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COMMISSION ON HUMAN RIGHTS

Forty-fifth session

SUMMARY RECORD OF THE FIRST PART\* OF THE 24th MEETING

Held at the Palais des Nations, Geneva,  
on Wednesday, 15 February 1989, at 3 p.m.

Chairman: Mr. BOSSUYT (Belgium)

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

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\* The summary record of the second part of the meeting appears as document E/CN.4/1989/SR.24/Add.1

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The meeting was called to order at 3.20 p.m.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTIETH SESSION (agenda item 19) (continued)  
(E/CN.4/1989/3-E/CN.4/Sub.2/1988/45, E/CN.4/1989/51 and 67;  
E/CN.4/1989/NGO/14 and 17)

1. Mr. WILLE (Observer for Norway) said that, over the years, the Commission had gradually broadened the mandate of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which had made substantive contributions to the promotion and protection of human rights throughout the world. However, the Sub-Commission should not stray from its mandate and should concentrate on the specific human-rights aspects of the items included in the agendas of other United Nations bodies. The Sub-Commission could also play a valuable role by launching new initiatives in the field of human rights and by providing a very necessary forum for the contributions from non-governmental organizations active in that field. The work of the Commission and of the Sub-Commission should be clearly delineated and complementary, and steps should be taken to rationalize and reduce the Sub-Commission's overloaded agenda.

2. Professor Mazilu, a former expert member of the Sub-Commission, had not been able to present his report to the Sub-Commission in 1988 because the Romanian authorities had refused him permission to leave the country. That situation involved a clear infringement of the human rights, and the Commission should urge the Government of Romania to respond positively to the requests of the Secretary-General and to permit Professor Mazilu to perform the task which the Sub-Commission had assigned him.

3. The working groups of the Sub-Commission performed a very important function, and the Sub-Commission should consider how that method of work could be applied further to its programme. At the last session of the Sub-Commission, the Working Group on Contemporary Forms of Slavery had made substantial progress, and had adopted a specific programme of work for 1989-1991. His delegation had followed with great interest the work of the Working Group on Indigenous Populations and fully supported its standard-setting activities, in particular its work on a draft universal declaration on the rights of indigenous peoples.

4. Miss WALKER (United Kingdom) said that the Sub-Commission should adhere to its mandate, not stray to areas which were covered adequately elsewhere and maintain its valuable expert and advisory role. It should also reform its overloaded agenda, perhaps by making more items subject to biennial consideration and by eliminating agenda items to which due consideration had already been given.

5. Her delegation was pleased that, after some eight years, the Sub-Commission had completed its work on the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care. It was still extremely concerned about the abuse of psychiatry to subvert political and legal guarantees of the freedom of individuals and also believed that a vulnerable group - the mentally ill - should be granted the rights and protection specified in the draft body of principles and guarantees.

6. With respect to the draft resolutions and decisions submitted for consideration under item 19, her delegation was in general agreement with the Sub-Commission's draft resolutions IV, V, VII and VIII, as well as with its draft decisions 1, 2, 4 and 5. With regard to draft resolution III, her delegation attached particular importance to the time-frame for Governments' comments on the outline provided by the Special Rapporteur. On the subject of draft resolution V, her Government condemned the export of dangerous wastes to any country unless that country's prior informed consent had been obtained and unless adequate facilities were ensured for the safe disposal of such waste on arrival. With regard to draft resolution VIII, her delegation had been pleased that the Chairman of the Working Group on Contemporary Forms of Slavery had suggested that Working Group should take up sensible and topical issues.

7. As for Sub-Commission draft decision 1, her delegation supported in general the views of the Special Rapporteur on Human Rights and Disability, although it did not agree that there was a need for an international instrument in that field. It thought that guidelines or general comments on the implementation of existing standards would be preferable.

8. The independent nature of the Sub-Commission would be enhanced if its members were able to vote by secret ballot, particularly during the closed confidential session but also on other occasions when the Sub-Commission so desired. The Centre for Human Rights should keep up its good work so that all Sub-Commission documents could be available in all languages in sufficient time. In that regard, the special rapporteurs of the Sub-Commission should meet the deadlines established by the Centre.

9. The members of the Sub-Commission should take their decisions on the basis of their own consciences and opinions and should not be influenced by political arguments, from their own Governments or from any others. Her delegation, which deplored the fact that Mr. Mazilu, the Special Rapporteur appointed by the Sub-Commission to undertake a report on human rights and youth, had been unable to make direct contact with either the Centre for Human Rights or with the Sub-Commission itself to discuss matters relating to his reports, wished to know why he had not been able to leave his own country, Romania, and to return there, as was his right under article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights. Her Government called upon the Government of Romania to allow Mr. Mazilu to exercise that right, so that he could travel to Geneva as and when required by the Centre for Human Rights and by the Sub-Commission.

10. Mr. BOUTET (France) said that the fortieth session of the Sub-Commission had been held in the absence of one of its special rapporteurs, Mr. Mazilu, who had not been permitted to leave his country. The Romanian authorities had not so far provided convincing reasons for not allowing Mr. Mazilu to attend the session, and his delegation wished to know whether the Secretariat had been able to obtain any new information on the situation.

11. His delegation commended the progress which had been made in the drafting of a second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, and hoped that the Commission would take decisive action on that issue during its current session. The work of his compatriot, Louis Joinet, on computerized personal

files and administrative detention also merited the Commission's consideration. In both those fields, the objective should be to draft guiding principles which could be adopted, first by the Commission and later by the Economic and Social Council and the General Assembly. His delegation was satisfied with the progress which had been made on the draft declaration on the protection of all persons from enforced or involuntary disappearances, and hoped that the final contributions would enable the Working Group to complete its work on that declaration.

12. At its fortieth session, the Sub-Commission had taken up the issue of discrimination against persons suffering from AIDS, and had requested Mr. Luis Varela Quiros to prepare a concise note setting forth methods by which a study on that subject could be made. The scope of that study should eventually be broadened to cover all illnesses which gave rise to discrimination.

13. Mr. SENE (Senegal) said that, in order to achieve better efficiency, the Commission and the Sub-Commission must co-operate to ensure the complementarity of their respective activities. The independence of the Sub-Commission's experts should not be interpreted as a break in the organic link uniting that body with the Commission, which had established the Sub-Commission. However, the Commission's role was not to replace the Sub-Commission but to ensure the continued improvement of the work of that body and to maintain its credibility. The Commission should consider the best means of avoiding the duplication and overlapping of questions being studied in the Commission and the Sub-Commission. The Commission should also endeavour not to overload the work of the Sub-Commission and should insist on the quality of the studies already assigned to it and on the need to carry out such studies in accordance with the prescribed time-table.

14. The experts of the Sub-Commission must resist the temptation to create new studies or activities. In that regard, the Commission should consider establishing a mechanism for following up its own decisions, which would enable it to evaluate the possibilities and more especially the limitation, of its subsidiary body. His delegation hoped that, in its next report, the Sub-Commission would include a table of new studies which had been suggested by the Commission so as to enable the Commission to determine more easily its priorities or to postpone tasks which seemed less urgent than others.

15. The Commission must help strengthen the credibility of the Sub-Commission by never ceasing to remind it of its task, namely, to promote international action in favour of human rights. The Sub-Commission had become the privileged forum for shaping international public opinion through the voices of numerous non-governmental organizations. That practice was to be maintained and encouraged.

16. For the Sub-Commission to carry out its mandate, it must be completely impartial. Assertions that the Sub-Commission was politicized could be dispelled if the Sub-Commission limited its task to suggesting the adoption of recommendations. The fact that experts condemned, regretted, denounced or disapproved the behaviour of Governments with respect to human rights did not help the work of the Sub-Commission, which was very often confronted with the reactions of the representatives of the Governments in question. The Sub-Commission should consider preparing a comprehensive report on such human-rights situations, which it would submit to the Commission, and should discontinue the sometimes controversial procedures and use of language associated with the drafting of resolutions.

17. The Sub-Commission was sometimes suspected of selectivity. Such criticism could be avoided if it prepared thematic studies on the various issues with which the Commission was concerned. In that context, the Commission, basing itself on the recommendations of experts, should recommend action to be taken by the international community. For the experts, that method would have the advantage of filtering the large volume of information received at the level of the Sub-Commission and of enabling that body to call for action by the Commission.

18. Many studies have been submitted to the Sub-Commission, all of them dealing with trends in the promotion of existing rights or offering new "paths". So as not to prejudice the validity of such studies, it was important to obtain the views and observations of Governments before the Commission took any decision on the subject. That method would have the advantage of benefiting from the understanding, recognition and acceptance, at the international level, of the new trends, prospects or implications of the study submitted to the Commission.

19. Mrs. GARUBA (Nigeria) said she welcomed the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which contained some highly important draft resolutions and declarations. It was noteworthy that, at its fortieth session, the Sub-Commission had ventured into new areas, discussing AIDS, the movement and dumping of toxic and dangerous wastes, and the human-rights dimension of the use of chemical weapons.

20. She expressed satisfaction with the adoption by consensus of draft resolutions 1988/4 and 1988/5, concerning South Africa and Namibia, respectively. Her delegation supported draft resolution 1988/28 and asked that the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care be transmitted to Governments, specialized agencies and non-governmental organizations for comment.

21. Her delegation welcomed the preparation by the Working Group on Indigenous Populations of the draft universal declaration on indigenous rights, and noted with satisfaction the creation of the Voluntary Fund for Indigenous Populations, which had enabled a significant number of representatives to attend the Working Group's sixth session.

22. With regard to the draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, she said that the Special Rapporteur had made a valuable contribution to legal doctrine in connection with the independence of the judiciary, which was an important prerequisite for the promotion and protection of human rights.

23. Draft resolution 1988/26 on movement and dumping of toxic and dangerous products and wastes was of great importance not only to Nigeria, but also to other African countries and the developing world in general. The vast majority of those States did not yet have at their disposal the technology required to identify, or dispose safely of, such wastes, and it was imperative, therefore, to protect them. Her delegation strongly supported the call for the abrogation of existing agreements for the disposal of such wastes and products with States which did not have the technical capability for their

environmentally sound disposal. It also welcomed the request that the United Nations Environment Programme should expedite action on the preparation of the global convention on the control of transboundary movements of hazardous wastes.

24. Referring to the draft second optional protocol to the International Convention on Civil and Political Rights aiming at the abolition of the death penalty, she pointed out that since a majority of Member States, including her own country, retained the death penalty, the draft was unlikely to be universally applicable.

25. Mr. WULF (Sweden) said that the Commission had devoted considerable effort to making the Sub-Commission on Prevention of Discrimination and Protection of Minorities more effective. The review of the Sub-Commission's work should continue since a properly functioning Sub-Commission was outstandingly helpful to the Commission in the discharge of its own duties. It should serve as a think-tank and body of expertise. Its information-gathering and studies were of great value to the Commission, in addition to which it provided a very useful forum for the non-governmental organizations.

26. The Commission should, however, give the Sub-Commission guidelines to ensure that its activities were suitably complementary. Priority should be accorded to standard-setting activities, and the Sub-Commission should request the Secretary-General to seek the views and comments of Governments and others only in respect of studies which had received prior explicit approval from the Commission.

27. Welcoming the report of the Sub-Commission, he said that the constructive and co-operative approach adopted at the fortieth session had enabled the Sub-Commission to accomplish a number of difficult tasks, including the achievement of a consensus on the draft second optional protocol to the International Covenant on Civil and Political Rights after many years of discussion and study.

28. His delegation expressed satisfaction with the very thorough discussions that had taken place within the Working Group on Contemporary Forms of Slavery, and praised the contributions of the non-governmental organizations. The Working Group had an important role to play in drawing the attention of Governments to the problems concerned, and in proposing ways and means of dealing with them. His Government also followed with interest the preparation by the Working Group on Indigenous Populations of a declaration on indigenous rights. The progress made so far was encouraging.

29. Sweden attached considerable importance to Mr. Despouy's study on human rights and disability, for which the Nordic countries had frequently expressed their support. It represented a vital element in the overall effort being made by the United Nations to improve the conditions of disabled persons and to implement fully the World Programme of Action concerning Disabled Persons. It was hoped that the study would be completed in time for consideration by the Commission at its forty-sixth session.

30. Much concern had been expressed with regard to the fate of Mr. Mazilu. There was ample proof that he had been denied the right to leave his country and was being prevented from completing his assignment as Special Rapporteur.

It was regrettable that the Romanian Government should have rejected the conciliatory offer to send a member of the Sub-Commission to help Mr. Mazilu to complete his study.

31. He expressed satisfaction with the work of the Sub-Commission not only in the fields mentioned, but in general. It played a vital role with regard to the Commission's consideration of communications from individuals and non-governmental organizations concerning human-rights violations. The report on its fortieth session furnished further proof of its value to the Commission as an independent body of experts.

32. Mr. ZURITA (Spain) said that recent results indicated that the Sub-Commission was not achieving as much as it should, although notable progress had been made in comparison with previous years.

33. There had been a profitable debate on the review of working methods and on ways of achieving greater output, in accordance with the terms of reference suggested by the Commission. It was necessary, however, to take account of the Sub-Commission's competence and responsibilities pursuant to the relevant Commission, Economic and Social Council and General Assembly resolutions.

34. New studies continued to be proposed irrespective of their financial implications. In his delegation's view, experts should not propose new studies until they had completed current ones. In that connection, he emphasized the importance of submitting reports within the prescribed deadlines. It was also worth pointing out that, in accordance with their mandates, experts were obliged to carry out specific studies. They should avoid the temptation to leave those tasks to specialist civil servants in the Centre for Human Rights.

35. Studies should be neither initiated nor reviewed without prior authorization from the competent bodies. When making recommendations, the experts should avoid addressing themselves directly to the Secretary-General, Governments or specialized agencies, without specific instructions from the Commission to that effect. Respect for those principles would increase the Sub-Commission's efficiency enormously, and reinforce its complementarity with the Commission. It would also help to safeguard the special nature of its functions.

36. There was a tendency to devote much time to discussion of political matters, at the expense of others. Priority should be given to standard-setting activities, and the Sub-Commission should not use the limited time available to discuss matters already being dealt with by the Commission or other United Nations bodies.

37. His delegation did not wish to reduce the scope of the Sub-Commission, since it set great store by the role it played, as a body of independent experts, in the promotion of human rights. Especially significant was the fact that it provided an open forum for non-governmental organizations. It should seek to promote and contribute, and to avoid duplication.

38. In spite of constant complaints and criticisms, certain experts continued to use the Sub-Commission for political discussions in order merely to advance the positions of the Governments of their own countries. The intrusion of national policy interests and pressure from certain Governments, responding in

turn to bilateral or diplomatic pressure from third States, was undermining the Sub-Commission's credibility and jeopardizing the independence of its members. All members of the Sub-Commission should be independent and participate in discussions and activities without external pressure and on the basis of their own convictions.

39. His delegation was much concerned at the refusal of the Romanian authorities to allow Mr. Mazilu to come to Geneva to present his report on human rights and youth. Not only had the experts been deprived of a document central to discussion of an agenda item, but the recognized immunities had been violated. The reasons advanced by the Romanian delegation for Mr. Mazilu's absence were unsatisfactory, and he called upon Romania to enable Mr. Mazilu to leave the country in order to fulfil his mandate. Only if he were able to do that, would the situation be clearly understood and proof be given of the good will of the Romanian authorities.

40. Mr. BENEDETTI (Italy) said that the fortieth session of the Sub-Commission had been characterized by inspiration, commitment to the cause of human rights and constructive intentions. Its outstanding achievements included the guidelines on the use of computerized personal files, the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care, and the draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers.

41. The Sub-Commission had made obvious efforts to comply with the recommendations set out in Commission resolution 1988/43, thereby acknowledging the nature of the relationship that should exist between the two complementary bodies.

42. There had been much talk of the risks of politicizing discussions and of the need for members to be genuinely independent. Such independence and the total absence of political overtones were unrealistic objectives, given that all members were necessarily the products of different cultural backgrounds and environments. The dividing line between accepting external constraints and genuine independence lay in the conscience of each individual member. It was important, therefore, to respect the integrity of every member and assume his or her capacity to withstand external political pressure. Deviation from the established principle of independence would expose not only the members themselves, but also their countries of origin and the body to which they belonged to disenchanted criticism. It would also indicate that a specific United Nations mandate was not being taken seriously, and that the trust of people all over the world was being betrayed.

43. By implication, that argument extended to individual States. When one of its citizens had been appointed to serve on the Sub-Commission or on any other United Nations body, a State was legally and morally bound to respect that person's mandate, in no way restricting his or her freedom of movement, and refraining from interference in the fulfilment of appointed tasks. Any departure from those duties would represent a breach of well-established practice and principle and undermine the prestige of the State in question as a Member of the United Nations.



44. Although the 1988 session had been highly productive, there had been a general feeling that the agenda contained too many substantive items, which meant that there was often insufficient time for exhaustive discussion. More time should be devoted to a smaller number of issues.

45. With regard to the question of selectivity, it was important to be aware of the effect on public opinion of discussions which considered alleged violations of human rights in some countries, whilst ignoring equally serious, well-known situations in other parts of the world. The Sub-Commission should give the matter some thoughtful consideration.

46. Referring to the draft second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, he suggested that it might be considered under a separate agenda item. As a representative of a State which did not impose the death penalty, he emphasized that any follow-up to the initiative should be approached on as broad a basis as possible in order to take account of the possible range of views on the subject.

47. Mr. CERDA (Argentina) said that his delegation attached great importance to the work of the Sub-Commission. Its composition of individual experts made its contribution specialized and objective; its effectiveness was also enhanced by its implementation of the Commission's recommendations regarding its subject-matter and methods of work, such as the adoption of resolutions by consensus as far as possible, an approach particularly noticeable in those adopted with regard to Latin American countries. Also welcome was the Sub-Commission's growing readiness to eschew sterile procedural discussion and speed up its work.

48. Especially noteworthy was the work relating to a draft declaration on enforced or involuntary disappearances, since the lack of such an instrument hampered the prevention and punishment of that repressive practice. In that connection, the text should mention the responsibility of States in facilitating the finding and reuniting of children with their kin, as provided for in the relevant draft convention drawn up by the Inter-American Commission on Human Rights.

49. Non-governmental organizations had played a very active role in the Sub-Commission's fortieth session and had contributed to the adoption of new resolutions on countries in which human rights had been violated or on thematic issues which called for some standard-setting, such as the draft declaration on the independence and impartiality of the judiciary, the draft second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, and the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care.

50. His delegation congratulated the Chairman and officers of the Sub-Commission at its previous session and was pleased to note that it had been attended by Mr. Sene, the Observer for Senegal and former Chairman of the Commission. His continued presence would help to strengthen co-ordination between the two bodies, as would the establishment of some means to enable the Sub-Commission's experts to follow up the work of the Commission more closely. They might, perhaps, be enabled to attend the Commission's meetings as observers.

51. Mr. VASSILENKO (Ukrainian Soviet Socialist Republic) said that, the Sub-Commission had not only dealt with practically all the items on its agenda but had introduced several new and important initiatives. His delegation attached particular importance to the preparation of a second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, and to the resolution on the movement and dumping of toxic and dangerous products and wastes; perhaps the latter could lead to discussion, within the Commission, of a wider range of issues relating to the protection of human rights against growing ecological threats. Likewise welcome was the attention the Sub-Commission had begun to give to teaching about human rights.

52. It was clear that the Sub-Commission's role and influence on other human-rights bodies was increasing. At the same time, the amount of criticism voiced each year about the Sub-Commission's nature and working methods indicated a number of unsolved problems, as instanced by Commission resolution 1988/43; in that regard, Commission resolution 1986/38 contained relevant guidelines. The most frequent criticism was that the Sub-Commission had in some way departed from its mandate as a subsidiary advisory body of experts whose recommendations to the Commission and the Economic and Social Council would facilitate the taking of political decisions by those two bodies relating to discrimination and the protection of minorities. In recent years, it had tended to pronounce on political issues rather than respond to the continuing need to prevent discrimination and protect minorities. While it should not duplicate the roles of other forums there might, perhaps, be a need for its mandate to be broadened somewhat and defined more precisely. It should not be an ideological forum in which the experts engaged in confrontation and erode its independent character.

53. In that connection, it was unfortunate that so many resolutions were still being adopted by a vote. Although the proportion so adopted at its fortieth session had fallen to a little over 10 per cent, as compared with almost 50 per cent at its thirty-ninth session, the Sub-Commission should be urged to seek a consensus approach more often. A thorough, impartial approach to problems, and the preparation of agreed recommendations reflecting the views of all States, were fundamental to the Sub-Commission's work.

54. His delegation agreed that the Sub-Commission's agenda was overloaded and required rationalizing. The Commission had more than once recommended that it should rationalize its work-load and aim at completing its tasks, initiating further studies only when previous tasks had been accomplished. It should also strive for greater efficiency, particularly by avoiding lengthy procedural discussions and being more orderly about the participation of non-governmental organizations in its meetings.

55. To judge from the report on its fortieth session (E/CN.4/1989/3), the Sub-Commission was striving to fulfil its mandate more effectively and avoid political confrontation. It had adopted some important decisions on such matters as measures to combat racism and racial discrimination, the adverse consequences of assistance to the South African régime, the protection of indigenous populations and measures to combat slavery. Its suggestions and recommendations about the co-ordinating role of the Centre for Human Rights and the draft declaration on the independence and impartiality of the judiciary were among those which warranted serious consideration. Despite the criticisms he had voiced, therefore, his delegation's opinion of the report was, on the whole, positive.

56. Mrs. MARTINS GOMES (Portugal) said that her delegation had followed with particular interest the Sub-Commission's debate on the review of its working methods. Such self-evaluation had certainly helped to improve its efficiency during the fortieth session.

57. She rejected the suggestion that the Sub-Commission should be independent of the Commission "to avoid being politicized". Such independence would jeopardize the Sub-Commission's decisive contribution to the work of the Commission, and be inconsistent with the logic of the structure developed by the United Nations to promote respect for human rights and fundamental freedoms. It was precisely its functional complementarity with the Commission, together with its ability to perform as a think-tank, that constituted the Sub-Commissions' raison d'être.

58. With regard to the question of the genuine political independence of members, she said that while the debates had appeared less obviously politicized than at previous sessions, the voting had shown how little margin some of the members had because of pressure from Governments. That was particularly so in the case of resolutions concerning situations in individual countries. Two draft resolutions on such situations had been set aside as a result of motions proposing that no action be taken, in spite of highly substantial debates. Certain other initiatives involving very well documented situations had been eliminated at the outset.

59. Leaving aside the question of individual credibility, the main responsibility lay with Governments, which should refrain from interference and attempts to direct experts. One remedy might be to resort to secret ballots whenever voting took place on controversial issues likely to attract intense Government pressure.

60. With regard to the question of addressing situations in individual countries, her delegation supported the suggestion that the Sub-Commission should revert to the practice of preparing a factual report for examination by the Commission, on any situation involving a consistent pattern of human-rights abuses. In addition to helping to de-politicize debates, that would be a more effective means of alerting the Commission to the need for action.

61. She commended the spirit of co-operation and productivity that had characterized the fortieth session, enabling several studies to be finally completed after many years. Particular credit must go to the non-governmental organizations, which had displayed a remarkable degree of discipline and restraint.

62. Her delegation noted with appreciation that some of the new studies would concentrate on topical issues such as the discrimination associated with AIDS, whereas others would involve new, unprejudiced approaches to matters such as religious intolerance and traditional practices affecting women and children. The Sub-Commission should, however, pay more attention to scientific and technological advances, which undoubtedly affected the exercise of human rights and fundamental freedoms.

63. Commending the activities of the Working Group on Indigenous Populations, she said that her Government attached great importance to United Nations activities in that field, and supported the proclamation of an international

year for the promotion of indigenous rights. She hoped that the Commission would approve the preparation of the study on treaties, agreements and other constructive arrangements between States and indigenous populations, on the basis of the outline provided by the Special Rapporteur, Mr. Martínez.

64. Her delegation was greatly impressed by the renewed vigour of the Working Group on Contemporary Forms of Slavery, particularly in view of the fact that Portugal itself was combating the exploitation of child labour. Her country's own experience in the field led to the conviction that the Working Group could continue to perform valuable work, identifying existing practices and making recommendations with regard to practical assistance for Governments seriously committed to their eradication.

65. Her delegation had followed with interest the activity of the Working Group on Detention and looked forward, in particular, to the working paper concerning a study on the right of freedom of expression and opinion.

66. With regard to Mr. Mazilu, who had been prevented from presenting his report to the Sub-Commission, her delegation utterly rejected the reasons advanced by the Romanian authorities for denying him the authorization to travel. Mr. Mazilu was presenting the report not as a representative of the Romanian Government, but as an independent expert. Accordingly, that Government should respect the privileges and immunities accorded to him by the United Nations. She welcomed the resolution adopted in that connection by the Sub-Commission, and pledged to support any action taken by other United Nations bodies. She urged the Romanian authorities to co-operate by allowing the Secretary-General to contact Mr. Mazilu, and by permitting the latter to visit Geneva to present his report.

67. Mr. STRUYE de SWIELANDE (Belgium) said that the Sub-Commission's report on its fortieth session (E/CN.4/1989/3) was an improvement upon those of earlier sessions; the Sub-Commission had seemingly striven to follow the recommendations made by the Commission in its resolution 1988/43, and the experts as a whole recognized that the tasks of the Commission and Sub-Commission should be complementary. In operative paragraph 12 of that resolution, the Sub-Commission had been asked to concentrate on those specific human-rights issues on which it could make a distinctive contribution; but there was still a marked duplication of discussion between the Sub-Commission and the Commission itself.

68. Although the latter was not blameless in that regard, the Sub-Commission must engage in a more substantial discussion of the matters within its own purview. His delegation attached the greatest importance to the fact that the Sub-Commission was composed of independent experts; and it felt that the discussion begun by the experts Mr. van Boven and Mr. Eide about reactivating Commission resolution 8 (XXIII) would at least cause the Sub-Commission as a whole to reflect on a crucial aspect of its work.

69. His Government noted with particular attention the efforts of the Working Group on Contemporary Forms of Slavery and welcomed the large number of participants in the discussions; it had sent, for the first time, an expert on prostitution problems to attend the discussions on that particular topic, and had learned of the astoundingly large number and often degrading contemporary forms of slavery. It was particularly pleased that the Group had decided to concentrate on one main theme per session and that the

recommendations adopted in its report (E/CN.4/Sub.2/1988/32) included another request to the Economic and Social Council to recommend to the General Assembly the adoption of a resolution to declare that 2 December should in future be proclaimed World Day for the Abolition of All Forms of Slavery. Three years previously a Belgian NGO had decided to inaugurate a national day for the elimination of slavery, under the patronage of the King of Belgium.

70. His delegation particularly welcomed the submission to the Commission at its current session of the reports on guidelines for the regulation of computerized personal data files and on draft principles and safeguards for the protection of the mentally ill. It also appreciated the Chairman's own contribution regarding the drafting of a draft second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty; it hoped that such a protocol, being optional, could be agreed to without difficulty, even by countries retaining the death penalty.

71. In his delegation's view, a number of subjects for discussion by the Sub-Commission warranted particular attention: the question of the co-ordinating role of the Centre for Human Rights, in regard to which the usefulness of creating a post of High Commissioner for Human Rights could also be considered; the working document on possible ways and means to facilitate the peaceful and constructive resolution of situations involving racial, national, religious and linguistic minorities; and the report on the right of everyone to leave any country, including his own, and to return to his own country. His delegation also noted the forthcoming submission of a working document on the drafting of an international instrument on freedom of religion or belief; before any such instrument was drafted, it would be as well to look into what already existed in that regard, as well as all relevant issues. All those topics came within the purview of the Sub-Commission, which should give them priority attention.

72. His delegation regretted that the Sub-Commission should have adopted a number of resolutions on matters which had nothing to do with its mandate, such as those on the elimination of chemical weapons and the movement and dumping of toxic and dangerous products and wastes, and doubted whether it was useful for the Sub-Commission to involve itself in certain medical topics. It also felt that the Commission could not ignore the problem created by the Romanian Government's refusal to allow Mr. Mazilu, an independent expert and a special rapporteur, to attend the Sub-Commission to present his report; it urgently appealed to that Government to allow him to do so.

73. Mr. ELIAV (Observer for Israel) said that the small and ancient Jewish minority in Syria was still subject to harassment and discrimination, its members being confined to the places in which they lived, forbidden to leave the country and subjected to constant supervision and harassment by the Syrian intelligence services. The Syrian Government's consistent policy was to deny its Jewish citizens the right to leave the country; application for permission to leave was unduly complicated and costly and involved leaving relatives behind as virtual hostages to ensure return. The resultant separation of families and the inability of Jewish girls to find Jewish spouses in Syria, although the precepts of Jewish religious law enjoined them to marry Jews, created evident suffering.

74. In several cases, Jews had been incarcerated without any recourse to the law, and were not allowed visits even from their closest relatives; he read out the names of some who were still under arbitrary arrest; most of them had dependants who had become utterly destitute.

75. It was difficult for Jews in Syria even to change their city of residence. They belonged to the only minority group whose religion was indicated on identity cards and passports - a practice reminiscent of Nazi Germany. They could not sell their property or make bequests without express permission - another sphere in which Jews were singled out for discrimination. They were also barred from government employment and impeded in their endeavours to pass on their religious heritage; the authorities had appointed Muslim principals to the Jewish schools in Damascus and Aleppo, thus curtailing the teaching of Hebrew and religious subjects and vitiating their specific character.

76. Syria's attitude was also reflected in its failure to co-operate in the detection, extradition and punishment of persons guilty of war crimes and crimes against humanity. For the past 28 years, it had been shielding from justice Alois Brunner, the most notorious Nazi war criminal still at large, who had sent over 130,000 Jews to their death; he had been indicted as a war criminal by several European States, and his extradition had been demanded by Austria, the Federal Republic of Germany and France.

77. The plight of the Syrian Jews had been raised in a number of international forums, but regrettably, no action had been taken on the issue by human-rights bodies such as the Sub-Commission, Commission and General Assembly, all of which unfailingly condemned Israel year after year. It was no consolation that such double standards were applied also to the plight of other minorities in Arab countries. Typical of that political motivation had been the Sub-Commission's setting aside, by a procedural motion, of a draft resolution submitted by five members regarding the use of chemical weapons by Iraq against its Kurdish citizens.

78. His delegation still hoped that further calls would be made, during the Commission's current session, to alleviate the plight of the Jewish minority in Syria, and it appealed to Syria's Government and Head of State to take definite action on the issue. In a period when long-standing animosities were yielding to better relationships it was hoped that the Jewish minority in Syria could benefit from that process.

79. Mr. KALELI (Observer for Turkey) said that the illegal transboundary traffic in toxic and dangerous products and wastes was one of the most challenging issues of the contemporary world and endangered the environment as well as the public health in the affected countries, which were mainly developing ones. That illegal trade constituted a serious affront to basic moral values, an inadmissible concept that the health of one part of the world was less important than that of another part. Consequently, in addition to its technical and legal aspects, the subject also had a very important humanitarian dimension requiring careful attention.

80. At the fortieth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, his delegation had raised that

issue and expressed the wish that strong reactions against that inadmissible practice should be voiced. It was pleased to note that the Sub-Commission had submitted to the Commission a draft resolution on the subject.

81. His delegation was confident that the Commission would follow up on the action taken by the Sub-Commission. At the current stage of preparations for a global convention, the Commission should give serious consideration to the human-rights aspects of the issue, thereby making a major contribution to international efforts to put an end to that inadmissible practice.

82. Mrs. KIRONGOZI MALIYABWANA (Observer for Zaire) said that her Government supported all the draft resolutions submitted by the Sub-Commission. It endorsed the strengthening of the activities of the Centre for Human Rights, which remained the catalyst for all actions in the matter. It supported the study of treaties, agreements and other constructive arrangements between States and indigenous populations with a view to finding a legal solution to the question.

83. The programme of advisory services in the field of human rights should be encouraged and remain the keystone of the Commission's task, since ignorance of one's rights constituted a brake on the promotion of human rights.

84. Toxic wastes were harmful to the health and life of individuals and therefore endangered human rights and Governments must stop the movement of such wastes to those States - particularly in Africa - which were unable to eliminate them. Mentally-ill and handicapped persons were entitled to legal protection by the international community. Slavery and slavery-like practices should no longer exist, 40 years after the proclamation of the Universal Declaration of Human Rights and her delegation encouraged the Secretary-General and the Working Group to submit a report denouncing all contemporary forms of slavery.

85. Her delegation endorsed most of the recommendations contained in the report of the Ad Hoc Working Group of Experts on southern Africa (E/CN.4/1989/8). In that connection, she drew attention to the statement in paragraph 673 of the report that the need to explore the possibilities for promoting a negotiating solution to the South African problem should continue to be a fundamental objective of the Commission on Human Rights and that all forms of persuasion should be used to convince South Africa that the alternative to negotiations could only be appalling chaos, bloodshed and destruction.

86. With regard to the situation in Burundi, her delegation welcomed the peace initiatives taken by the existing Government and encouraged the implementation of all the recommendations adopted on the subject by the Economic Community of the Great Lakes Countries and by the quadripartite meeting in Burundi, Rwanda, Zaire and UNHCR.

87. Mr. KHERAD (Observer for Afghanistan) said that his delegation attached great importance to the activities of the Sub-Commission which made an irreplaceable contribution to the efforts undertaken to promote and protect human rights and to the struggle against all human-rights violations wherever they occurred. It was impressed by the many positive results obtained by that

body of independent experts whose essential task was to prepare studies and to make suggestions and recommendations on theoretical questions for consideration by the Commission.

88. The annual updating of the report on the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the racist and colonialist régimes of South Africa was of great importance for the struggle against apartheid and other violations of human rights in South Africa. The study of the problem of discrimination against indigenous populations was also of the greatest importance, affecting as it did a large part of mankind.

89. Other important issues in respect of which the Sub-Commission made an essential contribution included the study of problems, policies and progressive measures relating to more effective realization of economic, social and cultural rights, human rights and scientific and technological developments, human rights and youth, and the comprehensive study on human rights and disability.

90. The Sub-Commission had been established as a subsidiary body of the Commission composed of experts for the purpose of helping the Commission to find positive solutions through theoretical studies and recommendations. The Commission had concluded, however, that the Sub-Commission's working methods could be improved and his delegation welcomed the consideration given to that point by the Sub-Commission. The complementarity and harmonization which should exist between the work of the Sub-Commission and that of the Commission was necessary to improve the effectiveness of both bodies.

91. In his delegation's view, the Sub-Commission should demonstrate greater impartiality in preparing its reports, should concentrate on specific violations of human rights, and should deal with the question of international peace and security which were indispensable corollaries for the promotion of human rights, primarily the right to life.

92. Mr. LITTMAN (World Union for Progressive Judaism) said that the Sub-Commission had adopted resolution 1988/1, requesting "the Secretary-General to contact the Government of Burundi and offer all assistance, in particular within the programme of advisory services in the field of human rights, needed for dealing with the present situation and its causes". The Government of Burundi's response to that offer had been a negative one and the situation remained unchanged after six months.

93. The cause of the ethnic massacres in August 1988 was still unclear. The Government alleged that the first victims belonged to the Tutsi ethnic group. However that might be, the revenge of the Tutsi-controlled army on the Hutu peasantry in the densely populated northern districts of Ntega and Marangara had been devastating. The Government itself had admitted that 5,000 people had died, but current estimates put the figure at between 25,000 to 50,000. Of the approximately 65,000 refugees, mainly from the Hutu ethnic group, 95 per cent had been able to return to Rwanda to their homes in northern Burundi, but about 1,300 of them had been forced to flee once again to Rwanda to escape reprisals by the army.



94. It was intolerable that, 16 years after the genocidal massacres of hundreds of thousands of Hutus in 1972, acts in total contravention of the Convention on the Prevention and Punishment of the Crime of Genocide seemed once again to have occurred in Burundi, whose successive Tutsi-controlled régimes had not signed the Convention. A Special Rapporteur should be appointed to study the situation of human rights and fundamental freedoms in Burundi, and the representatives of the African members of the Commission might take the initiative in that regard.

95. The precarious situation of the Jewish minority community in Syria deserved the Commission's attention. Several recent publications and appeals had highlighted various aspects of the general plight of that minority and the imprisonment of 11 of its members for attempting to flee the country. With regard to the approximately 250 to 300 unmarried Jewish girls and women who were retained in Syria by force, the representative of the Syrian Arab Republic had denied in the Sub-Commission that self-evident truth, just as he had denied the well-known presence at Damascus of the Nazi war criminal Alois Brunner. There, again, the appointment of a Special Rapporteur by the Commission would be appropriate. The issue also came under the right of everyone to leave any country including his own, as provided for under article 12, paragraph 2, of the International Covenant on Civil and Political Rights, to which Syria had acceded in April 1969.

96. With regard to the reunification of families, there were currently some 300 Israeli families which had close relatives in Yemen, and the remaining Jewish community there was estimated at from 4 to 6,000 persons. A similar problem existed for the nearly 15,000 Falasha Jews. In both cases, his organization appealed to the States concerned and to the Commission to facilitate a humanitarian solution in terms of the reunification of families.

97. In conclusion, he paid tribute to the universal message sent on 1 January 1989 by His Holiness Pope John Paul II regarding the need to respect minorities.

98. Mrs. TEEKAMP (Observer for the Netherlands) noted with satisfaction that certain issues which had been held up for years in the Sub-Commission on Prevention of Discrimination and Protection of Minorities had come before the Commission for further action. On the other hand, certain experts had seemed to be susceptible to political pressure from Governments which were the subject of country resolutions and some of them had complained publicly about the political pressure to which they were subjected. The tendency towards politization was an unfortunate one and the Sub-Commission's credibility would be seriously jeopardized if the independence of its members was not rigorously respected.

99. The debates in the Sub-Commission had generally been of a high standard due in part to political factors, such as the developments in East-West relations, while the self-restraint and co-ordination of non-governmental organizations had contributed to a better climate there. Nevertheless, the Sub-Commission's agenda was still overloaded and adequate support from the Secretariat was all the more necessary. Her delegation felt, therefore, that the debate on working methods and rationalization of the agenda should continue and regretted that the Sub-Commission should have decided to review its methods of work on a biennial basis only.

100. With regard to Mr. Mazilu, who had been unable to present his report on human rights and youth, her delegation commended the Sub-Commission and its Chairman on their efforts to resolve the matter. It fully supported the Sub-Commission's decision requesting the Secretary-General to establish contact with the Romanian Government on the matter and to facilitate the conclusion of Mr. Mazilu's report, since the entire question was one between the Government of Romania and the United Nations.

101. As for the draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, she said that, from a human-rights standpoint, the identification of conditions and factors which would contribute to independence and impartiality in the administration of justice did not diverge very much from the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Further action regarding the first part of the declaration transmitted by the Sub-Commission was thus not required for the moment although the subsequent chapters made a contribution from the human-rights perspective to the discussion on independence and impartiality of specific actors in the criminal justice system.

102. Under the agenda item on science and technological developments, a major breakthrough had been the acceptance by the Working Group on the Mentally-Ill of the draft body of principles and guarantees on the protection of mentally-ill persons and for the improvement of mental health care. The request by the Sub-Commission to the World Health Organization to draw up guidelines for the implementation of the draft body of principles and guarantees could not but enhance its practical value.

103. The discussion under the same agenda item on the movement and dumping of toxic and dangerous products and wastes seemed to be somewhat out of place in a body supposed to be dealing with human rights. Her delegation, which was of course aware of the threat to human health and the environment, considered that the issue should be dealt with in the appropriate international bodies such as UNEP.

104. An encouraging sign in the work of the Sub-Commission was that the Working Group on Contemporary Forms of Slavery had concentrated on three main themes: prevention of the sale of children, child prostitution and child pornography; eradication of the exploitation of child labour and of debt bondage; and prevention of the traffic in persons and exploitation of the prostitution of others.

105. It was necessary, of course, for both Governments and non-governmental organizations to follow the work of the Working Group closely in order to make the programme of work truly effective. It was of the utmost importance that NGOs, especially those concerned with human rights, should attend the Working Group's session and that Governments should provide information on the main themes taken up by the Working Group, especially regarding their national legislation and policies and practices in those important fields.

106. The Working Group also needed support from the Secretariat, particularly the Centre for Human Rights. Such support would enable it to do its work properly and ensure co-ordination with other activities in the field of contemporary slavery within the United Nations system. In that connection,

her delegation fully supported the request by the Sub-Commission (resolution 1988/31) that a full-time professional staff member be assigned to serve the Working Group and other activities relating to contemporary forms of slavery. Her delegation also suggested that the Secretary-General should be requested to appoint the Centre for Human Rights as the focal point for the co-ordination of activities in the United Nations for the suppression of contemporary forms of slavery. Consequently, it had prepared a few amendments to resolution VIII from the report of the Sub-Commission to follow up on resolution 1988/42.

107. Mr. MacDERMOT (International Commission of Jurists), speaking on behalf of the World Psychiatric Association, the World Association for Psycho-Social Rehabilitation, the World Federation for Mental Health, the International Commission of Health Professionals, the Christian Medical Commission, and the Friends World Committee for Consultation as well as his own organization, said that the NGOs in question, concerned about the rights of the mentally-ill, considered that the revision agreed by the Sub-Commission, while an improvement on the preceding draft, still required some clarification. They wished to reaffirm the proposals in the Sub-Commission resolution requesting the Commission to deal with the matter of the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care by sending the document to Member States and specialized agencies for consideration and comments. It hoped that non-governmental organizations would be included among those requested to submit comments.

108. The Commission should consider the document as a matter of high priority at its 1990 session, reach a decision and transmit it to the Economic and Social Council. He also hoped that the Commission would adopt the draft resolution to be submitted by the delegation of the United Kingdom on the establishment of a pre-sessional working group before the 1990 session.

109. He urged the Commission to request the World Health Organization to produce guidelines for Governments on the implementation in national legislation of the principles set out in the document. The preparation of guidelines should not delay agreement by the Commission on the principles and guarantees but it might at some stage wish to consider the guidelines in conjunction with the principles. It was to be hoped that the Commission would make sufficient resources available for the work to be brought to a swift conclusion.

110. On behalf of his own organization and the World Federation for Mental Health, he paid tribute to Mrs. Daes for her formulation of the first draft of the principles and guarantees and for proposing Ms. Palley as her successor.

The summary record of the second part of the meeting  
appears as document E/CN.4/1989/SR.24/Add.1.