COMMISSION ON HUMAN RIGHTS

Forty-fourth session

SUMMARY RECORD OF THE SECOND PART */ OF THE 36th MEETING

Held at the Palais des Nations, Geneva, on Thursday, 25 February 1988, at 6.20 p.m.

Chairman: Mr. SENE (Senegal)

later: Mr. MEZZIALAMA (Italy)

Mr. DELGADO BARRETO (Peru)

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Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its thirty-ninth session (continued)

*/ The summary record of the first part of the meeting appears as document E/CN.4/1988/SR.36.

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Miss WALKER (United Kingdom) said that the Sub-Commission was a valuable body of independent experts with an indispensable role to play in the United Nations human-rights system, and she hoped that it would be able to meet annually in future. The Sub-Commission had a broad mandate and should not stray too deeply into areas that were widely covered elsewhere but instead should concentrate on the specific human-rights aspects of items to which it could make a distinctive contribution, as well as on initiating new developments and providing a useful forum for non-governmental organizations active in the field.

It was essential, however, to retain the distinction between the expert and advisory function of the Sub-Commission and the policy-making role of the Commission itself. On the other hand, the Commission needed to give more detailed and analytical attention to the results of the Sub-Commission's work with a view to increasing the effectiveness of both bodies in their respective roles.

In connection with the rationalization of the Sub-Commission's work, her delegation wished to stress the need for a more limited and ordered agenda and a more equitable allocation of time to each item. The Sub-Commission was, unfortunately, continuing to increase its work-load without any corresponding reform in its methods of work or the elimination of agenda items to which due consideration had already been given. Biennial consideration of some items would also be helpful.

The independent status of its members should allow the Sub-Commission to conduct its business in a non-politicized way and it was vitally important not only that all its members should attend the meetings of the Sub-Commission on a full-time basis, but also that as many of them as possible should participate in the working groups, both sessional and pre-sessional. It was equally important that the Sub-Commission receive strong support from the Secretariat, and her delegation sought an assurance that Sub-Commission documents would in future be made available in good time in all languages, including Russian. It also urged the Sub-Commission's special rapporteurs to comply with the deadlines established by the Centre for Human Rights, so that the Secretariat could arrange for their reports to be issued in all languages before the relevant debate.

On one other procedural point, her delegation believed that the independent nature of the Sub-Commission would be enhanced if its members were able to vote in secret - not regularly, but whenever the Sub-Commission itself so desired.

Turning to the draft resolutions to be considered under agenda item 19, she said that her delegation would be happy to join a consensus on draft resolutions VII and VIII. As far as draft resolution VI, was concerned, however, it had some reservations about the use of the advisory services programme contemplated in operative paragraph 2, and reiterated its view that the budget for advisory services should be put to a more practical use than seminars. There was, in any case, already an appropriate forum for the subject in question, namely the Working Group on Indigenous Populations.
7. The study on treaties concluded between indigenous peoples and States called for in draft resolution IX, moreover, was a matter that needed further consideration. That draft resolution addressed only the areas where Governments had gone to the trouble of making treaties and there were other aspects of concern about indigenous populations which it did not deal with, perhaps because no treaties were involved. That selectivity was very undesirable and the views of Governments, specialized agencies and non-governmental organizations should be sought before a decision was taken about the mandate of any special rapporteur to be appointed on that topic.

8. A body such as the Sub-Commission could be as good only as its individual members, who must be genuine independent experts able and willing to act in accordance with their own consciences, regardless of the position of their respective Governments. In that regard, all members of the Commission must consider carefully how they could best use their votes in the coming week to elect candidates who possessed the requisite qualifications and thus ensure that the Sub-Commission continued to perform its valuable role as an independent expert body in the United Nations human-rights system.

9. Mr. YIANGOU (Cyprus) said that the Sub-Commission had a unique role to play in United Nations efforts for the promotion and protection of human rights at both the national and international levels and in combating human-rights violations whenever and wherever they occurred. The Sub-Commission's original mandate, as a body of independent experts, had been considerably extended over the years, in particular on the basis of Economic and Social Council resolution 1503 (XLVIII). Regardless of whether a change in its name might be appropriate, it had amply justified its existence by undertaking a large number of important in-depth studies on various human-rights issues. Although the priority attached to some of those studies might be questioned, the fact remained that such activities had aroused wide interest, serving as a focal point for constructive discussion, and had been translated in certain cases into concrete practical measures that had helped to improve the individual's life and well-being, a field in which the Sub-Commission should intensify its work, concentrating on further standard-setting to meet the new challenges of the contemporary world. By rationalizing its crowded agenda, moreover, the Sub-Commission might be able to devote more time to discussing the studies prepared.

10. Much criticism of the Sub-Commission's work had arisen from the widely held view that politicization of its activities had taken on unacceptable proportions. Such politicization was clearly not in keeping with the independence, impartiality, objectivity and integrity expected of an independent body of experts participating in their personal capacity, but some degree of politicization was inevitable, given the nature of some of the subjects dealt with, the more so since Government observers participated freely in the discussion on practically every item of the Sub-Commission's agenda.

11. Differences of approach regarding the tasks and role of the Sub-Commission however, should be resolved through dialogue and consultation, rather than confrontation, criticism or even accusations, and with due regard for the complementary relationship between the activities of the Sub-Commission and those of the Commission itself.
13. In such a sensitive area as human rights, all States had a responsibility to safeguard the independence of the experts serving on the Sub-Commission; to respect their impartiality and objectivity avoiding any action which might compromise them; to strengthen rather than to erode their integrity and to encourage them to speak the truth as they saw it. They should refrain from all interference, direct or indirect, with the experts' work, since such interference could not but undermine the authority of a body which, on the whole, had been an effective tool in advancing the noble cause of human rights.

14. Mr. LILLIS (Ireland) said that the forthcoming election of members of the Sub-Commission was a most significant opportunity for the Commission to influence the work of its advisory body for the years to come. In so doing, it might well be guided by the eighteenth century maxim; "Man, not measures". What mattered was the quality of those holding responsibility and not the complexity of their deliberations. His Government had not itself put forward any candidate for membership of the Sub-Commission, but would support those candidates nominated by other Governments who showed evidence of three important qualities: independence, including independence of their own Governments; personal commitment to the cause of human rights; and, lastly, expertise.

15. A member of the Sub-Commission lacking either of the first two qualities were not just a neutral factor in that body but a clearly detrimental one. If, as was often the case, such a member had mastered the complexity of human-rights issues, his very expertise, applied to obstruct the investigation or the elimination of violations, became itself a deliberate and gross violation of human rights, an injection of poison rather than an antidote to the disease. Some such persons would probably be elected, unfortunately, but those delegations which sincerely wished to further the goals of the Commission and Sub-Commission should give priority to independence and commitment when deciding which candidates to support.

16. His delegation had given careful consideration to the ideas that were circulating concerning a resolution to improve the efficiency and quality of the Sub-Commission. Some were very worth while: a greater measure of organized and transparent complementarity was desirable between the Commission and the Sub-Commission, and there was also a need for the Sub-Commission to rationalize and reduce the plethora of items on its various programmes, avoiding as far as possible any overlap with the work of the Commission, the Economic and Social Council and the General Assembly. In particular, his delegation had been struck by the idea of one non-governmental organization - the Four Directions Council - that the Sub-Commission should concentrate more on providing an early warning system for the Commission itself, rather than routinely rehearsing every established issue on the human-rights agenda.

17. Reform or restructuring must not, however, in any way limit the ability of the Sub-Commission to respond to new and urgent problems, even if, in addressing them, a neater and clearer programme were knocked askew. The measure of success in such a case was the elimination not of resources but of violations.

18. In conclusion, mention must be made of the extraordinary case of Dimitru Mazilu, a member of the Sub-Commission, which, in several ways, was the single most disturbing development to have occurred within the Sub-Commission for a number of years and one which had major implications as
far as the credibility of that institution was concerned. The Permanent Mission of Romania had informed the Secretariat, by a letter dated 11 August 1987, that Mr. Mazilu was unable to attend the Sub-Commission's 1987 session because of the state of his health. However, the Irish delegation had definite and unimpeachable evidence that Mr. Mazilu had applied for permission to the Romanian authorities to visit Geneva but had failed to secure such permission; and that, since May 1986, Mr. Mazilu had been unable to perform his duties as a member of the Sub-Commission, because of the attitude of his country's authorities.

19. That situation constituted an infringement of the human rights of a man who had been elected by the Commission precisely to protect the human rights of others, and amounted to a studied and contemptuous rejection of and insult to everything that it was trying to achieve. Unless the Commission was able to rescue a special rapporteur from the violation of his own rights by the very authorities that had nominated him to serve on the Sub-Commission, its credibility would be very severely damaged indeed.

20. Mr. PALACIOS (Spain), having thanked the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities for his excellent introduction of the Sub-Commission's report (E/CN.4/1988/37), said that the positive contribution of the Sub-Commission to the promotion and protection of human rights was recognized by all. There was recognition also of the role played by the non-governmental organizations in the defence of human rights and fundamental freedoms. However, a careful analysis of the work and operation of the Sub-Commission suggested that there was still considerable room for improvement with a view to achieving better results.

21. The Sub-Commission had its specific functions and was a technical body of experts. The Commission on Human Rights was an intergovernmental organ which, under the Economic and Social Council, was the principal United Nations body competent in the matter of human rights. The work of the two bodies was complementary, but it was for the Commission to establish guidelines and directives for Sub-Commission activities.

22. The experts who were members of the Sub-Commission had thus always to bear in mind the terms of reference established for it by the Commission; they had also to be mindful of their specific responsibilities, as laid down by the resolutions of the Commission on Human Rights, the Economic and Social Council and the General Assembly. His delegation therefore considered that the experts on the Sub-Commission should not, as a general rule, propose new studies until the previous ones had been properly completed, with due observance of the maximum three-year period laid down by the Sub-Commission itself. The experts should give priority to topics of general interest, preferably those connected with the formulation of international law, and should refrain from undertaking the preparation of a multitude of reports which were often not completed as they should be or, if completed, proved ineffective or obsolete.

23. The experts should not initiate new studies which involved expenditure for the United Nations without prior authorization from the competent intergovernmental organs. They should also endeavour, as far as possible, to avoid addressing direct requests or suggestions to the Secretary-General, to Governments or to specialized agencies, unless they had been instructed to do
so by the Commission itself. If those rules were duly observed, the efficiency of the Sub-Commission's work would be greatly enhanced and its role as a subsidiary body of the Commission would be strengthened.

24. It was obvious to everyone that the Sub-Commission's agenda was much too heavy. In order to avoid duplication of the work of the Commission, the consideration of certain topics should be deferred and more time allocated to the examination of others. An effort should also be made to avoid adopting resolutions on concrete situations which were already under consideration by the Commission.

25. With a view to making the best possible use of the time available, and of the Conference Services Division and its resources, an attempt should be made to rationalize the debates by, for example, concentrating the statements by NGOs in the first week of the session, establishing time-limits for the statements of the Sub-Commission members themselves and avoiding procedural discussions so as to concentrate on substance. Every effort should also be made to deliver reports within the time-limits set by the Secretariat in order to avoid delays due to lack of documentation in the various working languages.

26. His delegation deplored the increasing politicization of certain human-rights topics and the tendency on the part of some of the outgoing experts to use the Sub-Commission's debates to raise political issues totally alien to the cause of human rights. It therefore appealed to all States to nominate their candidates for members and alternates solely on the basis of experience and independence. It also urged the experts elected to remain faithful to their independent role, to attend the meetings of the Sub-Commission and its working groups in person and to participate actively in the discussions so that the exchange of views could effectively advance the cause of human rights.

27. In conclusion, his delegation, which welcomed the fact that the Sub-Commission had been able to hold its belated thirty-ninth session, expressed its support for that organ, which had an essential part to play in the cause of human rights and had co-operated effectively in the defence of human rights and fundamental freedoms.

28. Mr. Mezzalama (Italy) took the Chair.

29. Mrs. ZELNER GONCALVES (Brazil) said that her Government, which attached great importance to standard-setting, fact-finding and institution-building in the field of human rights, considered it indispensable to preserve and strengthen the complementary relationship between the Sub-Commission and the Commission on Human Rights, which was fundamental to improving the performance of both bodies and essential to the efficiency of the United Nations human-rights system as a whole. The Commission had to define clearly its fundamental role of promoting and encouraging the implementation of universally recognized human rights and fundamental freedoms and, in that connection, it was important that the Sub-Commission should be strengthened in its distinctive task, namely providing the Commission, on request, with expert advice on matters within its competence.

30. Efforts to ensure that the Sub-Commission kept within its terms of reference were therefore welcome. However, several resolutions had been adopted at the Sub-Commission's 1987 session on matters being dealt with
directly by the Commission. Moreover, the Sub-Commission still tended to
address itself directly to Governments and to the Secretary-General of the
United Nations. Irrespective of the merits of such resolutions, her
delegation believed that a body composed of experts acting in their personal
capacity should more appropriately express its views by submitting suggestions
and recommendations to the Commission. Not only would duplication thus be
avoided, but such suggestions, once approved by a higher instance, would
benefit from the imprint and authority of the Member States, thus constituting
far more expressive instruments in the endeavour to advance the cause of human
rights.

31. The seminar recently held at the University of Limburg on the future of
the Sub-Commission and the opinions and suggestions circulated by NGOs
(E/CN.4/1988/NGO/38 and 41) bore eloquent testimony to the general concern
about duplication of work and the need to rationalize the relationship between
the Sub-Commission and the Commission. Her delegation therefore called for a
strengthening of the role of the Sub-Commission through a clear definition of
its mandate and a strict adherence to its terms of reference.

32. Mr. de SILVA (Sri Lanka) said that much valuable time had been taken up
at the thirty-ninth session of the Sub-Commission in discussing the nature of
its role and functions, as well as questions such as how far the experts were
independent of control by their own Governments. In that last connection, it
might, perhaps, be extremely revealing to compare the experts' voting pattern
to that of their Governments in the Commission on Human Rights, the Economic
and Social Council or the General Assembly.

33. In general, however, all the members of the Commission would be aware of
the original mandate entrusted to the Sub-Commission in 1947 and also of
Sub-Commission resolution 1 (XXIV), which spelt out the procedures which that
body intended to adopt in dealing with matters referred to it pursuant to
Economic and Social Council resolutions 728 F (XXVIII) and 1503 (XLVIII).
Much of the confusion that had prevailed regarding the work of the
Sub-Commission would not have occurred if only it had chosen to follow the
guidelines contained in its resolution 1 (XXIV).

34. It appeared, for example, that the Sub-Commission and its Working Group
on Communications had not always adhered to the imperative rules in
paragraphs 3 (b) and 4 (b) of that resolution concerning the admissibility of
communications. Perhaps the members of the Sub-Commission took the view that
they were not bound by previous rulings of the Sub-Commission, a problem that
highlighted the danger of permitting a subsidiary body to lay down its own
rules: at each session, the Sub-Commission might decide upon different rules
or modify its rules from time to time or from case to case retrospectively.
There thus appeared to be a vital need to establish rules, backed by the
authority of the Economic and Social Council, that would be binding on the
Sub-Commission.

35. On another controversial point, namely whether a State should be
permitted to explain its position before a resolution concerning it was put to
the vote, the records showed that that right had been allowed by the
Sub-Commission in 1981 and 1982, denied in 1983, recognized again in 1984 and
1985 and allowed once more, after much argument, in 1987. At the thirty-ninth
session, some members of the Sub-Commission had argued that the right of a
36. However, most resolutions were considered long after the debate had ended and fresh material not the subject of discussion had at times been injected into some resolutions. Others had not even been debated or discussed. Much more time had been spent in arguing whether States could be granted a few minutes to explain their positions than would have been expended if the, undeniably fair, request had been granted at the outset. His delegation recommended that the participation of an interested State should be permitted even under the procedure established by Council resolution 1503 (XLVIII), in the same manner as in the Commission on Human Rights.

37. Regarding the question as to whether the Sub-Commission required a quorum, no meeting in any democratic system would be considered valid unless there was a quorum present. Failure to observe such a requirement could lead to a minority group or cabal of the body meeting and deciding on a course of action not acceptable to the majority. That was hardly the sort of decision by which the experts sought to guide the Commission on Human Rights in its deliberations. Justice should be done speedily, of course, but there was no point in expediting injustice.

38. All of the foregoing was symptomatic of a lack of clarity as to whether the Sub-Commission, a subsidiary body of the Commission on Human Rights, was entitled to adopt rules of its own. His delegation thus recommended that the Economic and Social Council should either draw up a set of rules to supplement the rules of procedure for the Sub-Commission or else direct the Sub-Commission, through the Commission on Human Rights, to prepare a draft set of rules for approval by the Council.

39. Mr. DAO (International Labour Organisation) said that the report of the Sub-Commission covered many matters in which the ILO shared a mutual concern and took an active part. The question of the rights of indigenous populations, in particular, was of special interest to his organization since the International Labour Conference, at its forthcoming session in June 1988, would be considering an item on the partial revision of ILO Convention No.107, the Indigenous and Tribal Populations Convention, 1957. The adoption of a revised convention by the Conference might be expected in 1989.

40. The three fundamental aspects of Convention No. 107 to be re-examined were its basic orientation - to be redirected from an integrationist approach to respect for the social and cultural identity of the populations concerned; its provisions on land rights - to be considered together with the environment and other natural resources; and its provisions on the conditions of recruitment and employment of indigenous populations - to afford improved protection.

41. In the elaboration of Convention No. 107, which was still the only international instrument dealing specifically with the living and working conditions of indigenous populations, the International Labour Organisation had engaged in extensive consultation and co-operation with the United Nations and other specialized agencies and organizations concerned and would seek to maintain that co-operation throughout the revision process. A first report, that was to be submitted to the International Labour Conference on the
question, had already been communicated to the United Nations and other organizations concerned, and, in particular, to the Sub-Commission's Working Group on Indigenous Populations, and a second report would be circulated shortly.

42. One important point was the question of participation in the revision process not only of the United Nations and other organizations but also of representatives of the indigenous and tribal populations themselves. While that was not specifically provided for in ILO procedures, a number of steps had already been taken and would continue to be taken in that regard. Non-governmental organizations had participated in the meeting of experts that the Governing Body of ILO had convened in 1986 to consider a revision of the Convention, and the reports being submitted for the Conference reflected the views expressed by those groups.

43. His organization was ready to participate actively in the further consideration of the question of indigenous populations by the Sub-Commission and other United Nations bodies, and more specifically with regard to the preparation of a draft declaration of principles on the rights of indigenous populations. The draft principles, as contained in annex II to the Sub-Commission's report, would be brought to the attention of the International Labour Conference when it came to consider the revision of Convention No. 107.

44. Mr. ELIAV (Observer for Israel), welcomed the fact that, by its resolutions 1987/2 and 1987/4, the Sub-Commission had reiterated the call to bring to justice the Nazi war criminals who had committed the worst outrages ever known in modern history and who had been responsible for the Holocaust of six million Jews.

45. There was no greater or more atrocious war criminal guilty of those outrages and yet still at large than Alois Brunner, chief assistant of Adolf Eichman, who had sent over 130,000 European Jews to their deaths. According to eyewitnesses, Brunner had acted with particular bestiality and uncommon zeal, offering special rewards for the betrayal of Jews, instructing officials at Auschwitz to inform him immediately if the number of Jews arriving had been less than expected and hunting down Jews in the Nice area, where the previous Italian occupation authorities had tried to prevent their deportation. He had organized the last transport to leave for the gas chambers from the infamous Drancy camp in August 1944, a week before the liberation of Paris. Backed by Heinrich Himmler, he had also frustrated attempts to negotiate the ransom of 14,000 Slovak Jews as the German defeat had become clear.

46. Brunner had managed to escape after the war, hiding in several places under false identities. Meanwhile, the States where he had committed genocide had either indicted him as a war criminal, issued warrants for his arrest or tried him in absentia. Israel, for its part, had been urging that Brunner be brought to trial ever since it had become apparent that he had found refuge in Syria, in 1954, under the assumed name of Dr. Georg Fischer. It should be added that Brunner had, in fact, admitted his real identity on several occasions, not least in a conversation in 1960 with a member of the Syrian intelligence services, which employed him in various tasks and provided him with bodyguards and a monthly pension.
47. In 1985, after Brunner's presence in Syria had been reconfirmed on several occasions, Israel had demanded in a note to the Secretary-General of the United Nations that the Organization should ask Syria to hand him over to an international tribunal. Brunner had, incidentally, been quoted in newspaper reports as saying that he did not regret his actions and that all Jews "deserved to die because they were the devil's agents and human garbage". That was the man whom Syria had been shielding for the past 28 years. Consequently, his delegation once more urged all those who were in a position to help, as envisaged in the operative paragraphs of Sub-Commission resolution 1987/4, to do everything in their power to see that Brunner finally faced justice.

48. Mr. BA (Observer for Mauritania) said that his country was well placed to appreciate the major contribution of the Sub-Commission to the United Nations efforts to protect and promote human rights in view of its close co-operation with that body on the question of the measures to be taken to eradicate the after-effects of slavery, which had been abolished throughout Mauritanian national territory by a Government decision of 5 July 1980. That decision, reflecting a sincere wish to eliminate what had been no more than the vestiges of slavery persisting mostly in the form of attitudes and mentalities, had provided the opportunity for some circles to distort the real situation. Consequently, by inviting the Sub-Commission to send a fact-finding delegation, his Government had demonstrated both its genuine commitment to international co-operation in the field of human rights and the fact that it had nothing to hide.

49. Following the abolition of slavery, economic and social changes, the decline of the traditional economic system and public awareness activities had hastened the eradication of the phenomenon. Former slaves were currently living on the same footing as their fellow citizens, enjoying the same rights and opportunities and experiencing only such problems as resulted from underdevelopment, but without discrimination of any kind. Activities to assist former slaves could not be dissociated from the efforts undertaken by his Government to ensure the well-being of the Mauritanian people as a whole. In that regard, external assistance was welcome provided it was in keeping with those efforts.

50. Throughout the time that the question of slavery had been considered, his Government had co-operated fully with the United Nations and had demonstrated its good will and frankness. Its position remained unchanged and, following the restructuring of 12 December 1984, it was more committed than ever to promoting respect for the fundamental rights of all citizens. That new direction was evidenced by the proclamation of a general amnesty and also reflected in the establishment of democratic structures for municipal elections based on direct universal suffrage, in the full participation of women in social and economic development, and in the ratification of a series of international conventions relating to slavery.

51. Mr. Delgado Barreto (Peru) took the Chair.

52. Mr. van den BERG (Observer for the Netherlands) said it would be appropriate for the Commission on Human Rights to adopt a resolution to guide the Sub-Commission along a road that would reaffirm and strengthen the very valuable functions it had to perform in initiating new developments in the field of human rights, stimulating standard-setting; monitoring the dynamics
inherent in human rights, providing a platform for the intercultural discussion of human rights, and providing a forum for the non-governmental organizations.

53. His delegation, which felt that the Sub-Commission had not been entirely successful in making use of the limited resources available to it, would like to stress the need for organizational measures which would be designed not to change the fundamental character of the Sub-Commission's functions, but to permit their full realization. The measures it favoured were a more disciplined structuring of the Sub-Commission's agenda, including further biennialization of agenda items to achieve an orderly discussion of urgent issues; giving priority to standard-setting activities, using pre-sessional working groups, where necessary, to speed up activities that were behind schedule; reorganizing participation by non-governmental organizations in such a way that sufficient time remained for discussion among the experts themselves and, in certain phases of the deliberations, limiting NGO contributions to answering specific questions from the experts.

54. The Sub-Commission should, moreover, concentrate on new developments of a human-rights nature and avoid repetitive deliberations on issues that had been extensively discussed in other United Nations forums. It should focus on those features of a situation where its distinctive character could add elements and aspects not yet treated elsewhere. More attention should also be given to the effects of human-rights violations on women, as an integral part of all Sub-Commission activities.

55. Furthermore, the experts should always be aware of their independent role since it was most disappointing to see some experts acting openly as mouthpieces of their Governments, thus ridiculing the intent for which the Sub-Commission had been established. The experts should also show awareness of the high costs of the Sub-Commission's meetings by being present when meetings were held and by preparing the items to be discussed. Lastly, the Secretariat and the Sub-Commission should monitor more closely the different measures it had adopted with a view to removing activities of little interest from its programme and to using scarce resources for those activities where positive results could be expected.

56. The adoption by the Commission of a resolution incorporating some or all of the elements he had mentioned could, in conjunction with the elections to be held shortly, provide the Sub-Commission with a fresh start.

57. In connection with the report of the Sub-Commission, his delegation commended the report of the Working Group on Slavery and Slavery-like Practices (E/CN.4/Sub.2/1987/25), from which the alarming conclusion could be drawn that, in 1988, slavery and slavery-like practices still represented some of the gravest violations of human rights and affected especially vulnerable groups of society such as women and children. Those practices were often interrelated: for example, the selling of young children and child prostitution complemented each other while emigration was sometimes linked to forced prostitution.

58. The eradication of that kind of human exploitation required a co-ordinated approach through international co-operation, especially by reinforcing preventive action by Governments, the United Nations and the specialized agencies, by non-governmental organizations and by the
International Criminal Police Organization. Traffic in women was still widespread and the prevention of forced prostitution, the repression of its exploitation and the social rehabilitation of its victims were relevant not only to children but also to women. He therefore suggested that the activities in that field, recommended in Sub-Commission resolution 1987/32, should be applied also to young women.

59. His delegation welcomed the request by the Sub-Commission, in its resolution 1987/31, that the study by Mr. Fernand Laurent, Special Rapporteur, on the legal and social problems of sexual minorities be made available as a document of the Sub-Commission at its fortieth session. However, it was still not clear what steps had been taken to implement Economic and Social Council resolution 1983/30 and General Assembly resolutions 38/107 and 40/103 on the issue. His delegation would therefore be in favour of a recommendation to the Council to examine the question of the suppression of traffic in persons and exploitation of the prostitution of others at its next regular session, and to invite the Secretary-General to report on the steps taken to implement the recommendations in Council resolution 1983/30. It also intended to explore with other interested delegations the possibility of submitting, in a climate of consensus, a draft resolution on the basis of Sub-Commission resolution 1987/32 on the report of the Working Group on Slavery and Slavery-like Practices in order to enhance further developments aimed at the elimination of human exploitation.

60. It was unfortunate that the Sub-Commission had decided to take no action on the excellent analysis by Mr. Bossuyt, its Special Rapporteur, concerning the proposition to elaborate a second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (E/CN.4/Sub.2/1987/20), thus leaving the Commission to consider that important subject without the appropriate documentation. That situation should not prevent the Commission from discussing the issue, which was literally of vital importance to both States and individuals.

61. In the view of his delegation, no State could purport to protect the interests of individuals under its jurisdiction properly unless it could guarantee that under no circumstances would it kill its own people. He therefore advocated the establishment of a working group to consider the analysis by the Special Rapporteur and make recommendations to the Commission. He also hoped that the Sub-Commission would be in a position, in 1988, to forward the appropriate documentation to the Commission, together with any recommendations it might wish to make.

62. Mr. KHERAD (Observer for Afghanistan) said that his delegation attached great importance to the activities of the Sub-Commission and its role in generating innovatory ideas. One of its most valuable functions was the preparation of studies, at the request of the Commission, on specific human-rights issues. Within its terms of reference, it already made a very useful contribution in that regard, for example by reporting each year on the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the racist and colonialist régime of South Africa. On that question, his delegation supported draft resolution V, recommended by the Sub-Commission for adoption by the Commission.

63. The Sub-Commission had also submitted a valuable study on the problem of discrimination against indigenous populations, which represented a large section of mankind whose voice was only recently coming to be heard by the
That study should serve as the basis for devising effective measures to protect indigenous populations against all forms of discrimination and to preserve their identity. Accordingly, his delegation supported the recommended draft resolutions VI, VII, VIII and IX. Furthermore, on the question of positive measures relating to a more effective realization of economic, social and cultural rights, his delegation welcomed the adoption of Sub-Commission resolution 87/29.

64. There was a close organic link between the Commission on Human Rights and the Sub-Commission, established as a body of experts to assist the Commission in finding positive solutions through studies and recommendations. Its status, functions, tasks, mandate and terms of reference had been clearly defined and it should carry out its work on the basis of the views of the experts serving on the body, while seeking the broadest possible agreement in the adoption of decisions.

65. The Sub-Commission's work programme should be drawn up in the light of the requests it received from the Commission and efforts should be made to catch up on the arrears in the preparation of studies. The activities of the Sub-Commission should complement those of the Commission, helping it to carry out its mandate through theoretical studies and recommendations on major issues, prepared in a spirit of complete impartiality. It should concentrate more on specific human-rights violations and address the question of international peace and security, which were essential to the promotion of human rights, and especially the right to life. His delegation was confident that a detailed analysis of the views of States on the Sub-Commission's working methods would help greatly to improve its effectiveness.

66. Mr. BARSH (Four Directions Council) said that, at its fifth session which had been marked by an unprecedented level of governmental and indigenous participation, the Sub-Commission Working Group on Indigenous Populations had agreed on a number of recommendations, submitted as draft resolutions VI to IX inclusive, all of which enjoyed unqualified indigenous support. Foremost among those recommendations, in draft resolution VIII, was authorization for the Chairman/Rapporteur of the Working Group to fill in some of the gaps in the preliminary text of a draft declaration of principles on indigenous rights for consideration at the Working Group's sixth session. That would obviously accelerate the Group's standard-setting work and give Governments a better idea of the full scope of the possible declaration and thus a better opportunity to begin making a constructive contribution to the drafting process.

67. Related to that work was the proposal, in draft resolution VII, regarding the proclamation of 1992 as an international year of indigenous peoples. That proposal had no financial implications and would be strictly a symbolic device to draw international attention to the new declaration. Since international years must be requested well in advance, of course, the Commission could not wait until it was much closer to the completion of the declaration to take that step.

68. Regarding the Sub-Commission's third recommendation, in the form of draft resolution VI, his organization viewed the proposed seminar as an implementation exercise designed to enable Governments and indigenous experts to share experience and consider the most effective strategies for realizing the economic and social rights of indigenous peoples. It would not duplicate
the activities of the Working Group, but deal with more basic, practical problems of particular usefulness to Governments and indigenous peoples. He noted that the financial implications for that proposal had been considerably overestimated, on the basis of the assumption that all six official languages would be used. Past experience showed that two languages would suffice, thus reducing the anticipated cost by as much as a third.

69. The last of the Sub-Commission's recommendations, in the form of draft resolution IX, that a study be prepared on the treaties concluded between States and indigenous peoples had unfortunately given rise to some misunderstanding. The idea was not a new one: the Sub-Commission's Special Rapporteur on the problem of discrimination against indigenous populations, had recommended a thorough and careful study of such treaties in his final report on the subject (E/CN.4/Sub.2/1986/7/Add.4, para.389). The indigenous organizations participating in the Working Group's fourth session had then unanimously proposed that respect for treaties should be included among the draft principles on indigenous rights (E/CN.4/Sub.2/1985/22, annexes III and IV). In the summer of 1987, indigenous non-governmental organizations from all parts of the world, the World Council of Churches and the Independent Commission on International Humanitarian Issues had all called for the appointment of a special rapporteur on the status of treaties and other agreements between indigenous peoples and States. That proposal had been taken up by the Working Group and then discussed and adopted by the Sub-Commission.

70. A number of Governments, such as those of Canada and New Zealand, had also referred to the importance of treaties in their remarks to the Working Group the previous year and it should be noted that the United States Congress was considering a resolution acknowledging the need to exercise the utmost good faith in upholding its treaties with the various Indian tribes. In its proposed conclusions on the partial revision of ILO Convention No.107, the International Labour Organisation suggested that the revised convention should include a saving clause to allow for benefits accorded to indigenous peoples under treaties.

71. Such views made it clear that treaties and other agreements, both old and new, should play a fundamental role in current and future relations between States and indigenous peoples. It was precisely for that reason, and in view of the historical and legal complexity of the matter, that an independent expert study of the question should be prepared to assist the Working Group in its standard-setting role.

72. Some speakers had suggested that the geographic scope of the proposed study was too narrow. Treaties had been employed as an instrument of colonial expansion by every major European power in all parts of Africa and southern Asia, as well as in the Americas, and had sometimes acted as a restraint on the European settlers. In most parts of the world, however, the colonized peoples had been able to regain their independence and, in the process, repudiate such treaties with the European empires. However, in the case of indigenous peoples, who could not realistically expect to achieve independence and who would remain part of other peoples' States, treaties had been their strongest legal weapon for self-preservation, precisely because the States involved had continued to accord those treaties at least some degree of official respect.
73. While his organization hoped that any international standards for indigenous rights would go far beyond the substance of the indigenous treaties which already existed, such standards would have to take account of the rights which many indigenous peoples already possessed or claimed under treaties. Above all, States should be encouraged to revise and strengthen their old agreements with indigenous peoples, or to make new ones, since the relations between States and indigenous peoples should, as far as possible, be governed by mutual respect and mutual consent. For all their historical flaws, treaties symbolized, for the indigenous peoples, their right to participate in the decisions which affected them.

74. Mr. LACK (Co-ordinating Board of Jewish Organizations - World Jewish Congress) said that, at the recent seminar held at the University of Limburg, a broad consensus had emerged regarding the importance of the Sub-Commission's principal functions and the special role it had to play, as an independent expert body, in developing specific studies and devising more effective ways of responding to human-rights violations. The view had also emerged that the Sub-Commission, acting together with the Commission, the Centre for Human Rights and the NGO community, should endeavour to formulate a comprehensive human-rights policy, taking into account the important human-rights functions of such specialized agencies as the International Labour Organisation and UNESCO and the vital role of the various bodies established to monitor implementation of the international instruments on human rights.

75. Turning to the report of the Sub-Commission on its thirty-ninth session, he said he wished to emphasize the importance of resolution 1987/2 concerning the files assembled by the War Crimes Commission. In that connection, his delegation welcomed the announcement by the Secretary-General on 6 November 1987 that such files would be made accessible for general research by Governments and, subject to certain safeguards, for bona fide research by individuals.

76. The Commission on Human Rights might also wish to endorse Sub-Commission resolution 1987/4 which, in particular, urged all States to take the necessary steps to give full implementation to international co-operation to secure, the just punishment of war criminals and persons having committed crimes against mankind. A number of Governments had introduced or were currently considering legislation along those lines. Although domestic law in the United States did not permit the application of federal criminal jurisdiction in respect of Nazi war crimes committed outside the territorial borders of that country, emigration laws had been amended in 1978 to facilitate deportation or extradition in certain cases.

77. The heightened interest in the prosecution of war criminals, more than 40 years after the end of the Second World War, must be seen in the context of the newly awakened recognition of international responsibility in that regard. Successive resolutions of the General Assembly on extradition and punishment of war criminals had reaffirmed the principles of international law that had led to the adoption of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

78. The rationale for continuing to bring Nazi war criminals to justice was founded on international legal responsibility, indissoluble from the letter and spirit which animated the entire human-rights doctrine, and the international community must live up to its obligations in accordance with the
clear requirements of positive and customary international law. That was particularly vital at a time when neo-Nazism was again on the upsurge, and when proponents of that revival were asserting that the Holocaust was a fiction. Endorsement by the Commission on Human Rights of Sub-Commission resolution 1987/4 would be a clear manifestation of the will of the international community to set the record straight.

79. Mr. BRODY (International Commission of Jurists) said he wished to draw attention to the activities of the Working Group on Indigenous Populations, which had become one of the most visible and useful of the United Nations human-rights bodies and had, in the current year, unanimously proposed to the Sub-Commission several important draft resolutions for adoption. His organization welcomed the idea of proclaiming an international year of the world's indigenous populations and the suggestion that a set of principles be prepared for insertion in a draft declaration on indigenous rights to be considered by the General Assembly in 1992. The proposal that a study be undertaken on the treaties concluded between indigenous peoples and States would give effect to one of the important recommendations contained in the landmark study of the problem of discrimination against indigenous populations by Mr. Martinez-Cobo. Also, the seminar that, it was proposed, should be organized in 1988 would provide a useful opportunity to advance understanding of the plight of some 200 million people who had so long been ignored by the international community. His organization hoped that the Commission could endorse all of those proposals.

80. Of the other items referred to in the report of the Sub-Commission, his organization particularly welcomed the decision to request Mr. Louis Joinet to draft a questionnaire seeking to obtain further information on administrative detention without charge or trial.

81. However, there were two items of great importance on which, because of problems relating to translation and its already crowded work schedule, the Sub-Commission had been unable to make the desired progress. The first was the draft declaration on the independence of justice, based on the comprehensive study by Mr. L.M. Singhvi. The Sub-Commission had sent the draft declaration to Governments for their comments but had made no final recommendations to the Commission. The Sub-Commission should therefore be requested to give priority to revising and completing that draft declaration.

82. The second item related to the elaboration of a second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, a task entrusted to the Sub-Commission in 1984. Over the past year, four more nations had joined the growing list of States having abolished capital punishment, and the time had clearly come for such a protocol which would be strictly optional but would allow those States wishing to make an abolitionist commitment to do so.

83. Mr. MOSES (Grand Council of the Crees) said he wished to draw attention to the significant progress made in the field of the protection of indigenous rights through the Sub-Commission's Working Group on Indigenous Populations and the personal initiative of its Chairman/Rapporteur, Mrs. Daes, in visiting indigenous peoples throughout the world and attending the historic, albeit unsuccessful, first conference between Canada's indigenous peoples and the federal and provincial Governments of Canada. The United Nations had often been criticized for its failure to study human-rights issues in the field and
to establish direct factual access to sources of information. The Working Group on Indigenous Populations was not open to such criticism, and his organization fully endorsed all the proposals recommended by the Sub-Commission and the Working Group for adoption by the Commission on Human Rights, in particular those contained in draft resolutions VI, VII, VIII and IX.

84. Regarding the practical value of the activities undertaken by the Sub-Commission, his organization wished to emphasize the importance of standard-setting, since it believed that the proclamation of international standards for the protection of indigenous peoples would lead eventually to conventions or treaties between indigenous peoples and States. The Crees' own experience of a modern treaty of that kind might provide valuable information during the standard-setting process and attention should also be drawn to the 1986 Report of the Cree-Naskapi Commission, the first report of an independent commission established by the Government of Canada under Orders in Council to oversee implementation of the Cree-Naskapi of Quebec Act.

85. The proposed study of treaties would be of great value in advancing the process of drafting standards related to the implementation of conventions and treaties, which was an essential element in the realization of indigenous peoples' inherent right to self-determination.

86. Indigenous peoples throughout the world, even in developed countries, were disadvantaged peoples and required international protection. Their condition was one of the world's most serious continuing tragedies, in which connection it was not without significance that the laws establishing Indian reserves and reservations on the North American continent had been used as models by the racist régime in South Africa for its own Homelands Act. Indigenous peoples everywhere shared the effects of a colonial past and must not remain victims caught in the cross-fire between powerful States unwilling to share the world's resources.

87. Mr. MACPHERSON (Friends World Committee for Consultation) said that the Sub-Commission, as a body of independent experts, should serve as a think-tank for the Commission by developing the study programme and devising a more effective response to human-rights violations. The Sub-Commission's agenda needed to reflect the true priority and urgency of human-rights situations, as determined by balanced and objective criteria. Although all issues on the agenda were important, some might have to be considered at every second session. Moreover, to avoid unnecessary duplication of work, the Sub-Commission should concentrate on human-rights issues not sufficiently examined by the Commission or the General Assembly. The working groups performed an invaluable role in keeping with the expert nature of the Sub-Commission. The existing working groups should therefore be maintained and the feasibility of establishing further working groups could be explored.

88. The partnership between the Sub-Commission, the Commission and the Centre for Human Rights was very important in developing a coherent human-rights policy. In that respect, the Secretariat should actively assist the Sub-Commission in carrying out its mandate. Human-rights considerations must be developed in all United Nations activities and better co-ordination sought in the field of standard-setting, studies and fact-finding among the various human-rights bodies and non-governmental organizations. Regarding the
expertise and independence of the Sub-Commission, measures were needed to facilitate the functioning of the Sub-Commission as a more collegial body. In particular, draft resolutions submitted by one expert only should wherever possible be avoided.

89. At its thirty-ninth session, the Sub-Commission had experienced some technical problems in connection with the translation of documents, as a result of which it had unfortunately been unable to hold a full debate on the report by its Special Rapporteur concerning the proposition to elaborate a second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (E/CN.4/Sub.2/1987/20). The elaboration of such a protocol deserved serious and urgent attention, since the death penalty was a violation of the right to life and of the right not to be subjected to torture or cruel, inhuman or degrading punishment.

90. Although some countries had declared their difficulties in abolishing the death penalty, that must not prevent others from continuing to work towards that desirable end. The Sub-Commission should take all necessary measures to complete its consideration of the report, so that the Commission on Human Rights could consider an appropriate text without further delay.

The meeting rose at 9.05 p.m.