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Forty-sixth session

SUMMARY RECORD OF THE 47th MEETING

Held at the Palais des Nations, Geneva,  
on Friday, 2 March 1990, at 10 a.m.

Chairman: Mrs. QUISUMBING (Philippines)

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

STATEMENT BY H.E. THE MINISTER FOR FOREIGN AFFAIRS OF GUATEMALA

1. Mr. RIVERA IRIAS (Minister for Foreign Affairs of Guatemala), noting that the positive changes taking place in various parts of the world were transforming international relations, said it was clear that the struggle for the full enjoyment of human rights had decisively contributed to generating those changes and would help to consolidate a new international order in which peace would be the fruit of understanding and mutual respect and not of force or terror. Understanding required the recognition of needs and difficulties as well as the necessary support to resolve them. Peace should be consolidated where it had been achieved through greater understanding and more comprehension.
2. Central America had participated in that new spirit of change seeking peaceful co-existence through dialogue, strengthening of democratic processes and the concerted will to achieve through regional integration the economic and social development that would make it possible to improve the living conditions of the majority of the people in each Central American country. To that end, it was necessary to stimulate greater understanding and more comprehension by the international community.
3. The United Nations had supported Central America in that effort. The Secretary-General had followed with great interest the development of the process of regional pacification since the time of its promotion by the Latin American countries members of the Contadora Group and the recent subregional initiative put forward by the Central American Presidents, which had resulted in the historic Esquipulas II agreements and subsequent commitments. Pursuant to a Security Council decision, the United Nations was currently monitoring the fulfilment of the security commitments under the Esquipulas II agreements. In addition, the United Nations High Commissioner for Refugees was facilitating the repatriation and resettlement of Central Americans who had been displaced or fled armed conflicts, while UNDP was actively promoting an economic co-operation programme for Central America.
4. He had referred to all those important activities of the United Nations in support of peace and development in Central America so that the members of the Commission would adopt a constructive attitude, based on objective rather than partial, political or ideological criteria, that would help the Central American countries to overcome the differences still existing in their societies and to improve the institutions and mechanisms which guaranteed the protection and full enjoyment of human rights and fundamental freedoms.
5. The Commission's analysis of the situation in Guatemala appeared to be made from both standpoints: objective reality and political interests. Unfortunately, the two diagnoses did not coincide and, consequently, neither did the criteria as to which mechanisms were most appropriate for the case of Guatemala. His Government, which had been co-operating with the Commission for several years and knew which mechanisms or procedures were best suited for its situation, had requested the provision of advisory services. It hoped that it would be supported constructively by all concerned in its efforts to consolidate a democratic society within a favourable regional context and to develop and refine a legal system that ensured the protection, promotion and enjoyment of civil, political, economic, social and cultural rights.

6. The Commission was the appropriate body in which to request the understanding and support of the international community for the fulfilment of President Cerezo's popular mandate which was not solely to restore a State subject to the rule of law, strengthen political and democratic institutions, and promote internal and regional peace but also to complete within a climate of freedom, the slow and difficult process of eliminating through political harmony and agreement the polarization of Guatemalan society.

7. The right to life, liberty and security of person could not be duly ensured without the existence within State institutions of just and effective mechanisms and of the human element necessary to implement them. For centuries, there had been a tradition in Guatemala of autocracy, dictatorship and a régime in which justice and its administration had been conceived and directed as a marginal priority and its independence from the Executive Power had been limited by political interests.

8. As the Expert had stated in his oral introduction and in his report (E/CN.4/1990/45/Add.1, para. 31), the system was also confronted with the old inquisitorial theory in criminal trials, which had never been changed or reformed to adopt it to modern times when scientific methods and co-operation by citizens ensured the individual's legal guarantees to have a fair trial, a basic component of the modern system of legality. The training of honest and conscientious judges and investigators was also essential for the administration of justice.

9. His Government had unreservedly co-operated with the Commission and accepted a recommendation that had been made by various advisors; it was undertaking the most ambitious structural and functional reform of criminal justice in Guatemala, namely the reform of the Code of Criminal Procedure.

10. As the Expert said, there was a positive element in that all sectors of the Guatemalan people were beginning to be aware of the human rights programme and therefore international assistance for the teaching of human rights and for the creation of that awareness should be stressed and important co-operation and assistance projects increased.

11. Another institution which had become more dynamic was the office of the Procurator for Human Rights whose primary function was the protection of fundamental rights. That office would be able to increase its capacity to produce results if it benefited from advisory services, since the purpose of the legislation which had created it was to break the vicious circle of violence.

12. As a result of the recommendations of the advisory services, his Government had signed and ratified international conventions and instruments for the protection of human rights. In that way, it was creating the framework and conditions for a favourable scenario for the consolidation of democracy and respect for human rights.

13. His Government had adopted a completely open approach to the evaluation of the domestic situation and the eradication of factors that were not conducive to the protection of human rights. All State institutions had co-operated fully with the Expert and the Government had spared no efforts or resources to help him to carry out his duties. It was of crucial importance therefore that an attempt should be made to maintain that spirit of co-operation.

14. He called on the Commission to evaluate the positive achievements of the past few years, and the importance of continuing to promote respect for human rights in his country. He also stressed the need for more and stronger private citizen groups genuinely concerned with human rights.

15. It could not be denied that the establishment of a democratic system and a legitimate Government in Guatemala constituted a qualitative change in the right direction despite the destabilizing action of extremist right-wing groups which, seeing their control over the development of society seeping away, were trying by violent means to return to a past which the majority of Guatemalans had clearly rejected. There had been a positive change despite the destructive actions of left-wing extremists who had not yet understood that the road to power did not involve destroying the system but rather working within it, i.e. choosing ballots rather than bullets.

16. The democracy that was being consolidated in Guatemala should be situated within its context and understood in the light of its efforts and results on the basis of concrete facts rather than on that of partial standpoints which were rooted in the past or in a theoretical or hypothetical future.

17. What could be stated and confirmed was that the advances which the Guatemalans currently enjoyed were the result of their political institutions and the actions of the Government. Their rights and freedoms were not only theoretical but were being exercised in their daily lives. The Guatemalan people had demonstrated that results could be obtained through dialogue. They had learned to exercise their right to disagree and to express it publicly without fear, as was shown by the intense, political and social activities of political parties, people's organizations and trade union associations. The results of public demonstrations and strikes had strengthened the confidence of citizens in democratic institutions.

18. The dialogue had been consolidated through reconciliation bodies in which more and more sectors were taking part, being convinced that dialogue was the only feasible way of making progress. The Government had demonstrated political democracy in practice and had never resorted to the use of force to resolve the political and social conflicts it had had to face over the past four years.

19. President Cerezo had promoted that faith and confidence in democracy and dialogue not only at the national level but, with a view to protecting his people from the tragedy of the fratricidal war that was developing in the Central American region, had taken the initiative of dialogue and the political approach to deal with the Central American problem. The invaluable positive results of the Esquipulas agreements were known to all. Peace had been consolidated and the effectiveness of dialogue had been demonstrated. The Central Americans could turn their thoughts and energies to construction and development.

20. The historic rendezvous which the people of Guatemala had in November 1990 would, he was sure, confirm the positive developments taking place in his country.

21. With objectivity and a constructive approach, the Expert had drawn attention to the real facts of the human rights situation in Guatemala, stating that the question should continue to be examined by the Commission. In that connection, he referred to paragraph 70 of the Expert's report (E/CN.4/1990/45), which emphasized the need for pluralistic and representative democracy. The Expert had also stated that international assistance and co-operation were essential if the process of safeguarding human rights was to continue, through the application of the provisions of the international instruments ratified by Guatemala and through the promotion of human rights (para. 69).

22. The content and orientation of the report were clear. The Commission should act accordingly and support a democratic government which was trying to improve the quality of society. The reality of Guatemala in 1990 was not the same as at the beginning of the 1980s. Changes for the better had taken place and the sectors which had contributed to those changes should continue to enjoy the support of the Commission and of the international community.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-FIRST SESSION (agenda item 19) (continued)  
(E/CN.4/1990/2 - E/CN.4/Sub.2/1989/58, E/CN.4/1990/40, 56, 75 and 82;  
E/CN.4/1990/NGO/6; E/CN.4/Sub.2/1989/26, 36, 37 and 39)

23. Mr. EYA-NCHAMA (International Movement for Fraternal Union Among Races and Peoples) said that, in Sub-Commission resolution 1989/3, the Spanish version of paragraph 15 should be brought into line with the English and French versions.

24. Sub-Commission resolution 1989/14 on freedom of opinion and expression, which was anchored in the Universal Declaration of Human Rights, concerned one of the most often-violated rights. Freedom of opinion was the very foundation of democratic government. It was strange that while supporting the return to democracy in Latin America and Eastern Europe, Western Europe sought to prevent the return to freedom when the African peoples attempted to follow suit.

25. Africans did not understand how the French could treat Chinese students as heroes while ignoring the massacre of students that had taken place in Africa a few days previously. They also wondered how the former Prime Minister of France, Jacques Chirac, could preach the one-party system in Africa while combating that system in Eastern Europe and Latin America. It was a form of racism to assert that one type of political system was for the whites and another for the blacks.

26. His organization supported Sub-Commission resolution 1989/12 on the movement and dumping of toxic and dangerous products and wastes and called upon the international community to urge the "civilized Europeans" to discontinue sending toxic wastes to Africa.

27. The Commission should approve the recommendations contained in Sub-Commission resolution 1989/16, on traditional practices affecting the health of women and children, because such recommendations would have a real impact.

28. His organization supported Sub-Commission resolution 1989/30 on the protection of staff members of the United Nations system. It was necessary to assist Ms. Bautista to complete her report. He urged Governments that had imprisoned staff members of international organizations to release them forthwith; if such persons had committed offences, the Secretary-General should be informed thereof so that the necessary measures could be taken in accordance with the United Nations Charter.

29. He welcomed Sub-Commission resolution 1989/34 on the draft universal declaration on indigenous rights. It was high time that the human rights of those peoples were protected.

30. The international community was duty-bound to support Sub-Commission resolution 1989/42 on the sale of children. International solidarity could prevent the occurrence of such practices which were a disgrace to the human race.

31. Mr. BARSH (Four Directions Council) said that the Working Group on Indigenous Populations continued to attract a growing number of indigenous peoples' organizations from around the world. Work on the draft universal declaration on indigenous rights had reached a critical stage. There was broad agreement on many parts, and important disagreements remained on just a few principles. With a constructive and flexible attitude on the part of the participants, a final draft could conceivably be ready for review by the Sub-Commission and the Commission in 1992.

32. It had been widely felt by persons observing the Working Group's meetings that indigenous peoples should be involved more directly in the drafting of the universal declaration and that the commitment of Governments to the final text should be ensured. Such involvement could be promoted on an informal basis by convening small drafting groups to make recommendations to the Working Group itself. In that way, it might be possible for Government and indigenous organizations to arrive at some general agreements upon which the Working Group could then build a sound final document.

33. The aim of the draft decision to authorize an additional five working days for the Working Group's 1990 and 1991 sessions was to provide enough time for consultations with governmental and indigenous observers. In view of the continued growth in attendance at the meetings of the Working Group, there was no other way of giving priority to completion of the declaration.

34. The recent adoption by the International Labour Organisation (ILO) of the Convention concerning Indigenous and Tribal Peoples in Independent Countries, No. 169 lent enhanced significance to the drafting work. Convention No. 169 established a basis for further standard-setting in the field. But the new Convention should be paired with an instrument indicating the direction to be taken when Governments were able to exceed the Convention's requirements. Moreover, it was essential to promote respect for the rights of indigenous peoples in the work of the United Nations itself, and that would require a declaration by the General Assembly.

35. The Four Directions Council attached great importance to the proposed International Year for Indigenous Rights (Sub-Commission draft resolution XI). The world's estimated 200 million indigenous people were coming increasingly under threat from large-scale projects, environmental degradation and the economic and political convulsions in the countries in which they lived. The proposed international year was an opportunity to strengthen the effectiveness of United Nations activities in the field by encouraging all United Nations bodies to review the impact of their activities on indigenous peoples and to develop explicit policies and guidelines for respecting indigenous peoples' rights; linking all related United Nations activities, whether in human rights, economic and social development or the environment, with a view to mobilizing the greatest possible support for national-level projects for indigenous peoples; and, above all, increasing the direct participation of indigenous peoples' organizations in the work of the United Nations at all levels.

36. In connection with Sub-Commission draft resolution X, his organization supported the proposal by the Seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and States that a United Nations technical conference be held on practical experience in the realization of sustainable and environmentally sound self-development by indigenous peoples.

37. That idea had become even more timely in view of the approval by the forty-fourth session of the General Assembly of plans for a United Nations Conference on Environment and Development in June 1992. A technical meeting on indigenous development could make an important contribution to the preparations for that Conference.

38. Draft resolution X would also authorize wider contacts between many United Nations technical assistance programmes and the indigenous peoples' organizations. Support for development initiatives taken by indigenous peoples themselves would have a greater concrete impact on their enjoyment of human rights than more intensive criticism of Governments, and draft resolution X would permit some modest experimentation along those lines.

39. ILO had adopted a similar policy in 1989 and had begun to entertain project proposals from indigenous organizations. Draft resolution X would facilitate co-operation on such projects between the Centre for Human Rights and ILO and would attract more contributions to the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights, including contributions from the indigenous peoples' organizations themselves.

40. His organization, and other similar ones, had been disappointed at the repeated delays in the Special Rapporteur's study on treaties and agreements between indigenous peoples and Governments, and he urged the Special Rapporteur and the Secretariat to act swiftly, so that a substantive progress report would be ready for discussion at the Working Group in the summer of 1990.

41. Ms. SLESZYNSKA (Christian Democratic International) stressed the importance of Sub-Commission resolution 1989/45 regarding human rights and youth. In the third world, millions of young people were forced to earn their living for their families from a very early age. That prevented them from obtaining the education needed to break out from the vicious circle of

exploitation and misery to which they were condemned in a society dominated by the pursuit of profit. Often they fell prey to organized crime, drug trafficking or prostitution. The situation affected not only the countries of South-East Asia or the major Latin American urban centres, but also certain quarters of wealthy cities in the industrialized countries.

42. Young people were also victims of war. That was particularly visible in the countries of Central America, where adolescents of 13 or 14 years of age were often conscripted by force, both by the Governments and by insurgent groups. Similar situations had also been observed in conflicts in the Middle East. Her organization disagreed with the age limit of 15 for recruitment to military service set by the Convention on the Rights of the Child. Allowing children under the age of 18 to participate in armed conflict violated the spirit of that Convention.

43. The Christian Democrat International applauded with deep admiration the vanguard role of the young people of Beijing, Bucharest and Berlin in the valiant struggle for democracy.

44. In August 1989, more than 10,000 young people from around the world had gathered in the French capital to take part in "Paris 89", one of the patrons of which had been the Secretary-General. That meeting had demonstrated that co-operation and concrete projects could promote peace and human rights, and the Commission should give consideration to the fruitful and promising initiatives that had emerged from that event.

45. Ms. ANDUJAR (Indian Law Resource Center) said she wished to alert the Commission to the critical situation of the Yanomami people of Brazil. The Yanomamis were an indigenous people that lived for the most part in the region of Roraima, where the recent gold rush had had a disastrous impact on their health and social structure. A new Constitution in Brazil guaranteed the protection of the human rights of indigenous peoples, but its provisions were not being implemented. A state of lawlessness reigned in Roraima, and the leading cause of death was murder.

46. With the arrival of vast numbers of gold diggers, the Yanomami people had been exposed to a variety of diseases, above all malaria, which an estimated 80 per cent of the Yanomami population living close to the mining sites had contracted. If the Government of Brazil took the appropriate measures, the illness would not be fatal, but as matters stood, 15 per cent of the Yanomami population had died of malaria in the past two years, and if no action was taken, the entire people would die out within 10 years.

47. The Government of Brazil was aware that international attention was focusing on the fate of the Yanomami Indians, and it should allow representatives of the Commission to visit the area to investigate the situation.

48. Mr. LOS ARCOS (Spain) said his delegation regretted that, in spite of numerous calls for the Sub-Commission to adhere to its terms of reference, the Sub-Commission continued to discuss issues of a mainly political nature, in many cases reflecting the particular attitudes of the countries of origin of its members, thus not only wasting time and resources but preventing the objective, independent approach which was supposed to be the Sub-Commission's characteristic.



49. It was essential that the Sub-Commission members and their alternates should satisfy the criteria of experience and independence, be present at the Sub-Commission's sessions at Geneva and take an active part in the discussions and decisions. It was quite wrong for an elected expert to be replaced, at such sessions, by someone from his country's mission. Unless the experts were able to discharge their tasks free from any influence by their own States, the Sub-Commission's credibility would be fundamentally threatened. In addition, the important contribution the Sub-Commission could make to the Commission's work was vitiated if it continued to address proposals direct to the Secretary-General, Governments, or specialized agencies without the Commission's authorization.

50. Since the preparation of studies, reports and draft international instruments was one of the experts' major contributions, the Sub-Commission should always be guided by the relevant Council and Commission resolutions. It had taken the welcome step of adopting decision 1989/104 on the establishment of a sessional working group to prepare an analysis of the suggestions and proposals which had been made, especially by the Commission, to enable it to carry out its mandate more effectively. That working group should consider, as a matter of priority, ways of avoiding a proliferation of studies which lacked majority support or particular interest, and to ending the adoption of resolutions and decisions of a political nature for which other forums were more appropriate.

51. Experts' reports should reach the Secretariat in time to be translated and issued before the Sub-Commission's sessions began; and no studies should be prolonged, or new ones initiated, without authorization from the competent body and consideration of the financial implications. In addition, the temptation to leave it to the Centre for Human Rights to complete the work on studies already begun should be avoided.

52. In so saying, his delegation had no wish to inhibit the Sub-Commission's sphere of action; indeed, the Sub-Commission and its independent experts, a forum which non-governmental organizations could approach, had an essential role. But that role was to promote and contribute, not to repeat and duplicate.

53. Mr. ABRAM (United States of America) said that when he had himself been a member of the Sub-Commission, almost three decades previously, he had been impressed not only by the members' expert qualifications and rigorous approach but also by their independence. Few of them had been government employees, and several of them had been adversaries of their own Governments on civil rights and other matters. That independence fostered frankness, objectivity and even-handedness.

54. The situation had woefully changed. The Sub-Commission currently had its own agenda and its own projects. Its independence had been eroded by members who served simultaneously as their governments' representatives on the Commission or in the General Assembly. The Commission had most recently seen a blatant example, concerning one current member of the Sub-Commission, of the resultant ease with which a Government could exert influence in the Sub-Commission.

55. Its reputation as a body of experts had been undermined by the slipshod pursuit of duplicative, wasteful or politicized projects. Work that should be performed by its members was often passed on to highly-paid consultants or to the Secretariat. The time spent in debating political issues which were properly for other forums further eroded the Sub-Commission's credibility.

56. On the other hand, there could be no doubts about what a genuine expert study could ultimately accomplish. In particular, he recalled the study prepared in the Sub-Commission, during the early days of his membership, by Mr. Inglés of the Philippines, on the right to leave one's own country and return to it; he had been reminded of that at a recent meeting of the Conference on Security and Co-operation in Europe, during which the Hungarian delegation had asked to join those of Austria and the United States in sponsoring an initiative calling for the elimination of all forms of exit visas. The recent great changes in Eastern Europe, symbolized by the pulling down of the Berlin Wall, and other advances in the cause of human rights, had undoubtedly been influenced by such studies. A further example was the study on the human rights of individuals who were not nationals of the country in which they lived, which had resulted in a declaration on the topic.

57. There was a pressing need for the Sub-Commission to study the next great and dangerous challenge to human rights: the return of the ghostly rivalries; the ethnic, religious and national tensions that until recently had been suppressed by the forces of empire, Fascism and totalitarianism. The lid had been opened on age-old tensions. Azerbaijanis and Armenians; Albanians and Serbs; Bulgarians and Turks. A clearer understanding of how those tensions could be reduced was long overdue.

58. In that connection, he wondered how Switzerland - a country with four languages and several religions - had managed to keep the peace for so long. The question could also be asked how his own country - with over 130 different nationalities and ethnic groups - existed with endurable ethnic tension. Those questions required answers if members were to comprehend and cope with the next great assault upon fundamental human rights. The Sub-Commission should be instructed to do its utmost to complete its work on that topic.

59. Reminding the Sub-Commission of its original mandate was the first step towards recovering its value. However, much more was necessary. An end should be put to the use of outside consultants to do the work of the members; the Commission should require the Sub-Commission to adopt a more thorough and professional approach to the drafting and reviewing of its own projects. It should demand that the Sub-Commission's members be independent and impartial; if they were not, it should demand their resignation. The Sub-Commission should be extracted from the political thicket by being instructed to stop trying to function like a miniature Human Rights Commission. There was no need for it to consider and adopt resolutions on human rights abuses around the world, a topic which constituted item 12 of the Commission's own agenda.

60. He stressed the need to send crystal-clear instructions to the Sub-Commission, which had been allowed to stray from its original purpose. Only the Commission could change that. It should not let that resource lie fallow or be misused for political ends. If members expected the Sub-Commission to live up to its potential and mandate, then they must be

prepared to assist it. To that end, the Commission must accept its responsibilities to the Sub-Commission, namely to instruct it, to guide it, and to change it back into the great institution it had once been and could be again.

61. Mr. KOLOSOV (Union of Soviet Socialist Republics) said that the change in international relations from confrontation to co-operation was reflected in the discussions and decisions of the Sub-Commission, although the course was not always smooth; the new way of thinking placed demands even on that body's eminent experts. Unfortunately, it could not always be said that the Sub-Commission's approach to questions of human rights had been free from ideological considerations; at times that forum gave the impression that each expert was listening only to his own statement. Although human rights problems might have a close ideological link, it was not only possible but essential for the experts' work to remain aloof from it - and the Commission itself could help to that end.

62. The Sub-Commission's basic role was to provide the Commission with expert analyses to enhance the quality of its work. Sub-Commission reports were of major value; in that regard, a parallel could be drawn between the Sub-Commission and the International Law Commission. But over the years the Sub-Commission's debates had become increasingly politicized; one result was that the Commission, at its current session, was required to consider 18 draft resolutions and decisions, out of some 60 texts adopted by the Sub-Commission.

63. If the Commission failed to give its subsidiary body adequate guidance, the outcome was duplication rather than complementary effort. The lead in selecting themes for study should come from the Commission; that did not deny the Sub-Commission a say in what particular studies might be pursued, but the Commission's ratification should precede any action.

64. The Sub-Commission, rather than considering situations in particular countries, should be concentrating on thematic studies, in which its members' expertise could be put to the most effective use with less risk of political influence, and on generating ideas, based on consensus, for the development of new international standards and the strengthening of existing ones. It could help particularly in developing overall approaches to questions of human rights violations, analysing opinions and considering ways and means of responding to situations which called for urgent attention.

65. With regard to human rights violations in various parts of the world, the Sub-Commission could adhere to its status as a body of experts, within the terms of its mandate pursuant to Council resolution 1503 (XLVIII). The experts' opinions could be reflected in brief statements, and if it was felt necessary to draw the Commission's attention to a matter, the corresponding statements could be referred to in the relevant thematic resolutions.

66. The work on reports and studies was not evenly distributed among the Sub-Commission's membership. Although a rigid rule was impossible, an effort should be made to involve each expert in the task of rapporteur.

67. The problems which beset the Sub-Commission should not be allowed to hide the fact that it was achieving ever better results in studying topics such as the rights of indigenous peoples and various aspects of the administration of justice, and in contributing to the development of monitoring mechanisms and the implementation of international standards. It could be expected to achieve even more if measures were taken to improve its effectiveness.

68. Mr. ZHIN Yishan (China) said that his Government had always attached great importance to the work of the Sub-Commission and taken an active part in the deliberation of relevant questions. The Sub-Commission had achieved some commendable results but there was still room for improvement in its work.

69. He was happy to note that the Sub-Commission had adopted a number of resolutions on the right to self-determination for the peoples of southern Africa and Palestine, in which it condemned the human rights violations by the South African racist régime and the Israeli authorities and expressed firm support for the just struggle being waged by those peoples.

70. His delegation had also noted the decision by the Sub-Commission to consider on an annual basis, beginning at its next session, the question of the realization of economic, social and cultural rights.

71. His delegation also commended the Sub-Commission on its studies on issues relating to the protection of the rights of women, children and indigenous people and on its adoption of a series of resolutions thereon.

72. On the other hand, there were some problems which merited the Commission's attention. Over the past few years, there had been a tendency in the Sub-Commission that a member who made accusations against countries by name was regarded as a staunch "human rights defender". At the Sub-Commission's most recent session, an expert had mentioned 70 to 80 countries in her statement; in her draft resolution submitted to the Sub-Commission, 39 countries had been accused by name and divided into country groups. Such practice was not only at variance with the mandate of the Sub-Commission but was also incompatible with the independent status of experts. Under the relevant United Nations resolutions, the main purposes of establishing the Sub-Commission was to set up an institution of experts so that it might bring into full play the expertise of its members by carrying out appropriate and useful studies and submitting advisory opinions to its parent body, the Commission on Human Rights. The fact that one was an expert did not mean that he was entitled to accuse or even attack a sovereign State.

73. The merits and shortcomings as well as the practical results of the long-standing system of special rapporteurs deserved careful study and evaluation. As things stood, the Sub-Commission was conducting too many studies, some of them overlapping with those of other organs, a situation which would not only result in the waste of human and material resources but also hinder the effectiveness of the Sub-Commission.

74. To take an example, he recalled that the Commission had established an open-ended Working Group to draft a declaration on the protection of the rights of minorities. The Group had been doing useful work for a number of years and a number of clauses of the declaration had been worked out on a preliminary basis. During its meetings, some of the major problems facing

minorities had been fully explored. Nevertheless, the Sub-Commission had, at its forty-first session, adopted a decision requesting the appointment of a special rapporteur to study the protection of the rights of minorities. Such an exercise was clearly repetitious.

75. Some of the studies and reports prepared by experts of the Sub-Commission failed to receive prompt consideration. Other reports, though considered, were not fully discussed and were adopted hastily. As a result, the report or study was unable to benefit from the expertise of the other members of the Sub-Commission and reflected only the personal views and comments of the rapporteur. Furthermore, only a few of the rapporteurs appointed to date were from developing countries. That unfair situation should be redressed.

76. His delegation welcomed the decision by the Sub-Commission to review its previous reports and studies and to work out a medium-term plan on the reports and studies to be prepared in the future. It hoped to see the documents prepared on that issue at an early date and expected that the Sub-Commission would give full play to its strong points and overcome its shortcomings in an effort to improve its efficiency.

77. The Sub-Commission should act strictly in accordance with the instructions of its higher bodies and observe its own rules of procedure. When examining certain matters at its forty-first session, the Sub-Commission had suspended certain rules, which had resulted in the abnormal practice of adopting resolutions concerning the questions of racism and apartheid by secret ballot. That was a harmful practice and should not be allowed to continue.

78. His delegation wished to point out that, at the forty-first session, a few Western members of the Sub-Commission had levelled unfounded attacks against China. Through manipulation and instigation, they had imposed their will on the Sub-Commission by changing the normal voting procedure and as a result a resolution had been adopted on the "Situation in China", which constituted a serious interference in his country's internal affairs.

79. On 2 September 1989, the spokesman of the Chinese Foreign Ministry had issued a statement solemnly declaring that the resolution was illegitimate and null and void and that the Chinese Government flatly rejected it. The Permanent Representative of China to the United Nations had recently sent a letter to the Secretary-General reiterating the position of the Chinese Government in respect of that resolution and giving the reasons for its rejection of the resolution. The letter had been issued as an official document of the current session of the Commission. The Sub-Commission should adopt effective measures to prevent a small number of persons from using it for their own political ends.

80. Ms. ANDREYCHUK (Canada) said that the Sub-Commission on the Prevention of Discrimination and Protection of Minorities continued to play an important role in promoting and protecting human rights through a wide range of activities. Increasingly, however, concern had been expressed over the changing nature of the Sub-Commission and the potential threat of those changes to the expert, independent, character of the institution. Her delegation shared some of those concerns. In its opinion, the Commission

should continue to examine the Sub-Commission's activities, fostering and enhancing those that were currently done well and recommending practical solutions for those areas where problems hampered the overall effectiveness of the Sub-Commission.

81. The guidelines for the work of the Sub-Commission, reiterated in the resolutions adopted by the Commission at its past two sessions, were primarily aimed at improving the effective functioning of that body and must continue to define the parameters within which it was expected to perform.

82. The current report of the Chairman of the Sub-Commission (E/CN.4/1990/40) bore witness to the desire to develop strategies for improving the effectiveness of that body. The establishment of a sessional working group to develop ideas on the means by which the Sub-Commission could better address situations of human rights abuses was a positive step in that regard. Her delegation continued to believe that, while the Sub-Commission's consideration of country situations was important, the proliferation of resolutions on different countries was not the necessary end result. It would encourage the sessional working group to consider seriously the suggestion that those resolutions might be replaced by a report of the deliberations of members on violations around the world.

83. Although some progress had been made, the Chairman's report (E/CN.4/1990/40) and the report of the Sub-Commission as a whole (E/CN.4/Sub.2/1989/58-E/CN.4/1990/2) showed that much remained to be done. In view of the limited resources of the United Nations, it was essential that the work done by one body did not duplicate that of another. Moreover, ongoing work should be completed before new proposals for studies and reports were authorized. The initiation of new studies remained one of the most important activities of the Sub-Commission and should continue, provided that the proposals had clearly defined objectives and addressed innovative subjects.

84. She welcomed the proposal for a study by Mr. Joinet and Mr. Türk which would examine the problems affecting the realization not only of the right to freedom of opinion and expression, but also of the related rights of freedom of thought, assembly and association and the right to take part in government. Another example of innovation on the part of the Sub-Commission was the proposed study by Mr. van Boven on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights. The question of the responsibilities of the State and the international community towards such victims was an area of human rights which had received little attention, and the proposed study should go a long way towards filling that gap.

85. In the past, too many studies and reports had taken too long to complete or had never been completed. In view of the unprecedented number of proposals for reports and working papers which had been put forward at the current session, and the burden which that placed on the Centre for Human Rights, she emphasized that the production of such reports remained largely the responsibility of the Sub-Commission member, whose expertise had been the basis for his or her election.

86. The report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1989/36) continued to be of prime interest to her delegation. She congratulated the Working Group on its presentation of the first revised text of the draft Universal Declaration on the Rights of Indigenous Peoples.

87. At its previous session, the Commission had appointed a Special Rapporteur to study treaties, agreements and other arrangements between States and indigenous populations. Since then, her country had received a visit from the Special Rapporteur, who had met a Canadian indigenous group. Her delegation looked forward to the Special Rapporteur's preliminary report in 1990.

88. With regard to the efforts by some extremist groups to disrupt the market for furs, thus depriving indigenous peoples of one of their traditional means of livelihood, she drew attention to paragraph 18 of the draft Declaration. Her Government would continue to work with its indigenous populations and the fur industry to protect the right of indigenous peoples to their traditional means of subsistence.

89. Her delegation noted with satisfaction the work of the United Nations Voluntary Fund for Indigenous Populations and hoped that support for the Fund would continue to grow.

90. She continued to believe that the procedure established by the Economic and Social Council under its resolution 1503 (XLVIII) was one of the most important mechanisms for protecting human rights within the United Nations system. For individuals in States which had not accepted the other individual complaint mechanisms, it was often the only hope of obtaining some form of redress.

91. Although the procedure did not work as effectively as it might, it should be strengthened rather than weakened. That had been the intention, although not the result, of the Sub-Commission's decision to extend the time given to States to respond to communications. However, the extension of the minimum period to five months was excessive, in view of the often urgent appeals made to the international community under the procedure. She therefore appealed to the Sub-Commission to reconsider its decision.

92. In the forthcoming elections of members of the Sub-Commission, her delegation would again support the candidates who best embodied the characteristics of independence and a strong expertise in and devotion to the cause of human rights.

93. Mr. BENHIMA (Morocco) said he welcomed the favourable outcome of the case of Mr. Mazilu, Special Rapporteur of the Sub-Commission, and was confident that, Mr. Mazilu having regained his liberty, he would be able to carry out his mandate in accordance with Sub-Commission resolution 1989/45.

94. The report of the Sub-Commission (E/CN.4/Sub.2/1989/58-E/CN.4/1990/2) underscored the importance and scope of its activities. The Sub-Commission's complementary role in relation to the work of the Commission deserved to be strengthened. The independent experts could obviously make an important contribution to clarifying the debates on human rights issues dealt with by the Commission.

95. Among the various questions considered by the Sub-Commission at its most recent session, he had noted with interest the growing importance accorded to the protection of vulnerable groups, especially children. He drew attention to Sub-Commission resolutions 1989/14, 16, 17, 42 and 43, which encompassed a range of issues affecting children in almost all parts of the world, and urged the Sub-Commission to continue discussing and analysing those questions.

96. He also welcomed the adoption of Sub-Commission resolution 1989/44, which was a positive contribution to the peaceful and constructive solution of problems involving minorities.

97. His delegation appreciated the efforts made by the Sub-Commission to rationalize and streamline its work. In the absence of a comprehensive evaluation of all the human rights monitoring mechanisms, it would be risky to take hasty decisions which might have difficult consequences for both the Commission and the Sub-Commission.

98. As noted in annex III of the report of the Sub-Commission, there was a growing and welcome tendency to prepare studies, reports and working papers with no financial implications. He also welcomed the Sub-Commission's decision to consider the possibility of drawing up a medium-term programme of studies.

99. The Sub-Commission's effectiveness would be seriously threatened without the co-operation of the Centre for Human Rights, whose staffing and resources should be increased in view of the increasingly complex tasks it was required to undertake.

100. Mr. VASSILENKO (Ukrainian Soviet Socialist Republic) said that his delegation endorsed the positive appraisal of the Sub-Commission's work during its forty-first session. Its deliberations, as reflected in its balanced and well-thought-out decisions, seemed to have been virtually free from the former confrontations; it was satisfying to note that, out of 60 resolutions and decisions, a mere 14 had been adopted by a vote.

101. At the same time, there remained a certain politicization, which hampered an objective and analytical approach, as could be seen in the adoption of resolutions on country situations. That had led to the complaint that in some respects the Sub-Commission was duplicating the Commission's work.

102. The Sub-Commission must eschew the adoption of resolutions on country situations. Its decision-taking must conform to the mandate set forth in Council resolution 1503 (XLVIII), even in cases where it was following Commission instructions to look into matters which involved situations in certain countries or territories. A clear distinction had to be made, of course, between the confidential and public procedures; and the experts were entitled, at all times, to express their views on human rights in any country within the framework of the Sub-Commission's terms of reference.

103. The Sub-Commission, given its expert nature, was fully qualified to draft resolutions on particular themes; it could also continue its work on developing criteria for the appraisal of situations and contribute to the development of review procedures. He hoped that such matters would be borne in mind by the sessional working group to be established pursuant to Sub-Commission decision 1989/104.

104. An overhaul of the Sub-Commission's procedures could lead to a reduction in the number of resolutions and decisions adopted - 60 was too many to emerge from a four-week session involving 26 experts - as well as fewer studies, especially of the sort which would have no direct practical impact on the observance of human rights. And the task of preparing reports and studies should be more evenly spread among the Sub-Commission's experts.



105. The Commission, in its resolution 1989/36, had called upon the Sub-Commission to provide it with recommendations based on the different views and perspectives of independent experts, which should be appropriately reflected in the Sub-Commission's report as well as in the expert studies. In that respect, Sub-Commission resolution 1989/27, which envisaged the appointment of two experts, from the United States and the Soviet Union, to study and report on standards relating to the right to a fair trial, was an example of a practical approach which deserved approval and support from all quarters.

106. The Sub-Commission had also adopted a welcome fresh approach to the issue of human rights and scientific and technological developments, as reflected in its resolution 1989/12 on the movement and dumping of toxic and dangerous products and wastes, and in decision 1989/108 on human rights and the environment. His delegation had already spoken, under agenda item 14, about that initiative, which the Commission should support, and was sponsoring a resolution which was being drafted with wide support.

107. Miss BOZHKOVA (Bulgaria), speaking in exercise of the right of reply, regretted that the representative of Yugoslavia had stated that the current democratic Government in her country should recognize an alleged Macedonian minority in Bulgaria. That statement had evoked certain dark periods in the history of the two neighbouring countries, when attempts had been made, through the old authoritarian practices, to create a Macedonian national consciousness artificially and to impose it not only on the population of Pirin Macedonia, which was in Bulgaria, but also on the population of Vardar Macedonia, which was in Yugoslavia.

108. In the context of the sweeping and irreversible democratic changes taking place in her country, it had rejected once and for all the system of authoritarianism and condemned the mistakes that had been committed during that deplorable historical period. Accordingly, her delegation had serious difficulty in understanding what the representative of Yugoslavia wanted her Government to do, surely not to revert to policies and practices that had already been rejected.

109. It was a mistake to identify the name of the geographical region of Pirin Macedonia with certain ethnic and national minorities. There were no historical or legal grounds which could justify the Yugoslav claims regarding the existence of an alleged Macedonian minority in Bulgaria. Everyone familiar with the history of the Balkans was aware of that fact.

110. Moreover, a national consensus existed on that question among all the political parties in her country. The recent declaration of the Yugoslav Parliament alleging the existence of a Macedonian minority had been rejected by the Minister for Foreign Affairs of Bulgaria, the Communist Party, the Agrarian Party, the main opposition alliance and all the other political parties, organizations and associations. Most importantly, the population of Pirin Macedonia itself rejected the Yugoslav claims and had unequivocally declared its Bulgarian origin at a series of demonstrations held to protest the adoption of the declaration in question.

111. Under the new democratic conditions in her country every Bulgarian citizen was fully entitled to declare freely his or her ethnic, religious or social affiliation. However, that choice should be left to the Bulgarians themselves. The new democratic policy on the national question, including

foreign policy, was based solely on the will of the Bulgarian people. Accordingly, any expectations on Yugoslavia's part of forcing concessions from Bulgaria with regard to the so-called Macedonian minority were unrealistic.

112. She reaffirmed Bulgaria's readiness to take an active part in development and in strengthening co-operation and good-neighbourly relations with all the countries in the region, including Yugoslavia. However, she urged the Government of Yugoslavia to refrain from reopening old enmities which had been characteristic of the Balkan region in the past and had brought much suffering to its peoples. Bulgaria was open to scrutiny and ready to discuss any criticism, including criticism in the human rights field, but it would not accept attempts to impose on its citizens an artificial ethnic consciousness.

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS (agenda item 14)  
(continued) (E/CN.4/1990/29, 30, 31, 53 and Add.1-4 and 72; E/CN.4/1990/NGO/29)

113. Mr. BOUTET (France) said that the item under discussion was the best illustration of the way in which basic human rights were constantly being extended into new areas. The search for the best possible adaptation of existing law to scientific and technological developments had proved to be increasingly complex. The solutions proposed with a view to protecting individual freedoms, while based on the principles of the Universal Declaration of Human Rights and the International Covenants on Human Rights, must take into account scientific developments and their impact on societies, and must themselves undergo development. Two areas to which the Commission should accord priority were the new information and communication technologies and medicine and biotechnology.

114. Automatic data collection and processing raised the sensitive issue of respect for privacy and individual freedom. While a single file might be harmless, several interconnected files could hold out the constant threat of abuse. For that reason, suitable laws had been enacted in a number of countries.

115. For its part, France had adopted an act in 1978 setting out the framework for the use of personal data files and establishing the National Commission on Data Processing and Freedoms. The Commission, which was independent of the Executive, had control over all personal data files. All individuals were entitled to access to information which concerned them and to correct such information where necessary. In addition, the act prevented any use of personal data files which was contrary to human rights, for example, by prohibiting - without the express agreement of the person concerned - the storage of data which revealed the racial origins, political, philosophical or religious opinions, or trade-union affiliations of individuals.

116. The States members of the Council of Europe had drawn up a European convention regulating the use of personal data files with a view to protecting individual rights.

117. International co-operation, whether bilateral or multilateral, should play a major role in developing such regulations. The United Nations had taken the lead in that regard by drawing up guidelines for the regulation of computerized personal data files, as outlined in the report submitted by the Special Rapporteur (E/CN.4/1990/72). He hoped that, before the end of 1990, the Economic and Social Council and the General Assembly would finally adopt those guidelines.

118. In the realm of the life sciences, particularly medicine and biotechnology, the question arose as to whether morality and positive law were adequate to ensure the proper use of technology involving experimentation on the human body, or whether new rules were called for. The unprecedented acceleration of knowledge and technology applied to the life sciences required each individual, and society as a whole, to assume responsibility for the preservation of human rights. The law in and of itself could not solve everything, especially in such a rapidly changing field.

119. There was a public debate in France concerning sensitive issues such as research on embryos, organ transplants and genetic experiments. Although the debate was far from over, some legislation had already been adopted, such as the 1988 act relating to the protection of persons who were the subjects of biomedical research.

120. His Government took the view that what was basically at stake in all public action must still be the protection of human rights as embodied in the existing national and international legal instruments. Accordingly, the Commission should take an active part in the ongoing debate, in consultation with non-governmental organizations and eminent experts. In so doing, it should be guided by the conviction that there could be no scientific and technological development in any field which did not increase the rights and enhance the dignity of the individual.

The meeting rose at 1.05 p.m.