tended rather to give credibility to allegations.

51. Having satisfied itself that the alleged violations had in fact taken place, the Sub-Commission must face the question of accountability. It must ascertain whether the Government could be held accountable for the events and if so, whether it had endeavoured to prevent a recurrence by taking disciplinary or penal action against those directly responsible. If the Government and its agents had not perpetrated the actions complained of, the Sub-Commission must endeavour to establish whether they had nevertheless failed to protect the enjoyment of the human rights in question. Furthermore, the Sub-Commission should concern itself not only with past and present violations, but with the prevention of violations in the future. That preventive function had been given too little attention, although some experts had spoken about it during the current session. In its analysis, the Sub-Commission should likewise study the different contexts in which human rights violations occurred, such as international armed conflict, occupation, internal armed conflict, internal repression, and social injustice. He underlined that the obligations of the State vis-à-vis the protection of human rights continued to apply in all circumstances. Some derogations might be made during periods of emergency, but they must be strictly circumscribed, a point the Sub-Commission had already made clear through the study carried out by Mrs. Questiaux and the work done by Mr. Despouy.

52. During international armed conflict, serious violations often took place. It was sometimes claimed that in time of war, actions which would otherwise constitute violations were excusable but that, of course, was not true. First, human rights must continue to be respected in time of war with the exception of certain derogations which, as he had just recalled, could be made in an emergency and war was an emergency. Secondly, there was a detailed body of humanitarian law in armed conflict which confirmed the supremacy of human rights. In a period of occupation, human rights law as well as humanitarian law applied. Extensive violations of human rights tended to occur, however, since no freedom-loving peoples wanted to be occupied or administered by an alien Power, as had been evident from the testimony of witnesses who had come to speak of the Palestinian territories occupied by Israel since 1967 or the occupation of East Timor, where serious violations had also occurred.

53. More often than not, the presence of foreign armed forces aggravated internal conflicts. That was also true of external support for armed groups fighting against established Governments. Frequently, that kind of support merely increased the suffering of the populations and added new dimensions to

human rights violations. The only exception was support to liberation movements approved by the United Nations in a decision taken by a two thirds majority of the General Assembly. He would like to take advantage of the opportunity to express the hope that the peace process embarked upon in Central America, for which President Arias of Costa Rica had won the Nobel Peace Prize, would continue and would not be affected by the intervention of foreign Powers.

54. With regard to Afghanistan, he recalled that many years ago he had submitted to the Sub-Commission a draft resolution calling for the appointment of a special rapporteur for that country. He welcomed the decision of Soviet Government to withdraw its troops from Afghanistan, but thought that the Sub-Commission must remain on its guard since a change of Government did not necessarily guarantee that human rights violations would stop. The same problem occurred in Kampuchea. Even if the Vietnamese troops withdrew from the country, the Sub-Commission should closely follow developments in the situation in order to avoid a recurrence of the terror inflicted on Kampuchea by the Khmers rouges.

55. Turning to the issue of internal conflicts of ethnic origin, he said he had on many occasions indicated his concern at the violations of the human rights of the minorities in Sri Lanka and that at the preceding session he had noted the intention of the President of that country and the Prime Minister of India to negotiate a peace plan involving a considerable devolution of power and extensive local autonomy. That encouraging example should be followed elsewhere. The major problem at present, however, was not the Government and its security forces nor the Indian peacekeeping forces but certain extremist non-governmental entities which refused to co-operate in a reasonable solution. Mention should be made in particular of the JVB in the south and the LTTE and the groups co-operating with it in the north whose behaviour should no longer go unnoticed, particularly by those who had given them moral support in the past. The kidnapping of Mr. Kanthasamy, a well known human rights activist and relief and rehabilitation worker, was only one example of those unacceptable violations of human rights. The Sub-Commission needed to give much more attention than in the past to violations of human rights carried out by non-governmental entities, which were certainly no less reprehensible than violations by Governments. Furthermore, social inequality and tension, bordering on internal armed conflict, often gave rise to human rights violations for which the Government could not be held accountable. Instead, the Government should be helped to stem that kind of violence. In the Philippines, for example, the Government was making praiseworthy efforts in respect of human rights issues which were being jeopardized by certain elements.

56. Human rights defenders and their fate in the event of an internal conflict should be a source of concern to the Sub-Commission. The United Nations must gradually and pragmatically develop a comprehensive policy to deal with that aspect of the issue, analysing in a realistic manner the nature of the problem and relying on the will of Governments to co-operate. Ultimately, the objective was to ensure the compensation and rehabilitation for the victims as well as an end to the violations.

57. Mr. Bhandare resumed the Chair.

58. Mr. ZAMIR (Observer for Bangladesh), speaking in exercise of the right of reply, said he wished to reply to certain observations made by the representatives of the International Fellowship of Reconciliation. The sincere efforts of the Government of Bangladesh to maintain the ethnic, religious and cultural heritage of the tribal people living in the Hill Districts of Chittagong had been amply demonstrated not only by the constitution of a National Committee on the Chittagong Hill Tracts but also by the dialogue with the tribal leadership, including representatives of the PCJSS, which had already given encouraging results. The qualitative transformation of the situation had been widely acknowledged by the tribal leaders and by international and non-governmental organizations and the representative of the International Fellowship of Reconciliation had himself judged the efforts constructive.

59. The number of persons of Bangladeshi origin who had had to seek shelter across the border because of terrorist attacks by a group of extremists was 29,920 and not 50,000. More than 8,000 of them had already returned to Bangladesh, many others were continuing to return every day. The Government had reiterated that it was willing to receive all persons of Bangladesh origin who recrossed the border. Furthermore, the Government of Bangladesh had been regularly in touch with the Government of India. A month previously, the Bangladesh High Commissioner (Ambassador) in India had met the Chief Minister of the State of Tripura in India to discuss the problem. It could therefore be hoped that all the refugees would soon return to Bangladesh, in view of the improvement in the situation in the region.

60. Mr. YOKOTA said that for several days members of the Sub-Commission, representatives of non-governmental organizations and observers of Governments had referred to many cases of serious violations of human rights in many parts of the world. He deplored any kind of violation of human rights and in particular gross and systematic violations. He hoped that the Governments concerned would take immediate and effective measures to stop such deplorable practices which constituted a clear violation of international conventions.

61. Violations of that kind were often perpetrated by governments or quasi-governmental entities, which must be urged to give up such practices and co-operate with United Nations organs to investigate the situation. Although direct contacts with the Governments were essential, the question arose of whether they were sufficient. That approach was based on the traditional concept in international law of dealing only with States directly or with individuals indirectly through States. The establishment of the United Nations had indeed made it possible to overcome that difficulty in part since human rights bodies could, in certain cases, establish direct contact with individuals, including victims and their families and representatives. The activities of the Sub-Commission were an example of that evolution.

62. Nevertheless he thought that the Sub-Commission should continue to do its work and should not be discouraged by the fact that it was not able to deal with all the violations of human rights which were being committed in many parts of the world. He hoped that the Governments concerned would take immediate and effective measures to stop such deplorable practices which constituted a clear violation of international conventions. He hoped that the Governments concerned would take immediate and effective measures to stop such deplorable practices which constituted a clear violation of international conventions.

given to holding seminars or training courses for soldiers and policemen, particularly from those countries where human rights appeared to be violated. The courses should be held not only in the official languages of the United Nations but also in the language of the participants. Illustrated brochures might also be prepared, explaining simply what would constitute a violation of human rights, for distribution to the personnel concerned, in their own languages. Lastly, instructors could be delegated to the national training courses for soldiers and policemen. Such measures would require the co-operation of the Governments concerned, but they might accept that approach rather than United Nations supervision. Efforts in that direction had already been made in the United Nations system and by organizations such as ICRC, but they should be intensified.

63. After hearing the allegations of gross and systematic violations of human rights and the replies of certain Government observers, he noted with some relief that there was general agreement about the extreme gravity of violations such as torture and mass killing as well as recognition that respect for human rights should be assured, even in cases of armed conflict. As Mr. Eide had pointed out, the disagreement was basically on the facts. It was encouraging to observe that no Government regarded respect for human rights as of secondary importance. Fact-finding was therefore an important aspect of the role of an international body such as the Sub-Commission, which should also press the Governments concerned on the measures they were taking to inculcate respect for human rights not only in members of the armed forces and the police force but also in government officials in general and on whether they would accept United Nations assistance in that regard.

64. Mr. DIACONU referred to the situation in south-east Europe, which had already been mentioned. Although the peoples of that region had often been divided in the past and been in conflict on many occasions, they had now learned to live side by side and develop together. Development in isolation would now seem to them to be completely impossible. In particular, all the peoples in the region were jointly participating in the process of industrialization.

65. He had listened with interest to the ideas expressed by Mrs. Daes, Mr. Türk, Mr. van Boven and more especially Ms. Palley. Nevertheless, he wished to remind the Sub-Commission that external elements were endeavouring to divide the populations in the south-east region of Europe. The fact should not be overlooked that some of the situations before the Sub-Commission were the consequences of the former colonial system. Before the Second World War the population of the region had been victims of certain divisions, but they had learned to coexist and national or religious conflict, intolerance or violence belonged to the past. On the contrary, it was noticeable that their predominate wish was to ensure their own development.

66. The Sub-Commission should therefore refrain from making difficulties where none really existed, even though certain external elements were busy creating them. What was needed was to promote a dialogue with a view to economic, social and cultural development, to avoid conflicts and intolerance and to associate people of different nationalities in the activities of State bodies at all levels. He wished to quote an extract from a report published on 17 June 1988 by a Romanian non-governmental association, the Council of Hungarian Workers, which stated that the presence of the workers on the boards of economic, cultural and political organizations at all levels showed that



the entire people were associated in building Romanian society. According to that organization, equal rights prevailed in all fields and, speaking of an issue to which particular reference had been made, the members of the various nationalities had the opportunity to study in their own languages.

67. The development process called for a common will even if there might be certain differences in ideas. On the other hand, interference from outside which tended to create such difficulties artificially, was unacceptable as was condemnation on the basis of hearsay. There were many human rights violations about which the Sub-Commission said nothing, and the choice of situations studied had often been prompted by political motives. The Sub-Commission was not the fire brigade but neither should it fan the blaze.

68. Mrs. EZZ (Observer for Egypt) said that her delegation always made a point of taking part in the Sub-Commission's discussions on the situation of human rights in the occupied Arab territories, because it would like the United Nations to take action in that regard. It was indeed surprising that the United Nations was in the process of settling a number of international problems that had arisen long after the appearance of the Palestine question but was unable to resolve the problem of the Palestinian people. That failure had even encouraged Israel to intensify its policy of repression in the occupied Arab territories and to refuse to apply the 1949 Geneva Conventions. In the circumstances, the only course left open to the Palestinian people was to fight the occupying forces by every means. That was what had sparked off the rising of December 1987.

69. Egypt was confident that the Sub-Commission would join with other United Nations forums in condemning Israel, demanding that international law should be respected and stating that it supported the Palestinian people in its struggle for independence. She did not think it necessary to cite the long list of crimes perpetrated by the Israeli authorities which had been given considerable coverage by the media, in United Nations documents, and most recently in the statement on the preceding day by the observer for the Palestine Liberation Organization.

70. In concluding, the Egyptian delegation wished to present its condolences to the delegation of Pakistan on the death of President Zia-ul-Haq, who had rendered great services to his country and to the entire international community.

71. Mr. GALLEGOS (Observer for El Salvador) recalled that on 7 August 1987 the five Central American Presidents had signed in Guatemala the Esquipulas II Accords with a view to establishing a sure and lasting peace in the region and to building a fairer society which would reflect, for the first time since independence in 1821, a single and indivisible will. The new community of views, no longer theoretical but practical, should open up a new economic, social, cultural and political future.

72. Honouring that commitment, on 5 November 1987 El Salvador had promulgated a complete and absolute amnesty law for all persons tried and imprisoned for acts of terrorism and for the armed FDR-FMLN groups in the mountain, in order to encourage the reconciliation of the Salvadorian family. With regard to refugees, it should be recalled that on the initiative of the Salvadorian Government, 4,500 fellow countrymen who were in Honduras had returned home on 10 October 1987 with the assistance, and under the auspices, of UNHCR. He was

also happy to inform the Sub-Commission that four days previously, again on the initiative of the Salvadorian Government, 1,500 refugees had returned to El Salvador and had been given all necessary assistance for their resettlement in their place of origin, despite the efforts of the FDR-FMLN, with the aid of foreign groups and of self-styled national groups, to make political capital out of the event. Those groups had thus delayed the return of the refugees to their country for 24 hours, inflicting unnecessary suffering on old people, women and children.

73. As he had already announced a few days earlier when speaking in exercise of the right of reply, on 4 May 1988, as in the preceding year, the Salvadorian Government had in a humanitarian spirit allowed 29 people injured during the internal conflict fomented by the FDR-FMLN and who were in the Calle Real hostel, to be sent for treatment abroad. In connection with the allegations made by a non-governmental organization on the preceding day, he wished to say that the Salvadorian people enjoyed freedom of expression and it was in their own interest that people had been assembled in camps in El Salvador.

74. The democratization process had also enabled the Salvadorian people to express themselves freely on 20 March 1988 by electing their representatives to the Legislative Assembly and to the municipal councils. The outcome of that free democratic exercise had been a majority for the opposition parties in the Assembly and in the municipal councils; that result had been regarded by the international community as a reaffirmation of democracy in El Salvador. In conformity with the democratic process and thanks to the guarantees offered by the authorities, the representatives of the political branch of FMLN had returned to El Salvador and had joined a common front called the Democratic Convergence with a view to participating in the presidential election of 20 March 1989. On Monday, 15 August, a representative of that political group had proposed Mr. Guillermo Manuel Ungo, the Chairman of the FDR, as his party's candidate for the post of President of the Republic.

75. In spite of all those efforts, FDR-FMLN armed extremist groups, supported by foreign elements, had continued to attack the civilian population as a matter of routine; to use homemade bombs which caused many casualties, particularly among women and children; to destroy in a completely irrational manner the economic infrastructure, principally by electricity cuts which had caused the death in hospital of several babies in incubators and patients on the operating table; to machine-gun and systematically destroy public transport vehicles and to instigate strikes without reasonable cause. During 1988, four of those strikes had caused numerous casualties. The armed groups also continued systematically to kidnap civilians and to impress them forcibly into their terrorist activities, murdering those who refused.

76. That was the situation in El Salvador. The efforts of the Salvadorian Government to promote democratization and full respect for human rights were totally at odds with the irrational intrigues and deliberate violations of human rights of the FDR-FMLN terrorist groups. The democratic efforts had been recognized by the international community, and it had been decided that El Salvador would host the eighteenth session of the General Assembly of the Organization of American States in November 1988. El Salvador had also been selected to be one of the Vice-Presidents at the forthcoming session of the United Nations General Assembly. The Salvadorian Government was ready to co-operate with the Sub-Commission in investigating cases of violations of

human rights, since it wished the rights of everyone to be respected. A few weeks previously, the Salvadorian authorities had asked the Centre for Human Rights, under Commission on Human Rights resolution 1988/65, for technical assistance in the form of the services of experts to conduct seminars on basic rights organized for members of the Salvadorian armed forces.

77. In spite of President Duarte's serious illness, he continued in spirit to lead the struggle for peace, freedom, justice, democracy and respect for human rights in a country which wished to be free, sovereign and independent.

The meeting rose at 1.05 p.m.