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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Forty-first session

SUMMARY RECORD OF THE FIRST PART* OF THE 25th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 23 August 1989, at 4 p.m.

Chairman: Mr. YIMER

later: Mr. van BOVEN

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* The summary record of the second part of the meeting appears as document E/CN.4/Sub.2/1989/SR.25/Add.1

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The meeting was called to order at 4.30 p.m.

ELIMINATION OF RACIAL DISCRIMINATION:

(a) MEASURES TO COMBAT RACISM AND RACIAL DISCRIMINATION AND THE ROLE OF THE SUB-COMMISSION (agenda item 5 (a)) (continued) (E/CN.4/Sub.2/1989/8 and Add.1; E/1989/48)

1. Mr. CHERNICHENKO said that Mr. Eide's study was sound and thorough, and he agreed in general with the conclusions and recommendations. However, as far as the recommendations on South Africa were concerned, at the previous session he had suggested that it might be better to encourage States to accede to the International Convention on the Suppression and Punishment of the Crime of Apartheid and that, for that purpose, the arguments put forward by some States to explain why they had not acceded to that instrument should be studied and an attempt made to convince them to reconsider their position. He therefore asked Mr. Eide to consider the problem and see what additions could be made to the recommendations on the subject.

2. Mr. JIN thanked Mr. Martenson for his presentation of item 5 (a) and Mr. Eide for his very helpful report, which, unfortunately, he had not yet had time to study thoroughly because of its belated distribution. Nevertheless, he agreed with the recommendations it contained.

3. The changes which had taken place in South Africa were due, as Mr. Eide stated in paragraph 440 of his report, to the anti-apartheid movements within the country, to the solidarity they enjoyed abroad and to pressures on the Government. All those actions were important and should not be slackened. At its forty-third session, the General Assembly had decided to convene a special session on apartheid in December 1989. The session could play a decisive role and Mr. Eide's study, as well as other documents by United Nations bodies concerned with human rights, would be very useful working tools for all participants.

4. Mrs. DAES said she had had the honour of being one of the experts who had participated in the important Global Consultations on Racial Discrimination, held in Geneva in late 1988. The Consultations had made it possible to adopt a number of very constructive recommendations, and she noted with satisfaction that the recommendations had already been transmitted to the appropriate bodies in the United Nations system with a view to their implementation.

5. Also of great importance was General Assembly resolution 43/91, which requested the Secretary-General to continue the study of the effects of racial discrimination on children of minorities, particularly children of migrant workers, in the fields of education, training and employment, and to submit specific recommendations for the implementation of measures to combat the effects of that discrimination. She hoped that recommendations would also be adopted by the United Nations seminar to be held in Athens in September.

6. The first United Nations Seminar on the effects of racism and racial discrimination on social and economic relations between indigenous peoples and States had been a milestone in the protection of the rights of indigenous peoples. The Seminar had been held in Geneva in January 1989, at a time when

very significant and far-reaching decisions were being made at the international level, particularly by the United Nations in standard-setting activities, namely the elaboration of the draft declaration on the rights of indigenous peoples.

7. She was impressed by the considerable material examined by Mr. Eide in his study (E/CN.4/Sub.2/1989/8 and Add.1). Chapter III of the report gave a valuable account of the achievements of the two Decades. As the Special Rapporteur said in that chapter (para. 422), the elimination of racial discrimination went much beyond the prevention of open and manifest violations and required measures to redress inequality resulting from past discrimination. In that regard, the Sub-Commission should consider encouraging Member States to take further steps to compensate the victims of past discrimination, such as those mentioned in paragraph 423 of the report.

8. She agreed with many of the study's conclusions and supported most of the recommendations, particularly those concerning indigenous peoples.

9. Mr. Türk had raised the point of the special protection needed for linguistic minorities. In fact, the Sub-Commission was greatly concerned with ensuring effective protection for all minorities, whether ethnic, religious or linguistic. In her opinion, the Sub-Commission should wait for the draft declaration on the rights of indigenous populations to be adopted. If, after it was adopted, the principles and guidelines it contained did not seem sufficient, the Sub-Commission could then consider whether some additional guidelines were needed for the protection of linguistic minorities.

10. In her view, Mr. Eide's study should be transmitted to the Commission on Human Rights for consideration and the Sub-Commission should recommend that it should be published.

11. Mr. BARSH (Four Directions Council) said that the analysis contained in Mr. Eide's report was concise and entirely correct. Indigenous peoples had suffered from racism in the traditional biological sense, as well as in the contemporary ethnic or cultural sense. Even within the United Nations system itself, it had not been easy for indigenous peoples to achieve recognition as "peoples". Very few of the groups now classified as "indigenous" would - or could - seek separate statehood, yet the mere fact of being considered as "peoples" was nevertheless of enormous symbolic significance to them, for it was a denunciation of the racism that had long considered them mentally or culturally unfit to govern themselves or choose their own destiny. That had been acknowledged by the Sub-Commission in resolution 1987/8, which called for the organization of a seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and States.

12. The report of the Seminar, held in Geneva in January 1989, emphasized the role of the development process in enabling indigenous peoples to assume practical control of their own lives. The Four Directions Council shared that view and hoped the Working Group on Indigenous Peoples and the Sub-Commission would in future emphasize operational activities in support of self-development for indigenous peoples, rather than focus solely on legal questions.

13. Five basic principles for combating racism against indigenous peoples had emerged from among the recommendations made by Mr. Eide, the Seminar and indigenous peoples' organizations themselves: first, recognition of the principle of consent, namely, the basic right of indigenous peoples to make decisions for themselves; second, prompt ratification and implementation of the new ILO Convention, No. 169, on indigenous and tribal peoples; third, intensified international dialogue and co-operation between States and indigenous peoples' organizations, particularly in the field of development, according to the procedural precedent set by the Seminar, i.e. on the basis of equal participation and consensus, a process the United Nations should facilitate by organizing regular technical meetings on social, economic and environmental issues of mutual interest to indigenous peoples and States; fourth, conscientious application to indigenous peoples of the principles contained in the United Nations Declaration on the Right to Development, through the operational programmes and agencies of the United Nations; and fifth, the importance of positive example, in other words, of finding new solutions, rather than simply identifying the problems, something that entailed a commitment on the part of States to give United Nations bodies, such as the Working Group, opportunities to study contemporary institutional arrangements in co-operation with indigenous peoples - not in order to condemn them but in order to strengthen them.

14. His organization continued to hope that the Second Decade would end, in 1993, with an International Year for Indigenous Rights as a focal point for the implementation within the United Nations system of a general commitment to indigenous peoples and their right to self-development. It was to be hoped that that proposal would be reflected not only in Mr. Eide's report, but also in the recommendations of the Working Group and in the decisions of the Sub-Commission.

15. Ms. BROCH (Minority Rights Group) congratulated Mr. Eide on an excellent report. However, her Group felt that, in order to provide a practical means of tackling the problem, it might be useful to define parameters or indicators that would assist in defining what constituted a violation of human rights of the groups concerned and in identifying the corresponding situations. Generally speaking, the problem lay largely in assumptions of cultural or racial superiority which gave rise to condescending or paternalistic attitudes towards the groups considered to be inferior. When such attitudes were present, dialogue and consultation became difficult, because mutual respect and an open, receptive attitude on all sides were needed for them to be effective. Yet feelings of superiority based on race or cultural achievements were often so deeply rooted that the dominant groups were unaware of them, although they were very obvious to a neutral observer and irritating to members of the group that was considered to be inferior.

16. With an avowed wish to be helpful, the dominant groups might adopt policies intended to "raise" the level of the other groups. While such intentions might seem praiseworthy, they failed to take into account the possibility that the other group might not wish to change its lifestyle or that it might have other ideas about its own development, more consistent with its own environment and traditions. The imposition of values by dominant groups led to inequalities and frictions in land ownership and occupation and in economic, social and educational matters, something which led to a vicious circle that was difficult to break.

17. It was none the less encouraging to note that some countries had sincerely tried to find ways of preventing exploitation of minorities, as was the case in India, where the Government was trying to protect inhabitants of tribal areas. Bangladesh had also embarked upon an impressive experiment in regional self-government designed to give the local population in the Chittagong Hill Tracts control over key factors such as land, resources, tax revenue and even the police force.

18. In the same region, however, the situation in Tibet, which had deteriorated in recent years, was of particular concern to the Minority Rights Group. It was a typical situation in which policies designed in a capital many thousands of miles away, perhaps with the best of intentions, simply did not suit local conditions. It was to be hoped that the People's Republic of China would soon initiate negotiations with the Dalai Lama to determine ways and means of securing real self-government for the people of Tibet.

19. Ms. VENNE (International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD)) said that, as an indigenous person herself, subjected to racial discrimination by the neo-colonialists, she was gratified that, in paragraphs 351 to 360 of his report, Mr. Eide had highlighted the work of the United Nations in matters relating to indigenous peoples. Those peoples were pleased to have the Working Group, which each year heard directly from indigenous peoples.

20. Under recommendation No. 10 in Mr. Eide's report (E/CN.4/Sub.2/1989/8/Add.1, p.5), countries should be encouraged to ratify as soon as possible the new ILO Convention on tribal and indigenous peoples in independent countries. She wished to make it clear that the majority of indigenous peoples and organizations present at the session of the Working Group on Indigenous Peoples in July 1989 had not approved of the revised convention. She therefore called on Governments not to ratify the Convention, for it demonstrated a racist approach towards indigenous peoples, which it did not recognize as "peoples" under international law. The indigenous peoples themselves considered that they were peoples with a right to assert themselves as such. In line with the racist colonial legal system imported from Europe, the Convention also failed to recognize the right of indigenous peoples to their land and resources.

21. Mr. PIEDRASANTA (International Federation of Human Rights) said that, like Mr. Eide, he thought that problems of racism arose in a variety of contexts, as seen in South Africa, Eastern Timor, Sri Lanka, Iraq, in the case of the Jewish minority, and in several Latin American countries, such as Guatemala.

22. In Guatemala, although indigenous peoples accounted for 65 per cent of the total population, they suffered from racist discrimination by the minority which excluded them from power. It was true for every area of economic and social activity and took the form of human rights violations which had been condemned in United Nations resolutions. His organization was in a position to confirm that, in Guatemala, the State did not recognize the principle which said that the indigenous population had a right to development and that that development should be based on its own culture. Although the Constitution did not contain any discriminatory rules against the indigenous population, the socio-political and economic situation was in reality discriminatory and had repercussions on legal decisions. In actual fact, the current legislation

took no account of indigenous peoples, since it did not recognize the legal exercise of their rights. For example, communal ownership of land, which was frequent in indigenous communities, was not recognized by law. The lack of rules in that regard was more than just an effectively discriminatory legal exclusion, since that cultural right of the Guatemalan indigenous peoples was thus rendered legally void. As to education, indigenous languages were also being discriminated against and plans to eliminate illiteracy were actually aimed at spreading the teaching of Spanish. Moreover, there were no legislative instruments designed to develop and promote indigenous languages.

23. He also wished to draw attention to the fact that the armed forces were subjecting the civilian population to strict military control and were forcing members of indigenous peoples to take part in civilian self-defence patrols. It should also be added that only members of indigenous peoples were obliged to carry out military service, although the Constitution stipulated that it was the duty of all citizens.

24. His organization therefore requested the Sub-Commission to recommend that Mr. Gros Espiell should give special attention to the situation of majority Indian populations and present to the Commission on Human Rights, at its forty-sixth session, a report focusing on rural areas in conflict.

25. Mrs. BUDIARDJO (Liberation), referring to the situation in Tibet, said that before the country was occupied in 1949/50 the Tibetans had never experienced racial discrimination, but millions of Chinese settlers were now living all over Tibet and, for the first time, Tibetans were in danger of losing their cultural, religious and national identity.

26. The indigenous population and the Chinese immigrants were developing as two distinct, separate and unequal communities. In what appeared to be a deliberate policy sanctioned by the Chinese Government, Tibetans were increasingly being pushed to the periphery of political, social, economic and cultural developments, through policies designed to promote a large influx of Chinese administrators, troops, technicians, workers and settlers who received more favourable treatment than the native Tibetans. As a result, the Chinese population in Tibet had increased rapidly and the gap between the two communities was continually widening.

27. That policy constituted a violation of the International Convention on the Elimination of All Forms of Racial Discrimination, which the People's Republic of China had ratified in 1982, and a denial of the Tibetan people's right to self-determination, recognized in General Assembly resolution 1723 (XVI). Discrimination against Tibetans was evident not only in employment, where they received lower pay for the same work and were not given responsible jobs, but also in education, where there were two separate systems, one for the Chinese and one for Tibetans, who had to make do with inferior teachers and facilities. Although Tibetan was the official language of Tibet, all Tibetans needed to know Chinese, even to buy stamps or go to the market. They were made to feel that their language, customs, religious ways and even their dress were inferior.

28. Lastly, the best medical facilities were reserved for cadres and Chinese settlers, and Chinese doctors sometimes refused to treat Tibetan patients. Tibetan doctors interviewed in 1988 had spoken of widespread malnutrition among the Tibetans, who suffered from a number of new diseases and were

increasingly vulnerable to older ones. There was also reliable evidence that Tibetan women and teenage girls were being pressured and even forced to submit to abortion and sterilization. There could be no justification for such measures in a region which, according to the Chinese leader Deng Xiaoping, needed a larger population to develop its resources.

29. Mr. EIDE thanked the experts, observers and non-governmental organizations who had commented on his study. He had also taken careful note of the few critical comments which had been made, particularly those of Mrs. Warzazi concerning paragraph 21 of the recommendations (E/CN.4/Sub.2/1989/8/Add.1) which, as Ms. Ksentini had highlighted, could well give rise to some misunderstandings.

30. Despite the comments by the representative of the Grand Council of the Crees concerning the new ILO Convention on the protection and integration of indigenous populations, there seemed to be no reason to amend the recommendation in paragraph 10 of Chapter IV B of the study. Although it was clear that the interpretation of the concept of self-determination was controversial, it was in the interest of indigenous peoples for the Convention in question to be ratified.

31. He would also like to point out to Mr. Chernichenko and Mr. Jin that it was South African activists who had made him aware of the crucial role of the International Convention on the Suppression and Punishment of the Crime of Apartheid by pointing out the significance to them of the fact that apartheid had been defined as a crime against humanity. Admittedly, that instrument had been the subject of a certain amount of legal controversy, but there were lacunae in other international instruments and, in the case in point, other factors needed to be taken into account.

32. Mr. Türk had made some very interesting comments on the question of the conflict between the integration of migrant workers and their right to maintain their identity, while Mrs. Mbonu had also made some very useful remarks about the alleged reforms in South Africa. The Committee on the Elimination of Racial Discrimination certainly needed to be strengthened and Mrs. Warzazi had been right to point out that some States members of the Committee were behind in the payment of their contributions, particularly African States. He would prefer the Committee be fincanced from the United Nations regular budget, so that what was a particularly useful body would not be continually faced with the same financial problems.

33. Mr. Diaconu had been right to point out that many of the issues under consideration would have to be tackled in the different contexts in which they arose. Although it was difficult to arrive at detailed universal norms, the Sub-Commission should in his opinion consider issues, such as migrant workers and indigenous minorities separately, while bearing in mind that the Commission also dealt with minority rights. Despite the difficulty of its task, the Sub-Commission should certainly carry on with that approach and start to look at the linguistic problems of minorities, for example.

34. Unfortunately, racial discrimination had far from disappeared and Mr. Sadi had mentioned some of the problems encountered in the United States. For its part, the European Parliament had conducted a significant study on xenophobia, which was clearly spreading in Europe. Several experts had expressed the opinion that the Sub-Commission could not enter into an

exhaustive debate on that issue on the basis of a study which had been distributed late and only in some languages, but, as Mrs. Daes had suggested, the study in question could be transmitted to the Commission on Human Rights, and the Sub-Commission could review the relevant recommendations at its next session.

35. There was a need to look more closely at the issue of economic and social factors contributing to the emergence and development of xenophobia. Although racism had in the past been tied in chiefly with the idea of genetic superiority or inferiority, it was now founded more on xenophobia, in other words, on the idea of differences, of cultural rather than biological superiority, on a feeling of exclusivity and the concept of "a chosen people". The Sub-Commission should certainly examine that aspect of the problem as well.

36. Mr. SADI said that the idea of financing the Committee on the Elimination of Racial Discrimination from the United Nations regular budget would have many consequences. Firstly, it would imply that the Human Rights Committee should also be funded from the regular budget and that the Committee on the Elimination of Racial Discrimination should be open to all Member States of the United Nations, and not only to those which had ratified the Convention. Moreover, the task could be better apportioned between the two Committees, whose activities overlapped in certain areas. Lastly, such a decision would presuppose that the principle of rotation would be introduced in the Committee on the Elimination of Racial Discrimination - where there was at present a kind of monopoly - so that the largest possible number of Member States of the United Nations could be directly involved in the Committee.

37. Mr. ALFONSO MARTINEZ pointed out that, in order to deal with the universal question under consideration, the Sub-Commission had always looked to the General Assembly for guidance. In resolution 42/47, the Assembly had approved a plan of activities for the second half of the Second Decade and in resolution 43/91 it had established a number of priorities the Sub-Commission could usefully follow.

38. Nevertheless, there was little reason for satisfaction with the world situation. Apartheid continued in South Africa and in a way it tarnished the honour of all mankind. The South African régime would not even take into account the opinion of some white sectors in the country. The problem of racial discrimination was growing worse in many other countries, in particular in the United States, where the National Association for the Advancement of Colored People had reported that illiteracy and poverty in the black population had increased. The rejection of migrant workers in many western countries was also becoming increasingly disturbing.

39. He welcomed specifically the fact that in his study, Mr. Eide had taken account of scientific criteria and precise indicators. Nevertheless, Mr. Eide's study of apartheid in paragraphs 277 to 350 of his report was somewhat repetitive and could have dealt directly with other aspects of the problem in a more exhaustive manner. The major achievement of the First Decade was without doubt the demolition of the scientific theory of racial superiority, although some traces of it still remained. It was also interesting to note in paragraph 245 of the report that racism had started in one specific geographical area. In addition, the situation of indigenous

peoples and migrant workers, which Mr. Eide referred to in paragraphs 355 to 386 of his study, was growing more and more difficult and the problem was well presented in its true dimensions.

40. He fully supported Mr. Eide's first general recommendation, as well as the idea suggested in his second general recommendation that the co-ordinating function of the Under-Secretary-General for Human Rights should be strengthened. It would also be wise, as Mr. Eide suggested in the third general recommendation, to update the study on racial discrimination submitted by Mr. Santa Cruz in 1976. On the other hand, other United Nations bodies were already fully competent to deal with the question of apartheid. He agreed that sanctions against South Africa should be tightened, but with reference to indigenous peoples, his impression was that Mr. Eide had drafted that part of his recommendations before he had been able to form any opinion about the new ILO Convention. It would be useful if the Sub-Commission could speed up the drafting of the declaration on rights of indigenous populations. The Committee on the Elimination of Racial Discrimination and the Sub-Commission should unquestionably maintain closer contacts, but financing the Committee from the United Nations regular budget ran the risk of raising more problems than it solved, as Mr. Sadi had so rightly observed.

41. Mr. van Boven said that the Committee on the Elimination of Racial Discrimination could be financed from the United Nations regular budget, as were several other bodies established under international instruments, such as the Committee on the Elimination of Discrimination against Women.

42. Mrs. WARZAZI said she feared Mr. Sadi was confusing the Committee on the Elimination of Racial Discrimination and the Human Rights Committee. While it was a fact that the International Covenant on Civil and Political Rights provided that the Human Rights Committee should be financed from the United Nations regular budget, the International Convention on the Elimination of All Forms of Racial Discrimination stipulated that the corresponding committee should be financed by contributions from States Parties. That was the core of the problem, and in the draft convention on the rights of the child there were provisions concerning financing which had indeed been left in square brackets.

43. Mr. CUI (Observer for China), speaking in exercise of the right of reply, said that a number of non-governmental organizations seemed to be very interested in Tibet, but their statements showed that they were badly acquainted with the situation. As to the so-called appeal for a dialogue with the Dalaï Lama for example, it was clear that the Chinese authorities did not object to such dialogue. They were nevertheless opposed to any activities designed to create division. The Chinese authorities ensured respect for the culture of minorities and it was hard to imagine that persons who posed questions of that kind wanted a return to the serfdom of the feudal period. On the contrary, account should be taken of the progress that had been made in China.

44. Mr. SENE (Observer for Senegal), speaking in exercise of the right of reply, said that, at the previous meeting, the International Movement for Fraternal Union Among Races and Peoples had referred to the situation between Senegal and Mauritania and launched an appeal to the Governments in both countries to take the necessary steps. The day before, the Observer for the United States had spoken of expulsions and other abuses connected with the

difficulties between the two countries, as had Mrs. Palley, when she had spoken on agenda item 6. The international press had widely reported on the difficult situation between the two countries, which none the less had many bonds.

45. For its part, Senegal had always advocated co-operation and the development of new relations. Within the framework of the Organization for the Development of the Senegal River, for example, two dams had been built between Senegal, Mali and Mauritania. Senegal therefore invited all friendly countries, the United Nations, non-governmental organizations and the media to go and see the situation for themselves, without let or hindrance, and Senegal would, as the President had recently said, spare no effort to curb the crisis, to provide information to the Commission on Human Rights and the Sub-Commission and to enable the African mediation commission to find a solution.

46. Mr. SOKHNA (Observer for Mauritania), speaking in exercise of the right of reply, said he wished to make it clear that Mauritania had never expelled anyone and that the population exchanges with Senegal had taken place by mutual agreement and at Senegal's request. Furthermore, he did not see how, as Mrs. Palley had said, Mauritania could have displayed any form of racial discrimination against the black Senegalese population.

47. Mauritania had always shown its political readiness to resolve the problem both in the Commission on Human Rights and in the Organization of African Unity and had always favoured the process of mediation. However, two days before the start of the negotiations, Senegal had decided to sever diplomatic relations with Mauritania, thus acting in breach of the conventions between the two States. It would also be recalled that Senegal was in conflict with Guinea-Bissau and the Gambia, something that was not likely to promote peace in the region.

48. Lastly, a number of articles in the press, signed by a Senegalese, reflected a clear bias, and it was important to draw a distinction between purely political matters and human rights matters.

49. Mrs. WARZAZI, commenting on the turn the discussion was taking, appealed to all parties concerned to avoid placing that disquieting problem outside the context of the two countries directly involved. The African countries close to Senegal, and Mauritania should be able to help them to settle their dispute and the representatives of non-African countries should refrain from intervening and discussing the problem in order to exploit it.

50. Mr. SENE (Observer for Senegal), speaking in exercise of the right of reply, said he fully shared Mrs. Warzazi's opinion. He assured the Observer for Mauritania that Senegal had always supported the maintenance of peaceful, friendly and fraternal relations with neighbouring countries and that it was certainly not in conflict with either Guinea-Bissau or the Gambia. On the contrary, his country was endeavouring to help create a confederation of African States so that in future they would be able to solve their own problems quite objectively and with full respect for human rights.

51. Mr. SOKHNA (Observer for Mauritania), speaking in exercise of the right of reply thanked Mrs. Warzazi for her statement. He assured the Sub-Commission that Mauritania had no desire whatever to enter into any polemics with Senegal, but stressed that it was necessary to be objective especially in interpreting the substance of press articles.

52. Mr. van BOVEN, commenting on the turn of the discussion, said that the Sub-Commission had already heard a large number of statements under agenda item 6, especially by observers speaking in exercise of the right of reply. He hoped that everyone would refrain from raising questions which had already been dealt with in depth.

53. The CHAIRMAN said he agreed with Mr. van Boven and announced that the Sub-Commission had completed the general debate on agenda item 5 (a).

The meeting was suspended at 6.15 p.m. and resumed at 6.30 p.m.

THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY (agenda item 16) (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)

54. Mr. DIACONU said that, under the mandate assigned to Mr. Mubanga-Chipoya in 1985, the Sub-Comm ssion should also have before it a final report on the right to employment, the right to return to one's country and the phenomenon of the brain drain, a report that could be useful in discussing the draft declaration.

55. Presenting his working paper (E/CN.4/Sub.2/1989/54), he said that his proposals for amendments to the draft declaration were designed to bring the various parts of the draft into one cohesive whole. For example, article 1 was closely linked to article 7 and, for that reason, he was proposing that a reference to the national legislation of each country should be added to article 1.

56. It was also important to emphasize that the measures taken by other countries should not prevent anyone from exercising the right to leave his country and that the receiving country should ensure that persons who entered its territory enjoyed all the economic, social and cultural rights and, as appropriate, political and civil rights. He, therefore, proposed the addition of a new article 2.

57. In article 5, it would be useful to insert a reference to national law, because the provisions dealt with in that article were not acceptable unless they also covered the exercise or the attempt to exercise the right in question in accordance with the law.

58. As to article 6 (a), it was useful to mention the matter of dual nationality because the law on the subject differed from country to country, and furthermore, the reasons for loss of nationality could be diverse.

59. In his opinion, the definitions suggested in article 7 could in no way way meet the diversity of the situations in all countries of the world. For that reason they could be replaced by a general phrase indicating that restrictions would not be applied so as to prejudice the basis of the right

under consideration. In addition, with respect to public order, (ordre public), it was difficult to interpret the definition as "universally accepted fundamental principles ... on which democratic society is based" as acceptable to all legal systems.

60. In the case of article 9, reference should again be made to national law to safeguard the cultural heritage and personal property, for the laws on the subject differed.

61. The right to return to one's country was also affected by the restrictions laid down in article 7 and article 10 should therefore be amended accordingly.

62. The text of article 14 (b), should be amended to take into account the fact that leaving a country necessarily meant entering another country.

63. Lastly, the provisions of article 17 (d) again raised the question of dual nationality, because States which did not recognize that principle would not be required to authorize the citizens to seek assistance from other States to leave their country.

64. Mr. van Boven took the Chair.

65. Mr. CHERNICHENKO said that the draft declaration was designed to clarify the existing rules of international law and better adapt to realities the traditional rules whereby all States applied a system of authorization to enter or leave the country, in keeping with the principle of national sovereignty and territorial integrity. Furthermore, under international instruments States could open their borders to citizens of other countries and a system of reciprocity was applied. Nor could any State arbitrarily refuse anyone the right to leave its territory, except for very specific reasons set out in national legislation and within the limits of universally recognized provisions.

66. He was not speaking on his country's behalf, but could none the less say that the draft declaration did not pose any problem for the Soviet Union and could in fact help Soviet legislators to improve the national laws on the subject. He merely wanted to stress that the provisions of article 7 (d) could be formulated in a more flexible way. In very exceptional cases, it should be possible to extend the period of application of restrictions, on the understanding that strict limits would be laid down in national legislation.

67. As Mr. Diaconu had stressed, the right to leave a country and return to it was clearly linked to the right to enter another country. In practice, however, those two sides of the same problem were often dissociated and, therefore, the right to enter a country should perhaps be studied separately. The question was a delicate one because a number of countries applied discriminatory laws on immigration. Again, there were no specific rules of international law on the subject and complete innovation might prove necessary.

68. Many Governments had asked for further clarification of the provisions of the draft and the Sub-Commission should decide whether the work was to be assigned to a working group or whether it would transmit the draft to the Commission, which in turn would set up a working group. Both solutions were possible and the Sub-Commission should choose the one that was more rational.

69. Mr. SADI said that the right to leave and return to any country, including one's own, was a universal right and it could not be governed solely by national legislation. National laws varied from one country to the other and were not always strictly applied.

70. The draft declaration in its present form stood in need of improvements to make it clearer and more consistent. A working group could perform that task. It was also indispensable to establish an independent body to monitor the application of the declaration and interpret its provisions, for any declaration of that kind would be totally useless if each State were left free to interpret it as it wished.

71. Mr. CAREY said he was fully in favour of establishing a working group to carry on the work on the draft declaration. One question was how the working group could proceed until the next session of the Sub-Commission. Perhaps Mr. Mubanga-Chipoya and members from the four geographical areas could exchange views, consolidate the various proposals and suggest a new wording for some articles. The working group's conclusions could then be submitted to the Sub-Commission in the form of a final text.

72. Lastly, he asked if the additional replies reaching the Secretariat by the Sub-Commission's forty-second session could be transmitted to members for examination.

73. Mr. SUESCON MONROY said the subject under discussion concerned one of the key human rights and was well covered by the draft declaration. He was, however, concerned about the large number of restrictions stipulated in article 7. A number of concepts such as public order (ordre public) and public morals had a wide range of meanings and lent themselves to all sorts of interpretations. In his view the wording of the article should be reviewed so that the declaration was in conformity with its objectives and the right to leave and return to one's country was not unduly restricted by legal means.

74. Mr. ARNAOUT (Office of the United Nations High Commissioner for Refugees) said that the Office of the High Commissioner had closely followed the Sub-Commission's work on the draft declaration on the right to leave and return to one's country because it was a right that lay at the heart of all action to protect refugees.

75. As indicated in his comments (E/CN.4/Sub.2/1989/44/Add.6), the High Commissioner had paid particular attention to provisions directly relevant to the protection of refugees and thought that some relatively minor amendments should be made.

76. In the refugee context, the right to leave and to return to one's country was integral to the security of refugees and to providing long-term solutions for them. In that connection, the international community had recognized that, when conditions permitted, the voluntary and safe return of refugees to their countries of origin was the preferred solution for their problems. UNHCR was called upon to facilitate that process not only financially but by promoting suitable conditions, one means being the negotiation of agreements with Governments. The proclamation of the right to return to one's country, in the form of an international declaration, should therefore persuasively underpin its efforts in that direction.

77. It should also be emphasized that restrictions on the right to leave or return to one's country constituted a key element in a number of refugee situations, because they were often the cause of them leaving and of refusing to return, for fear of retaliation. The state of being a refugee and the concept of asylum were closely intertwined. Every individual had the right to seek and enjoy asylum in other countries, but it was obvious that he could not exercise that right if he could not enter another country, yet the refugee's safety and physical integrity often depended on that possibility.

78. Mr. Mubanga-Chipoya also referred briefly in his report (E/CN.4/Sub.2/1989/35 and Add.1) to the initiatives taken by the United Nations to study the underlying causes of flows of refugees and the means of preventing them. Those measures however, which were designed not to eradicate the underlying causes but rather to limit the number of departures, could be incompatible with the right to leave and with the right to enjoy asylum in another country.

79. Furthermore, that right should be extended to all members of the same family. Family reunification was a task to which UNHCR devoted considerable efforts, especially through interventions with Governments to facilitate the departure of persons wishing to rejoin family members who had sought refuge abroad. The return to their country of origin of persons to whom refugee status had not been granted was another problem Mr. Martenson had raised when he introduced the subject under consideration; closer consultations between UNHCR and the Sub-Commission could certainly contribute to a solution in that regard.

80. Lastly, UNHCR would be pleased to work with the Special Rapporteur or to co-operate with any other mechanism such as a working group to follow up the drafting of an international instrument on the right to leave and to return to any country, including one's own, something which should directly assist UNHCR in its work on behalf of refugees worldwide.

81. Mr. Yimer resumed the Chair.

82. Mr. NODUP (Movement against Racism and for Friendship among Peoples) said that the possibility of exercising the fundamental right set out in article 12 of the International Covenant on Civil and Political Rights was a barometer of a country's general human rights situation. No State would prevent its nationals from leaving or returning to its territory unless it feared that the rest of the international community would find out about the situation there.

83. That was why the Chinese authorities had again imposed restrictions on the Tibetan people's freedom of movement and right to travel, not only abroad but within Tibet itself. Since martial law had been imposed in Lhasa after the recent bloody events, only 47 people had been allowed to travel to Nepal and India on pilgrimage and they had received their exit visas long beforehand. Since then, however, the only border post through which Tibetans were allowed to travel to Nepal had been closed off.

84. The sealing of the border indicated that the situation in Tibet had deteriorated in the past few months and that the Chinese authorities feared that the information about the Tibetan people's struggle for their freedom would reach other countries. Many of them were still trying to flee from Tibet, sometimes risking their lives to do so.

85. The forced isolation in which they were now being kept only heightened the Tibetan people's resentment towards the Chinese occupiers. He was himself a Tibetan and a refugee and was not allowed to return to his country as long as he continued to say that he was not Chinese. His brothers were also prevented from leaving Tibet to visit their parents, who were in exile in India. He therefore urged the Sub-Commission to pay greater attention to the tragic fate of the Tibetans and to help them, because they were deprived of a people's fundamental freedom of movement and, in particular, the right to leave and return to one's country.

86. Mr. TURK said that the right to leave and return to any country, including one's own, was plainly a universally recognized and applicable human right. On the other hand, the right to enter the territory of a foreign State and the corresponding duty of a State to admit a person into its territory were not enunciated very precisely, probably because that question had always been considered as essentially a matter of State sovereignty and because there was no international legal rule on the subject to date.

87. Nevertheless, no State should exercise any form of discrimination based on sex, race, religion, colour or political opinion against foreigners arriving in its territory. Admittedly, it was not always easy to make a distinction between situations which were comparable to acts of discrimination and situations which were not. But the principle of non-discrimination was incontestable and it would perhaps be useful to study the practice of States on the subject. A number of States had re-enforced restrictions on the entry of foreigners after lifting the restrictions earlier. It was a phenomenon to be found more particularly in numerous European countries and he wondered whether the principle of non-discrimination was being duly respected in those cases. The matter should be more carefully studied by the Sub-Commission and other United Nations bodies.

88. The Sub-Commission should strive to formulate a generally acceptable draft declaration and the working methods proposed by Mr. Carey seemed interesting. However, the possibility should be envisaged of creating, in accordance with established Sub-Commission practice, a sessional working group to work more effectively in drafting the project.

89. Mr. VARELA QUIROS said the topic under discussion raised very important questions to which the Sub-Commission had not yet, it seemed, paid sufficient attention. The Sub-Commission should take a decision promptly, so that Mr. Mubanga-Chipoya's efforts would be rewarded by the formulation and adoption of the draft declaration.

90. He supported the working methods proposed by Mr. Carey but wondered whether two members of the Sub-Commission instead of the four suggested by Mr. Carey would not be enough to arrive at a consolidated version of all the comments made on the draft, in co-operation with the Special Rapporteur, who would guide them in their work.

91. Some of the draft articles should be amended. For example, article (3) could be fleshed out by adding a provision stipulating that States should prevent any practices which prejudiced exercise of that right or which would lead to the forcible emigration of certain population groups. Article 4 could be worded in a more technical way to emphasize the need for bilateral and

multilateral co-operation to avoid the brain drain. The brain drain hurt the developing countries most of all, and they should therefore redouble their efforts to cut it down to the maximum by taking measures that would induce their qualified people to stay. The developed countries should co-operate with them in that endeavour.

92. As to article 8, the comments by the Government of Burundi on the disastrous economic effects of eliminating any currency or other controls were highly relevant and should be taken into due consideration.

93. With reference to the prohibition in article 8 (a), many countries, especially in Latin America, imposed airport taxes, which were approved by the International Civil Aviation Organization (ICAO). They should be mentioned along with the fees related to travel documents, specifying that they should not be so high as to restrict the right to leave.

94. Generally speaking, he supported most of the amendments proposed by the International Institute of Human Rights (E/CN.4/Sub.2/1989/44/Add.1) for improvements to the draft. He hoped that the Sub-Commission would study the matter thoroughly at its next session and decide promptly on the working method to be followed, in the light of the suggestions that had been made.

95. Mrs. DAES said she wished to repeat her congratulations and thanks to the Special Rapporteur, Mr. Mubanga-Chipoya, for an excellent study, and recommended that the Sub-Commission should transmit it to the Commission for publication.

96. The draft declaration itself, was an important text and the final version should now be elaborated in the light of the comments made by many Governments, non-governmental and intergovernmental organizations and United Nations specialized agencies, as well as experts in the Sub-Commission. In her opinion, the task should be assigned to a small open-ended sessional working group in which all members could participate if they wished. If the group was appointed in 1989, it could start work at the Sub-Commission's next session. That would be the most logical way to proceed, because she knew from experience that exchanges of views among two or three rapporteurs by correspondence was not enough in such a case. She was therefore strongly opposed to the proposal by Mr. Carey and would vote against it if it were put to the vote.

The summary record of the second part of the meeting appears as document E/CN.4/Sub.2/1989/SR.25/Add.1.
