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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Forty-first session

SUMMARY RECORD OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 24 August 1989, at 10 a.m.

Chairman: Mr. YIMER

later: Mr. ALFONSO MARTINEZ

CONTENTS

The right of everyone to leave any country, including his own, and to return
to his country (continued)

Organization of work (continued)

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CONTENTS (continued)

The new international order and the promotion of human rights

- Right to adequate food as a human right
- Realization of economic, social and cultural rights
- Human rights and extreme poverty
- Strengthening legal institutions for the promotion and respect of human rights
- The role and equal participation of women in development (continued)

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

THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY (agenda item 16) (continued) (E/CN.4/Sub.2/1989/44 and Add.1-7; E/CN.4/Sub.2/1989/54; E/CN.4/Sub.2/1988/35 and Add.1 and Add.1/Corr.1)

1. Mr. ALFONSO MARTINEZ said that it had been impossible in the limited time available to make a detailed study of Mr. Mubanga-Chipoya's final report and, in particular, the trends and conclusions in Chapter XIII of document E/CN.4/Sub.2/1988/35 and the draft declaration in annex I of document E/CN.4/Sub.2/1988/35/Add.1). He would therefore confine himself to a few preliminary comments.

2. In the first place, he agreed with the methods employed by the Special Rapporteur and his decision to consider the right to leave and return to a country along with the right to enter other countries, an issue linked with the exercise of the rights under article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights.

3. The right to enter other countries was not an academic concept. It was a practical matter which in effect determined the possibility of leaving one's own country. A guarantee of the right to leave a country was worth nothing if the person concerned could not find a receiving country. The situation was a familiar one at the present time, in his own country for example. The problem of admission to other countries should be discussed in connection with article 13 of the Universal Declaration. There was nothing to prevent the General Assembly or other bodies from studying the possibilities for guaranteeing rights already embodied in international instruments.

4. In that connection, he referred to the comments by the Federal Republic of Germany (E/CN.4/Sub.2/1989/44/Add.4), paragraphs 11 and 12 of which pointed out that international instruments for the protection of human rights did not envisage a general human right to enter and settle in foreign countries and that, as a general rule, countries decided on the basis of their own sovereignty whether, and on what conditions, they allowed the entry of foreign nationals and whether and to what extent they permitted foreigners to immigrate. That meant, of course, that a Government exercising its sovereign right to deny admission might be impinging on the sovereign right of another State to grant the right to leave the country. A country could even be subject to the provisions of an instrument to which it was not a party and which it did not support. The role of national legislation and its potential restriction of the right to leave and return to a country was perhaps a key problem for the Sub-Commission's future discussions.

5. With regard to Chapter XIII of the report, he supported the comment in paragraph 521 on the need for a better definition of the terms "national security" and "public order", the most common pretexts for restrictions. He also agreed with the substance of paragraphs 524 to 526. He agreed with the conclusions in paragraph 531 concerning family reunification of migrant workers, a very important subject and one of his own major concerns. The problem was widespread and any study should examine the separation of families. In Geneva, for example, he had seen migrant workers from southern Europe and North Africa who had no possibility of seeing their families for a long time and no possibility of bringing them to Geneva.

6. He concurred with all the recommendations for future action contained in Chapter XIV. With regard to the future international instrument, he would prefer a formal, binding, legal document, although a declaration could of course lead to a convention.
7. On the approach to be taken to future work on the subject, he said that he did not support the idea of working by correspondence, since that would preclude on-the-spot exchanges of view. Nor did he favour the idea of an intersessional working group, since two such groups were already scheduled for the year ahead and a third group would place a very heavy burden on members of the Sub-Commission. In his opinion, the only way to tackle the subject was through discussion in plenary. Accordingly, it would be useful if members of the Sub-Commission could prepare written comments and make them available to the other members in advance.
8. Mr. DESPOUY considered that the principle of non-refoulement, which had been mentioned by the observer for the Office of the United Nations High Commissioner for Refugees, and which was a principle of international law included implicitly or explicitly in most of the relevant international instruments, should be referred to in the draft declaration. In that way, whatever restrictions there might be on the right to enter a country, no Government could take action that was contrary to the principle that no one should be sent back to a country where he might suffer persecution. He appealed to the Special Rapporteur and other members of the Sub-Commission to give serious thought to the possibility of including that principle, perhaps in the final provisions of the draft declaration.
9. In conclusion, he said that it was important to complete the draft declaration as soon as possible.
10. Mr. EIDE emphasized the need for the speedy adoption of the draft declaration. He also stressed that practical difficulties associated with entering another country should never be used by a Government as a pretext for refusing someone permission to leave a country on the grounds that he had nowhere to go; that was a matter for the person concerned. It was essential to separate the two issues.
11. Mr. SADI said that the link between the right to leave a country and the possibility of entering a country was a valid point and should be covered in the draft declaration. The right might be exercised, for example, by showing a visa, since, apart from the police, airlines might refuse to allow a person on a plane without a visa to his country of destination. The restriction was valid, but must be exercised with restraint, because a country could use harassment to prevent a citizen acquiring a visa and thus frustrate the right to enter another country, or could even manipulate the issue of a passport which was needed to obtain a visa, or could impose a prohibitive airport tax.
12. The question of the brain drain had been discussed in other organizations, such as the United Nations Conference on Trade and Development and the International Labour Organisation. It was not an appropriate subject for the Sub-Commission in the present context and he hoped that it might be deleted.

13. Mrs. DAES proposed that the Special Rapporteur's valuable study should be submitted to the Commission on Human Rights for consideration, with a request that it should be published.

14. She proposed that the draft declaration should be further considered in an open-ended sessional working group. She requested that the secretariat should prepare a compilation of all correspondence received so far, so that in the following year the sessional working group would be able to start work on revising the draft declaration.

15. Mr. MUBANGA-CHIPOYA, Special Rapporteur of the Sub-Commission, said that he wished to express his appreciation to the Centre for Human Rights for facilitating the preparation of the study, and to thank the non-governmental organizations and the United Nations agencies for their support and the States for their replies to his questionnaire.

16. He had soon realized that the central issue was the content of the right to leave any country, including one's own, and the right to return to one's own country; although the right was expressed in glowing terms, its definition was imprecise and incomplete because it begged the question: the right to leave and go where?

17. No one would dispute that the right to leave one's country, as long as one satisfied the conditions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, was an imposition of international law and the community of nations on sovereign States, in recognition of an individual's inherent right to travel abroad. The logical conclusion was that it was not possible to leave one country without entering another. The question of such entry could be answered only according to the justification advanced for departure from one's own country.

18. The drafters of the Universal Declaration and the Covenants had been unable to tackle the problem of entry, and had accordingly contented themselves with making half the statement of the right for the time being. Today, in view of the general acceptance of the fundamental principle of non-discrimination, the Sub-Commission was obliged to reconsider completing and rationalizing the statement of that right.

19. Regarding the draft declaration, the guiding principle in his approach had been to maximize the opportunities for easier international travel and emigration. The reasons for the need for international contacts were obvious. They included the need for international mutual understanding and the consequent development of international co-operation and the inevitable progression to world peace.

20. Turning to the comments received on his report, he said that it would be well worth taking into account some of the points made by Mr. Diaconu in his working paper (E/CN.4/Sub.2/1989/54).

21. Similarly, useful comments had been made by the Governments of Burundi and Cyprus in document E/CN.4/Sub.2/1989/44/Add.1. The Government of Jamaica had also made a number of interesting comments in that document, although

in paragraph 13 it had pointed out that under the Passport Act of Jamaica the Minister had discretion to issue and renew passports, grant visas, etc. His own view was that discretion did not arise in such circumstances since the criterion should be the international one and the citizen need only satisfy the provisions of the international instruments to be entitled to travel. In the same document, the United Kingdom had made many helpful suggestions and provided advice on drafting, but there was a clear difference between his own approach concerning the entry of non-citizens, and that of the United Kingdom, which was that the matter should be left to the State without international control.

22. Document E/CN.4/Sub.2/1989/44/Add.2 from the Law Faculty, Tel Aviv University contained some particularly useful comments on the subject of the brain drain.

23. The Government of Venezuela in document E/CN.4/Sub.2/1989/44/Add.3 had also made a useful comment concerning the consistency of national legislation with the provisions of the draft declaration.

24. The Government of the Federal Republic of Germany, in document E/CN.4/Sub.2/1989/44/Add.4, had put forward some very useful ideas which should be borne in mind when the final declaration was drafted. It too would prefer that the question of entry was not dealt with at the international level. It had also stated that it did not believe that the brain drain problem should be used to restrict the right to leave a country.

25. The Government of Japan had also made many helpful comments and given advice (E/CN.4/Sub.2/1989/44/Add.5). It too had insisted that the question of entry should not be included in the declaration.

26. The United Nations High Commissioner for Refugees in document E/CN.4/Sub.2/1989/44/Add.6 had made some very useful comments. However, although the subject of refugees was covered in the study, it would be unwise to prejudice the well-established principle of non-refoulement. A distinction must be drawn between a refugee and an individual covered by the draft declaration. A refugee had no choice in leaving his country to avoid persecution or intolerable circumstances. Although it was important to ensure that a person was not sent back to a country where he might face prosecution, it was probably not a matter that should be dealt with in the draft declaration.

27. The Government of Portugal in document E/CN.4/Sub.2/1989/44/Add.7 had also provided some helpful advice which should be kept in mind by the Sub-Commission.

28. The comments and suggestions made orally by members of the Sub-Commission and observers had been valuable and he had taken note of them.

29. The CHAIRMAN thanked Mr. Mbanga Chipoya for his presence during the discussion of the item and for his concluding remarks. He said that the Sub-Commission had thus concluded its consideration of agenda item 16.

ORGANIZATION OF WORK (continued)

30. Mr. EIDE asked whether the secretariat had received any further information about when Mr. Mazilu would be coming to the Sub-Commission, in view of the note verbale of 15 August 1989 from the Permanent Mission of Romania (E/CN.4/Sub.2/1989/53) which he had found rather strange.

31. The Sub-Commission had been informed earlier that Mr. Mazilu was suffering from heart problems. The letter from the Permanent Mission of Romania indicated that he was suffering from mental problems. Although Mr. Mazilu might be a dissident it did not follow that he was mentally ill. He was troubled that the Special Rapporteur was being retained in his country on the pretext of mental illness.

32. Mr. MARTENSON (Under Secretary-General for Human Rights) said that he had nothing to add to the information already reported to the Sub-Commission. The Centre for Human Rights had tried to contact Mr. Mazilu directly and through the United Nations Office in Bucharest, but without success.

33. The first time he had seen any reference to mental illness was in the note verbale from the Permanent Mission of Romania.

34. Mr. EIDE said that he still assumed that Mr. Mazilu would be with the Sub-Commission when it dealt with item 15 (b) of its agenda. If he were not, then a very strong reaction would be required by the Sub-Commission.

35. Mr. RADU (Observer for Romania) asked whether agenda item 15 (b) was under discussion, since he wished to make some comments on the item.

36. The CHAIRMAN replied that the Sub-Commission had not yet begun its consideration of item 15 (b).

37. Mr. BHANDARE said that there was a contradiction between the explanation given by the Romanian Government the previous year that Mr. Mazilu was suffering from heart trouble and the fact that Mr. Mazilu had produced a logical and rational handwritten report in two volumes, which would not have been possible had he been suffering either from heart trouble or mental illness.

38. He believed that Mr. Mazilu was being retained without adequate reason. The Sub-Commission must find a solution to the problem before the end of the session and secure Mr. Mazilu's presence at its deliberations without delay.

39. The CHAIRMAN pointed out that item 15 (b) of the agenda was the appropriate item for the discussion of Mr. Mazilu's report. The relevant discussion should take place at that time and he therefore requested members of the Sub-Commission not to open a debate on that issue.

40. Mr. DIACONU urged members not to launch into far-fetched theories; such a course would be dangerous.

41. Mr. JOINET said that he would be prepared to take up agenda item 15 (b) immediately. The place scheduled for it towards the tail end of the agenda laid the Sub-Commission open to charges of not wishing to discuss it.

THE NEW INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS

- RIGHT TO ADEQUATE FOOD AS A HUMAN RIGHT
- REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS
- HUMAN RIGHTS AND EXTREME POVERTY
- STRENGTHENING LEGAL INSTITUTIONS FOR THE PROMOTION AND RESPECT OF HUMAN RIGHTS
- THE ROLE AND EQUAL PARTICIPATION OF WOMEN IN DEVELOPMENT (agenda item 7) (*continued*) (E/CN.4/Sub.2/1989/16, 17 and 19; E/CN.4/Sub.2/1989/NGO/6, 9 and 46; A/43/38; E/1988/15)

42. Mr. TÜRK, Special Rapporteur, introducing his preliminary report on the Realization of Economic, Social and Cultural Rights (E/CN.4/Sub.2/1989/19) said that the rights in question were rarely the subject of serious discussion. Hence, it was useful for the Sub-Commission to have an item on its agenda that allowed it to discuss them. However, consideration might be given to placing the topic higher on the agenda.

43. The sole purpose of his preliminary report was to provide a basis for the discussion of the Sub-Commission, since an approach to the question of the realization of economic, social and cultural rights had not yet been developed.

44. The report dealt with certain basic conceptual questions relating to the interpretation of economic, social and cultural rights as part of the whole range of human rights in contemporary international law, and selected a number of specific questions to be analysed. It formulated a set of hypotheses which it submitted for critical analysis and evaluation or rejection by the Sub-Commission, which should shape the study in the way it deemed appropriate. Nothing in a preliminary report could of course be final and the active participation by members of the Sub-Commission was needed.

45. Chapter I investigated the possibility of a truly unified United Nations approach or doctrine of human rights which would include economic, social and cultural rights. Human rights had been divided into two main groups, often given a hierarchical relationship. It had often been said that civil and political rights were more easily defined in legal terms, older and therefore more important than economic, social and cultural rights; and also that without the realization of the latter there could be no full realization of the former. There was truth in both interpretations, but they were rather simplistic. The Sub-Commission must search for a unified approach which would give the idea of the indivisibility and interdependence of human rights in all future discussions. In that context the report drew attention to the tenth preambular paragraph and article 6, paragraph 2 of the Declaration on the Right to Development adopted by the General Assembly in resolution 41/128 of 4 December 1986. The Declaration was important in its emphasis on the equality of both sets of rights and its specific description by their interdependence and indivisibility.

46. Chapter I of the report also discussed the questions of the nature of States' obligations corresponding to the individual's economic, social and cultural rights. In that context, it referred to the Limburg principles on the implementation of the International Covenant on Economic, Social and Cultural Rights and quoted from a particularly important section of the Limburg principles which offered an interpretation of the core obligation of States parties "to achieve progressively the full realization of the rights". It would be useful if the Sub-Commission could continue the discussion on the nature of States' obligations at the present session or a later one.

47. Chapter II identified a number of practical problems relating to the realization of economic, social and cultural rights which needed in-depth study in the future. It dealt with matters that required attention at national level and those that required international co-operation.

48. With regard to the former set of problems, the report emphasized the question of poverty and particularly of extreme poverty, a phenomenon which had begun to receive serious consideration. At its most recent session, the Commission on Human Rights had adopted resolution 1989/10 entitled "Human Rights and Extreme Poverty". The report tried to raise a few preliminary questions on the subject which should be discussed by human rights bodies. One of the problems was that people other than the poor became used to poverty, the very notion of which conveyed a certain idea of passivity. It was a problem to which serious attention must be given.

49. Another problem at the national level related to structural adjustment and realization of economic, social and cultural rights. Clearly, the realization of those rights was largely dependent on the economic situation which in many countries today was characterized by the need for structural adjustment which, in turn, often involved a decrease in the resources devoted to social services. The interrelationship between structural adjustment and actual possibilities for the realization of those rights had to be stated, and the report attempted to list in paragraphs 52 to 63 some of the issues that should be addressed at later stages.

50. Chapter III of the report dealt with areas of co-operation with specialized agencies in the realization of economic, social and cultural rights. It made a selection of the practical problems that had to be addressed in that area. There was a serious need for further standard-setting in certain areas, for instance in issues relating to the right to the highest attainable standard of physical and mental health, a general principle that should be translated into specific norms.

51. Another area that called for action was the right to housing. The broad principle had been adopted in international instruments including the International Covenant on Economic, Social and Cultural Rights, but it should be given a more precise content, and further analysis would be needed in co-operation with the relevant United Nations agencies.

52. The right to education was an area in which two groups of rights, the right to education as a social and cultural right, and the right to freedom of thought, conscience, religion, opinion and expression as civil rights, converged under the issue of academic freedom. It was thus an area where further standard-setting was needed.

53. Chapter III also dealt with the impact of activities of the international financial institutions on the realization of economic, social and cultural rights. The adoption by the Commission on Human Rights at its 1989 session of resolution 1989/15 on foreign debt, economic adjustment programmes and their effects on the full enjoyment of human rights and, in particular, on the implementation of the Declaration on the Right to Development showed that awareness of the importance of the activities of the financial institutions for the realization of human rights was growing. Paragraphs 77 to 93 of the report referred to those problems. He drew attention to the letter from Mr. Carlos Andres Pérez, the President of Venezuela to Mr. Michel Camdessus, the Managing Director of the IMF, quoted in paragraph 85 of his report; and to the methods of dealing with those delicate and complex questions outlined in paragraph 92. He stressed that it would be inappropriate for the Sub-Commission, or any other body, to advise the International Monetary Fund or any other international financial institution on its policies. The time had come, however, to give very serious consideration to the contribution of human rights bodies to the policies of those institutions. Paragraph 92 (c) contained a very concrete suggestion for an exchange of views with the International Monetary Fund and the World Bank, with a view to stimulating the integration of poverty-reduction objectives in structural adjustment programmes as well as to developing the methodology of human rights impact statements to be drawn up in the framework of the formulation of adjustment programmes. He invited comments on that and other proposals contained in paragraph 92.

54. Chapter IV, the preliminary conclusions, summarized his main ideas. He drew particular attention to paragraph 94 (g), which suggested that the question of realization of economic, social and cultural rights might be considered under a separate item of the Sub-Commission's agenda. He was not happy that the topic should be discussed under item 7 of the agenda, particularly since that item was discussed on a biennial basis. The importance of the topic justified its discussion on an annual basis.

55. In concluding his introduction, he pointed out that the preliminary report could not deal with every problem that existed in such a broad area. Thus, for example, the specific problems of women in contexts such as structural adjustment had not been touched upon. He fully favoured discussion of such aspects at a later stage, and invited members' and other participants' suggestions with a view to making the study as broad as possible in its scope.

56. Mr. TREAT said that the right to food and the right to cultural and economic development were human rights that most certainly deserved the Sub-Commission's attention. No one anywhere in the world should suffer from starvation. Yet the problem existed to some degree in virtually all countries. Even in the so-called developed countries, including his own, not everyone had the necessary nourishment and resources. There were many reasons why some countries were less developed than others, ranging from basic natural resources, through lack or deficiencies of skilled labour, to the prevailing economic system. It was not proper for the Sub-Commission to consider the disposition of resources without taking account of those reasons. Often, the countries themselves had no control over those circumstances. However, there was a clear correlation between economic conditions and cultural development. It was therefore incumbent on the Sub-Commission to do what it could to ensure

the continuing economic development of all countries; and there was an obligation for the developed countries to share their resources with the developing countries.

57. From his own experience of involvement with financial institutions, he had some appreciation of the difficulties involved in the production, as well as the distribution, of resources. He wished to emphasize the need for a proper consideration of the production aspect of resources, since there was little point in dumping funds on countries that did not have the machinery either to use them properly or to incorporate them in a long-range continuing plan for the development of further resources. In its discussions, the Sub-Commission should try to avoid talk of the "corporate greed" of the developed countries, and instead try to understand how it was that some countries used resources to greater advantage than others.

58. In considering the question of external debt, it must be borne in mind that the debt had been created to assist countries that were less developed. It did no good to talk of renunciation of that debt as the solution to the problem, since failure to pay the debt could only mean that the developed countries would no longer extend credit. Funds for the developing countries had to be voted by the democratic institutions of the developed countries. If it was determined that those funds had been mischannelled, then voters would discourage the continued expenditure of funds which could be put to good use among the needy in the developed countries. Countries like his own, that had accumulated a considerable debt of their own, could not be expected to increase it unless there was evidence that those funds would help the beneficiary to become a truly developed society. Unless that aspect was taken into account, it would be very difficult for the developed countries to continue to make loans. There had to be an expectation when funds were given that a regulatory and governmental environment existed that was conducive to development. That linkage between resources and the way in which they were dispersed had perhaps not been fully developed in their discussions. In some countries, notably those without a free-market economy, when there was a shortage of bread, the bread was sliced more thinly; whereas in the developing countries in the Western world, the solution was to build more bakeries. That was the approach he would like to see in the countries to which the funds were being distributed. Rather than, as it were, offering the developing countries a larger slice of the pie, he proposed giving them the recipe, to enable them to start making their own pies. In conclusion, he agreed that, in view of its importance, the question of realization of economic, social and cultural rights should be a separate agenda item.

59. Mr. van BOVEN referred to paragraph 18 of Mr. Türk's preliminary report (E/CN.4/Sub.2/1989/19) which cited an extract from the proclamation of Teheran stating that full realization of civil and political rights without the enjoyment of economic, social and cultural rights was impossible. While he entirely agreed, he felt that the converse was also true, and that the full realization of economic, social and cultural rights was impossible without the enjoyment of civil and political rights.

60. In paragraph 20 of the report, it was argued that full respect for and observance of civil and political rights was important, inasmuch as it gave people the possibility to control the State. However, it was important for other reasons too. In societies where actors other than the State - for example, employers' or workers' organizations - were important, civil and

political rights were also essential, as tools with which to claim economic, social and cultural rights. The paragraphs of the Limburg principles - in which the legal nature of economic, social and cultural rights was very much recognized - quoted in paragraph 32 of the preliminary report were very relevant in that regard. Unfortunately, that vision of economic, social and cultural rights was not universally shared, particularly by the United States administration, which had argued that economic, cultural and social rights did not have the same legal quality as civil and political rights. It had even been questioned whether they were human rights. The Sub-Commission should consider that state of affairs, as a matter of interest, and also as a matter for concern.

61. The role of the international financial institutions with regard to human rights, especially economic, social and cultural rights, was potentially very important. Until now, the emphasis had been on economic considerations, with sometimes adverse effects on social and political policies, as reflected in paragraph 82 of the report. Recent publications had shown that the financial institutions were becoming increasingly aware that the needs of the most vulnerable groups of people must be met. It was also argued that human rights considerations were already taken into account inasmuch as violations of political and civil rights affected the economic viability of the society in question; and that many of the projects supported by those financial institutions focused increasingly on the realization of social rights. Furthermore, the World Bank was paying increasingly close attention to environmental considerations, which also affected the primacy of economic considerations. He therefore supported the view set forth in paragraph 92 (b) and (c), regarding the desirability of an exchange of views with the IMF and the World Bank on the phenomenon of poverty in heavily indebted countries, and of developing the methodology of human rights impact statements. Those financial institutions should be encouraged to follow the line they were now tentatively embarking upon, and he hoped that the Sub-Commission could start a dialogue, with a view to developing the awareness building process.

62. He noted from paragraph 94 (d) that the question of the possible role of the United Nations development agencies in the realization of economic, social and cultural rights should be dealt with only after the study on methods of international co-operation in relation to the specialized agencies and financial institutions had been completed. His own view was that the Sub-Commission should deal first with those programmes that were closer to it. However, no doubt the Rapporteur would also deal with the development agencies such as UNDP in due course.

63. The right to housing was an important right, with economic and social aspects. But it also had political aspects: in many countries people were facing eviction for political or security reasons. The matter would require the Sub-Commission's attention.

64. Regarding the item as such, he shared Mr. Treat's view that the question of realization of economic, social and cultural rights deserved treatment as a separate agenda item. The present title of the item dated back to the 1970s. He had some reservations regarding the sub-item entitled "Strengthening legal institutions for the promotion and respect of human rights". While he did not deny the importance of the issue, he did not see that it belonged in agenda item 7. Furthermore, he did not see why the Sub-Commission should deal with the issue at all. In his view, it was part of the Advisory Services Programme

that was already dealt with adequately by the Commission on Human Rights; and little evidence of activity by the Sub-Commission was apparent from document E/CN.4/Sub.2/1989/17, issued under that sub-item. He considered that that aspect of the Sub-Commission's activity should be discontinued.

65. Mr. Alfonso Martínez took the Chair.

66. Mr. EIDE said that he regarded Mr. Türk's study as very important but that he needed more time to identify the questions which remained to be analysed.

67. During the 1970s the issue of the more effective realization of economic, social and cultural rights had become very polarized and ideology-oriented. As a consequence there had been a failure to go into the substance of those rights. It was time to compensate for that failure.

68. The indivisibility of human rights was widely recognized but the question arose as to how such indivisibility could be made to work in specific circumstances. An example of situations which could develop was to be found in the Soviet Union where circumstances had changed greatly in recent years to the point where it had admitted that there could be no development without transparency. It had been recognized that economic and social rights under the previous régime had not been implemented as satisfactorily as had been claimed earlier. That failure had given rise to problems which the country was currently struggling to resolve.

69. Mr. van Boven had referred to the attitude of the previous United States administration which had not regarded economic, social and cultural rights as being human rights properly speaking. That attitude differed markedly from that of earlier administrations. In that connection he invited the attention of the Sub-Commission to the statement made by the Head of the United States delegation to the Commission on Human Rights, Mrs. Eleanor Roosevelt, when the Universal Declaration on Human Rights was being drafted that "a man in need is not a free man". Without the freedom conferred by civil and political rights there was no possibility of achieving economic and social rights.

70. A distinction had been drawn in the past between economic and social rights on the one hand and civil and political rights on the other and the difference had been portrayed sometimes as an East-West issue. Such distinctions must be forgotten.

71. There were two fundamental questions relating to the realization of economic, social and cultural rights. The first concerned the role of the State and the priorities set by it in relation to economic and social matters in its own country. The second concerned the consequences of the great differences between the advanced industrialized States on the one hand and the less industrialized States, mainly agriculture-based, on the other.

72. The role of the State had been heavily ideologized. It was important to abandon that approach. Circumstances, resources, traditions and needs varied and any general model of what the State should be flew in the face of circumstances. Some favoured a liberal approach by the State towards economic and social matters; others favoured a basically liberal approach but with a dose of State intervention; the socialist democracies favoured still more State intervention while a purely socialist State believed in a totally State

directed economy. The choice of approaches should depend on what was needed in a country at a particular time and that, in turn, was influenced by changes in economic conditions, available resources and the degree of equality of distribution.

73. On the issue of State obligations, it must be emphasized that there were three ways in which a State could respond to the internal situation. It might respect the freedom of individuals and groups to solve their own problems. That was in principle the best approach, but it was not always sufficient because, for example, other more powerful groups in society might try to seize resources. At that point the State had an obligation to protect available resources and use them for the country's overall economic and social needs. The State then had an obligation to assist in the redistribution of resources; examples were the New Deal in the United States and land reform in agricultural societies. In industrial countries, where only a small percentage of the population was employed in agriculture, the main concern was with the redistribution of income through, for example, social security and unemployment benefits, so that those countries could deal with structural changes such as those resulting from advances in technology which had created pockets of unemployment and poverty as old industries declined or disappeared. In such circumstances the State should also help the unemployed to find other means of employment.

74. The result was that different conditions and needs existed in different countries. It was however essential, in all cases, that the people themselves should participate freely in discussing the problems and the ways and means of solving them and should enjoy freedom to claim their economic and social rights, including the right of association in trade unions. A striking example of the results which could flow from the exercise of trade union rights was to be found in Poland where the original problem had concerned the freedom of trade unions to address economic and social rights; the result had been a powerful political movement which was achieving fundamental changes in that country without the use of violence.

75. It was also important to note that, far from being eastern or third world oriented, economic and social rights were heavily influenced by the Western industrial countries. The language and concept reflected the experience of the Western countries; the concerns of agricultural societies were not reflected.

76. He strongly supported the views on academic freedom expressed by Mr. Türk in paragraph 74 of his report and his opinion that the concept of academic freedom as expressed in the Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education represented one of the areas of human rights on which the interdependence of both major groups of human rights became apparent. In that connection, he hoped that the developing countries would stop closing universities and thus hindering development.

77. He fully endorsed the conclusions of Mr. Türk's report and considered that Mr. Türk should proceed with the proposed further study. He also agreed with those who believed that the realization of economic, social and cultural rights should become a separate agenda item.

78. Mr. Yimer resumed the Chair.

79. Mr. KHALIFA, after welcoming Mr. Türk's report (E/CN.4/Sub.2/1989/19), said that he did not agree with those speakers who had suggested that the realization of economic, social and cultural rights should become a separate agenda item. The title of the item should be "The new international economic order and its application to human rights" and the realization of economic, social and cultural rights should be included under that item. In any study of economic, social and cultural rights, it was essential that the New International Economic Order should get first priority during the next few years.

80. In his view, economic, social and cultural rights could become effective and become rights in the true sense of the word only if civil and political rights were guaranteed. The international community must realize that, irrespective of the level of a country's development, those rights could not be implemented unless there existed a sound foundation of respect for human rights in general. The word "rights" in connection with economic, social and cultural rights was somewhat idealistic; it implied a human need in economic, social and cultural terms. In international law, however, those rights were not as clearly defined as were civil and political rights. The issue of economic, social and cultural rights was inextricably associated with the new international economic order which, hopefully, would improve the economies of the developing countries to the point at which they could meet the economic, social and cultural needs of their peoples. The Committee on Economic, Social and Cultural Rights was studying those questions but had only met twice.

81. The future of the new international economic order was unknown; the idea had emerged after 1973 when oil prices had escalated and a conflict had developed between the interests of the oil producers and those of consumer countries. At that time the wealthy countries had made many promises. They had set up the World Food Fund and had promised that commodity prices would not be permitted to fall. The resources of the developed countries were to be used for those purposes. That approach had been designed to encourage the OPEC countries to be more flexible. When however the developed countries had overcome their oil supply problem when supply had overtaken diminished demand, enthusiasm for the new international economic order had waned. The OPEC countries had become accustomed to high incomes and had tended to waste their resources without regard for the future; they were therefore less inclined to help the poorer countries. Oil production had also been the cause of the serious indebtedness of many third world countries; banks had extended extravagant loans to countries which were not ready or able to cope adequately with the use and repayment of such loans.

82. There were other restraints on the realization of economic, social and cultural rights, such as the need to increase the capital resources of the World Bank and the need to extract the wealth of the sea bed as provided for in the treaty on that issue. A beginning must be made by deciding how to implement economic, social and cultural rights. Before the character of the new international economic order was determined, all that could be done would be to deplore poverty and put forward ideas which could not be implemented in present economic circumstances.

83. In his view the Sub-Commission should not proceed at too fast a pace as not all the elements in the situation had yet been clearly defined. He would welcome the views of Mr. Türk on that point; there seemed however to be little enthusiasm for the issue currently.

84. Mr. SADI welcomed Mr. Türk's report (E/CN.4/Sub.2/1989/19) and particularly the emphasis which it had placed on the indivisibility of human rights.

85. When the United Nations had drafted the two International Covenants separately, it had laboured under the illusion that the two sets of rights could be divided; that civil and political rights could be implemented immediately whereas the realization of economic, social and cultural rights could be postponed until a later date. He welcomed Mr. Türk's view that such a position was untenable. A sick or hungry person could not enjoy civil and political rights. The opposite position, as expressed by Mr. van Boven, was also true as, without civil and political rights, economic rights could not be enjoyed. He had yet to see a country which had been able to provide economic, social and cultural rights while denying civil and political rights.

86. The lack of sensitivity of the International Monetary Fund on the human rights aspects of financial assistance was also to be deplored. Recently the IMF had persuaded Jordan to remove the subsidies on the staples; the result had been riots and a change of government. It would seem that there was a need for the international financial agencies to have human rights sections which would inject the human element into the stringent conditions applied to the solution of debt problems. It was essential to keep in mind the human needs of the peoples involved.

The meeting rose at 1 p.m.