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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Fortieth session

SUMMARY RECORD OF THE THIRTY-FIRST MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 30 August 1988, at 10 a.m.

Chairman: Mr. BHANDARE

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will be consolidated in a single corrigendum, to be issued shortly after the
end of the session.

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The meeting was called to order at 10.20 a.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1988/2, E/CN.4/Sub.2/1988/3, E/CN.4/Sub.2/1988/4, E/CN.4/Sub.2/1988/36 and Add.1, E/CN.4/Sub.2/1988/38, E/CN.4/Sub.2/1988/NGO/2, E/CN.4/Sub.2/1988/NGO/7 and E/CN.4/Sub.2/1988/NGO/11)

1. Mrs. RAS-WORK (International Movement for Fraternal Union among Races and Peoples) recalled that some traditional practices affecting the health of millions of young girls and women were a matter of concern to many Governments and non-governmental organizations. In 1979, WHO had organized a seminar on the issue in Khartoum (Sudan) at which experts had dealt with such problems as female circumcision, childhood marriage and nutritional taboos during pregnancy. Unfortunately, there had been no appropriate follow-up to ensure the implementation of the recommendations made by the seminar.

2. It was the non-governmental organizations which had assumed responsibility for that task. In 1977, 20 of them had set up a non-governmental Working Group on Traditional Practices which had sent representatives to various countries where female circumcision was practised and had established educational projects in some of those countries. In 1984, the Working Group had organized a regional seminar in Dakar in co-operation with the Government of Senegal, WHO and UNICEF. Proposals had been made at that seminar and the Inter-African Committee had been set up to implement them. Since then, that Committee had been concerned with education and information programmes and had established affiliated committees in 14 countries. In April 1987, the Committee had organized a regional seminar in collaboration with OAU, ECA, UNICEF and WHO at which a plan of action had been adopted for the eradication of all harmful practices by the year 2000. It was obviously essential for Governments to become involved in that campaign and her organization appealed to them to do so.

3. Her organization was also satisfied to see that the issue was receiving the attention of the Commission on Human Rights and the Sub-Commission. The establishment of the Working Group on Traditional Practices had given the problem a human rights dimension. Her organization had taken part in the activities of the Working Group, whose recommendations concerned measures to be taken with regard to public education and Government policies; raising the age of marriage to 18; action-oriented research; organizing seminars and workshops; and effective evaluation machinery. The Commission on Human Rights had adopted the Working Group's report (E/CN.4/1986/42) at its forty-second session. At its last session, the Commission had adopted resolution 1988/57 requesting the Sub-Commission to study progress being made in that field and to submit a report to it at its forty-sixth session. Her organization hoped that the Sub-Commission would now appoint an expert to follow up the implementation of the Working Group's proposals and to report thereon at its next session; it would be happy to co-operate with that expert.

4. Mr. BARSH (Four Directions Council) said he regretted the fact that, to date, the Sub-Commission had never taken any conclusive action on the problem of minorities. Now would be the appropriate time to take a decisive step in that direction. At the current session, a statistical study showed that two thirds of the human rights situation examined in 32 countries involved religious, linguistic and especially ethnic minorities. The problems of

minorities had changed little since 1919, when the President of the United States of America, Woodrow Wilson, had told the Peace Conference at Versailles that nothing was more likely to disturb the peace of the world than the treatment which might in certain circumstances be meted out to minorities. Although there was no mention of minorities in the United Nations Charter, the term "protection of minorities" had become firmly embedded in the legal framework of the Commission and the Sub-Commission. In point of fact, the protection of minorities had been an important part of the Sub-Commission's original 1947 mandate and of General Assembly resolution 2170 (III), which had requested the Sub-Commission to make recommendations on the matter. The protection of minorities was one of the basic components of the Sub-Commission's dual mandate and that was why it was mentioned in the Sub-Commission's title.

5. At the current session Mr. Türk had drawn attention to the concept of autonomy for minorities and had emphasized that it was relative in nature. It would be recalled that, at the Commission's request, Professor Capotorti had conducted a study of minorities between 1971 and 1977. To date, however, the Sub-Commission had not done very much with regard to the "minorities" part of its mandate. The draft declaration recommended by Professor Capotorti had made little progress: the Commission on Human Rights had been working on it since 1978, but had drafted only the preliminary text of a preamble and three articles. Professor Capotorti had also pointed out that the provisions on minorities contained in article 27 of the International Covenant on Civil and Political Rights were not being widely implemented. Steps therefore had to be taken now to ensure the full implementation of that article.

6. To that end, his organization proposed that the Sub-Commission should assign one of its members to explore mechanisms for the effective protection of minorities, with particular reference to positive experiences of autonomy arrangements for minorities in a wide variety of countries and in all the major regions of the world. Subsequently, the Sub-Commission might assign one of its members the task of reviewing the overall implementation of article 27 and other relevant provisions, perhaps on an annual basis.

7. One of the most important safeguards for minorities was participation in economic and social development, which also helped to strengthen national unity. The Sub-Commission might appoint a rapporteur on that issue. With regard to another problem that was of concern to minorities, namely, the drafting of a convention on religious intolerance, he emphasized that the world-wide application of a declaration's provisions through an informal procedure, such as a rapporteur or a working group, was in fact more universal and just as effective as a formal reporting system under a convention. He also believed that there was no qualitative difference between the aspirations and needs of religious minorities and other minorities. Practical work on the protection of minorities in general, together with the study of their economic and social rights, would be far more useful than the drafting of another instrument on religious minorities.

8. Mr. TEITELBAUM (International Federation of Human Rights) recalled that, in its resolution 1988/22, the Commission on Human Rights had invited the Sub-Commission to appoint a special rapporteur to study problems, policies and progressive measures relating to a more effective realization of economic, social and cultural rights. In operative paragraph 6 of that resolution, it had recommended that the special rapporteur should take into account all

documents and issues listed in Sub-Commission resolution 1987/29. One of the issues listed was that of the impact on human rights of the policies and practices of international financial institutions, notably the IMF and the World Bank. In that connection, a UNICEF document entitled "Adjustment with a Human Face" had shown that the adjustment policies advocated by the IMF for debt repayment had considerably reduced the economic, social and cultural rights of the most vulnerable sectors of society in many countries.

9. The World Economic Survey (E/1988/50) indicated that, in some parts of Africa, Latin America and the Caribbean, per capita income had decreased and would continue to decrease in 1989. On 6 July 1988, the United Nations Secretary-General had told the Economic and Social Council that the gap between rich and poor was constantly widening and that creditor countries had to take emergency measures to reduce the volume of foreign debt and ease the burden of repayment. Unfortunately the creditor countries were being inflexible; in Toronto, the most industrialized countries had barely considered the initiative by the President of France to cancel part of the debt, although the proposal concerned only a small portion. Another important factor which should also be dealt with by the special rapporteur to be appointed was the study of the impact of capital flows on foreign debt. According to "World Financial Markets", a Morgan Bank publication (March 1986 issue), 98 per cent of one Latin American country's foreign debt was attributable to capital flows. The future special rapporteur should also study financial manipulations and the illegal clauses which were contained in many contracts and which would, according to the legislation of both debtor and creditor countries, be grounds for the cancellation of such contracts.

10. Mr. ZOLLER (Pax Christi International) said that, in defining the Sub-Commission's role more clearly, as was now being done, the role of non-governmental organizations also had to be made clearer. As the Director of the International Service for Human Rights, a body set up in 1984, he had been involved in organizing an NGO seminar which had been held in September 1986 and whose aim had been to improve the quality of NGO action and to ensure the wider dissemination of information on United Nations human rights activities. Since the beginning of the current session, the International Service had organized several informal meetings between NGOs and had prepared joint written statements signed by a large number of NGOs to improve the organization of the Sub-Commission's work. As a result of such written statements, there had been a marked reduction in the number of oral statements. Unfortunately, there had been problems with the distribution of those statements to the Sub-Commission: they could not be placed on the experts' table and, when they were sent by post, the Secretariat did not distribute them. Since the beginning of the session, the International Service had received many complaints from NGOs regarding written statements that the Secretariat had refused to accept.

11. Although the NGOs had been highly disciplined at the current session, they were more and more under attack. In that connection he emphasized that, when a speaker did not follow the rules, the matter should be dealt with by his own organization: not all NGOs should be blamed. Those who were critical of the NGOs should also note that many Government observers also broke the rules. Some had even gone so far as to request the Governments of the countries from which the Sub-Commission's experts came to give "their representatives" mandatory voting instructions. There was thus a danger that

the Sub-Commission's experts might withdraw their support for some draft resolutions for fear of incurring penalties on their return home. If he were asked to do so, he could cite specific examples.

12. He urged that NGOs should not become scapegoats for many of the problems discussed in the Sub-Commission. They brought up the same endless lists of murders, killings and cases of torture every year because such atrocities existed and more specific measures had to be taken to put an end to them. By ceasing to use NGOs as scapegoats, Member States would commit themselves more firmly to ensuring greater respect for human rights, while encouraging NGOs to continue their efforts to be more self-disciplined.

13. Mrs. BROCK (Minority Rights Group) referred to the problem of the transfer of population groups carried out by Governments either to ensure their safety or to gain control over a specific region. In some instances, the transfers were spontaneous and were caused by economic and social forces; in others, they were the result of Government policy. The sudden influx of large numbers of persons nearly always disrupted the fabric of society in the host region by placing a strain on the local economy, exerting influence on political structures and the administration and arousing hostile feelings among the local population.

14. The situations of that kind which had been considered by various United Nations bodies included that of Cyprus, where a solution was being reached on the basis of dialogue and coexistence, and that of Kampuchea, where the ongoing negotiations gave reason to hope that many displaced people would be able to return to their traditional areas of residence. She then described in detail the case of Tibet, where cohabitation was uneasy. The issue of Tibet's national status did not come under the agenda item being considered, although it should be noted that the Dalai Lama had recently submitted a proposal for negotiations in Strasbourg; it was, however, worthwhile to consider the economic and social consequences of the arrival of hundreds of thousands of Chinese workers, which had created severe unemployment among Tibetans. The Chinese authorities claimed that only engineers and technicians were being brought in and that they returned home once their contracts had expired. In fact, the Chinese workers often stayed in Tibet; they found better paid jobs and good housing, brought their families and sent their children to schools where there were more Chinese pupils than Tibetans.

15. Mr. TIAN JIN, speaking on a point of order, said that the representative of the Minority Rights Group was referring to points already dealt with under agenda item 6. In addition, her statement was not constructive.

16. The CHAIRMAN requested the representative of the Minority Rights Group to take account of the comment that had just been made and not to deal with matters that come under another agenda item.

17. Mrs. BROCK (Minority Rights Group) assured the Chairman that she was referring to economic, social and cultural matters that did come under agenda item 4 and that her purpose was a constructive one. She affirmed that the disproportionately high purchasing power of the Chinese newcomers, who received financial incentives, had led to severe inflation that was crippling for the Tibetans and meant that they were gradually losing control of business and trade. In practice, moreover, the local administration discriminated in

favour of the Chinese. The fact that two massive demonstrations involving one fifth of the Tibetan population of Lhasa had occurred since October 1987 indicated that the demographic aggression had almost reached the point of no return. However, Chinese Government publications continued to call for settlers to populate the border areas; some publications even announced that 30 or as many as 100 million settlers were needed in Tibet. She hoped that, at a time when so many difficult problems were being solved, the issue which she had just raised would be dealt with impartially and objectively by the Sub-Commission; that would not only help to solve a specific problem, but would also set standards for the future in the region and throughout the world.

18. Mrs. EK (Rädda Barnen International) said that her organization, established in 1919 in Stockholm, had approximately 250,000 members and worked for the rights of children in all countries. She recalled, that at its forty-fourth session, the Commission on Human Rights had adopted resolution 1988/57, requesting the Sub-Commission to consider measures to be taken at the national and international levels to eliminate traditional practices affecting the health of women and children and to submit a report to the Commission at its forty-sixth session. Her organization believed that the Sub-Commission should appoint an expert to follow up the recommendation contained in that resolution. She also recalled that at its 1987 session, the Commission on Human Rights had adopted article 12 bis, paragraph 3, of the draft Convention on the Rights of the Child, which referred to measures to be taken to abolish traditional practices prejudicial to the health of children.

19. Ms. ANSBACH (Observer for the German Democratic Republic) recalled that, at its forty-fourth session, the Commission on Human Rights had adopted resolutions 1988/23 and 1988/22 on economic, social and cultural rights. Her country had been one of the sponsors of the latter resolution, operative paragraph 5 of which invited the Sub-Commission to appoint a special rapporteur to study problems, policies and progressive measures relating to a more effective realization of economic, social and cultural rights. In that resolution, the Commission on Human Rights had also recommended that the special rapporteur to be appointed should take into account all documents and issues listed in Sub-Commission resolution 1987/29. Her delegation hoped that the Sub-Commission would comply with the Commission's request. It noted with satisfaction that, recently, various United Nations bodies, including the Sub-Commission, had increasingly been dealing with economic, social and cultural rights, which had, until now, not received as much attention as civil and political rights. Her Government was convinced that the preparation of the study requested in Sub-Commission resolution 1987/29 would help to restore the balance between the attention paid to civil and political rights, on the one hand, and economic, social and cultural rights, on the other.

20. Mr. EIDE, referring to comments made by some non-governmental organizations, said that it should be made clear exactly what the Sub-Commission expected of those organizations and noted that experts held differing views on the matter, as had been shown during the discussion of agenda item 6 (violations). He personally believed that there was nothing wrong with the use of examples to illustrate problems relating to the item under consideration, as had just been done by one NGO representative.

21. Some NGOs had referred to the problems they had encountered in distributing documents to the members of the Sub-Commission, not in an official form which would involve translation costs, but merely as conference

room documents. He expressed the hope that the Secretariat would find a way of facilitating that type of distribution because the information contained in such documents might be extremely valuable and could also save time by making oral statements unnecessary.

22. It was essential for Member States to respect the independence of the Sub-Commission experts. He had noticed that some experts occasionally received instructions from their capitals as to how they should act. That practice was not normal and observers representing their countries in the Sub-Commission had to understand, that while they were entitled to try to convince the experts that their position was justified, they must not request their Governments to exert pressure on independent experts. That had never happened to him personally, but he knew that it had happened to some experts, who had told him so unofficially.

23. The CHAIRMAN said he had himself pointed out that, since many agenda items overlapped, issues under one item might be raised in connection with another. However, it must also be acknowledged that some NGOs repeated the same things under various items, and that was not admissible. Although some Governments might exert pressure on experts, it was the experts' duty to resist such pressure and to preserve their independence.

24. Mr. JOINET said it was true that there were problems with item 4 because its title referred to "further developments", while what was meant was events which had occurred during the past year. He therefore believed that a pragmatic attitude had to be adopted and that, in cases of doubt, the NGOs should be encouraged to consult one of the Sub-Commission's experts or the Rapporteur so that generally acceptable solutions might be found and the Chairman would not have to act as a judge.

25. He agreed with Mr. Eide on the problem of the experts' independence. In point of fact, only two or three delegations had acquired the unfortunate habit of giving experts instructions through their Governments. He nevertheless admitted that, although that had happened to him, he had always had the good fortune to deal with ambassadors who had told him so after the Sub-Commission's session had ended. Since there were in fact two or three delegations, always the same ones, which exerted pressure on experts, he urged them to refrain from doing so in future.

26. Mrs. DAES said that the original title of the subsidiary agenda item dealt with in the report of the Secretary-General contained in document E/CN.4/Sub.2/1988/2 had been: "Gross violations of human rights and international peace". It must not be forgotten that systematic and mass human-rights violations such as aggression, military occupation, genocide, the bombing of civilian populations and apartheid could have serious consequences for the maintenance of international peace and security. As the General Assembly had reiterated in resolution 42/119 of 7 December 1987, the international community should accord, or continue to accord, priority to the search for solutions to mass and flagrant violations of the human rights of peoples and individuals. The Sub-Commission and the Commission on Human Rights had themselves considered that the relationship between human-rights violations and threats to peace and security was more direct in cases such as the persecution of minorities, in particular ethnic and religious minorities.

27. She thanked the ILO and UNESCO for their reports on further developments in fields with which the Sub-Commission had been concerned. UNESCO, in particular, had provided valuable information on the social, cultural and economic situation of indigenous populations and she was happy to learn that, in 1989, it would organize an informal consultation of international non-governmental organizations on the co-ordination of research and programmes concerning such populations.

28. She recalled that, at its thirty-ninth session, the Sub-Commission had adopted resolution 1987/19 in which it had decided, inter alia, that the question of human rights in Cyprus should be considered in the context of item 4 of the agenda for its fortieth session. Everyone was aware that the problem of human rights in Cyprus remained unresolved; the foreign military occupation and foreign settlement in the north of the country were continuing, very serious violations of human rights and fundamental freedoms were still being committed and the Sub-Commission's resolutions on that question had still not been implemented. The issue of the restoration of the human rights of all Cypriots should be one of the first priorities of the negotiations between the two communities that were about to resume and, in that connection, she expressed her gratitude to the Secretary-General for all his efforts to promote a peaceful and lasting solution to the tragedy in Cyprus.

29. She proposed that the issue of human-rights violations in Cyprus should continue to be included in the Sub-Commission's agenda. She also wished, through the Chairman of the Sub-Commission, to request the Secretary-General to draw the Sub-Commission's attention, at its next session, to any relevant report on the question. She expressed the hope that the document to be prepared by the Secretary-General would contain not only factual information, but also his assessment of the situation.

30. Mrs. PALLEY said that she was very familiar with the problem of Cyprus and sincerely hoped that a political settlement would be reached. Under such a settlement, however, it was important to protect and safeguard the human rights of all Cypriots, particularly their right to freedom of movement and to property. In view of the tragic division of the two communities, it was quite clear that temporary measures had to be taken until a situation in which everyone might freely exercise his rights could be established. Nothing should therefore be done to impede the negotiating process. That did not mean that the Sub-Commission should not continue to deal with the issue. On the contrary, until the problem had been solved, the Sub-Commission should continue to keep the case of Cyprus under review. It was to be hoped that the occupying forces would withdraw their troops and their settlers and that the many refugees and displaced persons from both communities would soon be able to return home. If only as a guarantee, the Sub-Commission should keep the question of Cyprus on its agenda and she hoped that her comments would not be interpreted as criticism or condemnation of either side.

31. The question of human rights teaching had often been discussed by the General Assembly. Admittedly, procedures and principles were very valuable, but their implementation was even more important and, above all, the attitudes and behaviour of human beings had to be changed. Children should therefore be taught human rights from a very young age. Suitable manuals and textbooks for all educational levels should be prepared for that purpose and programmes should be set up for teachers themselves and for persons who did not attend school. She would submit a draft resolution on that question at a later stage.

32. In conclusion, she said that, for many years, the Sub-Commission had been neglecting a major part of its original mandate - namely, the protection of minorities - perhaps out of fear of raising the issue of self-determination and separatism. She fully recognized the territorial integrity and sovereignty of States and believed that the Sub-Commission should do nothing that might jeopardize such integrity and sovereignty. She nevertheless considered that, without in any way encouraging separatist movements, the Sub-Commission could help to strengthen the concept of internal autonomy.

DRAFT DECLARATION ON THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 10) (continued) (E/CN.4/Sub.2/1988/20 and Add.1, E/CN.4/Sub.2/1988/39, E/CN.4/Sub.2/1985/18 and Add. 1 to 4, Add.5/Rev.1 and Add. 6, E/CN.4/Sub.2/1987/17)

33. The CHAIRMAN said that, following the statement made by the International Commission of Jurists on item 10, two observers from member States had asked to be able to speak in exercise of their right of reply. As he had not been able to give them the floor at that time, he now invited them to exercise that right.

34. Mr. VILLARROEL (Observer for the Philippines) recalled that the representative of the International Commission of Jurists had stated that a number of human rights lawyers in the Philippines had been murdered and that many others were being harassed and threatened. His Government had condemned these killings. Furthermore, as he himself had already informed the Sub-Commission, an investigation into those murders had revealed that Mr. Bueno in the island of Luzon had been killed for reasons unconnected with his human rights activities. Mr. Mendoza had been murdered after having defended a policewoman who had brought a private case against one of her colleagues. Those responsible for Mr. Cura's death had not yet been identified, so it was premature to accuse the armed forces. On the other hand, the killer of Mr. Surigao was a former member of the New People's Army death squad who had implicated a military officer in the murder. However, the representative of the International Commission of Jurists had not mentioned that that military officer was currently facing charges in a civilian court.

35. There was now a bill pending in the Philippine Congress which would strip military tribunals of their powers to try cases of members of the armed forces accused of human-rights violations. That was Bill No. 13399, which sought to repeal Presidential Decree No. 1850 of the previous régime. His Government did not, as the representative of the International Commission of Jurists had seemed to suggest, condone the harassment of human rights lawyers. The reported harassment of Mrs. Encinareal, who was both mayor of a district and a lawyer, had been politically motivated. Nevertheless, his Government, through the Philippine Commission on Human Rights, had immediately heard her complaint and had given her and her witnesses the protection she had requested. The Philippine Commission on Human Rights had also informed the military command in that particular area that it would be held responsible for the safety of Mrs. Encinareal and her witnesses.

36. The representative of the International Commission of Jurists had also called for the abolition of vigilante groups, but he had forgotten that there was a serious insurgency problem in the Philippines and that, in many cases,

particularly in remote areas, those civilian volunteer groups represented the only protection the civilian population had against the insurgents. The Philippine Constitution recognized the right of citizens to band together for self-defence and protection. Was the representative of the International Commission of Jurists seeking to deny them that constitutional right? In July 1988, the President of the Philippines, Mrs. Aquino, had ordered the disbanding and prosecution of the vigilante groups, especially those which had committed excesses or offences. Those groups would, however, be replaced by volunteers from the communities who would be screened by the local civilian councils. Those persons must have no police record or charges pending against them; they would have to agree to undergo military training and would be subject to the orders of military officers and to military laws.

37. The International Commission of Jurists also called on the Philippine Government to make it clear that the defence of human rights and fundamental freedoms by lawyers and private individuals, even when it involved criticism of the Government or the armed forces, was a citizen's legitimate right. Such a request was unnecessary and unfair because it implied that the present Government had denied its citizens that right, whereas the Philippine press and media were the freest in the world, some of their daily criticism of the Government, including the President, was extremely severe and their rights and freedom of action were respected. In point of fact, his Government did not in the least fear criticism. It pursued a policy of openness and transparency. However, that did not mean that it could allow half-truths to be told to a respected group of experts which was entitled to nothing less than the truth.

38. Mr. KHOR ENG HEE (Observer for Malaysia) said that the representative of the International Commission of Jurists had made a serious allegation that the Malaysian Government was seeking to undermine the rule of law and the independence of the judiciary. He had also made that allegation in order to reinforce the claim he had made earlier, under agenda item 9, that the Malaysian Government was arbitrarily using administrative detention to suppress all political opposition. In support of those allegations, the representative of the International Commission of Jurists had asserted that six judges of the Malaysian Supreme Court had been suspended from their functions for actions and decisions consistent with the rule of law, but contrary to the wishes of those in power.

39. In order to make the true facts known, he explained that the first case was that of the Lord President of the Supreme Court, who had been removed from office by the Supreme Ruler under article 125 (3) and (4) of the Malaysian Constitution. A six-man court composed of four Malaysian judges, one from Singapore and one from Sri Lanka had been set up to hear the charges against the Lord President of the Supreme Court. That court's report had been conveyed to the Supreme Ruler and its contents had been made public. The court had unanimously found the Lord President of the Supreme Court guilty of the five charges brought against him. Subsequently, the Prime Minister's Department had issued a statement to the effect that the Supreme Ruler had endorsed the court's recommendations and had decided that the Lord President of the Supreme Court should be relieved of his duties. That decision had been made under article 125 (3) of the Constitution.

40. On 7 July, the Supreme Ruler had suspended five Malaysian Supreme Court judges under article 125 (5) of the Constitution. That information had been reported in a statement issued by the Office of the Chief Justice. The

charges against the five judges had also been included in the statement. A court composed of four Malaysian judges, one from Singapore and one from Sri Lanka had been set up to hear the charges and the hearing was currently taking place. That was briefly the background to the suspensions of the six judges to which the International Commission of Jurists had referred. The measures taken against the judges were fully in keeping with the country's Constitution. An independent court had been set up in those cases to hear the charges and make recommendations to the Supreme Ruler. Judges from outside the country had been invited to form part of the court. The contents of the first case had been made public. The judges against whom the charges had been made had been free to use legal counsel to defend themselves and to appear before the court. The allegations made by the International Commission of Jurists were therefore unfounded and unworthy of such an important organization. It was not for that organization to decide whether the five judges still facing charges were innocent or not. It was for the court and, possibly, the Supreme Ruler to make that decision in accordance with the Constitution. It was also not that organization's role to decide whether or not a Government had the right to suspend or dismiss a judge for misconduct. The allegations it had made implied that the court set up to hear the charges against the Lord President of the Supreme Court lacked integrity, and that was a serious charge. He believed that the Sub-Commission should not allow such statements to be made with impunity.

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT THE NATIONAL, REGIONAL AND INTERNATIONAL LEVELS (agenda item 15):

- (a) THE STATUS OF THE INDIVIDUAL AND CONTEMPORARY INTERNATIONAL LAW;
- (b) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES;
- (c) PREVENTION OF DISCRIMINATION AND PROTECTION OF CHILDREN: HUMAN RIGHTS AND YOUTH;
- (d) PREVENTION OF DISCRIMINATION AND PROTECTION OF WOMEN;
- (e) THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY (E/CN.4/Sub.2/1988/33 and Add.1, E/CN.4/Sub.2/1988/35 and Add.1 and Add.1/Corr.1; E/CN.4/Sub.2/1988/NGO/3, E/CN.4/Sub.2/1988/NGO/6, E/CN.4/Sub.2/1988/NGO/16; E/CN.4/Sub.2/1984/29, E/CN.4/Sub.2/1987/30 and Add.1 and E/CN.4/Sub.2/1988/26)

41. Mr. MARTENSON (Under-Secretary-General for Human Rights), introducing agenda item 15, said that the Sub-Commission would consider five subitems under that item. Those subitems dealt, inter alia, with protective measures for the equal enjoyment of human rights and fundamental freedoms by members of some particularly vulnerable groups, especially women and children. The Sub-Commission would also have before it studies prepared by Special Rapporteurs who had been entrusted with the task of considering important legal aspects of the practice of States with regard to the promotion, protection and restoration of certain human rights. The Sub-Commission would find information and guidance for the consideration of those issues in the annotations to the provisional agenda contained in document E/CN.4/Sub.2/1988/1/Add.1 (paras 208 to 236).

42. Mr. EIDE, reminded the the Under-Secretary-General for Human Rights that, at the end of the previous week, the Sub-Commission had requested further contacts with Mr. Mazilu. Since the Sub-Commission was currently considering the agenda item for which Mr. Mazilu was to prepare a report, it hoped that the Special Rapporteur would be able to come to introduce it. He therefore asked whether the United Nations Organization's representatives in Bucharest had been able to go to Mr. Mazilu's home or whether they had encountered problems in establishing direct contact with that expert of the Sub-Commission.

43. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that, in accordance with the Sub-Commission's request, the secretariat had again contacted the United Nations representatives in Bucharest and had been informed by them that, on 27 August, they had had a meeting with the Foreign Ministry official in charge of relations with international organizations. That official had reiterated the Romanian Government's attitude and had stated in particular that the issue could be discussed only with the Romanian Ambassador in New York or in Geneva. He had also emphasized that the matter was between the national authorities and a Romanian national and that the United Nations Information Centre in Bucharest was not competent to establish direct contact with a Romanian national. Hence, the efforts the secretariat had made at the Sub-Commission's request had so far been unsuccessful, but they would be continued.

44. Ms. SELLAMI-MESLEM (Director of the Women's Branch) recalled that, at its thirty-seventh session in 1985, the Sub-Commission had decided to include in its agenda the question of the prevention of discrimination and the protection of women. The World Conference to Review and Appraise the Achievements of the United Nations Decade for Women - Equality, Development and Peace - had also been held in Nairobi that year and had adopted the Forward-looking Strategies for the Advancement of Women until the year 2000. She was deliberately drawing attention to those two events in order to inform the Sub-Commission of the recommendations by the Commission on the Status of Women which had been endorsed by the Economic and Social Council and the General Assembly, as well as the programmes and activities undertaken by the Women's Branch within the United Nations Secretariat. As emphasized in paragraph 227 of the Sub-Commission's annotated agenda, the implementation of the Forward-looking Strategies should result in the elimination of all forms of inequality between men and women and in the complete integration of women into the development process. The Strategies had become the reference manual for the adoption of policies and practical measures and, in order to implement them, the Commission on the Status of Women had held a special session in January 1987 and had adopted a five-year work programme. That programme contained five priority themes: national machinery for monitoring and improving the status of women; the problems of rural women, including food, water resources, agricultural technology, rural employment, transportation and environment; access to information, education for peace, and efforts to eradicate violence against women in the family and society.

45. The items on the agenda of the next session of the Commission on the Status of Women were: under equality, equality in economic and social participation; under development, women and education, the eradication of illiteracy, employment, health and social services, including population issues and child care; and, under peace, full participation of women in the construction of their countries and in the creation of just social and

political systems. The other priority themes which would be considered between now and 1995 were described in document E/1987/15. At its special session, the Commission on the Status of Women had also decided, in its resolution 1987/2, to recommend that its sessions should be held on an annual basis and that recommendation had been adopted by the Economic and Social Council and by the General Assembly. The Commission had also adopted a system-wide medium-term plan for women and development, which provided a framework for the formulation of related plans and programmes and which reflected the concern to co-ordinate and rationalize all activities for the advancement of women. The question of overall co-ordination was considered at the inter-agency meetings held annually after each of the Commission's sessions.

46. As the intergovernmental body responsible for the substantive aspects of programming and co-ordination work relating to the advancement of women, the Commission on the Status of Women had revised its agenda in the light of functional principles, prepared a systematic long-term programme of work and made proposals to improve the system for the submission of reports on the monitoring and appraisal of the implementation of the Nairobi Forward-looking Strategies.

47. In so far as its resources had permitted, the Women's Branch, which provided secretariat services both for the Commission and for the Committee for the Elimination of Discrimination against Women had organized several meetings, including a special meeting on the issue of violence in the home and its effects on women, in December 1986; an interregional seminar on national machinery for monitoring and improving the status of women, which had studied ways of achieving equality and the specific features of the national machinery for the advancement of women to be established in various countries, in October 1987; and a seminar on information systems for national machinery for the advancement of women, in January 1988. The Branch had developed an information system containing over 800 documents.

48. The seminars and meetings of experts gave representatives of Member States of the United Nations an opportunity to exchange views, share experiences and make joint recommendations which were then submitted to the Commission. The participants were selected from among persons who were responsible at the national level for the formulation and implementation of policies for the advancement of women. In March 1988, the Commission on the Status of Women had endorsed the recommendations made by those meetings. The work on the themes had been appreciated by the Commission as an in-depth analysis of the underlying reasons for discrimination against women. The final recommendations made by the preparatory meetings were the result both of past experience and of the day-to-day practice of national officials. In so far as available resources permitted, there were plans to organize other meetings of experts and seminars of that kind for each of the themes to be discussed until 1995. The Commission had also decided to extend its 1990 regular session in order to carry out an initial appraisal of the Strategies.

49. With regard to Sub-Commission resolution 1987/26 on the role and equal participation of women in development, she recalled that, at the beginning of her statement, she had referred briefly to policies and programmes to eliminate discrimination against women. She emphasized that the problem was one of eliminating discrimination in general. Development and the two other

objectives, namely equality and peace, were interdependent. In the Nairobi Forward-looking Strategies, it had been emphasized that the Decade's activities had enhanced knowledge of the problems encountered by Member States in truly integrating women into society and had also found and implemented solutions to the problems which arose. Women continued to be confined to stereotyped roles, allegedly as a result of physiological, social and cultural factors, and they remained in a subordinate position with regard to development as a whole, even where some progress had been made.

50. An initial study submitted to the General Assembly in 1985 had shown that the integration of women into the economy was a dynamic factor in development and that their contribution was becoming increasingly visible. However, their participation in development depended on the policies adopted, on the obstacles created by their traditional status and on current social and economic structures (see United Nations publication, Sales No. E.86.IV.3).

51. In its resolution 40/204, the General Assembly had requested that the world survey on the role of women in development should be updated on a regular basis and that the first update should be submitted to it at its forty-fourth session in 1989. The first draft of that update was contained in document E/CN.6/1988/7. The Statistical Office of the Secretariat, the International Research and Training Institute for the Advancement of Women and various United Nations bodies would take part in the preparation of that study. It would deal primarily with the following problems: the impact on women of structural adjustment policies adopted to deal with indebtedness, the worsening of the terms of trade and protectionism; the effectiveness and efficiency of selected innovative policies to promote women's integration into the economy; other emerging development trends; and the impact of the reduction in spending on programmes for the advancement of women in countries where such reduction had taken place, particularly in the fields of health, education and housing.

52. In conclusion, she expressed the hope that her statement would facilitate consideration of an issue which had the international community's broad support, although much still remained to be done.

53. Mr. McDERMOT (International Commission of Jurists) said that his organization was concerned about the Romanian Government's plan to level 7,000 of the country's 13,000 villages and to relocate their inhabitants in 600 "agro-industrial centres" by 1995. The decision to eliminate all villages with fewer than 3,000 residents had already been enforced in four cases. The main victims of that policy were Hungarians, Germans, Gipsies, Serbs, Ukrainians, Turks and Tartars, whose families had lived in Transylvania and other parts of Romania for centuries. The approximately 2 million Hungarians represented the largest of those minority groups, which, altogether, accounted for 11 per cent of Romania's population of 22.7 million. The inhabitants of the villages which had already been destroyed had been settled in tower block buildings erected in townships of over 3,000 inhabitants. Their apartments had no kitchens and washing and toilet facilities were communal. According to the authorities, that policy would give the rural population a standard of living equivalent to that of town dwellers and would make more land available for agriculture. However, the alleged economic advantages of that policy had been challenged and the plan was in fact a deliberate attempt to destroy the culture, traditions and way of life of all rural population groups, as well as to disperse the ethnic minorities and convert them into Romanians.

54. The authority's educational policies were intended for the same purpose. Until the 1950s, there had been separate schools for Hungarians, who had been taught in their own language. However, that system had begun to be dismantled in the 1960s and there were no longer any Hungarian schools or universities today. The Hungarian minority complained mainly of shortages of teaching materials and increasing control by non-Hungarian speaking Romanians. For example, the new director of the Hungarian theatre at Tirgu Muses was a Romanian who knew no Hungarian and the printing of Hungarian newspapers had been curtailed. Even worse from the Hungarian standpoint was that the history of Transylvania had been rewritten in such a way as to exclude them completely. Development policies were directed at the forced assimilation of the national minorities, which were frequently excluded from policy-making bodies. The destruction of villages would also involve the demolition of many historical monuments and churches. Several Orthodox churches and monasteries, some dating from the sixteenth century, had already been levelled.

55. In his organization's view, that "settlement organization programme" was a violation of the two International Covenants on human rights, particularly the articles which guaranteed ethnic and linguistic minorities the right to preserve their cultural life and freely to choose their residence. Moreover, the Romanian Government had pledged to fulfil its obligations under the Helsinki Final Act, principle VII of which stated that "The participating States on whose national territory minorities exist will respect the rights of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will in this manner, protect their legitimate interests in this sphere."

56. The situation in Transylvania had become a serious international problem particularly because it had caused emigration flows to Hungary and other countries. His organization urged the Sub-Commission to remind the Romanian Government of its international obligations and to call on it to abandon its settlement organization programme.

57. Ms. THOMPSON (International Commission of Jurists) said that her organization was also concerned about the effects on women in Pakistan of the provisions of the Hudood Ordinances relating to the crime of zina. Since their enactment in 1979, those provisions had resulted in the increasingly harsh treatment of women because they meant that women could be prosecuted for crimes such as adultery, fornication and rape. The Islamic punishment for adultery and so-called "rape" was death by stoning. A husband had only to tell the police that his wife had left him for another man and the wife and her supposed lover would be arrested. If the accused could not be found, the police could arrest close relatives on charges of complicity. Persons arrested in three such cases were currently in detention in Karachi.

58. The case of Shahida Parveen and Mohammed Sarwar, which was now on appeal to the Federal Shariat Court, was a revealing example. Shahida Parveen, aged 25, had divorced her first husband and the divorce papers had been attested by a magistrate. However, a divorce was not legally valid unless the husband registered the papers with the local authorities. In the mistaken belief that her husband had done so, Shahida had decided to remarry. Her first husband had then claimed that her second marriage constituted adultery and she and her second husband had been arrested and charged under the Zina Ordinances. As she had not denied that she had consummated her second

marriage she had been deemed to have "confessed" to the crime with which she had been charged. She and her second husband had been sentenced to death by stoning.

59. The criminalization of sexual relations out of wedlock particularly affected victims of rape. If a woman filed a complaint of rape and the court considered her testimony inadmissible, she might receive a conviction for zina, while her rapist would be set free. The victim had the burden of proving that she had not been a consenting partner. A rape victim who did not file a complaint with the police was also in danger of being charged with zina if the act was discovered by other persons, who often denounced the victim for having brought shame on her family and friends.

60. The International Commission of Jurists urged the Government of Pakistan to consider the repeal of the Zina Ordinances and to abolish all discriminatory legislation in order to ensure genuine freedom, equality, tolerance and social justice for women in accordance with the preamble to the 1973 Constitution of Pakistan.

61. Mrs. WARZAZI thanked the Director of the Women's Branch for her detailed description of the activities being carried out for the advancement of women. She was nevertheless surprised that the Sub-Commission was dealing with the role of women in development under item 15 of its agenda. She recalled that International Women's Year had resulted in the proclamation of the United Nations Decade for Women: Equality, Development and Peace. Since then, three international conferences for the advancement of women had been held in Mexico, Copenhagen and Nairobi; the last conference had led to the adoption of the Nairobi Forward-looking Strategies for the Advancement of Women. The Commission on the Status of Women, which had been meeting biannually, had now been authorized to meet annually to monitor the implementation of the Strategies. In the past few years, moreover, the Second Committee of the General Assembly had been discussing an agenda item on the role of women in development.

62. In view of all those activities, she did not see what fresh contribution the Sub-Commission could make on that particular question, which was already being dealt with by several other United Nations bodies. It was understandable that the Sub-Commission wished to show that it was concerned about the issue, but, in order to prevent overlapping and duplication of work, it should merely take note of the other activities being carried out with regard to the role of women in development, without trying to discuss problems that were already being dealt with in depth elsewhere.

63. Mr. LITTMAN (World Union for Progressive Judaism) congratulated the Sub-Commission's Special Rapporteur, Mr. Mubanga-Chipoya, on his final report on the right of everyone to leave any country, including his own, and to return to his country (E/CN.4/Sub.2/1988/35 and Add.1). Although his organization had one or two reservations about that document, which made an invaluable contribution to the study of a difficult subject, he would not discuss them now, but would refer to a situation relating directly to agenda item 15 (e).

64. Since January 1987, more than 18,000 Jews, the same number of Armenians and twice as many ethnic Germans had been allowed to leave the Soviet Union. The Soviet authorities had also released all Jewish prisoners - some of them

well before their sentences had expired - who had been sent to labour camps for their involvement in Jewish national activities. Most of those persons had immediately been granted permission to leave the Soviet Union for Israel. It gave him particular pleasure to be able to mention that positive development in the Sub-Commission, where the issue had hitherto been a contentious one. Indeed, the Soviet Government deserved the praise of Jews throughout the world for that particularly positive aspect of perestroika and for its vehement criticism of the outrageous anti-semitism recently demonstrated by the Soviet Historical and Patriotic Association, which was called "Pamyat" ("Memory") and to which he had already referred in the statement he had made to the Commission on 28 February 1988.

65. That made it all the more regrettable that some cases still had not been solved, including that of the four former "prisoners of Zion", who had still not received exit visas. A fifth former "prisoner of Zion" had received permission in May 1988 to be reunited with his wife and daughter, who had been living in Israel since 1976. A number of Jews, including Yuli Kosharovskiy, had also been refused permission to emigrate for more than 15 years. He himself had been privileged to be able to raise some of those cases with Mr. Kouznetsov, the Head of the Department of Visas and Registration of the Soviet Ministry of International Affairs and a member of the Soviet delegation at the last session of the Commission on Human Rights. On the latter's advice, Mr. Kosharovskiy had applied to the Special Commission of the Supreme Soviet, but his request had again been refused and he had been told not to submit a further application until 1991 or in other words, 20 years after he had first asked for the right to leave his country, the Soviet Union, to live in another Member State of the United Nations, Israel, in accordance with the right recognized in the Universal Declaration of Human Rights and in other international instruments. He also drew attention to the case of Mark Grauer, who had first applied for permission to emigrate to Israel in 1972, but had been told in June 1988 that he should not submit a further application until 1995 - a wait of 23 years! His parents, who had been allowed to emigrate to Israel in 1974, feared that they might never see their son again. Why should such injustice be tolerated?

66. In an article published in the International Herald Tribune on 31 May 1988, Evgeny Chossudovsky, a Soviet citizen and a Senior Fellow of the United Nations Institute for Training and Research, had emphasized that the United Nations was the principle forum for settling individual cases in a humane and equitable way. In that spirit, his organization was again appealing to the Sub-Commission and to the Soviet Union, which had made enormous efforts in the past 20 months to resolve so many Jewish refusnik, to settle the outstanding cases as soon as possible. In point of fact, only three of the 15 persons whose cases had been referred to at the Commission's last session had since been allowed to leave the Soviet Union.

67. During the recent Moscow Summit Meeting, President Reagan had stated at a press conference that the idiosyncrasies of some human rights problems in the Soviet Union were not directly the result of Soviet policy, but of an unresponsive bureaucracy. How else could it be explained that some individual cases remained unresolved and that almost all of the 300 "long-term refusniks" and their families were still awaiting exit visas, while thousands of others had been allowed to leave? Although he had been informed six months previously that all those cases would soon be settled, nothing had happened!

Bureaucracy was a real problem everywhere in the world and not only in the Soviet Union. How else could it be explained that, even while Mr. Kouznetsov had been in the Commission, someone in Moscow had been preventing one of his own colleagues, Martin Gilbert, from receiving an entrance visa to visit the Soviet Union? That decision had been all the more ridiculous because, two years earlier, Martin Gilbert had been the guest of the Soviet Academy of Sciences, even before the era of glasnost and perestroika had begun. Mr. Gorbachev himself had declared publicly at the recent Communist Party Conference that, although bureaucrats always found arguments to justify their conduct, the whole of society was moving forward and there would be no way out for the bureaucrats. In order to deal with those revisionists, it was all the more necessary to develop dialogue, as Mr. Gorbachev had stressed in Geneva in 1985 and at the close of the Moscow Summit Meeting on 2 June. In that spirit of dialogue within the Soviet Union and between the Soviet Union and the international community, he was confident that the problem of Soviet Jews and other vital issues could be resolved.

68. On the previous day, however, he had received disturbing information concerning three "long-term refusniks" whose exit visas had been withdrawn on the usual grounds of "knowledge of State secrets". One of the persons concerned, who had applied to emigrate to Israel in 1978, had had no contact with any so-called "State secrets" for 18 years. Another, a Second World War invalid, had never had access to such secrets. The old bureaucratic demons were unfortunately still very much alive! In conclusion, he pointed out that the Literaturnaya Gazeta had just published a strong attack on the Leningrad Communist Party leadership for having allowed the anti-semitic organization, "Pamyat", to hold meetings in the city. His organization called on the Soviet leadership to remain extremely vigilant with regard to that matter.

69. Mrs. BAUTISTA thanked the Director of the Women's Branch for her detailed description of the activities being carried out within the United Nations system for the advancement of women, particularly through the organization of international conferences and the adoption of the Nairobi Forward-looking Strategies. Like Mrs. Warzazi, she nevertheless believed that the Sub-Commission should not be discussing the question of the advancement of women, which was already being dealt with by other United Nations bodies, and that it should concentrate more fully on other problems.

70. Mrs. FARHI (International Council of Jewish Women) said that she was representing not only her own organization, but also 29 other non-governmental organizations, many of which were working for human rights. Those organizations all welcomed the fact that six of the Sub-Commission's experts and four of its alternates were women and hoped that they would make the role and equal participation of women in development, in accordance with Sub-Commission resolution 1987/26, a priority issue instead of one that was relegated to the end of the session.

71. All those organizations noted that the Sub-Commission had requested that the reports of the Commission on the Status of Women and of the Committee on the Elimination of Discrimination Against Women should be made available to it and that the Director of the Women's Branch had been invited to speak to the Sub-Commission.

72. That was, however, not enough to eliminate discrimination against women or to ensure their equal participation in development. All over the world and especially in developing countries, women were disadvantaged, denied education, cloistered within their homes, condemned to a life of domestic servitude that often included physical and psychological ill-treatment, underpaid when they worked, unable to exercise their freedom and fundamental rights, such as freedom of movement and the right to own property, since they themselves were often regarded as pieces of property, and dying by the thousands every year for lack of adequate medical care during childbirth. It was not enough to say that women should participate in the development process, for women had been rendered mute by being denied education, by being treated as second-class citizens and by traditions of repression which made them psychologically incapable of speaking out. Recent United Nations studies had shown how difficult it was to convince people to change existing social structures. Governments therefore had to be persuaded to include women in the development process at all levels and the Sub-Commission should emphasize that aspect of the right to development. Women must have equal opportunities in education, both general and vocational, and be protected against violence in the family and society. At its 1988 session, the Commission on the Status of Women had decided to consider violence in the family and in society as an integral part of the "peace" aspect of its activities.

73. Her organization and the other non-governmental organizations it represented requested the Sub-Commission to strengthen co-ordination and the sharing of information with the Commission on the Status of Women, the Women's Branch and the Committee on the Elimination of Discrimination against Women; to give higher priority to the agenda item under consideration; and to promote balanced development through the clear assertion of the essential role and equal participation of women during the discussion of the item on the new international economic order and the promotion of human rights. The non-governmental organizations concerned emphasized once again that development could not be achieved without equal participation by women at all levels.

74. Mrs. NGANEKO KAIHAU MINHINNICK (Indigenous World Association) said that the Treaty that had been signed in New Zealand in 1840 had been a treaty between two sovereign nations. At that time, the Maoris had outnumbered the new arrivals, but colonization and all its evils had made them a minority group in their own country. Young people and children accounted for over 75 per cent of the Maori population and it could therefore be considered that item 15 (c) on the prevention of discrimination and protection of children also related to the issue of minorities. However, the promotion, protection and restoration of the human rights of the Maoris at the national level depended on the implementation by the New Zealand Government of the 1840 Treaty.

75. With regard to item 15 (d), she pointed out that the New Zealand Government had set up a Royal Commission for Social Policies to prepare a report dealing, inter alia, with the situation of women and Maoris in the country. Unfortunately, the report had had to be completed in a hurry and it was unlikely to be taken into account in Government plans. Women nevertheless played a key role - and not merely as mothers - in the survival of the Maori people and in other important fields, including environmental protection. It was therefore clear that the implementation of the recommendations by the

Royal Commission for Social Policies would be an appropriate means of promoting, protecting and restoring human rights in New Zealand.

76. Mrs. FARHI (Co-ordinating Board of Jewish Organizations) said that the organization she represented was pleased to note that the Special Rapporteur had taken account of the suggestions it had made in its October 1986 statement with regard to permissible limitations on the right of everyone to leave any country, including his own, as provided for in article 12, paragraph 3, of the International Covenant on Civil and Political Rights, and, in particular, of the proposal that the period of limitation should not exceed five years. Her organization also noted that the effects of the "brain drain" phenomenon on the right to leave had been analysed by the Special Rapporteur in chapter X of his report (E/CN.4/Sub.2/1988/35). It nevertheless hoped that, when he stated in paragraph 266 that reference to public order might be used for the restriction of the right to leave of highly qualified and skilled persons who might be tempted to do so, the Special Rapporteur was merely making an observation without necessarily recognizing it as being justified. It was also stated in paragraph 473 that arbitrary restrictions on the right to leave would not settle or even reduce the problem of the "brain drain", but might, rather, have a negative effect in the sense that they might encourage clandestine departures. Her organization shared the Special Rapporteur's view that it would be more appropriate to consider that problem in connection with the right to development and it hoped that the Special Rapporteur would agree that, in any event, such considerations could not be invoked by developed countries as grounds for any restrictions on the right to leave.

77. Her organization regretted that paragraphs 121 to 124 of the report raised a political issue which was in no way related to the issue of individual rights. The problem of persons who had been displaced as a result of war, political transfers of territories or population movements could be solved only by means of a political settlement negotiated between the parties concerned. That issue was now being considered by other United Nations bodies and should therefore not be dealt with in the report.

78. There should be no mistake about the precise meaning of the words "his own country", in the sense of article 31 of the Vienna Convention on the Law of Treaties, as applied to article 13, paragraph 2, of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights. Her organization believed that those words undoubtedly had the same meaning in those two instruments and could refer only to the country of nationality. The argument put forward by some experts that those words could apply to persons who were permanent residents of a particular country of which they were not nationals did not bear serious scrutiny. In particular, there was no evidence that a broader interpretation had been given to these words during the "travaux préparatoires" for the Covenant. If that had been the intention of the drafters of the Covenant, they would have used clear and specific wording in the text of the instrument. A broader interpretation of article 12, paragraph 4, of the Covenant would also be inconsistent with article 13 of the same instrument, which made no reference to any special status or exceptions in favour of permanent residents of a country. Moreover, in its 1986 general comment on article 13 of the Covenant, the Human Rights Committee had clearly stated that the Covenant did not recognize the right of aliens to enter or reside in the territory of a State Party; and it had made no reservations with regard to

permanent residents. It was thus indisputable that only citizens of a country had the right to enter the territory of that State. In all regional human rights conventions, moreover, the words "his (own) country" referred only to nationals of the country concerned.

79. In conclusion, her organization considered that the inclusion in the report of considerations relating to a political problem of that kind could only lead to undesirable political controversy in respect of an issue affecting individual human rights. As the Special Rapporteur said, that issue was one to be discussed by the political organs of the United Nations. Her organization sincerely hoped that the inclusion of that issue would not detract from the more relevant recommendations and conclusions which were contained in the Special Rapporteur's study and which required careful consideration and support in order to promote and protect a fundamental right.

80. Mr. WOLFSON (International Bar Association) said that the right of everyone to leave any country, including his own, and to return to his country had been the subject of a debate between representatives of the Soviet Government and an Israeli professor during a seminar organized in Moscow on 7 June 1988 by the International Bar Association and attended by lawyers from 30 countries. At the seminar, Professor Blischenko, deputy representative of the Soviet Union to the Commission on Human Rights, had stated that international treaties and agreements were essential to enable different societies living under different systems and with different ideas to find common ground, particularly as far as human rights were concerned. With regard to emigration he had said that, in some countries, the issue of exit visas could give rise to problems because everyone was influenced by the environment in which he lived and a State could not be indifferent as to how a person was to live in his new country. In reply to those comments Professor Dinstein of Israel had said that the question of freedom to leave one's own country was most prominently the problem of the Jewish community in the USSR. Substantial progress had been made in that regard in recent years and the number of Jews who had received permission to emigrate to Israel had increased considerably. It was not enough to support the Universal Declaration of Human Rights; it had to be implemented in the form in which it had been adopted and the USSR, nor for that matter any other country, was not free to deviate from the provisions of the Declaration through internal legislation. National security could be invoked only to delay emigration and not to prevent it altogether. The right to freedom of emigration, as embodied in the Universal Declaration and the Covenant, should not be applied solely with regard to the reunification of families. It was an individual right. The "brain drain" was a problem which affected developing countries, but not the USSR. According to Soviet officials, a process of democratization and "openness" was now under way in the Soviet Union and all citizens could freely express their views. Emigration formalities were still complicated, but the number of persons who had received exit visas from the country had recently increased.

81. It was clear that the Soviet Union was looking closely at its emigration regulations and that it would welcome guidelines from the United Nations. His own organization would welcome any new Soviet regulations to strengthen the fundamental right of all persons to leave and return to their country, as well as any proposals for expanding the role of the United Nations in that regard.

The meeting rose at 1.10 p.m.