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COMMISSION ON HUMAN RIGHTS

Forty-sixth session

SUMMARY RECORD OF THE 53rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 7 March 1990, at 10 a.m.

Chairman: Mrs. QUISUMBING (Philippines)

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Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories, including:

- (a) Question of human rights in Cyprus
- (b) Study of situations which appear to reveal a consistent pattern of gross violations of human rights as provided in Commission resolution 8 (XXIII) and Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII): report of the Working Group on Situations established by the Commission at its forty-fifth session (continued)

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The meeting was called to order at 10.35 a.m.

ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS (agenda item 22) (continued)
(E/CN.4/1990/42, 43, 44 and Add.1, 45 and Add.1; E/CN.4/1990/NGO/19 and 20)

1. Mr. RIVAS POSADA (Colombia) said that his delegation noted with satisfaction the progress made, despite budget restraints, in developing and applying the programme for advisory services in the fields of human rights. It had read with appreciation the reports by the Experts on Equatorial Guinea (E/CN.4/1990/42), Haiti (E/CN.4/1990/44 and Add.1) and Guatemala (E/CN.4/1990/45 and Add.1), and welcomed the possibility that the Commission might consider, at its next session, the question of similar assistance to Paraguay as proposed in a draft resolution recommended by the Sub-Commission to the Commission for its adoption (E/CN.4/1990/2-E/CN.4/Sub.2/1989/58, chapter I, section A, draft resolution V).
2. Such services were not only praiseworthy in themselves but were also an indispensable complement to the Commission's tasks of monitoring the observance of human rights everywhere and encouraging the development of national human rights institutions. The criticism, some of it hardly impartial, often voiced in the Commission about advisory services failed to take into account the enormous difficulties many countries faced in their efforts to promote and protect human rights - although a number of delegations had rightly stressed the need for Governments to co-operate fully with the Commission and the world community in carrying out policies aimed at improving their social sectors.
3. Colombia had been successfully carrying out an experiment in advisory services, under the auspices of its Office of the Human Rights Adviser and involving direct UNDP funding, to promote the awareness and observance of all citizens' rights. The programmes included training courses for police, military and administrative personnel, fellowships and seminars, as well as programmes and materials for education from the primary to the tertiary level. In addition, a number of Governments had collaborated in specific sectors; for example, the Governments of Canada and the Netherlands had provided assistance in programmes targeted at regional and municipal officials, and the Italian Government had provided a training course for judges.
4. The experience of Colombia and of other countries confirmed the importance of the advisory services programme, which he hoped, could make further contributions to countries in need of such services. He also hoped that the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights would continue to grow.
5. Mrs. GONZALEZ MARTINEZ (Mexico) said that the programme of advisory services had been shown to be one of the most effective means of supporting national efforts for the promotion and observance of human rights. The experience gained in various regions and nations was bound to enhance the programme's implementation and make it more flexible.
6. Nevertheless, her delegation remained gravely concerned about the situation in Haiti, as reflected in the Expert's report (E/CN.4/1990/44 and Add.1); it urged the Haitian Government to take all requisite measures to improve the situation of its citizens. The world community must intensify its

co-operation for development in Haiti, since the country's underdevelopment was clearly one factor of the current insecurity there. In that connection, it disturbed her delegation that the recommendations contained in the report submitted to the Commission at its previous session had failed to mention the problem of underdevelopment; it was hard to contemplate advisory services for a Government and its officials without, at the same time, envisaging programmes for public education and training.

7. The current report contained a recommendation that, if the Commission were to consider extending the Expert's mandate, it would have to establish a scheme to provide technical assistance in connection with the electoral process by sending observers before and during the elections (para. 107 (e)); tasks such as that were matters for the Government to decide and not properly a feature of an advisory services programme. The point made in the following subparagraph, that the other recommendations submitted in the 1989 report (E/CN.4/1989/40, para. 139), should be considered only if the Haitian Government was prepared to make specific requests, should apply also to the question of sending observers.

8. Paragraph 93 of the report, relating to talks with representatives of the diplomatic world, suggested that the Expert had overlooked the presence in the Haitian capital of the ambassadors of countries in the region to which Haiti belonged.

9. In general, the report would have been better had it contained some reference, in its conclusions (para. 106), to the dire situation of the Haitian people's economic, social and cultural rights, regarding which a far-reaching programme of assistance, in co-operation with the specialized agencies, pursuant to the relevant General Assembly resolutions, would be extremely valuable.

10. The programme of assistance to Guatemala (E/CN.4/1990/45 and Add.1) was one of the most comprehensive that the United Nations had ever implemented. The Government of Guatemala had made great efforts in the legal and institutional fields to improve the human rights situation and consolidate democracy. However, the serious instances of violence referred to in the report (para. 57), together with the failure to investigate and punish many killings and disappearances, pointed to a situation which was severely hampering the progress of human rights. As the Expert has pointed out, the continued violations of civil and political rights stemmed from factors that were often beyond the Government's control. It was essential for the Government to investigate thoroughly the murders of Hector Oqueli and Dr. Gilda Flores.

11. Her delegation endorsed the recommendations contained in the report (para. 71) and the continuation of a broad programme of assistance; it agreed that the institutional framework was a necessary prerequisite for the future improvement of the situation which was undeniably linked to the maintenance of democracy. It appealed to the Government of Guatemala, a neighbouring and sister country, to adopt the necessary measures to put an end to the serious human rights problems, making wider use of the programme of advisory services.

12. Mr. PEREIRA GOMES (Portugal) said that his delegation appreciated the programme for advisory services and noted with satisfaction the increase in related activities reported in the Secretary-General's report (E/CN.4/1990/43) and in the Experts' reports. While his delegation agreed that such services

should form part of the overall human rights programme, it shared the view expressed in the Secretary-General's report (para. 17) that the provision of such assistance should not be a pretext for a Government to evade its responsibility and should not exempt it from scrutiny by the Commission. Advisory services should be provided at the request of a Government which was displaying real political will to improve or advance human rights.

13. His delegation welcomed the efforts made by the Centre for Human Rights, including the setting up of an advisory group and the establishment of a flexible inter-agency mechanism for human rights activities (para. 31). There had been a welcome increase in contributions to the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights, but the Voluntary Fund could not replace regular budget allocations, which needed to be larger.

14. His Government welcomed the growing number of requests, from all regions, for advisory services. It planned to hold a training course at Lisbon for officials from Portuguese-speaking countries; the course would be organized by the Centre for Human Rights, with the collaboration of the International Centre for the Teaching of Human Rights and Peace. That initiative was a follow-up to the course held at Lisbon in May 1988. Experience had shown that priority should be given, when allocating resources, to projects and programmes which had a multiplier effect; in that regard, training courses and expert assistance were more productive than fellowships or large-scale seminars.

15. Mr. DLAMINI (Swaziland) said that, once the concept of human rights was accepted, no State could consider itself wholly immune from criticism or praise. The principle of non-interference in the internal affairs of other States was recognized in international law, but unless that principle could be modified, the purpose of common membership, objectives and ideals would be frustrated; it surely could not have been the Commission's original intention that its members should meet annually but say nothing about the human rights situations in other Member States. The barbarous acts, referred to in the preamble to the Universal Declaration, which had outraged the conscience of mankind had initially been defended as internal affairs.

16. Although the Commission existed by the will of the Member States' Governments, its purpose was to serve not their immediate interests but those of peoples themselves. Any Government, no matter how democratic its election had been, would sooner or later pursue purely oligarchic interests, often at variance with the interests of its people. Therefore, the effective enjoyment and safeguarding of human rights should not be taken for granted in any country.

17. The Commission's members should not fail to speak out about violations of human rights wherever they might occur; to accuse another State of infringing human rights did not necessarily mean that the accuser was always innocent of similar infringements. The responses of Governments to the Commission regarding alleged failure to observe human rights had at times left something to be desired; his delegation nevertheless thanked them for co-operating with the Commission and for their efforts. Many Governments had remained in office precisely by denying human rights to their people.

18. His delegation commended the Commission on its work in providing advisory services and also commended the recipients of those services in the firm belief that they would be put to beneficial use. There were many obstacles to be overcome, however, since the greater part of mankind still lived in conditions which prevented the exercise of human rights.

19. It was undoubtedly true that more violations of human rights occurred under certain forms of government than others. At the centre of human rights there was the element of free choice - including the choice, at periodic intervals of both the system of government and the actual governors. However, his delegation did not deny that there could be some limit on choice.

20. His Government was observing with great admiration the changes taking place in Eastern Europe and southern Africa and hoped that they were in the right direction and consistent with the advancement of freedom and the enjoyment of human rights. Those historic changes would prove that a Government which took the lead in a humane and popular path in the interest of the people would not regret its efforts; nor should popular changes brought about by a régime formerly accused of human rights violations necessarily lead to the immediate demise of that régime.

21. To expect Governments to spearhead the promotion of human rights in their countries was to ask a great deal from them. Human rights were best protected at the instance of the people themselves who were the beneficial possessors of those rights. In the normal course of events, one should not be discouraged if a people, the recipients of advisory services in the human rights field, viewed with disbelief and scepticism a Government with a history of shameless violations of human rights, which suddenly requested advisory services from the Commission and co-operated in the administration of those services. In such circumstances, his delegation strongly urged the continued use of special rapporteurs, possibly in conjunction with advisory services.

22. With regard to human rights, Swaziland, as a developing country, had had its fair share of difficulties, which it had not so far been able to overcome. However, the search was continuing. In 1973, the independence Constitution then perceived as "unworkable" had been abolished. Attempts to find a suitable replacement had led to the current tinkhundla-based parliamentary system of government introduced in 1978. Technically, however, Swaziland did not have a formal constitution.

23. The tinkhundla-based system of government provided for free political expression. As an African kingdom steeped in long-established traditions and social mores, Swaziland was concerned about the need to evolve a system of government and political order responsive to the needs of its people. It had emerged from colonial rule deeply ethnocentric and suspicious of so-called modern and progressive changes in the political order. That largely explained its reluctance to adhere to many of the human rights conventions and instruments. A substantial amount of appropriate education in the relevant areas of human rights was still desirable to raise the national consciousness, so as to avoid the appearance of a minority of progressive leaders imposing the requisite human rights standards.

24. Yet Swazi traditionalism was adaptive and pragmatic. In introducing the tinkhundla system of government, King Sobhuza II had acknowledged the need to change and abandon institutions which did not promote the welfare of the

people. To that end, he had clearly stated that the current system of government in Swaziland was only an "experiment". If it worked well, it would be confirmed; if it did not, it would have to be reviewed. His Government was ever prepared to meet reasonable demands for greater liberalization and democracy.

25. The Government was willing to take the lead in fostering human rights in accordance with internationally accepted standards, pending the establishment of autonomous human rights bodies. It was therefore eager to receive appropriate advisory services in the field of human rights. An early start in that regard should ease any future tension by all concerned and progressively create a healthy climate for greater appreciation and enjoyment of human rights.

26. Mr. VIGNY (Observer for Switzerland) said that, in 1989, his Government had made a contribution of FS 55,000 to the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights. In its opinion, the advisory services programme was useful since it often made, at the multilateral level, a positive contribution to States which, confronted with human rights problems, had identified and wished to resolve them but did not have the necessary financial or technical means to do so.

27. It must be made clear that such technical assistance provided to States requesting it could have a positive impact on the human rights situation only if the relevant projects dealt with problems in a concrete and direct way. Advisory services should not be a mere public relations operation designed to enable Governments to improve their image by, for example, organizing costly academic seminars on human rights attended by representatives of the national and international intellectual elite. Advisory services should have the primary goal of increasing the awareness of persons confronted in their daily work with specific problems relating to the protection of human rights.

28. When making its contribution, therefore, his Government had urged that it should be used for planning and information courses for national staff responsible for the preparation, implementation and monitoring of legislation. In particular, he was referring to legislative draughtsmen, officers of the police and armed forces, prison guards and judges. All such persons should be informed and trained so that respect for international standards in the field of human rights and humanitarian law would become the normal attitude in their day-to-day work, including situations of tension and crisis. It was only through the adoption of such measures that the commitments accepted by States in becoming parties to international human rights instruments could be genuinely fulfilled.

29. It was no secret that the implementation of the advisory services programme raised numerous questions, such as those of determining the specific objectives to be achieved, setting an order of priorities to be followed in the choice of projects to be supported, determining the conditions to be met by a State in order to benefit from the advisory services, and developing criteria for the evaluation, execution and follow-up of projects. It was for the Commission, taking into account the comments of donor countries and also those of the Centre for Human Rights, with the advice of a group of experts composed of independent representatives, to elaborate guidelines on all those points. Such an effort should be made in close co-operation with development

agencies, such as UNDP, specialized agencies such as UNESCO, other IGOs such as the Council of Europe, and non-governmental organizations and experts in certain fields of human rights.

30. With regard to the activities financed by the Fund and those covered by the regular budget of the United Nations, his delegation considered that expenditure incurred by the Centre as a result of a mandate given by the Commission or another United Nations organ should be covered entirely from the regular budget and not divided between the regular budget and the Fund, which should be used to finance projects going beyond the mandates specified by the Commission.

31. The advisory services programme could be successful only if the applicant States were genuinely prepared to collaborate and improve respect for human rights in their territories. The services should never become a means of evading the institutional machinery of the Commission, such as a special rapporteur. The provision of advisory services could constitute a supplement to but should never be a substitute for the Commission's own efforts. The two approaches had the same objective, namely to increase respect for human rights in the country concerned.

32. Mr. PALLARES BUONAFINA (Observer for Guatemala) said that, as noted in the Expert's report (E/CN.4/1990/45 and Add.1), his Government had made appropriate use of the advisory services provided to it since 1987.

33. In recent years, the Commission had requested the Secretary-General to provide advisory services to the new Governments of countries which had experienced periods of frequent human rights violations in order to help them take the necessary measures with a view to restoring the full enjoyment of human rights and fundamental freedoms. Guatemala, which for many years had been governed by authoritarian régimes, was in that category. The assistance provided by the United Nations had greatly helped his Government to develop a human rights policy that made it possible to strengthen and consolidate the democratic process within a framework of absolute freedom, tolerance and respect for the dignity of the human person.

34. His Government was determined to build in Guatemala a more just and participatory society fully aware of its rights and obligations with confidence in its moral and spiritual strength. National reconciliation, payment of the social debt to the most disadvantaged sectors, opportunities for youth, and the fight against poverty were the priority objectives of his Government, which was determined to achieve true social justice.

35. His Government recognized the praiseworthy work done by the Expert on Guatemala and expressed its satisfaction with the objective and comprehensive reports that he had submitted to the Commission during the past three years. It had implemented the measures which he had recommended and had paid due regard to his observations and suggestions.

36. The Congress of Guatemala had recently elected a new Procurator for Human Rights, who had expressed his determination to strengthen his office institutionally, expand its functions and carry out fully the difficult mission entrusted to him by the highest representative body of the people of Guatemala. For its part, the Government fully supported the Procurator in the performance of his duties.

37. The advisory services of the United Nations could provide invaluable support to the Procurator for Human Rights as a domestic institution set up to investigate all the complaints made, to propose measures to improve the human rights situation, and to collaborate with the Judiciary for the trial and punishment of those responsible for any human rights violations.

38. Some non-governmental organizations with sectarian political aims had expressed in the Commission their opposition to the continued provision to Guatemala of advisory services in the field of human rights, deliberately distorting the facts with regard to his country. They had described a situation that had existed in the past and were unwilling to recognize the existence in Guatemala of a legitimate Government, the product of genuine, free and fair elections, which had amply demonstrated its respect for human rights and its determination to co-operate openly and fully with the relevant bodies established. He categorically rejected the false accusations levelled against his Government and asked the Commission to examine with impartiality the actual situation in his country.

39. The appointment of an expert in the human rights field with respect to Guatemala had produced positive results, since it had helped his Government to improve the enjoyment of human rights and had enabled the Commission to monitor the Government's actions through the Expert's reports. Consequently, the international community had recognized that there was no systematic policy of human rights violations in Guatemala, as was clear from the reports of the Expert and those of the Special Rapporteur to examine questions relevant to torture, both of whom had visited his country and personally checked on the human rights situation there. There was thus no justification whatever for the proposal by some non-governmental organizations that the situation in Guatemala should be dealt with under agenda item 12 (b).

40. The preservation of democracy in Guatemala was a necessity since it was only under such a system that it was possible to promote development, secure domestic peace, reduce acts of violence, combat extreme poverty and make resolute progress with regard to the respect for and enjoyment and full exercise of human rights and fundamental freedoms.

41. The Commission had a moral duty therefore to co-operate with the Government of Guatemala in its efforts to strengthen and consolidate the democratic process, which had been achieved at the cost of so many sacrifices by the people of his country.

42. Mr. PORRET (International Fellowship of Reconciliation) said that one of the priorities of the programme of advisory services in the field of human rights was to assist in the establishment or development of regional and human rights institutions and to strengthen or establish national human rights institutions and infrastructures. Such assistance was of the greatest importance since it had to be adapted to the requirements of each individual country or region.

43. His organization was particularly concerned about the tribal societies in China, Viet Nam, Laos, Thailand, Burma, Bangladesh, northern India, the Philippines and Indonesia, which had to confront particularly difficult problems. Their way of life was rather fragile and they had few opportunities of influencing development plans even those of direct concern to them. Most of those peoples had similar problems in the various countries in which they

lived, although the degree of tolerance varied greatly from one country to another. There was a need for regional and transnational co-operation as well as for an exchange of experience and results.

44. There was no institute entirely devoted to the tribal societies of Asia with human rights as its main focus. There was a need for intensive training which should include all human rights, civil and political and economic and social alike. Such training should include courses on the preservation and development of local languages and teaching of the national language, so as to ensure wider access to the national life, courses on new agricultural techniques, and studies on the traditional use of plants for medical purposes.

45. Ms. MENCHU (International Indian Treaty Council) said that she belonged to a group of Indians which constituted the largest minority in Guatemala and which was the most affected by the situation of conflict prevailing there. In January 1980, her father had been burned alive together with 39 other persons in the Spanish Embassy massacre. Her mother had been kidnapped, raped and murdered. Most of her brothers had disappeared, been tortured and murdered.

46. She had left her country in 1981 and had since devoted part of her life to defending the human rights and fundamental freedoms of all the peoples of Guatemala as well as of the Indians of North America. In 1989, she had returned to Guatemala but had left again after receiving threats. Many of her compatriots, who had had to leave Guatemala, had tried to find a solution to the problem.

47. Three years previously, she had told the Commission that the situation in Guatemala would not change, that there would be more murders and more torture and that the Commission should take an appropriate decision. It was inconceivable that the Expert should say that Guatemalan culture was violent and that the people were responsible for the violence. The people in Guatemala were completely unaware of their human rights.

48. It seemed as if the Commission was deaf to the cries of the victims. She hoped, however, that even if it did not listen to the voices of the victims, the Commission would at least heed the recommendations of the non-governmental and intergovernmental organizations that were urging it to appoint a special rapporteur.

49. She had just received a cable from Guatemala reporting that the military commander of the region outside the capital was forcing the inhabitants of 16 rural hamlets to sign a declaration running counter to the national protests against the unconstitutionality of the so-called Civilian Self-Defence patrols. She had also been informed that indigenous farmworkers and poor Ladinos who were demanding a fair wage on the agricultural-export plantations had been subjected to militarization, threats and intimidation.

50. In the circumstances, if the Commission did not take specific steps, the Guatemalans would continue to lose their lives. Many democratic and progressive sectors in her country were hoping for a message from the Commission. It was unacceptable that countries which violated human rights should be shielded from criticism. Technical assistance should be given to the people, so that they would know how to assert their rights, rather than to those who violated human rights.

51. Mr. GAJARDO (World Federation of Democratic Youth) said that the political violence which had characterized Guatemala during 1989 had been comparable, in its intensity and horror, to the worst period of the dictatorship. His organization was particularly interested in the cases of 13 students who had been kidnapped between August and December 1989. Six of them had been murdered and their bodies showed obvious signs of torture, while seven were still missing. They were among the nearly 15,000 cases of serious violations of the right to life and the security and liberty of the person recorded during the previous year.

52. On the basis of evidence, the main instigators of the systematic violation of human rights were the paramilitary gangs, which were controlled and led by the army; the national police; the army itself and the other security forces. In the conflict zones, the army had persisted in the indiscriminate shelling of populated areas and lands under cultivation, particularly in the departments of Quiché, San Marcos and Péten.

53. The situation in Guatemala was known to the members of the Commission; the Expert, whose report (E/CN.4/1990/45 and Add.1) had been largely devoted to describing it; the Government, because of its ties to those who were committing the violations; and legislative bodies, such as the Commission on Human Rights of the Guatemalan Congress, which had adopted a resolution requesting the United Nations to appoint a special rapporteur.

54. The United Nations provided an impressive level of advisory-service assistance to the Guatemalan Government, totalling \$220,000 according to the Centre for Human Rights. The work done by the Centre was commendable, but the situation did not improve. Perhaps the answer lay in a misinterpretation of the purpose of advisory services, which were construed by some as a means of softening the criticism of a country's situation.

55. The Under-Secretary-General for Human Rights had rightly emphasized that, on the contrary, advisory services were not a substitute for the obligation of States to respect international standards in the field of human rights and the Expert had pointed out the gap between written law and reality in Guatemala. Legal standards were essential but, if they were not applied in practice, they were of little use. Advisory services could be of help to Governments which really intended to make use of them. They should not be seen merely as an expression of confidence on the part of the international community.

56. In Guatemala, the advisory services programme had helped to divert attention from the causes and magnitude of the violations of fundamental rights and freedoms. A study prepared by the Lawyers' Committee for Human Rights, a non-governmental organization, affirmed the need for the Commission to develop objective and specific criteria for determining whether a country had demonstrated sufficient respect for international law to be included in the programme. The first criterion was the degree of independence of the Judiciary and the extent to which civil courts could try members of State institutions who were charged with human rights violations; the second was the extent to which law enforcement agencies were separated from other bodies, such as the army and the third was whether there were reliable reports that the security forces perpetrated torture, disappearances and political assassinations.

57. It was not sufficient to rely solely on a Government's good intentions. While it was important to support democratic processes, it was essential to monitor the effectiveness of the measures taken by transitional Governments to protect and ensure respect for human rights. He urged the Commission to appoint a special rapporteur to investigate the situation of human rights in Guatemala and to report to the Commission at its following session.

58. Mr. WADLOW (World Association for World Federation) said that the imposition of states of emergency and martial law often signalled the inability of Governments to deal with fundamental problems of a structural nature. It might be a question of economic changes for which the people had not been adequately prepared, as in the cases of Argentina and Venezuela, where sharp price increases linked to those countries' efforts to reduce their foreign debt had led to rioting. There must be a popular understanding of economic reforms or such policies would be endangered. The advisory services programme could play an important role in facilitating awareness of economic issues.

59. A second factor in the imposition of martial law was violence linked to demands for self-determination, including demands for the modification of territorial jurisdiction. The situations in Yugoslavia, the Soviet Union, Tibet, the Arab territories occupied by Israel and Northern Ireland clearly fell into that category. It was obviously a delicate task for the advisory services programme to offer advice and training in situations linked to self-determination, yet that was the area in which the greatest tensions existed and constructive solutions must be found.

60. The third type of state of emergency situation arose when there were demands for radical changes in the structure and functioning of the Government, as in China and Myanmar. In both cases, student-led demands for reform had been met by uncompromising Governments. He wondered whether the advisory services programme could teach a spirit of compromise and dialogue to aging military leaders. Increasingly sophisticated studies on styles of negotiation were being produced, and the advisory services programme should be in the forefront of training military and other governmental administrators in the techniques of peaceful negotiation.

61. In the fourth type of situation, tensions resulted from the transition from dictatorship to nascent democracy. Such were the cases in Equatorial Guinea and Haiti, where the advisory services programme had laboured under difficult circumstances. In Romania, a State which was seeking new political institutions, a new economic system and a new relationship among its ethnic populations, the previous lack of freedom had prevented open discussion of the modalities of reform and the emergence of an alternative leadership. The advisory services programme must be prepared to facilitate the transition to a society of law and justice.

62. Ms. BRANTLY (World Association for World Federation) said that one way in which the advisory programme could provide assistance with respect to emergency situations was by ensuring that the procedural and substantive provisions of article 4 of the International Covenant on Civil and Political Rights were respected, and more specifically the provisions relating to proportionality and the recognition of an imminent threat. A society and a State of law and justice could exercise its right of self-defence and impose a state of emergency only to the extent that such measures were intended to resolve an unstable situation and were proportional to it.

63. Accordingly, any derogation from the obligations arising under the Covenant must specifically relate to the emergency in question; otherwise, it would serve to fuel the emergency, not to resolve it. For example, in Yugoslavia, the derogation from the right to work did not help to resolve the ethnic tension in Kosovo, but rather aggravated it. In Tibet, martial law had been imposed after peaceful demonstrations had ended, so that there was no relationship between the threat alleged by the Chinese Government and the demonstrations that had ostensibly caused it.

64. The advisory services programme should therefore establish a mechanism which would enable Governments to resolve the tensions in their countries which had led to the declaration of a state of emergency, and ensure that the derogations from their human rights obligations were proportional to the threat which they were allegedly addressing.

65. The CHAIRMAN said that the Commission had concluded its consideration of agenda item 22.

66. Mr. Ditchev (Bulgaria) took the Chair.

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

67. Mr. MARTENSON (Under-Secretary-General for Human Rights), introducing agenda item 14, said that, pursuant to resolution XI of the International Conference on Human Rights held at Tehran in 1968, the United Nations had carried out various studies of the impact of scientific and technological developments on the enjoyment of human rights. The issue had been on the agenda of the Commission since 1971 and had been the subject of 20 resolutions adopted to date. At its thirty-ninth session, the Commission had decided to consider the item on a biennial basis, beginning at its fortieth session.

68. By its resolution 1989/40, the Commission had decided to establish an open-ended working group to examine the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care. The working group had met from 8 to 19 January 1990 and had made considerable progress. In its resolution 44/134, the General Assembly had welcomed the establishment of the open-ended working group and requested the Commission to consider the subject at its current session in the light of the group's deliberations and recommendations.

69. By its resolution 1989/43, the Commission had decided to transmit to the General Assembly, through the Economic and Social Council, the final report of the Special Rapporteur on guidelines for the regulation of computerized personal data files (E/CN.4/Sub.2/1988/22). The Commission had also requested the Secretary-General to submit the report, together with documents containing the views expressed by Governments (A/44/606 and Add.1), to the General Assembly for consideration at its forty-fourth session. In its resolution 44/132, the General Assembly had expressed its appreciation for the report and had further invited the Special Rapporteur to submit to the Commission at its forty-sixth session a revised version of the draft guidelines, taking into account the comments and suggestions made by Governments. In addition, the General Assembly had requested the Commission to examine the revised draft guidelines and, after any necessary modifications, to transmit them, through the Economic and Social Council, to the General Assembly at its forty-fifth session for final adoption.

70. Since the proclamation by the General Assembly in 1975 of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, the General Assembly, the Commission and the Sub-Commission on Prevention of Discrimination and Protection of Minorities had concentrated most of their endeavours on the implementation of the Declaration and had adopted measures in that regard.

71. In its resolution 44/133, the General Assembly had noted the value of the Declaration in promoting human rights and fundamental freedoms. It had requested the Commission to continue to give attention, in its consideration of the current item, to the question of the implementation of the Declaration.

72. At its forty-first session, the Sub-Commission had adopted two resolutions and one decision relating to the item. By its resolution 1989/12 entitled "Movement and dumping of toxic and dangerous products and wastes", it recommended that the Commission request the United Nations Environment Programme to enter into negotiations with the Organization of African Unity with a view to finding global solutions to the problem of transboundary movement of hazardous wastes and their disposal. By its resolution 1989/39 entitled "Respect for the right to life: elimination of chemical weapons", the Sub-Commission had decided to give further consideration to that matter. Furthermore, in its decision 1989/108 entitled "Human rights and environment", it had decided to ask one of its members to prepare a concise note setting out methods by which a study on the subject could be made.

73. Mr. STEEL (Chairman-Rapporteur), introducing the report of the Working Group on the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care (E/CN.4/1990/31), said that, as could be seen from paragraphs 6, 7, 8 and 9 of the report, many Governments and non-governmental organizations and the World Health Organization (WHO) had participated actively and constructively in the activities of the Working Group. He paid particular tribute to WHO and to the delegations of a number of non-governmental organizations, without whose expert assistance the progress made would not have been possible. He also expressed his gratitude for the essential groundwork laid in the Sub-Commission by Mrs. Daes and Mrs. Palley.

74. He drew the Commission's attention to the reference in paragraphs 13 and 14 of the report to working methods. It was to be hoped that the Commission would agree that the decision to defer certain matters until consideration of the substantive articles had been completed was a wise one. Some of the problems left until a later stage might prove to be difficult technically, but he hoped that they would not produce problems of substance, and it would be a lot easier to solve them once the deliberations had been concluded. Indeed, some might have solved themselves by then. All members of the Working Group had attached importance to the need, in due course, to look again at the form, placement and, in a few cases, the substance of certain articles so as to insure consistency. A technical review would also be needed eventually,

75. Some of the articles represented the outcome of protracted discussions, during which the Working Group had reassessed the problems involved and moved slowly towards statements of principle that were both general enough to fit the wide variety of circumstances found in countries with different cultural

traditions and at different stages of economic development and sufficiently precise to provide real protection for the rights of persons with mental illness and the others concerned. Those who might wish to comment on any of the draft articles must bear in mind the need to strike a proper balance between universality and particularity.

76. With regard to paragraph 19, he thought that the Commission could be satisfied with the progress made to date and that the Working Group could reasonably ask to be allowed to carry on with its work at another session. There was a very good chance that it could complete its task in one more session, but it was of course for others to decide when that next session, if any, should be.

77. There had been a general sentiment in the Working Group that it would be better to have a rather longer interval between its next session and the next session of the Commission itself than the one week that had elapsed in 1990. That pointed to the Working Group meeting at least a few weeks earlier the next time, perhaps in November or even a little sooner.

78. Mrs. ILIC (Yugoslavia) said she regretted that the United Nations University had not been able to submit a report on the impact of scientific and technological developments on human rights for consideration by the Commission at its current session, and would not be in a position to submit it until 1991.

79. When implementing scientific and technological developments, particularly in developing countries, special attention must be paid to the protection and promotion of human rights. Greater emphasis must be placed on the interrelationship between the advancement of science and technology, the protection of the environment and human rights concerns.

80. Scientific and technological developments must be taken fully into account in future United Nations standard-setting activities and their impact on human rights monitored. It was to be hoped that the United Nations University's study would also include proposals for future activities at the national, regional and international levels.

81. Mr. ANCOG (Philippines) said he added his delegation's voice to the call for continued consideration of the impact of science and technology on the promotion and protection of human rights. The Philippines awaited with keen interest the result of the study being undertaken by the United Nations University which, it hoped, would be available in early 1991 for consideration by the Commission at its forty-seventh session.

82. His delegation congratulated the Sub-Commission's Special Rapporteur on his revised version of the draft guidelines for the regulation of computerized personal data files (E/CN.4/1990/54) which would provide Governments with the basic framework for enacting legislation that would end one of the most subtle forms of invasion of privacy. Those guidelines could not yet be considered exhaustive, however, because other areas also existed in which unauthorized persons could gain access to confidential personal files through sophisticated electronic manipulations.

83. His delegation supported the recommendation by the Working Group on the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care that it should hold a two-week session before the forty-seventh session of the Commission so as to facilitate the elaboration of the final text of the draft body of principles and guarantees.

84. The impact of science and technology on the environment and on agricultural production capacity in developing countries required further investigation. The depletion of the ozone layer and climatic changes would ultimately affect the quality of life. The revolution in gene technology might deprive the poor of the right to produce their traditional crops and have an adverse impact on their comparative advantage because of the accelerated move towards the intellectual property protection of bio-technological inventions.

85. His delegation called for vigilance with regard to scientific and technological activities that encroached upon human rights and urged a thorough analysis of the implications of scientific and technological developments for the protection of those rights.

86. Ms. BECK (World Movement of Mothers) said that her organization had confidence in scientific and technological progress, but it must not be used to violate the right to life. A human being was not an organ that could be removed from the body of the mother at will. Every person began a unique life cycle at the moment of conception. Those who were in favour of abortion in all its forms, including the use of the abortion pill RU 486, must remember that no penal code of any country gave the right to kill another human being. The Commission must ensure that scientific and technological progress benefited life, not death.

87. Mr. FLACHE (World Federation for Mental Health) expressed satisfaction at the distinct progress made by the Working Group on the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care. It was to be hoped that, when it received the report of the Working Group, the Commission would take into account the progress made in preparing the text and authorize, with the approval of the Economic and Social Council, a second meeting of two weeks of the Working Group, preferably before the end of 1990, so that the final report could be submitted to the Commission at its forty-seventh session.

88. The matter required urgent attention, because the human rights of mentally-ill persons continued to be violated either deliberately or through neglect, and it was high time that the Commission took a stand on the problem with a clear and definitive declaration.

89. Ms. TOLEDO (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that there were two new technological advances that helped in the identification of missing persons. The first technique involved an immunogenetic data bank containing the genetic data of the families of missing children, whose identity could then be established. The data bank had also been conceived as a way to combat trafficking in children. The system offered a wide range of possibilities for recovering children who had been abducted and returning them to their rightful families.

90. The other technique involved forensic anthropological investigations carried out by an Argentine team set up by the American Dr. Clyde Snow. The technique, which had been used in Argentina, Chile and Bolivia, helped to identify human skeletons found in unmarked graves and to determine the cause and the manner of death. With its aid, the investigators had elucidated numerous cases of missing persons, and many families had learned the fate of their loved ones. Unfortunately, the laws granting impunity or amnesty had closed the doors of justice and the evidence gathered through such techniques could not be used to punish the perpetrators of those human rights violations.

The meeting rose at 1 p.m.