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PROTECTION OF MINORITIES

Forty-first session

SUMMARY RECORD OF THE 6th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 10 August 1989, at 10 a.m.

Chairman: Mr. YIMER

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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.2/1989/2-3, 5-7, 26 and 45)

1. Mrs. WARZAZI said that La Fontaine's description of cholera could appropriately be applied to the latter-day scourge of AIDS: it was an evil that provoked terror. As such, AIDS was the subject, not only of international, regional and national meetings, but also of declarations and statements by heads of State. The disease affected men, women and children alike, giving rise to widespread panic, particularly in uninformed or ill-informed circles. Thus far, the research conducted in developed and developing countries had not resulted in a cure or a vaccine.
2. The extent of the disease, and its psychological consequences both for its victims and for society, had led to the realization that AIDS sufferers were a prime target for discrimination based on ignorance, prejudice and fear. Admittedly, the disease and its spread were not unconnected with the prevailing climate of permissiveness, as was seen in the emphasis placed by the Western media on a return to a life-style which, if not puritanical, was at any rate more restrained and showed greater consciousness of one's responsibilities vis-à-vis others.
3. Whatever the origins of the disease, the fact remained that the panic and excessive reactions it provoked called for action at national and international levels to prevent the creation of groups condemned by society to isolation, persecution and discrimination.
4. The concise note prepared by Mr. Varela Quirós (E/CN.4/Sub.2/1989/5) indicated the negative and serious consequences of AIDS. Those consequences were tantamount to violations of a large number of human rights that had been recognized since 1945. Clearly, intervention by the international community was indispensable. The principal recommendation of any study undertaken must be the need for dissemination of information based on socio-behavioural research by a multi-disciplinary team made up of sociologists, doctors, anthropologists, psychologists and data-processing experts.
5. Her only reservation regarding the recommendations made by Mr. Varela Quirós was that he had not sufficiently stressed the importance of preventive measures, which would greatly facilitate participation by society in the campaign to defend the rights of victims. She supported his recommendation regarding aid to the developing countries, aid which should be construed, not as charity, but as a measure beneficial to all countries, since AIDS was a disease that knew no frontiers. She hoped that there would also be a recommendation for co-ordination between research centres in the developed and developing countries, with a view to hastening the discovery of a cure or a vaccine. Competition, vested interests or economic lures should yield precedence to the interests of individuals and society.
6. Turning to the working paper by Mr. Türk on the right to freedom of opinion and expression (E/CN.4/Sub.2/1989/26), she said that, while the principle had been confirmed after the Universal Declaration of Human Rights by the International Covenant on Civil and Political Rights, it was clear that

full enjoyment of that right depended on a country's social and economic context. Illiteracy was a severe handicap to the exercise of that right. But it should be stressed that regardless of the degree of a country's development or the literacy of its population, the right to freedom of opinion and expression must be available and guaranteed. However, that inherent right of the human person must not be used as a means to violate the fundamental rights of others. Freedom, priceless as it was, lost its rationale if it created victims. In the context of freedom of opinion and expression, she had particularly in mind certain parties, organizations or groups of individuals who used that right to incite to hatred, persecution and even murder. Article 19 of the Covenant had provided for restrictions on the right to freedom of opinion and expression, but those restrictions did not seem to have been taken into account in certain countries. On the contrary, an over-liberal interpretation of that article had fostered pernicious campaigns, not only within national frontiers, but also in international forums. Moreover, even in the developed countries, where illiteracy was not a problem, not all citizens enjoyed full freedom of opinion and expression. Power, wealth and control over the mass media by interest groups meant that the weaker sections of society in the developed countries had very little opportunity to make themselves heard.

7. Freedom of opinion and expression was a right that must be guaranteed by the State, but which, like every right, implied certain obligations: tolerance, respect for the opinions of others, and abstention from the use of force. That, at any rate, was what every Muslim child learned from a religion that sanctified freedom of thought and the right of expression. In one of his hadiths, the Prophet had enjoined the faithful not to bring discredit upon themselves.

8. Mr. DIACONU, on the subject of toxic and dangerous products and wastes, said that environmental issues were increasingly becoming human rights issues. Many writers had included them among the so-called "rights of solidarity": the right to development, the right to peace, the right to security, and the right to a healthy natural and social environment. The latter was a right of which States, public opinion and scientists had increasingly to take account, in view of the growing pollution resulting from nuclear tests, other pollution caused by the arms race, and the pollution associated with industrial development.

9. It was for each State to take appropriate measures to ensure that the natural environment did not violate human rights. Recently such problems had increased world wide, particularly because some States had tried to shuffle off the problem on to other States, dumping radioactive and toxic wastes on developing countries that were unaware of the implications of such actions. There had also been a tendency to locate polluting industries in the developing countries. Meanwhile, other countries were being turned into nature reserves so as to preserve the planetary environment, thereby restricting industrial development to those countries that were already developed. Technical assistance, including credits, was often made conditional on environmental policies; and constraints, pressures and interference in countries' internal affairs were used as tools to secure pursuance of such policies. It had been pointed out at the 1972 Stockholm Conference on the Environment that economic and social development were indispensable to ensure an environment propitious to the existence and work of mankind, and to create the necessary conditions to improve the quality of

life. That Conference had asked States to adopt integrated, co-ordinated conceptions of development planning, compatible with the needs to protect and improve the environment in the interest of their populations. The previous day, the Sub-Commission had received the text of the Basel Convention, which set out to ban and prevent illegal traffic in radioactive and toxic substances. In 1992 a new Conference on the environment would be held, 20 years after the first. The Sub-Commission must continue to deal with that agenda item and to expand its scope. According to document E/CN.4/Sub.2/1989/3, the United Nations Environment Programme was finalizing a report requested by the General Assembly on the illegal traffic of hazardous wastes. The Sub-Commission should also request the relevant report by the International Atomic Energy Agency to be made available, to assist it in its work at the next session.

10. On the question of Mrs. Warzazi's report on traditional practices affecting the health of women and children (E/CN.4/1986/42), he pointed out that the practices with which it dealt affected only a limited number of countries. However, since the Sub-Commission dealt with discrimination, why should the question not be broadened to include the far more widespread problem of discrimination against women? While many organizations already dealt with the question, he did not regard that as a reason why the Sub-Commission should exclude it.

11. Turning to the note by Mr. Varela Quirós (E/CN.4/Sub.2/1989/5), he agreed that working in consultation with intergovernmental and non-governmental organizations dealing with the problem, especially the World Health Organization, was the right way forward. One problem he would like to have seen dealt with more thoroughly was the clear need to protect the human rights of others - particularly the right to health. How could the Sub-Commission best defend that right, while simultaneously defending victims' rights?

12. Regarding Mr. Türk's working paper, on freedom of opinion and expression (E/CN.4/Sub.2/1989/26), he agreed that freedom of expression should not be considered in isolation, but must be seen as interdependent with other rights. He stressed that there would inevitably be differences of opinion among the 159 States Members of the United Nations, even where they accepted the same international documents, such as the International Covenant on Civil and Political Rights, since different countries took different views of concepts such as national security, public order or public morals. For example, a demonstration at a military base might be a crime against national security in some countries, but not in others. Even where respect for the rights and reputation of others was concerned, there were differences. He felt that Mr. Türk should have given more attention to article 17 of the Covenant, especially with regard to protection of the privacy and rights of others. The interference referred to in that article was usually attributable not to States, but to individuals. On the question of information, which was very unevenly distributed in the world, there was also a good deal more to be said. With regard to linking the idea of freedom of expression to that of political participation, it should be borne in mind that such participation did not necessarily take the form of opposition, but might be voluntary, conscious participation in the direction taken by the Government or a party.

13. He agreed that other rights, such as the right of association or the right of religious freedom, should not be considered in that context, except where certain aspects thereof were directly linked to freedom of expression.

14. In conclusion, he stressed that the Sub-Commission should not try to make freedom of expression unduly uniform world wide: even if it attempted to do so, it could not hope to succeed.

15. Mr. EIDE referred first to the question of movement and dumping of toxic and dangerous products and wastes. He was pleased to note that the Basel Convention on that subject had now been completed. He disagreed with the view taken by some Western commentators that the Convention was outside the human rights framework, since it clearly reflected human rights such as the right to life and the right to health. The same was true of the question of chemical weapons.

16. He felt that the remaining issues under item 4 could be subsumed under the heading "Human rights defenders". Mr. Türk's explorations went to the core of the problem. Two issues stood at the heart of the concern to protect human rights defenders: one, the problem of detention, was dealt with under item 9; the other was the freedom of everyone to hold and to express their opinion in the wider context of political participation. If it could deal effectively with those two problems, the Sub-Commission would have made a major contribution to the advancement of human rights. Mr. Türk had fulfilled his mandate of exploring conceptual and methodological problems, and had presented the Sub-Commission with some very clear options on the basis of which it could take future decisions.

17. He proposed to explore three points: first, freedom of information and power derived from position; secondly, freedom and acceptable limitations; thirdly, freedom and limitations that jeopardized freedom. He suggested that the study might be improved by the addition of an exploration of ways in which freedom of expression could be not only respected but also protected, and of how assistance might be given to ensure the exercise of freedom in cases where it was threatened by non-governmental actors.

18. The observation made in paragraph 10 was crucial: the powerful, whatever the sources of their power, had usually had the freedom to express their thoughts, whereas the powerless had had to struggle for it. The basis of power might be economic or political, or sometimes both. Marxists and others had rightly pointed out that the real exercise of freedom of expression and of information, in particular the freedom to disseminate one's opinions, was dominated in Western, liberal society by those who held economic power. But Marxists had made a serious mistake when, after a political revolution, they had assumed control over both the economy and political institutions, thereby controlling almost all possibilities of disseminating, and indeed receiving, opinions and information.

19. One of the first critics of that error from within the system had been the Yugoslav writer Milovan Djilas, in his book "The New Class", published in the 1950s. But there had been many others, such as Jivi Hajek in Czechoslovakia in the 1960s, where debate on the issue had ultimately led to the Prague spring of 1968. That spring of hope had been followed by a very dark autumn, during what was now referred to in the Soviet Union as the stagnation period. Later during the same period, another outstanding figure who had expressed his opinions against great odds, the physicist Andrei Sakharov, became a household name. Those examples underlined the fact that an unprecedented change was now taking place, a change best expressed by two Russian words glasnost and perestroika. Mikhail Gorbachev had made the

point that it was not possible to have perestroika without glasnost. In more familiar terms, one could not have development without respect for human rights. Above all, development was not possible without freedom of expression. The Soviet press was now extremely critical of the shortcomings of the system. For example, Izvestiya had initiated a campaign against the misuse of psychiatric confinement for political or religious dissidents, which had led to far-reaching changes in the legislation.

20. During recent visits to Moscow, he had been stunned by the frank acknowledgement of the weaknesses in the Soviet administration of justice by the Vice-President of the Supreme Court of the Soviet Union and by a Soviet expert on labour law who had said that his country might have to learn from the West on the issue of economic and social rights. In Romania, people had learned of the Mazilu case through the radio after the Vienna Conference had agreed to a cessation of radio jamming. In May and June 1989, Milovan Djilas, Andrei Sakharov and Jiri Hajek had come to Norway and had subsequently returned to their respective countries. Later, he had learned that books by Milovan Djilas were about to be published in Yugoslavia; that Andrei Sakharov was a deputy of the People's Congress and had been seen by a great many people on television, in the Soviet Union, making active use of his freedom of speech. Unfortunately, Jiri Hajek had not yet received the same treatment in his home country of Czechoslovakia. Those and other events had shown clearly that unprecedented changes were taking place throughout the world in, from a human rights perspective, the right direction.

21. Freedom of expression required not only the freedom to express opinions without sanctions by the Government, but also protection by the Government against third forces. In many places, human rights defenders who had used their freedom of expression had been killed by right-wing extremists and death squads often linked to the armed forces, or by the security forces. That aspect was very serious. In societies which were allegedly liberal and permitted different opinions to be expressed, it might sometimes be convenient for the powers-that-be to remain passive when critical voices were silenced by such elements, thus giving an appearance of freedom which was far from real.

22. Some consequences might be drawn from that background for the work of the Sub-Commission. One was the degree to which glasnost was applied in its own proceedings. United Nations reports tended to be very shy of mentioning countries in a critical way even when solid information regarding serious human rights problems was available. Such self-censorship must be abandoned if the Sub-Commission was to take the right to freedom of expression seriously. The presence of non-governmental organizations in the Sub-Commission represented a serious effort to enable those with little power to express their opinions.

23. Mr. Alfonso Martinez had made the point that there was a predominance of non-governmental organizations from the Western world. Consequently, so far as the third world was concerned, the Sub-Commission tended to hear the voices mainly of Governments and not the voices of the powerless and the grass-roots organizations. It was therefore particularly gratifying to observe the presence of non-governmental organizations from third world countries in the working groups on indigenous peoples and on contemporary forms of slavery.

24. A new problem calling for vigilance by human rights defenders was that of discrimination against persons with the HIV virus or suffering from AIDS. In that connection he endorsed the views expressed by Mr. Varela Quirós in paragraphs 7, 8 and 9 of his concise note (E/CN.4/Sub.2/1989/5) regarding the dangers inherent in possible responses to the victims. He was happy to note that there had been International Consultation on the problem from the human rights perspective between the Centre for Human Rights and WHO's Global Programme on AIDS. The document, entitled "International Consultation on HIV/AIDS and Human Rights" emerging from that consultation had been made available to the Sub-Commission. It contained some very important admonitions and it was for the Sub-Commission to insist that the human rights perspective should be brought clearly into many aspects of the problem. A wide range of applicable human rights standards were pertinent to the issue. He would encourage Mr. Varela Quirós to pursue his task in co-operation with the Centre for Human Rights and the World Health Organization; the latter might be in a position to appoint a human rights expert to deal with those aspects of the problem.

25. In conclusion, he had been particularly impressed by the observations contained in Mrs. Warzazi's report (E/CN.4/1986/48) in so far as they concerned the reticence of Governments on the issue of traditional practices affecting the health of women and children. He had been stunned to learn that such practices continued to be carried out in hospitals in Italy and Spain. He had noted the comment by Mr. Joinet that prohibition of the practices, as in the United Kingdom, was not necessarily the best approach in all cases as it might result in clandestine action with attendant health risks. He inclined to support the position taken by Mrs. Warzazi. It would seem that the women affected were more or less forced to subject themselves to those practices by traditions which were currently meaningless. Information and enlightenment were essential.

26. Mr. KHALIFA, speaking on document E/CN.4/Sub.2/1989/26, said that the right to freedom of expression and opinion was central to the exercise of all other human rights. The facts of political and social life often encouraged the authorities to impose exceptions and limitations to that right, particularly in emergency situations or on grounds of alleged public morality or health. Such limitations could assume dimensions and legal forms such that the right itself was threatened. Human rights defenders must in particular do everything possible to ensure that force was not used to restrain the right to freedom of opinion and expression. It must be borne in mind too that legislation was often nothing more than the codification of practices which limited the right. Freedom of opinion was an absolute right; it was the right to think in absolute freedom.

27. An individual did not however form his opinions alone and unaided. He needed information and contact with others with whom he could exchange views freely. The right to freedom of opinion and expression therefore meant that the individual must have free access to impartial information. Some universal sources of information were however monopolized by world-wide cartels so that the truth could not make itself known. Misrepresentation could often be spread more quickly than truth. It was well known that certain television networks had deliberately disseminated misinformation or disinformation and had justified the practice as being a necessary tactic in the "Cold War". When UNESCO had attempted to examine world-wide practices in the field of information dissemination, the effort had been thwarted by lack of resources when several member States had withdrawn from the organization.

28. Mr. Türk's working paper made it clear that freedom of opinion and expression could not be guaranteed by the Universal Declaration of Human Rights and other United Nations covenants per se. What was currently needed was a study on the right to freedom to obtain information. The study should examine the impact of capital and technology on the free exercise of that right and should also consider the circumstances in which public security and morality might justifiably be cited as reasons for stifling freedom of opinion.

29. He welcomed the recommendation contained in paragraph 63 of Mr. Türk's working paper and expressed the hope that Mr. Türk and Mr. Joinet would jointly undertake the responsibility for its implementation. Commenting on the discussion which had taken place the previous day, he wished to emphasize that in carrying out its mandate, members must not regard themselves as belonging to any particular nationality, creed or colour. That did not mean that members should abandon their own identities, or national or religious feelings. But in carrying out the mandate of the Sub-Commission, they must always rise above personal feelings and above the sense of belonging to a particular category. Everything must be considered in an objective manner. The Sub-Commission was the conscience of the United Nations and must view the implementation of every aspect of its mandate in a universal context.

30. Mrs. DAES said that, in view of time constraints, she would comment only on a few of the many and vitally important sub-items of agenda item 4.

31. In the first place, she was pleased to see in the note by the Secretary-General (document E/CN.4/Sub.2/1989/2, para. 16 et seq.) that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been ratified or acceded to by 41 States and that the Committee Against Torture had been established and had already held two successful sessions.

32. She also noted (para. 26 of the document) that the General Assembly, in its resolution 43/115 of 8 December 1988, welcomed the efforts of the treaty bodies to streamline and rationalize reporting procedures in the field of human rights. In that connection, she emphasized the importance of technical assistance and advisory services and the role that human rights treaty bodies could play in identifying means of helping States to meet their human rights obligations.

33. In connection with the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care (paras. 35 and 36 of the document), she expressed satisfaction at the establishment of a working group to examine, revise and simplify as necessary the draft body of principles prepared by the Sub-Commission. She suggested that the compilation of replies by Governments, specialized agencies and intergovernmental organizations contained in annex III to her final report as Special Rapporteur on the subject (E/CN.4/Sub.2/1983/17/Add.1) should be submitted to the Commission on Human Rights and its working group. It would save time and would be useful to the members of the working group and to the secretariat.

34. She welcomed the memorandum submitted by the International Labour Office in document E/CN.4/Sub.2/1989/6 and the information on developments contained in paragraph 1. She also drew attention to the adoption of the new ILO Convention on Indigenous and Tribal Populations, which was a revision of

ILO Convention 107/1957. In that connection, she recalled that the United Nations, in co-operation with the Greek Government, was organizing a seminar in Athens from 18-26 September on the cultural dialogue between host countries and the countries of origin of migrant workers.

35. With regard to the interesting statement by Mrs. Warzazi on traditional practices affecting the health of women and children, she appreciated the reasons for which Mrs. Warzazi had not submitted a written report at the present session and looked forward to hearing about her recommendations and her future approach.

36. She supported nearly all the relevant recommendations contained in paragraphs 63 and 64 of the working paper prepared by Mr. Türk on the right to freedom of opinion and expression (E/CN.4/Sub.2/1989/26).

37. She had learnt a great deal from the concise note prepared by Mr. Varela Quirós contained in document E/CN.4/Sub.2/1989/5. The Sub-Commission should continue to consider the item on AIDS and human rights and, through its studies, make its contribution to the adoption of policies designed to guarantee and protect the essential rights of persons suffering from AIDS.

38. With regard to the sub-item on compensation for victims of gross violations of human rights, she recalled the terms of Sub-Commission resolution 1988/11. In that connection, she recalled the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power contained in General Assembly resolution 40/34 of 29 November 1985. A very successful conference had been organized by the Canadian Human Rights Foundation in Ottawa in May 1989. The main recommendation of the conference had been that the right to compensation for victims of gross violations of human rights should be duly recognized. The legal view that it was meaningless to speak of a right unless it could be enforced, which followed the Roman maxim ubi remedium ibi jus had been disputed. Another school of Roman jurists maintained that where there was a right there must be a remedy - ubi jus ibi remedium. The fact remained, however, that a right for which there was no remedy was of no practical use to anyone. That was one of the main reasons for which nearly all national constitutions and other legislation contained clauses requiring all States to provide individuals with an effective remedy for violations of their basic rights. It was one of the most important justifications for the inclusion in a number of international and regional human rights instruments of provisions relating to the right of every individual to an "effective remedy" by the competent national tribunals for acts violating his human rights granted to him by the constitution or by law.

39. The relevant basic provisions in United Nations human rights instruments were therefore the following: article 8 of the Universal Declaration of Human Rights, which stated "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law"; article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; article 2 (3) of the International Covenant on Civil and Political Rights; and article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

40. Basic provisions in human rights instruments at the regional level were: article 5 (5) and article 50 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; and article 10 and article 68 (2) of the American Convention on Human Rights.

41. Those were the basic provisions of international and regional instruments which provided expressly for the right of everyone to an effective remedy or to be compensated, in the event of gross violation of his fundamental rights. There was also a wealth of important judgements, decisions and pronouncements by competent courts, tribunals and other bodies, including the valuable work and important decisions of the United Nations Human Rights Committee.

42. In conclusion, she suggested that it was time the Sub-Commission appointed a Special Rapporteur to prepare a report or study on compensation for victims of gross violations of human rights.

43. Mr. BHANDARE congratulated Mrs. Warzazi on her introduction to and work on the subject of traditional practices affecting the health of women and children.

44. Turning to Mr. Türk's working paper in document E/CN.4/Sub.2/1989/26, he said that the most important freedom was freedom of opinion and expression. Denial of that right would destroy all other human rights. In that context, it was important to recognize that the world was made up of a variety of different systems and that failure to recognize and respect those systems would result in serious trouble. He believed that the source of change must come from within. The Sub-Commission should therefore be very circumspect in criticizing others and, as had been rightly said, should avoid the "holier than thou" attitude.

45. It must be remembered, too, that it was no use conferring a right unless it could be enjoyed and it was in the context of enjoyment that the significance of Mr. Türk's working paper would be understood. One of the most important aspects of the subject was that the right could be denied in more ways than one, for example, through the absence of economic, social and cultural rights. What would be the value of the right to freedom of opinion to someone who was hungry, without clothes and homeless? All human rights, whether civil, political, economic, social or cultural, were integrated, interdependent and indivisible; they were universal because they were unalienable and inviolable. There were advocates of civil and political rights, on the one hand, and of economic, social and cultural rights on the other; but the truth was that neither set of rights could be enjoyed without the other. Once that was understood, the problem would be nearer to being solved. He hoped that Mr. Türk would elaborate on the idea.

46. An essential ingredient of the right of expression was the right to know. In that context, he asked himself how he could enforce his right to know about special rapporteurs, for example, the whereabouts of Mr. Mazilu. A letter had been received and Mr. Mazilu had sent his report in handwriting in two volumes, and that had made members of the Sub-Commission all the more anxious to know about him. The current exercise in futility must now come to an end. The Sub-Commission would shortly be receiving an advisory opinion from the International Court of Justice. He appealed to the Government of Romania to recognize that there was no prestige in keeping Mr. Mazilu away from the Sub-Commission and he requested the observer for that country to give

a positive response at the end of the debate on the present item, and an assurance that Mr. Mazilu would be present to submit his study. He appealed also to the Under-Secretary-General for Human Rights, and through him to the Secretary-General, to make every effort to see that Mr. Mazilu attended the Sub-Commission to submit his report.

47. He also wished to touch on a possibly controversial aspect of the question of limitations. The classic example was the case of Salman Rushdie's book. He himself did not believe in banning but India had been the first country to ban the book and he had justified the action on the grounds that failure to ban the book would lead to bloodshed, as had unfortunately proved to be the case. That showed that restraint had to be exercised at all times, out of respect for the rights of others. Only by protecting others' rights could people enjoy their own rights.

48. With regard to the concise note by Mr. Varela Quirós in document E/CN.4/Sub.2/1989/5, he pointed out that in many parts of the world, including India, adultery was an offence and sodomy an offence punishable by law, and if the views of society were to be respected, Mr. Varela Quirós was skating on thin ice in commenting in paragraph 8 that "This paranoia is sometimes wrapped up in a moral discourse which seeks to re-establish strict and puritanical social customs". It was only by accepting the world as it was that any substantial progress in the field of human rights could be achieved.

49. He commended Mrs. Daes on her comprehensive statement on compensation for victims of gross violations of human rights and supported her view that the time had come for a study to be made on the subject.

ELIMINATION OF RACIAL DISCRIMINATION (agenda item 5) (continued)

(b) ADVERSE CONSEQUENCES FOR THE ENJOYMENT OF HUMAN RIGHTS OF POLITICAL, MILITARY, ECONOMIC AND OTHER FORMS OF ASSISTANCE GIVEN TO THE RACIST AND COLONIALIST REGIME OF SOUTH AFRICA (continued) (E/CN.4/Sub.2/1989/9 and Add.1)

50. Mr. KHALIFA, introducing his updated report, said that he would not enumerate in detail the position of countries with regard to sanctions and their implementation. Institutions and their countries of origin were listed in document E/CN.4/Sub.2/1988/6/Add.1 and Corr.1, which had been discussed at the Sub-Commission's previous session and also incorporated in his report. In that respect, he wished to refer the Sub-Commission to a comprehensive report by the Secretary-General to the General Assembly (document A/43/786), which contained a survey of national measures adopted against South Africa with dates, notes on scope of applicability, monitoring and reporting systems and an analysis of problems relating to implementation.

51. His main concern was whether sanctions worked. He believed that they did. Sanctions, in the final analysis, hurt. South Africa would definitely be better off without sanctions which impeded if did not cripple its great potential in the international economy and complicated its trade. They had forced South Africa to pay a higher price for apartheid, and the mere threat of tighter sanctions had given the West more leverage for goals such as freeing prisoners and introducing minor changes in apartheid. The Finance Minister of South Africa had acknowledged that they were causing grave damage, and that he was unable to abolish exchange controls because of the continuing

flight of foreign capital. According to a South African political scientist, South Africa's exchange reserves had sunk below those of Botswana, and the Governor of the Reserve Bank of South Africa had conceded that the cut-off of foreign loans had crippled the country's ability for sustained economic growth. Indeed, analysts maintained that there was no chance of achieving the 5 per cent annual economic growth that would create a take-off and avoid social unrest. Economic growth in the current year was estimated at 2 per cent or less. Moreover, there was a serious possibility of South Africa's defaulting on its \$27 billion foreign debt, the price of gold remained low and inflation was running at nearly 20 per cent. Clearly, cutting off loans had been much more effective than other sanctions such as corporate disinvestment and trade embargoes, which lent themselves readily to devious practices. Nearly 60 per cent of South Africa's exports in high-value minerals such as platinum, gold and uranium were probably untraceable and hence sanction-proof.

52. Transnational banks were the most important sources of capital flows into South Africa. Since the introduction of legislative measures against lending to South Africa by the United States in 1986, the banks of Switzerland, the Federal Republic of Germany and the United Kingdom had become South Africa's most important creditors. However, in 1987 the assets of the South African Reserve Bank and those of domestic banks had together amounted to only \$US 4.66 billion, which was held to be insufficient to accommodate the needs of South Africa's trade. The major trading partners of the régime were therefore providing the necessary export credits to South Africa.

53. Japan had banned loans to South Africa as early as 1974 but the wording of the measure was interpreted as not binding. However, the Japanese Government had appealed to banks to refrain from lending to the South African Government. Denmark, Norway, Finland, Iceland and Sweden had enacted laws prohibiting loans to South Africa; Australia and Canada had suspended loans and credits and the EEC Council of Ministers had agreed a prohibition on long-term loans. In the United States, the Comprehensive Anti-Apartheid Act of 1986 prevented loans to the South African Government or its entities, with certain exceptions for humanitarian and educational activities.

54. The Commonwealth Committee of Foreign Ministers set up in 1987 had held two meetings in 1988 to review developments in South Africa. It had emphasized that the maintenance and extension of economic sanctions would stifle South Africa's economic growth and had called for action by more countries and international financial institutions in restricting new lending and investment, refraining from taking part in debt rescheduling exercises with South Africa and had also asked for an international ban on insurance cover by official export credit agencies for loans to South Africa.

55. Most of South Africa's external debt was owed to some 400 commercial foreign banks, and the ban on new loans and the refusal to roll over existing loans would have a more immediate impact than disinvestment. The effect of sanctions was clear from South Africa's recent attempts to improve its image in the eyes of the world. Moreover, South Africa was at long last responding to the Sub-Commission's report: a letter of 5 October 1988 from the Permanent Representative of South Africa to the United Nations Office at Geneva revealed deep-seated anxiety.

56. Research showed that the price of apartheid to South Africa was growing daily. In October 1987 the Commonwealth Heads of Government with the exception of the United Kingdom had decided to evaluate on a continuous basis the impact of sanctions. An interim study revealed that even with limited sanctions and despite the breaches of international efforts by certain countries and transnational companies, South Africa's trading partners had reduced their trade by \$1.2 billion in 1985/1987. That represented 7 per cent of South Africa's exports.

57. Oil was still South Africa's lifeline. Conversion of coal to oil and stockpiling had helped it to a limited extent, but those measures were expensive. Although the vast majority of oil-producing countries prohibited the export of their oil to South Africa, oil production, processing and distribution was still almost entirely controlled by transnational companies such as BP, Caltex, Mobil, Shell and Total which were assisting the apartheid régime in its energy crisis, although Mobil, the largest United States company in South Africa, had recently announced that it was pulling out and selling its assets to a South African company.

58. The intergovernmental group created by the General Assembly to monitor the supply of oil and petroleum products to South Africa had urged in its report (A/34/44) the imposition by the Security Council of a mandatory oil embargo against South Africa to complement the arms embargo imposed in 1977.

59. Sanctions would have had even more serious effects on South Africa but for lack of co-ordination among States and lack of comprehensive measures, loopholes in policies and legislation, imprecision in the drafting of legislation and because the authority charged with monitoring or administering the measures was often not the one in charge of a country's foreign affairs. For instance, the implementation of the 1986 Comprehensive Anti-Apartheid Act in the United States had been delegated to no less than 10 different officials and agencies. It was true that the House of Representatives and the Senate Foreign Relations Committee had approved new legislation aimed at cutting off virtually all United States trade with South Africa and forcing United States companies to withdraw almost all investment, but there was a marked rift between the Legislature and the Administration in that respect. Mr. Herman J. Cohen, the new Assistant-Secretary of State for African Affairs, had made clear his opposition to sanctions and his belief that United States companies should be encouraged to remain in South Africa.

60. Another reason why sanctions were not effective was that third countries were stepping in to fill the gap left by those that had left. It was reported that 19 new Taiwanese factories were under construction in South Africa at the end of 1987 in addition to the 81 that were already there. Taiwanese banks were reported to have made loans to finance joint ventures in South Africa. South Africa was also seeking new business and trade relationships with countries like South Korea and Singapore. Its well-known links with Israel were becoming closer. He referred the Sub-Commission to the reports of the Special Committee against Apartheid for further details. Israel had, however, decided in December 1987 to take certain measures prohibiting the granting of loans for the sale or transfer of oil and oil products and the import of Krugerrands and had announced that new investments in South Africa would not be approved.

61. Yet another factor lessened the effectiveness of sanctions: the shift from direct to indirect investment. About half of the firms that had disinvested in South Africa since 1984 and many of the 96 United States companies that disinvested in 1988 were still making money in the country through other deals. The South African economy was still receiving all the products it needed. Rather than pay dividends to former parent companies, South African operators paid royalties under licensing agreements. Chapter 2 of his report (E/CN.4/Sub.2/1989/9) described the various techniques employed to avoid total disinvestment.

62. Sanctions were likely to continue because of the lack of any alternative, not because of their effectiveness. If the option of violence were to be discarded, only sanctions would be left as a weapon against apartheid. The black population of South Africa was being told by East and West to negotiate a peaceful solution, but the real issue at stake was the right of all South Africans to a vote. That right was not negotiable. When freedom came to the black people of South Africa it would not be the victory of blacks over whites but that of the people of South Africa over an evil system. When South Africa sentenced peaceful demonstrators to death and banned all opposition by means of a protracted state of emergency it could hardly complain of violence.

63. South Africa had always proclaimed itself a bastion against international communism but, for the first time since 1956, was developing trade with the Eastern bloc so as to counter the economic sanctions of some Western States.

64. While welcoming Namibian independence, the world community must remain on guard, for that independence would be merely symbolic as long as Namibia remained economically dependent on South Africa.

65. He thanked the secretariat for making available the services of an economist for three to four months to work on a general overview of the economic situation in South Africa and its trade and economic relations with certain countries.

66. However, in requesting the services of two economists, he had in mind a much more wide-ranging survey appraising the effect of sanctions and their overall impact on the South African economy and an objective critique paving the way for a more effective sanctions policy. The survey should also deal with devious disincentive practices. There would also be full documentation of special cases of corporations deserving detailed treatment. The General Assembly in operative paragraph 2 of resolution 43/92 of 8 December 1988 had demanded that the services of two economists should be made available to him.

67. In his consultations with the Centre against Apartheid and the United Nations Centre on Transnational Corporations he had detected a desire for only one list to emanate from the United Nations system so as to avoid discrepancies and overlapping. However, following consultations, General Assembly resolution 43/92 used the word "consolidating" rather than "unifying" in respect of the updating of his report.

68. The CHAIRMAN thanked Mr. Khalifa for his wide-ranging report and said that item 5 (b) of the agenda would be taken up again when the Committee had concluded its consideration of item 4.

ORGANIZATION OF WORK (continued)

69. The CHAIRMAN drew attention to paragraph 17 of Commission resolution 1988/43 and appealed to members to arrive on time for meetings. He announced that the deadline for the submission of draft resolutions on item 3 had been set for 1 p.m. on Monday, 14 August 1989.

70. In reply to a question from Mr. EIDE, Mr. CISSE (Secretary of the Sub-Commission) said that Mr. Ilkahanaf had arrived in Geneva that morning and that Mr. Al-Khasawneh was scheduled to arrive on 14 August 1989.

The meeting rose at 12.50 p.m.

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