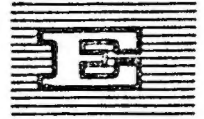


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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Twenty-fourth Session
Volume II*

SUMMARY RECORDS OF THE SIX HUNDRED AND TWENTY-FIFTH
TO SIX HUNDRED AND THIRTY-FIFTH MEETINGS

Held at Headquarters, New York,
from 12 to 20 August 1971

<u>Chairman:</u>	Mr. GROS ESPIELL	Uruguay
<u>Rapporteur:</u>	Miss GICHURU	Kenya

The list of representatives attending the session is found in the report of the Sub-Commission to the Commission on Human Rights (E/CN.4/1070).

* The summary records of the six hundred and twelfth to the six hundred and twenty-fourth meetings, held from 2 to 12 August 1971, are contained in volume I.

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SUMMARY RECORD OF THE SIX HUNDRED AND TWENTY-FIFTH MEETING

Held on Thursday, 12 August 1971, at 3.35 p.m.

Chairman:

Mr. GROS ESPIELL

(Uruguay)

QUESTIONS OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES (continued):

- (a) PROCEDURES FOR DEALING WITH COMMUNICATIONS RELATING TO VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1503 (XLVIII) (E/CN.4/Sub.2/L.539/Rev.1, L.540 and Corr.1 (Spanish only), L.541-L.544, L.544/Add.1, L.545-L.551; E/CN.4/Sub.2/NGO.46) (continued)

Draft resolution E/CN.4/Sub.2/L.549 (continued)

The CHAIRMAN noted that at the morning meeting the Sub-Commission had concluded its consideration of paragraph 2 (a) of document E/CN.4/Sub.2/L.549 and would now take up paragraph 2 (b).

Paragraph 2 (b)

Mr. NETTEL said that, in his opinion, the substance of paragraph 2 (b), which stipulated that anonymous communications should be inadmissible, was already covered by the provision in paragraph 6 that the author of a communication must be clearly identified. If the formulation in paragraph 6 was adopted, paragraph 2 (b) would be unnecessary and should be deleted.

Mr. MOUSSA pointed out that the provision contained in paragraph 6 differed essentially from that in paragraph 2 (b). While paragraph 2 (b) dealt with anonymous, that is unsigned communications only, paragraph 6 covered much more ground, requiring clear identification of the author of a communication, which he took to mean name, address and other particulars. The intention behind paragraph 6 was to exclude communications from fictitious individuals or organizations.

Mr. RYBAKOV agreed with Mr. Moussa's interpretation of paragraph 6. The author of any communication should be clearly identified, and the Sub-Commission or other competent United Nations bodies dealing with communications should be in possession of all the relevant facts concerning authors.

Mr. JUVIGNY shared Mr. Nettel's view that the adoption of paragraph 6 would make paragraph 2 (b) unnecessary. Moreover, regarding the second sentence of paragraph 6, it was clear that the working group could not satisfy itself as to the existence and true identification of the author of an anonymous communication.

Miss SOLESBY said that perhaps the difference of opinion which had arisen concerning paragraph 2 (b) was based on a misunderstanding. Paragraph 6 was not covered by paragraph 2 (b); the converse was true, namely that paragraph 2 (b) was covered by paragraph 6, as Mr. Nettel had observed.

Mr. MOUSSA welcomed Miss Solesby's clarification. For his part, he was willing to delete paragraph 2 (b) on the understanding that paragraph 6 would appear unaltered in the final text.

Mr. RYBAKOV suggested that paragraph 2 (b), as worded, should be added as a new sentence at the end of paragraph 6. Then the whole problem of identification would be dealt with in paragraph 6.

Mr. LAGOS said he also felt that paragraph 6 covered the substance of paragraph 2 (b). The simplest way of eliminating the present redundancy would be to delete paragraph 2 (b).

Mr. MARTINEZ-COBO said that he would prefer not to take any action on the deletion of paragraph 2 (b) until paragraph 6 had been discussed. He felt that the second sentence of paragraph 6, which required the working group to satisfy itself as to the existence of authors of communications, would create serious difficulties and immensely complicate the task of the working group. He would therefore oppose the inclusion of that sentence in the final draft resolution. If the majority of the members of the Sub-Commission agreed to delete that sentence, he felt that the remaining sentence in paragraph 6 could be added at the end of paragraph 2 (b).

Mr. INGLES said that the Sub-Commission should require some guarantee of veracity from any individual accusing the Government of a Member State of a violation of human rights. He therefore proposed the addition to paragraph 2 of a new subparagraph (c): "Communications shall be inadmissible unless they are made under oath". That would have the effect of deterring scandalmongers from making frivolous or unfounded accusations.

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Mr. HUMPHREY said that he for one would have great difficulty in agreeing to the amendment just proposed by Mr. Ingles. In many cases it would be impossible for the author of a communication to make an affidavit. A person in prison, for example, would find it impossible to make an affidavit complaining against his detention. The effect of Mr. Ingles's proposal would be to exclude the majority of communications which the working group would otherwise receive.

Mr. INGLES pointed out that the obvious recourse for a person in prison was to request his next-of-kin to submit the communication. There would, of course, be no obstacle to the next-of-kin making a sworn statement.

Paragraph 3 (a)

Miss SOLESBY requested the sponsors to amend paragraph 3 (a) so as to make it clear that the Sub-Commission did not intend to reject well-founded communications merely because they contained a few "abusive" phrases but were otherwise acceptable and relevant. She suggested that the present wording of paragraph 3 (a) could be improved by inserting the word "essentially" before the word "abusive".

Mr. CRISTESCU requested that the formulation he had submitted to the drafting group, which appeared as the fifth paragraph in section G of document E/CN.4/Sub.2/L.544, should be included in paragraph 3 as a new subparagraph, before the present (a). The heading of the entire paragraph should then be changed to: "Contents of communications and nature of allegations".

He also suggested another subparagraph to be added under paragraph 3 which would read: "Communications must be accompanied by the clearest possible evidence supporting the allegations made therein."

Mr. JUVIGNY objected to the word "defamatory" in paragraph 3 (a), noting that true statements, however damaging to the reputation of the State concerned, could not be considered defamatory although, if untrue, they might be so regarded. It was not possible to decide a priori what constituted defamation. He would support the deletion from paragraph 3 (a) of the words "defamatory or" and the retention of the word "insulting", which was sufficient to make the point.

Mr. CAREY felt that it would be wrong to reject a communication merely because it happened to be couched in inappropriate language. He therefore suggested the addition of the following sentence to the end of subparagraph (a): "Such communications may be considered if they meet the other criteria for admissibility after deletion of the abusive language."

Mr. RYBAKOV disagreed with Mr. Juvigny's statement concerning the word "defamatory". He agreed that the concept of defamation implied deliberate submission of false information but felt that both "defamatory" and "insulting" were appropriate in the present context.

With regard to the amendment proposed by Mr. Carey, he felt that further qualification of the present wording might encourage the submission of prejudiced and slanderous communications. Therefore, while he was in sympathy with the intention behind Mr. Carey's amendment, he could not support it.

Mr. NIKIEMA said that, as drafted, the paragraph did not exactly reflect what the Sub-Commission was aiming at. Whether or not they used abusive language, individuals had the right to complain to the United Nations if their human rights had been violated. The Sub-Commission's purpose should be to ensure that individuals did not abuse that right. It would be helpful if the sponsors could devise a formula which would exactly reflect that purpose.

Paragraph 3 (b)

Mr. RUHASHYANKIKO suggested that the paragraph was superfluous because the ideas expressed in it had already been expressed in paragraphs 1 (a) and 2 (a). If, however, the Sub-Commission wished to retain it, the text should be replaced by that in section D of document E/CN.4/Sub.2/L.544, which expressed the same ideas and had won the support of the drafting group.

Mr. NIKIEMA agreed that to a certain extent paragraph 3 (b) duplicated paragraphs 1 (a) and 2 (a). There was, however, another reason why he would have difficulty in accepting the text. There might be a case in which a State, in contravention of its constitution and domestic laws, prevented its citizens from establishing political parties. A communication complaining about a violation of that right would have manifestly political motivations but it was by no means certain that it would therefore be inadmissible because the subject of the complaint would not be contrary to the provisions of the Charter of the United Nations.

Me. KETTANI said that the Sub-Commission was merely trying to draw up criteria to govern the admissibility of communications. It could not, at the current stage, provide for all the types of cases that would be submitted to the working group.

Mr. NIKIEMA said that it was precisely for that reason that paragraph 3 (b) was unnecessary.

Mr. MOUSSA said that if the Sub-Commission adopted the amendment to paragraph 2 (a) proposed by Mr. Martinez Cobo at the previous meeting, paragraph 3 (b) would have to be retained.

Mr. INGLES agreed with Mr. Ruhashyankiko that there was no need to repeat ideas which had already been expressed in other paragraphs.

Paragraph 3 (c)

Mr. DEPREE CRESPO suggested that paragraph 3 (c) might be a repetition of paragraph 2 (a), under which a communication would be inadmissible if it originated from a person or group of persons who did not have direct knowledge of the violation. He further suggested that the word "exclusively" might be replaced by the word "essentially".

Mr. NETTEL said that the word "exclusively" had been included at his request. In his opinion, communications should be inadmissible only if they were based exclusively on reports disseminated by the mass media. He would be unable to agree to any amendment of that word.

Mr. RUHASHYANKIKO drew attention to the words "and other relevant information" in paragraph 5 of Council resolution 1503 (XLVIII). It appeared that the Sub-Commission was trying to establish stricter criteria than those laid down by the Council.

Mr. RYBAKOV said that members must remember that the working group would be dealing with communications from individuals and that its purpose would be to determine the accuracy of the allegations made in those communications. If it endeavoured to use information from indirect sources, such as press reports, it would complicate its work and, indeed, render the communications superfluous. As experts, members would, of course, be able to use press reports for their own information, but their main task would be to determine the admissibility of communications from individuals.

Mr. HUMPHREY said that in any democracy there were newspapers which, although consistently hostile to the Government, constituted as good a source of information as those sympathetic to the Government. In any case, how was the working group to determine whether a particular press was hostile to the Government concerned?

Mr. CAREY said that if he were a member of the working group he would not know how to apply the criterion.

Mr. RUHASHYANKIKO pointed out that it would be difficult to determine whether or not a communication was based exclusively on reports disseminated by mass media.

Mr. INGLES said that he doubted the propriety of paragraph 3 (c). It would indeed be very difficult for the working group to decide whether certain mass media were hostile to the State concerned. Were those media to be considered hostile because they told the truth? The question of hostility was beside the point. It should be left to the working group to decide whether there were reasonable grounds for believing in press reports. He would be unable to accept paragraph 3 (c), even with the word "exclusively".

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Mr. MOUSSA said that the text of subparagraph (c) reflected a compromise reconciling many different positions. Describing the background to the inclusion of the word "exclusively", he said that Arab States had been subjected to an extensive defamatory campaign carried on by the mass media in a certain area of the world whose purpose had been the preparation of public opinion for a specific situation. There were obvious and close political overtones in such a case; human rights were not the only issue. Other countries, too, had had the same experience. The subparagraph could not be included without qualification and, as Mr. Ruyashyankiko had pointed out, many ideas in paragraph 3 had been watered down already to take account of the reservations of certain members.

Paragraph 4 (a)

Mr. MARTINEZ COBO recalled the statements made by the representatives of the ILO and UNESCO at the 623rd and 624th meetings describing well-established procedures for dealing with complaints within the province of their organizations. There was a danger of a conflict of competence between those procedures and the procedures to be established for the working group by the Sub-Commission. To avoid such a conflict, he suggested the inclusion of a new paragraph 4 (a) to read: "Communications would be inadmissible if there are other procedures established within the United Nations system."

Mr. RYBAKOV pointed out that an individual might prefer to submit a communication to the Sub-Commission rather than to the ILO or UNESCO. He asked whether Mr. Martinez Cobo's proposal would mean that if a communication concerning the struggle against apartheid or racism was received, the Sub-Commission would be obliged to reject it because other procedures existed. With regard to the rights of workers, for example, it was well known that discriminatory practices against foreign workers existed in certain States. Would the proposal mean that the ILO alone would be competent to take cognizance of related complaints?

Mr. NETTEL doubted the wisdom of including time-limits for the submission of communications in the draft rules. The sponsors of draft resolution E/CN.4/Sub.2/L.540 had deleted such references in that text in view of the arguments advanced by Mr. Ingles. A simple person who felt that his rights had been violated would hardly be aware of the domestic remedies available to him, still less of the international remedies. He might even be unaware of the existence of the ILO. Such a person could not be expected to understand why his communication should be ruled inadmissible on the ground that some other international remedy existed. It could well be asked if such a position was in keeping with the spirit of existing human rights procedures. It might be as well to delete paragraph 4 (a) altogether.

Mr. HUMPHREY said that Mr. Nettel had anticipated several of his own remarks. He had become convinced during the debate that it would be wiser to omit any rule relating to the exhaustion of other remedies. It was difficult to see how the working group could possibly know whether all other remedies had been exhausted. It might be suggested that the communication itself should state whether such was the case, but the working group would not be dealing with persons with legal expertise. The complainants included simple people and it would be most unfair to reject all communications which failed to comply with certain formal requirements.

As to Mr. Martinez Cobo's proposal, he agreed with Mr. Rybakov that it might mean that the Sub-Commission would be prevented from considering certain communications. Indeed, recourse to the Sub-Commission could become a procedure of last resort. In any event, if other procedures were to be resorted to they should be at least as effective as those contemplated under Council resolution 1503 (XLVIII).

Mr. CAREY agreed with Mr. Humphrey as to the difficulties of establishing that domestic and other remedies had been exhausted. He therefore suggested that at the preliminary stage, in the matter of the burden of proof the procedure should work in favour of the complainant. To that end, he suggested that the

(Mr. Carey)

second sentence of paragraph 4 (a) should read: "Any failure to exhaust such remedies should be established to the satisfaction of the working group." In that way, if it was not clear from a communication that other remedies had been exhausted, the working group would proceed to measure the communication against other criteria, leaving the question of the exhaustion of other remedies for consideration at a subsequent stage.

Mr. CRISTESCU said that a rule concerning the exhaustion of other remedies was a fundamental requirement because, without it, the activities of the Sub-Commission and its working group would be illegal under the Charter in that the consideration of communications would be undertaken parallel to the exercise of domestic jurisdiction. That would be tantamount to interference in the domestic affairs of a country. He could not accept the other criteria without the inclusion of a rule on the exhaustion of other remedies. Recourse to the Secretary-General was an extraordinary remedy and, in the absence of such a rule, the examination of communications might violate the principles which the Sub-Commission had adopted at its previous session concerning equality in the administration of justice. If, for example, a judge considering his decision in a given case was requested to comment on the case as the result of a complaint to the Secretary-General by one of the parties, he might find it difficult to remain impartial. It would thus be possible for pressure to be exerted on judges in the course of a hearing. The Secretary-General might receive a communication requesting him to intervene in the case, another communication complaining against the decision in that same case and a third communication requesting him to examine the question of domestic remedies. Clearly, that would involve interference in the domestic affairs of a State.

Mr. RYBAKOV said that he fully agreed with Mr. Cristescu with regard to the need to exhaust domestic remedies. He also agreed with previous speakers as to the difficulty of determining that regional and international remedies had been exhausted and thought it wiser to delete all reference to regional or other international remedies from paragraph 4 (a). The second sentence of the subparagraph would serve only to complicate the work of the group and was quite

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(Mr. Rybakov)

superfluous. He would have some difficulty in accepting the text of the entire draft resolution if that particular sentence, to which he was categorically opposed on the grounds that it was vague and obscure, was retained.

Mr. RUHASHYANKIKO agreed with Mr. Martinez Cobo concerning the need to avoid a conflict of competence in connexion with the procedures to be established by the working group and those already set up by various specialized agencies.

He had appreciated Mr. Cristescu's comments concerning the exhaustion of other remedies. There was the further consideration that a victim of a violation of human rights might feel that the United Nations was in a better position to protect him than was his own country as the author of the violation and that, consequently, the Sub-Commission would be overwhelmed with communications. It might be that a simple person would not know which international remedy was the most appropriate but, in such a case, the Secretary-General could refer the communication to the correct body. In any case, he did not think that the burden of proof should be placed on the individual complainant.

Mr. NETTEL, referring to Mr. Cristescu's comments on the exhaustion of remedies, said that the question of improper influence on domestic authorities was also relevant to the procedures established under Council resolution 728 F (XXVIII), whereby communications were also sent to States for comment.

Mr. MARTINEZ BAEZ supported Mr. Martinez Cobo's proposal and suggested that the heading of paragraph 4 should read: "Existence of other remedies".

Mr. HUMPHREY said he assumed that Mr. Martinez Cobo's proposal related to other procedures established within the United Nations system. If a conflict of competence did arise, it would surely be resolved when the case reached the Commission on Human Rights, which would refer it to the most appropriate international agency.

Mr. JUVIGNY said that the question of competence was fundamental and difficult. The Sub-Commission should clearly establish what it wanted. First, there was the suggestion that complaints should be inadmissible so long as domestic

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(Mr. Juvigny)

remedies remained to be exhausted. If they had been exhausted and had proved unsatisfactory he felt the complaint should be admissible. The fact that there had been a legal decision did not necessarily mean that no violation of human rights had occurred for legal errors were sometimes made. Secondly, with regard to regional and international remedies, the Sub-Commission should decide whether, once the individual's case had been judged by the supreme court of his region, for instance the European Court of Justice, his complaint should be admissible for consideration by the working group. He himself would be against such a provision. The difference between the two cases was that in one there was no higher, multilateral supervision while in the second there was. Thirdly, there were more specialized remedies, for instance, under the Conventions of the International Labour Organisation. The latter's Constitution stated that in case of a complaint the case should be referred to the International Court of Justice. Was it conceivable that after hearing the decision of the International Court a union would decide to appeal to the Sub-Commission?

Finally, it should be decided whether the fact that other procedures for the consideration of complaints existed but had not been used constituted grounds for inadmissibility. There might be cases where a complainant preferred recourse to the working group. The Sub-Commission could then receive the complaint but refer it automatically to the appropriate body. In certain cases, as in that of UNESCO, for instance, which had no arrangements for considering individual petitions, the working group might perhaps fill the lacuna and consider such cases together with representatives of the competent specialized agency. He felt that that possibility should be mentioned in the Sub-Commission's report or in some preparatory document.

Mr. MARTINEZ COBO considered that his proposal was indispensable in order to avoid duplication of consideration and conflict of competence between United Nations bodies. Some organs had already devised procedures for considering cases and those should not be interfered with. In reply to Mr. Nettel's objection that persons might not know of the existing machinery and their complaints should therefore be admissible he pointed out that if they did not know of existing

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(Mr. Martinez Cobo)

machinery they would be unlikely to know about the working group. With regard to Mr. Humphrey's suggestion that reference should be made to Council resolution 1503 (XLVIII) he pointed out that his amendment took account of the provisions of that resolution.

In any case, it was the Secretary-General who directed the communications received to the appropriate body.

Mr. KHAN said that the question of the possible conflict of competence between various United Nations bodies should not affect the admissibility of complaints. The Sub-Commission was currently considering what kind of complaints should be admissible. Competence was a separate matter and should be dealt with later. Possibly another resolution could be drafted stating that the Commission on Human Rights should authorize the Secretary-General to direct complaints to other jurisdictions.

Paragraph 4 (b)

Mr. GOWEN proposed the insertion of the words "as set forth in the Universal Declaration of Human Rights" after "in accordance with the principles of human rights".

Paragraph 5

Mr. NETTEL said that the considerations mentioned with respect to paragraph 4 (a) also applied to paragraph 5.

Paragraph 6

Mr. CRISTESCU proposed that the words "with the assistance of the Secretariat" should be added at the end of the first sentence.

Mr. NETTEL asked the sponsors of the draft resolution how they suggested the working group should go about identifying authors of communications as recommended in the second sentence.

Mr. MARTINEZ COBO, supported by Mr. HUMPHREY, Mr. LAGOS, Mr. KETTANI and Mr. MOUSSA, proposed that the sentence should be deleted since implementation of the provision would be very difficult.

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Mr. HUMPHREY pointed out that even if it were deleted the problem would remain. If the first sentence merely meant that communications should contain the sender's address there was no difficulty. If the sponsors meant more than that the problem of how to identify the authors of communications remained. The recommendation that authors of communications should be identified seemed to contradict Economic and Social Council resolution 728 F (XXVIII), according to which the identity of the authors of communications was not divulged unless the authors so requested. That was to guard against possible reprisals against them and he did not think that the Sub-Commission would want to eliminate that safeguard.

Mr. CAREY proposed that the first sentence should start with the phrase "Subject to the requirements of Economic and Social Council resolution 728 F (XXVIII)". He had no objection to the deletion of the second sentence; however, if it was retained it should be connected to the first by the word "and" so that it, too, would be subject to the same limitation.

Mr. KHAN said he was in favour of deleting the second sentence. There was some justification for the objections raised by Mr. Nettel and Mr. Humphrey concerning the identification of individuals submitting complaints; however, it was also generally agreed that anonymous complaints were not to be recommended. He therefore proposed that the first sentence should read: "The existence of an individual or the true identity of an organization who has submitted complaints must be established."

Mr. INGLES felt that it was important for the Sub-Commission to reject communications from fictitious individuals. To that end, he proposed that the Secretary-General, in addition to compiling a confidential list of communications in accordance with Economic and Social Council resolution 728 F (XXVIII), should be requested to ascertain the identity and substantiate the existence of authors of communications. He therefore suggested the addition to paragraph 6 of a new sentence: "The Secretary-General must ascertain the identity of any person or group of persons sending a communication before including the communication in the confidential list which he is required to

(Mr. Ingles)

compile and distribute to members of the Commission on Human Rights under the provisions of Economic and Social Council resolution 728 F (XXVIII)."

He explained that he had deliberately avoided mentioning non-governmental organizations in the amendment he was proposing, assuming that only non-governmental organizations in consultative status with the Economic and Social Council would be allowed to submit communications for consideration by the working group. There was of course no need to verify the bona fides of non-governmental organizations in consultative status with the Economic and Social Council. The working group should not, however, consider communications from unaccredited non-governmental organizations.

It had been recommended that specific reference should be made in paragraph 6 to paragraph 2 (b) of Economic and Social Council resolution 728 F (XXVIII), whereby the identity of authors of communications was not to be divulged without their permission. He had no objection to including a reference to that resolution but felt it might be superfluous inasmuch as resolution 728 F (XXVIII) remained in full effect whether or not specific reference was made to it.

Mr. NETTEL said that Mr. Ingles's proposal raised many problems. The communications the Sub-Commission was dealing with were those submitted under Council resolution 728 F (XXVIII) which, if they revealed a consistent pattern of gross violations of human rights would be referred to the Commission on Human Rights. The only obligation devolving on the Secretary-General under operative paragraph 2 (b) of Council resolution 728 F (XXVIII) was that he should compile a confidential list containing a brief indication of the substance of communications concerning human rights; he was not required to ascertain the identity of the authors of communications. The Sub-Commission could not amend a Council resolution. In any case, it did not seem appropriate to use the words "the Secretary-General must..." in a resolution. The Secretary-General was usually requested to perform a certain task. It would be interesting to know the financial implications, if any, of the proposal.

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Mr. INGLES agreed that the Sub-Commission could not amend a Council resolution. Nevertheless, in Council resolution 1503 (XLVIII), the Sub-Commission was specifically requested to devise procedures for dealing with the question of admissibility of communications received by the Secretary-General under Council resolution 728 F (XXVIII). Any procedures the Sub-Commission might devise would be subject to the Council's approval, and by giving its approval the Council itself would amend existing procedures.

He agreed that the word "must" was inappropriate. He had used it in order to emphasize that the duty to ascertain the identity of the authors of communications should lie with the Secretary-General rather than with the Sub-Commission. He would replace the word "must" by the phrase "is requested to".

Mr. HUMPHREY asked the representative of the Secretary-General what the administrative and financial implications of Mr. Ingles's proposal would be.

Mr. RYBAKOV said that under operative paragraph 2 of Council resolution 728 F (XXVIII), the Secretary-General was required to prepare a non-confidential list containing an indication of the substance of each communication. Furthermore, the terms of that paragraph in no way limited the Secretary-General's freedom to divulge the identity of authors of communications. There seemed to be some misunderstanding concerning that point among members of the Sub-Commission.

The first sentence of paragraph 6 of the draft resolution under consideration was intended simply to ensure that anonymous communications would be inadmissible, and it should be retained. If members so wished, a reference to Council resolution 728 F (XXVIII) could be added.

Mr. MARTINEZ COBO proposed that the first sentence of paragraph 6 should be added to paragraph 2 (b).

Mr. SCHREIBER (Director, Division of Human Rights) said that there were clearly many ways of applying the system to be established by the Sub-Commission. Methods would be clarified in the light of experience and there would be procedural details to be worked out in future in co-operation with the Secretariat.

(Mr. Schreiber)

With regard to paragraph 2 (b), he pointed out that it was not currently the practice to include anonymous communications among those circulated to members of the Commission in summary form. The Secretary-General had no right to divulge the identity of complainants without their permission, whether it was specified in the communication or ascertained subsequently. That was a categorical obligation under Council resolution 728 F (XXVIII). As to the actual existence of an individual - as opposed to an organization - he observed that the Secretariat received very considerable numbers of communications each year and the only proof of the existence of a complainant was the communication itself. The Secretariat had no independent means of establishing that a particular individual did exist; if further information was requested, the Secretary-General could not go beyond requesting it from the complainant by correspondence. The assistance required of the Secretariat under Council resolution 1503 (XLVIII) could only be provided within the framework of the existing resources of the Division of Human Rights. If more elaborate machinery was required, for example, for the identification of complainants, there must be express provision for its establishment.

Mr. CRISTESCU proposed the addition of a new paragraph 7, that would read:

"(7). Examination of communications and conclusions of the working group

(a) The working group and the Sub-Commission will hold closed meetings when considering communications and their conclusions presented by the working group. The results of the work of the working group will be brought to the knowledge of the Sub-Commission in a confidential manner.

(b) The working group will present to the Sub-Commission its conclusions concerning violations of human rights in accordance with the order in which these rights appear in the applicable instruments in the field of human rights."

The meeting rose at 6.45 p.m.

SUMMARY RECORD OF THE SIX HUNDRED AND TWENTY-SIXTH MEETING

Held on Friday, 13 August 1971, at 10.20 a.m.

Chairman:

Mr. GROS ESPIELL

(Uruguay)

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES (continued):

- (a) PROCEDURES FOR DEALING WITH COMMUNICATIONS RELATING TO VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1503 (XLVIII) (E/CN.4/Sub.2/L.539/Rev.1, L.540, L.541 to L.544, L.544/Add.1, L.545 to L.548, L.549/Rev.1, L.550, L.551; E/CN.4/Sub.2/NGO 46; E/CN.4/Sub.2 (XXIV)/CRP.3) (continued)

The CHAIRMAN invited the Sub-Commission to vote on document E/CN.4/Sub.2/L.549/Rev.1 paragraph by paragraph.

First preambular paragraph

The first preambular paragraph was adopted.

Second preambular paragraph

The second preambular paragraph was adopted.

Paragraph (1) of the operative part

Mr. MARTINEZ COBO recalled that at the 624th meeting, Mr. Ingles had submitted an amendment to paragraph (1).

Mr. INGLES said that the sponsors of the revised draft resolution had taken his amendment into account in the wording of paragraph (1) (b). He accordingly withdrew his amendment.

Mr. CAREY proposed that an "s" should be added to the word "standard" in the heading of the English text.

The CHAIRMAN stated that, if there were no objections, he would assume that the Sub-Commission agreed to the proposed correction in the English text.

It was so decided.

Paragraph (1) (b)

Mr. CAREY, supported by Mr. JUVIGNY and the CHAIRMAN, pointed out that beginning at the end of the fifth line the co-sponsors had sought to incorporate part of the heading of the agenda item under consideration. However, the wording

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(Mr. Carey)

as it stood might be interpreted to mean that communications would be admissible only if they could disclose the existence of a pattern of violations in all countries at the same time. He therefore proposed that the words "in all countries" should be deleted or that the words "any country" should be substituted for the words "all countries".

Mr. RYBAKOV supported Mr. Carey's proposal that "all countries" should be replaced by "any country".

The CHAIRMAN said that, if there were no objections, he would assume that the Sub-Commission agreed to substituting the words "any country" for "all countries" in the fifth line.

It was so decided.

Mr. JUVIGNY remarked that the words "with particular reference to colonial and other dependent countries and Territories" seemed to imply that a priori there were more violations in colonial and other dependent countries than in the others. That point of view was politically defensible but it would be more appropriate to use a more neutral term. He therefore suggested that "with particular reference to" should be replaced by the words "including."

Mr. CAREY supported Mr. Juvigny's amendment. It was true that in certain colonial and other dependent countries and Territories violations of human rights and fundamental freedoms were an extremely serious problem, but there was reason to hope that the problem could be eliminated in the near future and would become a thing of the past.

In order to bring the text back into line with the heading of the agenda item and to give it its full significance, he proposed that a comma should be added after the word "apartheid", in the fifth line of the English text.

Mr. MOUSSA, supported by Mr. RYBAKOV, pointed out that if Mr. Carey wished to add a comma after the word "apartheid" in order to bring the text into line with the heading, logically he should agree not to change anything else in that part of the paragraph, which quoted the heading.

Mr. CAREY said that, as a compromise, he was prepared to accept the original wording provided that a comma was added after the word "apartheid."

The CHAIRMAN said that if there was no objection, he would assume that the Sub-Commission wished to adopt paragraph (1) (b) with no other change than the addition of a comma after the word "apartheid".

Paragraph (1) (b) was adopted as amended.

Paragraph (2)

Subparagraph (a)

Mr. HUMPHREY acknowledged that the revised draft resolution contained changes that reflected the comments made during the debate. However, the new text was not satisfactory owing to the fact that the co-sponsors had not retained the words "any person or group of persons" which appeared in the original draft at the end of the third line. Mr. Humphrey asked that the words should be put back in the new draft, for the right to send a communication on behalf of the victims should not be limited to non-governmental organizations only.

Recalling, in addition, that Mr. Carey had already proposed that the word "having" in the last line of the original paragraph should be replaced by the words "appearing to have," Mr. Humphrey stated that if Mr. Carey did not press for that amendment, he would do so himself.

When the time came, he would ask for a separate vote on subparagraph (b).

Mr. CASSESE expressed regret that the co-sponsors of the draft resolution had not retained the amendment he had proposed concerning the addition of the words "or his dependants or agents" after the word "above" in the third line of the original text. If that amendment was adopted, Mr. Humphrey might support the text of subparagraph (a).

Mr. CRISTESCU said he could support subparagraph (a), which was a compromise text. However, if further amendments were submitted he, too, would submit some.

Mr. MOUSSA recalling that subparagraph (a) was the result of a great effort to reach a compromise, asked Mr. Humphrey to withdraw his amendment and not to press for a separate vote on subparagraph (b).

As a result of the amendments proposed at the previous meeting, particularly by Mr. Humphrey, the co-sponsors had included in subparagraph (b) the text of the first sentence of paragraph 6 of document E/CN.4/Sub.2/L.549. It was an extremely

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(Mr. Moussa)

delicate question and he therefore felt he should make it clear that if the Sub-Commission decided to vote separately on subparagraph (b), he would propose amendments to subsequent paragraphs.

Miss SOLESBY recalling the amendment she had submitted at the 624th meeting, insisted that the words "politically motivated" in subparagraph (a) should be deleted. If those words were retained in the draft resolution, she would ask for a vote on her amendment.

Mr. HUMPHREY said that, in view of Mr. Moussa's explanation, he would not insist on a separate vote on paragraph (2) (b).

With regard to Mr. Cristescu's remark concerning paragraph (2) (a), he explained that his proposal to add the words "any person or group of persons or" was not a new amendment at all but was intended solely to restore a phrase which had been deleted in the revised draft resolution.

He regretted that he was unable to support the amendment proposed by Mr. Cassese.

Mr. NETTEL said he supported Mr. Humphrey's proposal to re-insert the words "any person or group of persons or".

Mr. MARTINEZ COBO said he was sorry that the sponsors of the draft resolution had not kept his amendment calling for insertion of the words "in consultative status" after the words "non-governmental organizations"; he asked for a vote on that amendment, the purpose of which was to prevent the Sub-Commission from being swamped by communications from non-governmental organizations, which were increasing in number at an impressive rate and were often established for political purposes. If, as Mr. Rybakov had pointed out, the African, Asian and socialist countries were not adequately represented in non-governmental organizations, the organizations themselves were responsible.

Mr. MOUSSA said that some non-governmental organizations were working behind the scenes to see that certain words in the draft resolution were deleted.

At a previous meeting, Miss Solesby had submitted an amendment primarily intended to delete the words "provocative or politically motivated", and in a spirit of compromise, the sponsors of the draft resolution had agreed to omit the

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(Mr. Moussa)

word "provocative" from the revised text. Now Miss Solesby was insisting that the words "politically motivated" should also be deleted. If she submitted her amendment formally, he would request a suspension of the meeting in order to propose that the sponsors of the draft resolution should withdraw the draft resolution altogether.

Mr. CRISTESCU said he was prepared to support the revised draft resolution as a whole but wanted a separate vote on each of the following three amendments: first, the words "it can be reasonably presumed" in the second line should be deleted; secondly, all the words from the words "non-governmental organizations" in the third line to the end of the paragraph should be deleted; thirdly, the words "in consultative status with the Economic and Social Council" should be inserted after the words "non-governmental organizations", as had been proposed by Mr. Martinez Cobo.

Mr. INGLES confessed that he did not understand Mr. Moussa's attitude and protested against the ultimatum being presented to the Sub-Commission.

As for Mr. Cassese's proposal, he thought it might be preferable to insert the words "or by their agents".

He asked for a separate vote on the following amendments.

First, the words "in accordance with recognized principles of human rights" in the fourth line should be deleted since those principles had already been referred to in paragraph (1) (a).

Secondly, the words "not resorting to politically motivated stands contrary the provisions of the Charter of the United Nations" in the fourth, fifth and sixth lines should be deleted since they were also redundant, having been referred to already in other paragraphs.

Mr. CASSESE was gratified that in substance Mr. Ingles had accepted at least part of his proposal. He had proposed the insertion of the word "mandataire" because it was a relatively ambiguous word; he had not been referring to a "legal representative". The term "mandataire" was thus open to the same broad interpretation as the word "agent" which Mr. Ingles had suggested.

He did not support the proposal submitted by Mr. Humphrey and Mr. Nettel to insert the words "any person or group of persons or" because it would entitle far too many people to send communications. He therefore suggested that Mr. Humphrey and Mr. Nettel should accept his own amendment as a compromise solution, between

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(Mr. Cassese)

the positions of those who wished to delete all reference to individual groups other than the victims of violations and those who wished to grant the right to communicate with the United Nations to any person or group of persons.

Mr. RYBAKOV said it was clear from the discussion that the problem was a serious one; however, he did not see the reason for Mr. Moussa's ultimatum. There was no doubt that all the members of the Sub-Commission were aware of the significance of the draft resolution. The text would demonstrate the great importance which the Sub-Commission attached to the need for preventing violations of human rights and fundamental freedoms. He was convinced that the sponsors of the draft resolution had shown the greatest willingness to compromise, and he even regretted that, in the end, they had taken account of too many amendments which weakened the text to some extent.

He proposed, as a modest but practical amendment, that a sentence should be added to the end of paragraph (2) (a) to read: "Communications from non-governmental organizations not having members or branches in the State against which the complaint was made shall be inadmissible."

The CHAIRMAN said that since document E/CN.4/Sub.2 (XXIV)/CRP.3 had not yet been circulated to the members of the Sub-Commission, he would ask the Secretary of the Sub-Commission to read out the amendments which had been submitted orally at previous meetings with regard to paragraph (2) (a) in the operative part of draft resolution E/CN.4/Sub.2/L.549.

Mr. ALEXIDZE (Secretary of the Sub-Commission) read out the amendments referred to by the Chairman.

Mr. MOUSSA said, in reply to Mr. Ingles, that he had not delivered an ultimatum to the Sub-Commission and that he was entitled to request the suspension of the meeting.

He asked Mr. Cristescu not to insist on his amendment calling for deletion of the words "it can be reasonably presumed" and also asked Mr. Rybakov not to insist on his proposal to add the text of paragraph 1 of document E/CN.4/Sub.2/L.550 to the subparagraph under consideration.

With regard to the expression "not resorting to politically motivated stands", he pointed out that a number of Member States had suffered on account of the attitude adopted by certain non-governmental organizations which interpreted

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(Mr. Moussa)

violations of human rights as they pleased. If non-governmental organizations were given an opportunity to continue their propaganda campaigns, some States would refuse to co-operate fully with the working group. For political motives, certain non-governmental organizations had brought, were bringing or would bring political pressure to bear within the United Nations, and the interests of Member States should not be sacrificed to those of the non-governmental organizations. The Sub-Commission should strive to ensure greater respect for human rights and fundamental freedoms. The sponsors of the draft resolution had already made a concession by deleting the reference to "provocative... stands", and Miss Solesby should be satisfied with that.

He moved that the meeting should be suspended to enable the sponsors of the draft resolution to consult.

Mr. ABU RANNAT said that, inasmuch as the Sub-Commission was required to receive communications originating from non-governmental organizations, it should sift such communications and exclude those that were politically motivated. He saw no difficulty in incorporating such a restriction.

As to the second point raised by Mr. Ingles, who in order to avoid redundancy would favour the deletion of the words "in accordance with recognized principles of human rights", he observed that the Sub-Commission's purpose was to ascertain that genuine violations of human rights had taken place, and it should not hesitate to emphasize that point.

The CHAIRMAN, referring to rule 49 of the rules of procedure of the functional commissions of the Economic and Social Council, said that, if there was no objection, he would take it that the members of the Sub-Commission agreed to Mr. Moussa's motion for suspension of the meeting.

The meeting was suspended at 11:30 a.m. and resumed at noon.

The CHAIRMAN asked Mr. Moussa to inform the members of the Sub-Commission of the results of the consultations among the sponsors of the draft resolution.

Mr. MOUSSA said that he would first like Miss Solesby to clarify her position.

Miss SOLESBY said that she was prepared not to press her amendment, but she reserved the right to request a separate vote on other parts of the text.

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Mr. INGLES, referring to the comments by Mr. Abu Rannat, said that paragraph (1) (a) applied to all communications, no matter who the originator might be, whereas in paragraph (2) (a) the reference was only to communications originating from non-governmental organizations. Yet, if the Sub-Commission was to be consistent, the principle should apply to communications originating from all the sources enumerated. Accordingly, he would not object to the retention of paragraph (2) (a), on condition that the following was added after the words "such violations" at the end of the subparagraph: "providing they act in good faith and not contrary to the provisions of the Charter of the United Nations". The provision would then apply to communications originating from the victims of violations, from their agents, or from non-governmental organizations.

Mr. MOUSSA requested Mr. Ingles to read out the subparagraph as he wished to have it amended.

Mr. INGLES said that the subparagraph would read as follows: "Admissible communications may originate from a person or group of persons victims of the violations referred to in subparagraph (1) (b) above, or from their agents, or from non-governmental organizations, having direct and reliable knowledge of such violations, providing they act in good faith and not contrary to the provisions of the Charter of the United Nations."

Mr. MOUSSA said that the sponsors were prepared to accept the wording proposed by Mr. Ingles, provided that he in turn agreed to include the reference to politically motivated stands.

Mr. INGLES said that he could agree to Mr. Moussa's suggestion, provided that another amendment which had been proposed, namely, the insertion of the words "in consultative status" after the words "non-governmental organizations" was accepted.

Mr. HUMPHREY observed that Mr. Ingles had made a number of changes to the proposed text and that the compromise he had reached with Mr. Moussa raised other difficulties, since Mr. Cristescu, Mr. Gowen and he himself (Mr. Humphrey) had submitted other amendments that had not been taken into account. He would not be able to accept the text proposed by Mr. Ingles unless the other amendments were incorporated.

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Mr. RYBAKOV said that he found the compromise reached by Mr. Ingles and Mr. Moussa acceptable.

Mr. MOUSSA recalled that, for the sake of impartiality, the sponsors had not accepted either the amendment proposed by Mr. Gowen or the one proposed by Mr. Rybakov at the 622nd meeting. He hoped that Mr. Rybakov and Mr. Humphrey would not press their amendments.

As to the deletion of the words "it can be reasonably presumed", Mr. Humphrey might perhaps discuss the matter with Mr. Ingles.

He appealed to Mr. Ingles to agree to the inclusion in the text he had proposed of the reference to "politically motivated stands".

Mr. LAGOS suggested that, in order to overcome the difficulties which had arisen regarding the question of non-governmental organizations, the phrase "non-governmental organizations concerned with human rights" should be used. That might be acceptable to Mr. Martinez Cobo.

Mr. NETTEL said that he could agree to the text proposed by Mr. Ingles if the word "agent" was given a broad interpretation.

Mr. JUVIGNY noted that paragraph (2) (a) included the words "not resorting to politically motivated stands" and that paragraph (3) (b) stated: "A communication shall be inadmissible if it has manifestly political motivations." He wondered whether the scope of the two phrases was different or whether it was the same, in which case conflict might arise in applying those two provisions. He would like the terminology to be uniform throughout and would favour the inclusion of the word "manifestly" in paragraph (2) (a).

In his view, the phrase "non-governmental organizations concerned with human rights", proposed by Mr. Lagos, was too restrictive. It would mean, for example, that a communication from an organization such as a trade union organization reporting violations of human rights in matters not directly connected with the purposes of the association as enunciated in its statutes would be inadmissible. The result would be to deny the right of associations to take legal action to protect the common interest.

Mr. CAREY said that he would respond to Mr. Moussa's appeal and, if Mr. Rybakov did not press his amendment, would not press his own.

In the light of Mr. Nettel's statement, he proposed that the word "agent" should be replaced by the phrase "or others acting on their behalf".

Mr. CASSESE recalled that on the preceding day he had proposed the phrase "or their relatives or agents" and had suggested during the current meeting that it should be replaced by "or his dependants or agents", the word "agents" being used in a very broad sense.

He would point out that he had not proposed the deletion of the last phrase of subparagraph (a), as stated in document E/CN.4/Sub.2(XXIV)/CRP.3.

Mr. RYBAKOV felt that it should be specified that persons submitting communications on behalf of the victim must be duly authorized to do so by the victim or must be acting as his representative.

Mr. CRISTESCU said that he could accept the wording of subparagraph (a) as proposed by the sponsors.

He agreed with Mr. Lagos's suggestion for the use of the phrase "non-governmental organizations concerned with human rights", which was more explicit and improved the text.

He was opposed to the suggestion that mention should be made of agents, relatives or dependants. Those were extremely vague expressions which would compel the Working Group to ask the authors of communications for proof that they were agents or relatives and would complicate its task.

Mr. NETTEL supported Mr. Humphrey's proposal.

Mr. CASSESE, speaking in reply to Mr. Cristescu, said that it would be an easy matter to establish whether the author of a communication was a relative or a representative of an alleged victim. In subparagraph 2 (b) of the text under discussion, it was specified that the author must be "clearly identified". It would be just as easy to identify the victim of the violation as to identify the family or other connexion between the author of the communication and the victim. In his view, his proposal answered a fundamental need since, as he had already pointed out, a person in custody might find it impossible to contact a non-governmental organization, and if he wished to turn to the United Nations

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(Mr. Cassese)

he could do so only through his relatives or lawyers. Moreover, it was conceivable that, for political or other reasons, a non-governmental organization might be unwilling or unable to refer the matter to the United Nations.

Mr. RUHASHYANKIKO suggested that, now that the list of oral amendments proposed to document E/CN.4/Sub.2/L.549 had been circulated, the Sub-Commission should proceed to vote.

Mr. RYBAKOV said that the Sub-Commission, in continuing to discuss non-governmental organizations, was straying somewhat from the problem at hand, which was the admissibility of communications within the United Nations itself. In a spirit of compromise, the sponsors of the draft resolution had included non-governmental organizations in their text, and that had raised the question of agents, whose intervention, as Mr. Cristescu had pointed out, might lead to abuses. He had himself submitted alternatives to Mr. Carey's proposal; he attached great importance to them and hoped that they would be included in the text as adopted. Above all, however, he hoped that a decision could be reached, and he was prepared to agree that his proposal should not be put to the vote.

Mr. CRISTESCU said that, in a spirit of compromise, he could accept subparagraph (a) as it stood, but he would definitely vote against that subparagraph if it mentioned dependants, relatives and agents. The expression "clearly identified" referred to by Mr. Cassese meant that a person really existed and not, in the present context, that he was a relative, an agent, and so forth.

The CHAIRMAN asked Mr. Moussa to read out slowly the text of the paragraph as amended by the sponsors of the revised draft resolution.

Mr. MOUSSA observed that profound differences on many points had emerged from the debate. He was gratified that Mr. Carey and Mr. Rybakov were not pressing for the adoption of their amendments and that Mr. Cristescu was also prepared to accept the text as it stood, and he believed that Mr. Ingles did not disagree with that text but simply wished to improve its wording. The text was

(Mr. Moussa)

very delicately balanced and it was impossible to amend it in any way. The addition proposed by Mr. Lagos, singling out non-governmental organizations that were concerned with human rights, would only limit the number of those organizations, of which there were already too few in Africa, Asia and Latin America.

In a spirit of compromise, the sponsors of the draft resolution wished it to be put to the vote as it stood.

Mr. INGLES said that, since the sponsors of the draft resolution apparently did not object to the expression "in consultative status", the Sub-Commission had two alternatives. If it omitted the words "in consultative status" and adopted the phrase proposed by Mr. Lagos, "concerned with questions of human rights", it would have to specify that the reference was to "international" non-governmental organizations. Alternatively, since the question of non-governmental organizations was causing so much difficulty, it could delete all references to them.

Mr. HUMPHREY said that he wished to maintain his amendment for the addition of the words "any person or group of persons" after the word "or" in the third line of subparagraph (a). He also wished to maintain his amendment for the replacement of the words "having knowledge" in the last line by the words "appearing to have knowledge". He could not agree to the suggestion that only communications originating from non-governmental organizations concerned with human rights, or from international organizations, should be receivable, as that would have the effect of excluding many non-governmental organizations.

Mr. RYBAKOV agreed with Mr. Ingles that all mention of non-governmental organizations could be deleted, if that suggestion seemed acceptable. He also agreed with Mr. Humphrey concerning the restrictive effect of using the adjective "international". If substantive amendments continued to be proposed, he would propose some of his own.

Mr. MARTINEZ COBO said that he would be prepared to accept the proposal of Mr. Lagos, despite the misgivings it was apparently causing. The number of non-governmental organizations was much larger than had been suggested, even counting only those that were recognized by the United Nations and the specialized agencies. He suggested that the amendment proposed by Mr. Lagos should be put to the vote.

Mr. CRISTESCU observed that Mr. Humphrey had gone back to a phrase which the sponsors of the revised draft resolution had used in a previous version and which also appeared in the report of the Drafting Group. However, he had quoted only part of it, since the phrase in the report was "who have direct knowledge of such violations". He therefore proposed that the word "direct" should be added to Mr. Humphrey's amendment. He also requested separate votes on the words "it can be reasonably presumed" and on the whole last part of the sentence, beginning with the words "or non-governmental organizations". He proposed, in addition, that the adjective "international" should be inserted before "non-governmental organizations", and that it should also be specified that such organizations were "in consultative status with the Economic and Social Council of the United Nations". Finally, he agreed with Mr. Humphrey's suggestion that the words "or reliable" should be added after the word "direct".

Mr. CASSESE said that he maintained his proposal concerning dependants or agents.

Mr. JUVIGNY asked whether the practice of subamending an amendment could be allowed; it had not been allowed in the debates on the drafting of the Covenants on Human Rights.

Mr. MOUSSA observed that the draft resolution had been drawn up in a spirit of compromise, and that its sponsors could not agree to the insertion of ideas which upset its balance. That was a responsibility they could not accept, and they were very seriously considering withdrawing their draft resolution.

Mr. HUMPHREY said he wished to propose a further subamendment to Mr. Cristescu's subamendment, as he believed he had the right to do. In place of the phrase "having knowledge", he proposed the words "appearing to have knowledge".

Mr. RYBAKOV said he insisted that a decision should be reached today on the point at issue, as had been agreed. He urged all his colleagues to respond to Mr. Moussa's appeal by voting on the text as it stood, and he requested that the vote should be taken forthwith.

The CHAIRMAN suggested that the various amendments should be voted on at the afternoon meeting, if necessary line by line.

Mr. RYBAKOV pointed out that he had expressly asked for an immediate vote on the text as it stood, and his colleagues had not denied the request.

The CHAIRMAN asked if anyone opposed Mr. Rybakov's proposal; if so, it could not be accepted.

Mr. HUMPHREY said that he was completely opposed to the proposal, for which he knew of no precedent. Nor had he ever seen, in the United Nations, a draft resolution withdrawn by its sponsors because it did not command unanimous support.

Mr. CRISTESCU said he was surprised that his subamendment, which was based on a part of document E/CN.4/Sub.2/L.544 that the members of the Sub-Commission had approved unanimously, was now giving rise to objections.

Mr. LAGOS requested a suspension of the meeting.

The CHAIRMAN said that he would put Mr. Lagos's motion to the vote.

Mr. JANKOVIC pointed out that Mr. Lagos had made only a suggestion.

Mr. INGLES formally requested that the meeting should be adjourned.

The CHAIRMAN, invoking rule 48 of the rules of procedure, put to the vote Mr. Ingles' motion for adjournment of the meeting.

The motion was adopted.

The meeting rose at 1.15 p.m.

SUMMARY RECORD OF THE SIX HUNDRED AND TWENTY-SEVENTH MEETING

Held on Friday, 13 August 1971, at 3.10 p.m.

Chairman:

Mr. GROS ESPIELL

(Uruguay)

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES (continued):

- (a) PROCEDURES FOR DEALING WITH COMMUNICATIONS RELATING TO VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1503 (XLVIII) (E/CN.4/Sub.2/L.549/Rev.1) (continued)

The CHAIRMAN suggested that, to expedite consideration of draft resolution E/CN.4/Sub.2/L.549/Rev.1, the Sub-Commission should proceed forthwith to vote line by line on paragraph 2 (a).

Subparagraph 2 (a)

Mr. ALEXIDZE (Secretary of the Sub-Commission) read out amendments to the draft resolution submitted at the 626th meeting and drew attention to a list of oral amendments proposed to document E/CN.4/Sub.2/L.549 (E/CN.4/Sub.2 (XXIV)/CRP.3). The position as to which amendments had been withdrawn was not clear.

Mr. MOUSSA said that the very considerable number of amendments would make it impossible for the Sub-Commission to vote as the Chairman had suggested on issues as sensitive as those before it. It should first be clearly understood which amendments had been withdrawn.

Mr. RYBAKOV, speaking in exercise of the right of reply, said that he had been surprised by Mr. Humphrey's description of his approach to the Sub-Commission's work as unprecedented. He had simply appealed for the withdrawal of amendments to subparagraph 2 (a) so that the Sub-Commission could vote on a single text. It would be a very different matter if he had proposed the of all amendments except his own. His amendment was pragmatic as opposed to tactical; he attached great importance to it and if all the other amendments stood he would maintain it. He emphasized, however, that he was appealing to the goodwill of all members of the Sub-Commission. He agreed with Mr. Moussa that it would be difficult for the Sub-Commission to proceed as the Chairman had suggested in view of the wealth of amendments.

Mr. CRISTESCU said that he was ready to accept the text of subparagraph 2 (a) as it stood but would maintain his subamendment to Mr. Humphrey's amendment if the latter was maintained. He would also propose a separate vote on

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(Mr. Cristescu)

the words "it can be reasonably presumed" and on the latter part of the subparagraph, beginning with the words "or non-governmental organizations". He withdrew his proposals for the insertion of "international" before "non-governmental organizations" and "in consultative status with the Economic and Social Council" after the same words.

Mr. CAREY commended the sponsors of draft resolution E/CN.4/Sub.2/L.549/Rev.1 on having established a middle ground in their revised text. He suggested that only the amendment by Mr. Humphrey, as amended by Mr. Cristescu, should be retained, failing which he would vote against any and all amendments in order to support the admirable work of the sponsors of the text.

Mr. HUMPHREY said that he would withdraw all his amendments except the one adding "any person or group of persons" after the words "in subparagraph (1) (b) above or" and, in a spirit of compromise, would accept Mr. Cristescu's subamendment to his text, even though he felt that it diluted its meaning.

Mr. CASSESE said that he would be willing to withdraw his amendment if Mr. Humphrey's amendment, as subamended, was accepted.

Mr. INGLES pointed out that non-governmental organizations could be described as groups of persons. He proposed that the Sub-Commission should revert to the text on the source of communications which appeared, outside brackets, in section C of document E/CN.4/Sub.2/L.544.

Mr. JUVIGNY said that a group of persons was not necessarily a personne morale in French legal language. Whatever the legal régime, however, associations, trade unions and the like could be victims of violations of human rights and he thought that the text should contain the term "personne morale".

Mr. MOUSSA said that as the latter part of the subparagraph referred to "direct and reliable knowledge", Mr. Humphrey's amendment, as subamended by Mr. Cristescu, should read: "any person or group of persons who have direct and reliable knowledge of those violations".

Mr. INGLES proposed the deletion of that part of the subparagraph which followed Mr. Humphrey's amendment, as subamended, and began with the words "or non-governmental organizations". He would maintain his request for a separate vote on the text which followed the phrase "non-governmental organizations acting in good faith...".

Mr. MOUSSA said that Mr. Ingles' acceptance of the inclusion of the references to non-governmental organizations was, in part, the basis for the further progress of the Sub-Commission's work. The sponsors had understood that Mr. Ingles' amendment related to the order of certain phrases but not to their deletion. Consequently, they were unwilling to agree to the separate vote which Mr. Ingles proposed.

Mr. RYBAKOV endorsed Mr. Moussa's remarks. He had withdrawn his own amendment on the understanding that Mr. Ingles would do likewise.

Mr. CAREY expressed the hope that a decision would be taken on the amendment proposed by Mr. Humphrey with the subamendment proposed by Mr. Cristescu. He supported the text of paragraph 2 (a) as it stood.

The CHAIRMAN proposed that the Sub-Commission should vote on the amendment and subamendment whereby the words "any person or group of persons who have direct knowledge of such violations" would be inserted after the word "above".

The amendment and subamendment were adopted by 12 votes to 3, with 6 abstentions.

Mr. MARTINEZ COBO wished to go on record as having voted against the amendment, for the reasons he had given in the general debate.

The CHAIRMAN, recalling Mr. Cristescu's request for a separate vote, proposed that the Sub-Commission should vote on the words "it can be reasonably presumed".

The phrase was adopted by 20 votes to 2, with 2 abstentions.

The CHAIRMAN put to the vote Mr. Ingles' proposal concerning the insertion of the word "international" before "non-governmental organizations".

The proposal was rejected by 19 votes to 1, with 4 abstentions.

The CHAIRMAN recalled Mr. Ingles' request that a separate vote should be taken on the phrase "in accordance with recognized principles of human rights, not resorting to any politically motivated stands contrary to the provisions of the Charter of the United Nations."

The phrase was adopted by 20 votes to 2, with 1 abstention.

The CHAIRMAN invited members to vote on subparagraph 2 (a), as amended, as a whole.

The subparagraph, as amended, was adopted by 20 votes to none, with 3 abstentions.

Subparagraph 2 (b)

After a brief discussion in which Mr. JUVIGNY, Mr. HUMPHREY, Mr. LAGOS, Mr. CAREY, Mr. INGLES and Mr. MARTINEZ-COBO participated, the CHAIRMAN said that the punctuation of subparagraph 2 (b) in the French and Spanish texts would be harmonized with that of the English text.

The CHAIRMAN, after taking note of Mr. Kettani's suggestion that the reference to resolution 728 F (XXVIII) should be made more specific by the addition of the words "in subparagraph (b)", suggested that subparagraph 2 (b) should be considered adopted.

It was so decided.

Subparagraph 3 (a)

Mr. RUHASHYANKIKO proposed that a subparagraph should be added under paragraph 3 which would read "Nevertheless, communications shall not be inadmissible solely because the knowledge of the author is second-hand."

Mr. MOUSSA asked Mr. Ruhashyankiko if he would accept the insertion of the word "individual" in his proposed formulations before the word "author". That would accord special consideration to communications from individuals but would exclude communications from groups of individuals or organizations which did not have direct and reliable knowledge of violations.

Mr. RUHASHYANKIKO agreed to Mr. Moussa's proposal.

Mr. CRISTESCU said that he would vote in favour of Mr. Ruhashyankiko's proposed new subparagraph but he would like to propose the addition of the following phrase at the end of the present text: "provided that they are accompanied by clear evidence".

Mr. RUHASHYANKIKO said he could agree to that amendment.

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Mr. MARTINEZ COBO said that he would have to abstain in a vote on Mr. Ruhashyaniko's proposal since he saw a contradiction between subparagraph 2 (a), which required authors of admissible communications to have direct knowledge of violations, and the proposed new subparagraph, which would permit communications based on second-hand knowledge.

The CHAIRMAN put to the vote Mr. Ruhashyaniko's proposal with the modifications introduced by Mr. Moussa and Mr. Cristescu.

Mr. Ruhashyaniko's proposal for a new paragraph (subparagraph 3 (b)), as amended, was adopted by 11 votes to none, with 2 abstentions.

Mr. CRISTESCU drew attention to the proposal he had made previously to change the heading of paragraph 3 to "Contents of communications and nature of allegations". He also proposed that the following subparagraph should be inserted before the present subparagraph (a): "Communications must contain a description of the facts and must indicate the purpose of the petition and the rights which have been violated. They should be accompanied by evidence as clear as possible of the allegations referred to."

The CHAIRMAN said that if there was no objection, he would take it that the Sub-Commission unanimously agreed to the proposed change in the heading of paragraph 3.

It was so decided.

Mr. NETTEL asked for a separate vote on the second sentence of the subparagraph proposed by Mr. Cristescu.

The CHAIRMAN, in accordance with Mr. Nettel's wish, invited the members of the Sub-Commission to vote on the second sentence of the subparagraph proposed by Mr. Cristescu for insertion in paragraph 3 of the revised draft resolution.

The second sentence of the subparagraph proposed by Mr. Cristescu was rejected by 8 votes to 7, with 5 abstentions.

The remainder of the subparagraph proposed by Mr. Cristescu was adopted by 19 votes to none, with 3 abstentions.

The CHAIRMAN remarked that the new subparagraph which had just been adopted by the Sub-Commission would be numbered 3 (a) and the following subparagraphs contained in document E/CN.4/Sub.2/L.549/Rev.1 would be renumbered accordingly. For the sake of convenience, however, members of the Sub-Commission could refer to the subparagraphs printed in that document as former subparagraph (a), (b) or (c).

Mr. INGLES drew attention to the proposal he had made concerning the insertion either in paragraph 2 or in paragraph 3 of a new subparagraph which would read: "Communications shall be inadmissible unless they are made under oath."

The CHAIRMAN called for a vote on the subparagraph proposed by Mr. Ingles, noting that if the Sub-Commission adopted the subparagraph it could then decide whether it should be included in paragraph 2 or paragraph 3.

The subparagraph proposed by Mr. Ingles was rejected by 6 votes to 3, with 4 abstentions.

Miss SOLESBY recalled that she had proposed an amendment to former subparagraph 3 (a), which consisted in inserting the word "essentially" before the word "abusive" in the present text. She also asked for a separate vote on the words "defamatory or" in subparagraph 3 (a).

The CHAIRMAN put Miss Solesby's amendment to the vote.

The amendment proposed by Miss Solesby was adopted by 12 votes to 4, with 6 abstentions.

Mr. MOUSSA, speaking on behalf of the sponsors of the revised draft resolution, agreed to delete the words "defamatory or" from former subparagraph 3 (a).

Mr. CAREY drew attention to the amendment proposed by Mr. Gowen in reference to former subparagraph 3 (a) (E/CN.4/Sub.2 (XXIV)/CRP.3, p. 3).

The CHAIRMAN put the amendment proposed by Mr. Gowen to the vote.

The amendment proposed by Mr. Gowen was adopted by 13 votes to 4, with 5 abstentions.

Former subparagraph 3 (b)

Mr. CASSESE recalled that he had proposed the deletion from subparagraph 3 (b) of the phrase "or if the subject of the complaint is contrary to the provisions of the Charter of the United Nations". That phrase was superfluous in view of the previous reference to the Charter in subparagraph 2 (a); moreover, it seemed inconsistent to use the word "complaint" where every other paragraph had the word "communication". He added that he now proposed the deletion of the first part of subparagraph 3 (b), that is, the sentence "A communication shall be inadmissible if it has manifestly political motivations." The phrase was superfluous since it reiterated the provision already contained in subparagraph 2 (a), which stipulated, inter alia, that communications should be inadmissible if their authors resorted to "politically motivated stands contrary to the provisions of the Charter of the United Nations". Moreover, the wording of subparagraph 3 (b) was less clear and precise than that of subparagraph 2 (a), which by referring to the Charter specified to some extent the kind of political considerations that should not motivate a communication; subparagraph 3 (b), however, did not clarify that issue.

Mr. NETTEL said that he shared Mr. Cassese's view but if that last phrase were to be retained he would suggest changing the conjunction from "or" to "and".

Mr. MOUSSA, speaking on behalf of the sponsors of the revised draft resolution, accepted the change of conjunction proposed by Mr. Nettel.

Mr. INGLES was pleased that explicit reference had been made to politically motivated communications in subparagraph 3 (b). The subparagraph, as it stood, would ensure the rejection of communications from any source with a political motivation and not just from non-governmental organizations as the similar stipulation in subparagraph 2 (a) provided.

Mr. JUVIGNY endorsed Mr. Nettel's proposal and, to eliminate the bothersome word "complaint", suggested the formulation: "and if its subject is contrary to the provisions of the Charter of the United Nations".

The CHAIRMAN put to the vote Mr. Cassese's proposal to delete subparagraph 3 (b).

Mr. Cassese's proposal was rejected by 11 votes to 8, with 5 abstentions.
Former subparagraph 3 (b), as amended, was adopted.

Former subparagraph 3 (c)

Miss SOLESBY requested a separate vote on the words "hostile to the State concerned".

Mr. MOUSSA said that the sponsors were prepared to delete those words.

At the request of Mr. HUMPHREY, the subparagraph was put to the vote.

Former subparagraph 3 (c), as amended, was adopted by 13 votes to 8, with 3 abstentions.

Mr. CRISTESCU proposed that the following subparagraph should be added at the end of paragraph 3: "The cases dealt with in communications must not constitute offences against, or other violations of, the law of the State concerned in conformity with the principles of international law."

Mr. CAREY pointed out that that text had originally been proposed for insertion in subparagraph 2 (a). In a spirit of compromise, however, members had agreed to withdraw their amendments to that paragraph. Why was the text now being proposed for insertion in paragraph 3?

Mr. RYBAKOV said that the proposal to insert the text in subparagraph 2 (a) had been made in error; the text was concerned with the nature of allegations rather than the source of communications. It was an important text and must be included in the draft resolution.

Mr. KETTANI said that the text would unduly restrict the rights of petitioners and enable States to prevent communications from being considered by the working group.

Mr. RYBAKOV pointed out that only cases which constituted violations of those domestic laws which were in conformity with international law would be affected.

Mr. CRISTESCU said that he did not share Mr. Kettani's fears. The Sub-Commission was drafting rules for the working group, not for States. Indeed, unless the text was inserted, the Sub-Commission might be accused of encouraging criminality.

Mr. CAREY said that, as worded in English, the text was not sufficiently clear to exclude the interpretation placed on it by Mr. Kettani. If the intention

(Mr. Carey)

was that the domestic law in question must conform to the principles of the Universal Declaration of Human Rights, that fact should be stated.

Mr. CRISTESCU said that he would be prepared to add the words "and with the principles of the Universal Declaration of Human Rights" at the end of the subparagraph.

Mr. CAREY said that the English text would be improved if the words following the words "State concerned" were replaced by the words "which comply with the provisions of international law and with the principles of the Universal Declaration of Human Rights". Even with that amendment, the subparagraph would be a source of concern to him.

Mr. CRISTESCU said that he could accept Mr. Carey's amendment to his proposal.

Mr. JUVIGNY said that insertion of the proposed subparagraph would place an additional burden on the working group, whose task should be to determine whether a case constituted a violation of human rights, not to decide whether the laws of the State concerned were in conformity with the principles of international law and of the Universal Declaration of Human Rights.

Mr. NEITEL said that Mr. Carey's amendment implied that at present the principles of the Universal Declaration were not generally recognized as principles of international law. In Austria, however, law students were taught that they were, and unless it, too, proceeded from that assumption, the Sub-Commission would be unable to fulfil the mandate entrusted to it under Council resolution 1503 (XLVIII). In any case, for the reasons already stated, he would vote against the subparagraph as a whole.

Mr. RYBAKOV suggested that the additional subparagraph should read: "Communications must not be based on facts which constitute violations, by the author of the communication, of the laws of the State concerned which comply with the principles of international law including the principles of the Universal Declaration of Human Rights."

Mr. CRISTESCU said that he could accept that wording.

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The CHAIRMAN invited the Sub-Commission to vote on Mr. Cristescu's proposal, as amended by Mr. Rybakov.

The proposal was rejected by 18 votes to 2, with 3 abstentions.

Paragraph 4

Mr. MARTINEZ COBO reminded members that at an earlier meeting Mr. Martinez Baez had proposed that the title of paragraph 4 should be amended to read "Existence of other remedies", and that he himself had proposed the insertion of a new subparagraph (a) reading: "Communications would be inadmissible if there are other procedures established within the United Nations system."

Mr. HUMPHREY recalled that it had been proposed, at the 625th meeting, that the whole paragraph should be deleted. That proposal should be put to the vote first.

Mr. MOUSSA said that the substance of the paragraph was important and must be retained.

Mr. RYBAKOV concurred. Outside the meeting-room he had been approached by observers for certain specialized agencies who had suggested that the words "unless it appears that such remedies would be ineffective or unreasonably prolonged" should be replaced by the words "without prejudice to the functions and powers of the organ concerned". Personally, he had no objection to those words. He was of the opinion, however, that the words "regional or other international" should be deleted and would request a separate vote on them.

Mr. HUMPHREY agreed with Mr. Rybakov that there should be a separate vote on the words "regional and other international".

Mr. CRISTESCU said that if Mr. Humphrey's proposal involved the deletion of the whole of paragraph 4 he would oppose it; the two subparagraphs provided a legal framework for the consideration of communications.

Mr. NETTEL said that, contrary to the statement in document E/CN.4/Sub.2.(XXIV)/CRP.3, he did not propose the deletion of subparagraph (a) although he would vote against it. He would oppose the deletion of the phrase in the first sentence beginning: "unless it appears that" because it was part of a rule of international law which, if included, should be given in its entirety.

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Mr. RYBAKOV pointed out that the wording he had suggested had originated with representatives of the specialized agencies; it was not his own formal proposal. He agreed with Mr. Cristescu as to the importance of the text but thought that the reference to regional or other international remedies should be removed, so that complainants would be free to choose recourse to the Sub-Commission. He therefore supported Mr. Humphrey's proposal for a separate vote on those words.

Mr. SCHREIBER (Director, Division of Human Rights) said that he had also been requested to express the concern of the two specialized agencies, the ILO and UNESCO, regarding the matter under discussion. Over the years, those agencies had established well-defined procedures for dealing with complaints in the area for which they were competent under their constitutions. There was no question, of course, of subordinating United Nations procedures in the field of human rights to those of specialized agencies, but the agencies' procedures in such areas as discrimination in employment or discrimination in education or trade union rights were satisfactory and useful and it would be as well to leave open the possibility of recourse to them under the procedures to be established by the Sub-Commission. Another question was that, once those procedures had been resorted to, the United Nations procedure on communications should not be such as to constitute a procedure of appeal, but full weight should be attached to the decisions and other action of the specialized agencies.

The CHAIRMAN invited the Sub-Commission to vote on the proposal for the deletion of paragraph 4.

The proposal was rejected by 15 votes to 5, with 4 abstentions.

The CHAIRMAN invited the Sub-Commission to vote on the proposal by Mr. Martinez Paez that the heading of paragraph 4 should read: "Existence of other remedies".

The proposal was adopted by 17 votes to 2, with 5 abstentions.

Mr. MARTINEZ COBO proposed that, in view of the statement by the Director of the Division of Human Rights, paragraph 4 should include a provision reading: "Communications shall be inadmissible if there are other competent procedures within the United Nations system for their consideration."

Mr. CAREY said that the phrase "within the United Nations system" was too general. There were other bodies within the United Nations system which dealt with the problem of apartheid and violations of human rights in colonial Territories and the Sub-Commission would surely not wish to be prevented from dealing with such problems. He therefore suggested the alternative wording: "... established within the specialized agencies of the United Nations...".

Mr. NETTEL said that the meaning of "competent procedures" was not clear.

Mr. RYBAKOV said that Mr. Martinez Cobo's proposal would mean that the Sub-Commission would not deal with such important problems as that of apartheid. Perhaps Mr. Martinez Cobo could alter his proposed formula to take account of the idea inherent in the suggestion from the specialized agencies, which he himself had put forward.

Mr. JUVIGNY said that he could accept a version reading: "Communications shall be inadmissible, without prejudice to the functions and powers of the international organizations concerned, if domestic remedies have not been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged."

Mr. INGLES said he appreciated the purpose of Mr. Martinez Cobo's amendment, however, the Sub-Commission should not have a purely negative attitude. The problem was not one of admissibility but of referral of a complaint to the appropriate body. Mr. Martinez Cobo might consider rewording the amendment. One possible formula might be "Complaints over which another body of the United Nations has primary or exclusive jurisdiction should be referred to that body".

Mr. HUMPHREY agreed with the first part of Mr. Ingles' statement. It was a matter for the Commission on Human Rights to decide if there had been a consistent pattern of gross violations. If the Commission decided to investigate a complaint, it could also decide whether to refer it to another body. Action in specialized agencies had several times been precipitated by the United Nations. He would ask Mr. Martinez Cobo to withdraw his amendment.

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Mr. CAREY, referring to Mr. Nettel's earlier comment concerning the suitability of describing "procedures" as "competent", proposed the phrase "available equivalent procedures" and the elimination of the word "established". He also suggested that the words "specialized agencies of" should be inserted before "the United Nations system".

Mr. MOUSSA said that he could agree to Mr. Martinez Cobo's amendment as modified by Mr. Carey. The Commission on Human Rights had a heavy agenda and whatever procedure was chosen should facilitate the Commission's work. He would make a tentative suggestion to the effect that communications should not be admissible if there were other procedures within the United Nations system.

Miss SOLESBY agreed with Mr. Humphrey that it would be difficult to accept the wording of the amendment even with the proposed modifications. Many complaints - concerning, for instance, violations of human rights in the Middle East or apartheid - would not come before the working group at all if that proposal was adopted. The working group would be unable to establish whether there were consistent patterns of violations if it could not examine complaints that fell within the competence of other bodies. Perhaps Mr. Martinez Cobo would agree to the addition of the words "or by another organ of the United Nations system" after the words "the State concerned", in subparagraph 4 (b), in place of his proposed separate subparagraph.

Mr. MARTINEZ COBO said he had no objection to Mr. Carey's amendment. With regard to Mr. Humphrey's statement on the difference between admissibility and transferral, he mentioned the case of unions and the right to strike. When a complaint was received about such matters, the Secretariat of the body receiving the complaint transferred the complaint to the proper body. He could not accept Miss Solesby's proposal because his proposal did not refer to cases that had been settled.

Mr. RYBAKOV proposed that after the word "if" in Mr. Martinez Cobo's amendment, the sentence should read "it would prejudice the functions and powers of the organs concerned".

The CHAIRMAN put to the vote Mr. Rybakov's amendment to the text proposed by Mr. Martinez Cobo.

Mr. Rybakov's amendment was adopted by 9 votes to 4, with 7 abstentions.

Mr. MOUSSA said that it was unclear what the words "organs concerned" in Mr. Rybakov's amendment referred to.

Mr. RYBAKOV said that he would have no objection to a drafting change which would clarify his text.

The purpose of the provision was to ensure that communications should be inadmissible if their admission would prejudice the functions and powers of the specialized agencies concerned.

Mr. LAGOS proposed that the subparagraph in question, as a whole, should read: "Communications shall be inadmissible if their admission would prejudice the functions and powers of the specialized agencies of the United Nations."

That proposal was adopted by 10 votes to 4, with 6 abstentions.

Former subparagraph 4 (a)

The CHAIRMAN invited the Sub-Commission to vote on the proposal that the words "regional or other international" should be deleted from former paragraph 4 (a).

The proposal was adopted by 16 votes to 1, with 3 abstentions.

Former paragraph 4 (a), as amended, was adopted by 18 votes to 2, with 1 abstention.

Former subparagraph 4 (b)

Miss SOLESBY asked whether Mr. Carey maintained the amendment he had proposed at the 625th meeting that the words "as set forth in the Universal Declaration of Human Rights" should be added after the words "human rights" in subparagraph 4 (b).

Mr. CAREY replied in the affirmative.

Mr. RYBAKOV proposed that Mr. Carey's amendment should be supplemented by the words "and in other applicable instruments in the field of human rights".

Mr. Rybakov's proposal was adopted by 18 votes to none, with 3 abstentions.

Mr. Carey's amendment as subamended by Mr. Rybakov, was adopted by 21 votes to none, with 1 abstention.

Paragraph 4 (b), as amended, was adopted by 17 votes to 4, with 1 abstention.

Paragraph 5

Mr. LAGOS proposed that, for the sake of consistency with paragraph 4 (a), the words "regional or international" should be deleted.

The proposal was adopted unanimously.

Mr. JUVIGNY proposed the deletion of the word "final".

The proposal was adopted by 17 votes to none, with 2 abstentions.

Paragraph 5, as amended, was adopted by 20 votes to none, with 2 abstentions.

Mr. CRISTESCU proposed that the following paragraph, entitled "Examination of communications", should be added to the text as paragraph 6: "Communications concerning violations of human rights will be examined and submitted in the order in which these rights appear in the applicable instruments in the field of human rights."

Mr. CAREY, Mr. HUMPHREY, Mr. NETTEL, Mr. NIKIEMA and Mr. MOUSSA appealed to Mr. Cristescu to withdraw his proposal. There were at least 30 instruments in the field of human rights and it was by no means certain that they all listed the rights in the same order.

Mr. CASSESE associated himself with the appeal by other speakers who had asked Mr. Cristescu to withdraw his proposal. He stressed that the Economic and Social Council, in resolution 1503 (XLVIII), had instructed the Sub-Commission to establish criteria governing the admissibility of communications, that is, the requirements which communications must meet in order to be admissible, and not to determine the order in which communications should be considered. It would therefore be inappropriate for the Sub-Commission, at least at the present stage, to take a decision on the questions dealt with in Mr. Cristescu's proposal.

Mr. CRISTESCU withdrew his proposal. Members had dissuaded him from pressing his point but had not succeeded in persuading him that there was not an established order in which rights appeared in the applicable instruments in the field of human rights. The question would have to be settled by the working group.

Draft resolution E/CN.4/Sub.2/L.549/Rev.1 as a whole, as amended, was adopted by 21 votes to none, with 1 abstention.

Mr. RYBAKOV said that he had voted in favour of the text because it contained useful criteria and principles which should govern the admissibility of communications. His position of principle concerning Council resolution 1503 (XLVIII) remained unchanged.

The meeting rose at 7 p.m.

SUMMARY RECORD OF THE SIX HUNDRED AND TWENTY-EIGHTH MEETING

Held on Monday, 16 August 1971, at 10.45 a.m.

Chairman:

Mr. GROS ESPIELL

(Uruguay)

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES (continued)

- (a) PROCEDURES FOR DEALING WITH COMMUNICATIONS RELATING TO VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1503 (XLVIII) (E/CN.4/Sub.2/L.539/Rev.1, L.551) (concluded)

The CHAIRMAN said that the Sub-Commission now had before it draft resolution E/CN.4/Sub.2/L.539/Rev.1 and the amendments thereto submitted by Mr. Cristescu (E/CN.4/Sub.2/L.551).

Mr. CRISTESCU said that he was withdrawing the last subparagraph of paragraph 1 of his amendments.

He explained that the aim of the amendments he had submitted was to ensure equitable geographical representation in the working group.

In reply to a question put by Mr. MARTINEZ COBO, the CHAIRMAN said that the members of the Sub-Commission would be able to make oral amendments to both the draft resolution and Mr. Cristescu's amendments and that the text would be voted on paragraph by paragraph.

Mr. MARTINEZ COBO proposed that the second preambular paragraph be deleted.

He went on to suggest that the word "Western" in operative paragraph 1 (a) should be replaced by the words "Western European and others", which would be more in line with the practice followed in the United Nations.

Mr. HUMPHREY observed that the term "geographical areas" used in the resolution was better than "geographical group", the term contained in Mr. Cristescu's amendment. The Sub-Commission consisted of experts from different geographical areas and not belonging to geographical groups.

The Chairman would, of course, consult the members of the Sub-Commission before appointing the five members who would make up the working group.

Mr. NETTEL said that he shared Mr. Humphrey's view and asked Mr. Cristescu to specify in what circumstances he envisaged a member of the working group being replaced by another.

Mr. CRISTESCU said that, in view of the comments which had been made, he was prepared to accept the term "geographical area" instead of "geographical group" and also the expression "Western European and others" instead of the word "Western".

In reply to Mr. Nettel, he suggested adding the words "In the event of unavoidable absence" before the words "A member of the working group" at the beginning of the second subparagraph of paragraph 1 of his amendments.

In addition, he explained that it was his understanding that the members of the working group would be elected by the Sub-Commission.

Mr. INGLES said he did not believe that a formula whereby members of the working group were chosen according to purely geographical criteria was particularly satisfactory. For example, he pointed out that the division of Europe into Eastern Europe and Western Europe was an artificial one. In that case, why not also divide Asia into Eastern Asia and Western Asia and Africa into East Africa and West Africa? The proposed division of Europe was in fact based on ideological rather than geographical considerations. He pointed out that in the International Court of Justice representation was assured of the principal legal systems and the main forms of civilization. In his view, Mr. Cristescu's amendment went even further because the members of the Sub-Commission would not only be divided into geographical blocs, but also because the geographical blocs would choose their respective representatives to the working group. While there was good reason to form geographical blocs in political bodies, that could not be done in the Sub-Commission, which was composed of experts and not representatives of Governments, blocs or groups. The proposed division, if accepted, would mean the politicization of the Sub-Commission and would jeopardize its influence and its prestige in the prevention of discrimination and protecting minorities. For that reason, he could not support Mr. Cristescu. He believed that the best way to select the members of the working group would be for the Sub-Commission itself to make the choice or for it to entrust the selection to the Chairman.

Mr. DAOUDY said that, while he was sympathetic to the arguments advanced by Mr. Ingles, he would like to draw the latter's attention to the fact that,

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(Mr. Daoudy)

Although the members of the Sub-Commission were experts, they had been selected on a geographical basis. Consequently, the members of the working group should also be selected on the basis of equitable geographical distribution. In addition, he felt that the members of the working group should be appointed by the Chairman after consultation with the members of the Sub-Commission and he therefore proposed that, in the second line of operative paragraph 1 (a) of the draft resolution, the words "after consultation with the members of the Sub-Commission" should be inserted after the words "the Chairman".

He also pointed out that there was an error in the last line of operative paragraph 1 (a) of the French version of document E/CN.4/Sub.2/L.539/Rev.1, which should read "d'Europe orientale".

Mr. RYBAKOV said that the working group must be an objective and impartial body and must represent different social and judicial systems. It was understood that there was no question of introducing political considerations into the selection of the members of the working group. Mr. Daoudy had rightly said that the members of the working group must be selected on a geographical basis. If political considerations were not to influence the selection, the only objective procedure would be not to hold elections but to have the Sub-Commission confirm the appointment of any candidates from the different geographical areas who might be proposed.

Mr. CRISTESCU, voicing his support for Mr. Daoudy's view, said that he was prepared to amend his proposal and replace the words "the latter shall elect" by the words "the Chairman shall appoint".

Mr. FERGUSON proposed that, in operative paragraph 1 (a) of the draft resolution, the words "after consultation with members from each geographical area" should be inserted after the words "the Chairman".

Mr. KHALIFA asked if the sponsors of the draft resolution would consider including a new operative paragraph which would permit the members of the Sub-Commission to attend meetings of the working group and take part in its discussions, but without having the right to vote and without requiring the

(Mr. Khalifa)

United Nations to pay the expenses involved. The working group would in any case have to inform the Sub-Commission of its conclusions and it was unreasonable to prevent the members of the Sub-Commission from assisting the working group in its deliberations.

The CHAIRMAN put to the vote Mr. Martinez Cobo's amendment to delete the second preambular paragraph of the draft resolution.

Mr. Martinez Cobo's amendment was adopted by 13 votes to none, with 7 abstentions.

At the request of Mr. Cristescu, the vote on his first amendment, as revised, was taken by roll-call.

Mr. Abu Rant, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mr. Cristescu, Mr. Daoudy, Mr. Khan, Mr. Rybakov.

Against: Mr. Abu Rant, Mr. Calvocoressi, Mr. Cassese, Mr. Ferguson, Mr. Gros Espiell, Mr. Humphrey, Mr. Ingles, Mr. Juvigny, Mr. Martinez Baez, Mr. Martinez Cobo, Mr. Nettel, Mr. Nikiema.

Abstaining: Miss Gichuru, Mr. Ilako, Mr. Jankovic, Mr. Lagos, Mr. Ruhashyankiko.

Mr. Cristescu's amendment was rejected by 12 votes to 4, with 5 abstentions.

At the request of Mr. Cristescu, the vote on his second amendment, as revised, was taken by roll-call.

Mr. Nikiema, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mr. Rybakov, Mr. Cristescu, Mr. Daoudy.

Against: Mr. Nikiema, Mr. Ruhashyankiko, Mr. Abu Rannat, Mr. Calvocoressi, Mr. Cassese, Mr. Ferguson, Miss Gichuru, Mr. Gros Espiell, Mr. Humphrey, Mr. Ilako, Mr. Ingles, Mr. Jivigny, Mr. Martinez Baez, Mr. Martinez Cobo, Mr. Nettel.

Abstaining: Mr. Jankovic, Mr. Khan, Mr. Khalifa, Mr. Lagos.

Mr. Cristescu's second amendment was rejected by 15 votes to 3, with 4 abstentions.

Mr. DAUDY asked Mr. Ferguson whether the effect of his amendment would be that consultations would be held with some members of the Sub-Commission or with all its members. If they were to be held only with some members of the Sub-Commission, he would vote against Mr. Ferguson's amendment. If all the members of the Sub-Commission were to be involved, he would vote in favour of it.

Mr. FERGUSON explained that he was proposing "consultations with the members" and not "consultations with members".

The CHAIRMAN put operative paragraph 1, subparagraph (a), as amended, to the vote.

Operative paragraph 1, subparagraph (a), as amended, was adopted by 18 votes to 1, with 4 abstentions.

Mr. MARTINEZ COBO said he felt there was no logical connexion between subparagraphs (a) and (b) of paragraph 1. While subparagraph (a) stated that it was for the Chairman to select the members of the working group, subparagraph (b) provided for the use of the system of drawing by lot, which had raised objections earlier, in order to make an initial selection or fill a vacancy. He considered it preferable to allow the Chairman full discretion in that regard and proposed the following amendment: "If necessary, the Chairman may at any time, in order to fill a vacancy, select a member from among the members of the Sub-Commission from the same geographical area".

Mr. RYBAKOV proposed the following amendment which seemed to him to be consistent with the practices adopted by the Sub-Commission: "The working group shall meet in closed session and the results of its work shall be communicated to the Sub-Commission confidentially".

The CHAIRMAN said that according to operative paragraph 8 of resolution 1503 (XLVIII) all the Sub-Commission's work would be confidential.

Mr. RYBAKOV said he hoped that point would be stressed.

Mr. HUMPHREY said that, as a sponsor of the draft resolution, he was prepared to accept the amendment proposed by Mr. Rybakov. He suggested that the amendment proposed by Mr. Martinez Cobo should be altered slightly to read "the Chairman or the outgoing Chairman", since one chairman's term could end before a new chairman had been selected.

The CHAIRMAN put the amendment proposed by Mr. Rybakov to the vote. Mr. Rybakov's amendment was adopted unanimously.

The CHAIRMAN said that the amendment submitted by Mr. Cristescu in document E/CN.4/Sub.2/L.551 regarding the deletion of operative paragraph 1, subparagraph (b), had been withdrawn. He put to the vote the amendment proposed by Mr. Martinez Cobo, which, taking Mr. Humphrey's suggestion into account, read: "If necessary, the Chairman or the outgoing Chairman may at any time, in order to fill a vacancy, select a member from among the members of the Sub-Commission from the same geographical area".

The amendment submitted by Mr. Martinez Cobo was adopted by 18 votes to none, with 5 abstentions.

The CHAIRMAN suggested that the amendment submitted by Mr. Khalifa, which would add a second operative paragraph to draft resolution L.539/Rev.1, should be put to the vote.

Mr. KHALIFA said that he had not submitted a formal proposal to that effect, but had merely asked for the views of the sponsors of the draft resolution.

Mr. HUMPHREY said he felt a certain reticence on that point. He thought that the debates should retain the confidential character which Mr. Rybakov had so rightly emphasized and he would prefer to see the work of the working group restricted to its members.

Mr. NETTEL said he was certain that if the members of the Sub-Commission were allowed to participate in the work of the working group, even without the right to vote, the debates could not help but be extended as a result. The period of 10 days allowed for the work of the group might then prove insufficient.

Mr. RUHASHYANKIKO said that he had initially been in favour of Mr. Khalifa's proposal, but, on reflection, he found it difficult to endorse it. The working group was charged with a dual responsibility: it had to conduct its debates behind closed doors in order to maintain their confidential character and minimize the risk of leaks, and it also had to take its decisions in full knowledge while taking the greatest precautions. The presence of extraneous persons might disturb the desired atmosphere of serenity.

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Mr. FERGUSON said he thought that if as impartial a body as possible was to be established, the members of the Sub-Commission should certainly not participate in the work of the working group. However, it was difficult to prevent independent experts who were members of the Sub-Commission from intervening in a matter upon which, in the last resort, they would have to decide in any case. It was also necessary to consider the problem of substitutes, who might be many or few in number, and that might lead to some injustices.

Mr. JUVIGNY said he believed that, at the current initial stage, the possibility of persons who were not members of the working group attending meetings should be ruled out. There was yet another argument in addition to all those which had already been put forward on that question: within the working group, much attention had been given to ensuring equitable geographical representation and the presence of other members of the Sub-Commission, even without the right to vote, might lead at least to a psychological, if not to a legal, imbalance. When embarking upon a new and as yet incompletely determined course, it was surely better to launch the working group and let it proceed on its own at first, even though further measures might be taken at a later time.

Mr. CALVOCORESSI said he was opposed to Mr. Khalifa's proposal, both in practice and in principle. In that connexion, he wished to stress three important points: first, with regard to the financial implications, it was clear that expenses would not be the same for five persons as for an indefinite number of persons. In addition, under resolution 1503 (XLVIII), the Sub-Commission was authorized to select a working group consisting of not more than five members. There was no reason to increase the number of members, especially since all the members of the Sub-Commission would be able to state their points of view at a later stage of the debates. Lastly, it was necessary to ensure that the principle of equitable geographical distribution was applied.

Mr. RYBAKOV said he considered Mr. Khalifa's arguments completely justified. It should not be forgotten that the task of the working group was to consider the communications before it and to give an opinion on them which would be merely provisional. The question of financial implications has been considered

(Mr. Rybakov)

by Mr. Khalifa, who had made it quite clear that the travel and hotel expenses of members of the Sub-Commission who desired to participate in the debates of the working group would not be charged to the United Nations. Thus, Mr. Khalifa had already replied to the argument raised by Mr. Calvocoressi. He himself had stressed the confidential nature of the debates of the working group; however, that did not apply to members of the Sub-Commission. It would therefore be difficult to prevent them from participating in the work of the working group in accordance with the democratic principles in force and with the precedents established in other United Nations bodies. Each member of the Sub-Commission, as an independent expert representing a particular geographical area, had the sovereign right to participate in the work of the group, which, it should be made clear, was a subsidiary functional body which could act only within the mandate given to it by the Sub-Commission. He therefore supported Mr. Khalifa, whose proposal was democratic, logical and entirely justified.

Mr. HUMPHREY hoped that Mr. Khalifa would press his proposal. He did not agree with Mr. Rybakov that the proposal was democratic. On the contrary, he considered it unfair to some members of the Sub-Commission. Participation in the meetings of the working group would necessarily have financial implications unless the members of the Sub-Commission named alternates from their delegations to represent them in the working group. However, it was debatable whether experts appointed in their individual capacity could name alternates.

Mr. LAGOS noted that under resolution 1503 (XLVIII) the Sub-Commission was to establish a group of five persons whose task would be to facilitate its work. It was quite clear that it was easier to reach a consensus in a small group; however, he wondered how a member of the Sub-Commission who wished to participate in the work of the group could be kept from doing so. Moreover, although the membership of the working group had to be consistent with the principle of geographical distribution, there could be differences of opinion within a given

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(Mr. Lagos)

geographical area. In the final analysis, what really mattered was not the number of people participating in the work but the type of arguments that were put forward. It should therefore be possible for members of the Sub-Commission to take part in the discussions of the working group without being officially members of the group and without being entitled to vote. The Sub-Commission was establishing new procedures in a new area of work, and it would be unfair to keep some experts from participating in the formulation of those procedures.

Mr. MARTINEZ COBO referred to the procedures established by the Committee on Freedom of Association of the International Labour Organisation and said that if the independence of the working group was to be ensured it was important not to permit people who were not members of the group to take part in its work. If Mr. Khalifa's proposal was adopted, he would also have some amendments to submit.

Mr. KHALIFA said he thought that any member of the Sub-Commission should have the right to take part in the proceedings of the working group whenever he felt that his presence would be useful. He was convinced that his proposal met with the approval of the silent majority of the Sub-Commission and therefore formally proposed the addition of the following paragraph to the draft resolution:

"2. The elected members of the Sub-Commission shall be authorized to attend the meetings of the working group. They shall not have the right to vote."

He did not think that that provision would have any financial implications.

Mr. CRISTESCU suggested, by way of compromise, that the members of the Sub-Commission should be authorized to take part in the meetings of the working group without having the right to vote or to take part in the discussions. Their views could, however, be solicited by the members of the group when necessary.

In reply to a question put by Mr. ABU RANNAT, Mr. KHALIFA said that only the elected members of the Sub-Commission, and not their alternates, would be authorized to take part in the proceedings of the working group.

In reply to a question put by Mr. ILAKO, Mr. KHALIFA said that if members of the Sub-Commission who were not at the place where the working group was meeting wished to attend its meetings, they would have to pay their own travel expenses. He also emphasized that his amendment was intended to authorize the members of the Sub-Commission to attend meetings of the working group and not give them the "right" to attend them.

Mr. JUVIGNY said that although it was important not to impose additional financial burdens on the Secretariat, the proposed arrangement was not very fair. To provide that members of the Sub-Commission who wished to take part in the proceedings of the working group had to come to the meetings at their own expense was a false solution, since it amounted to saying that all members were equal but some were more equal than others.

Mr. ILAKO said that Mr. Khalifa's solution to the problem of the travel expenses of members of the Sub-Commission was undemocratic.

Mr. RYBAKOV asked the Secretariat for an estimate of the financial implications of Mr. Khalifa's amendment.

Mr. SCHREIBER (Director, Division of Human Rights) said that, prior to the adoption of Economic and Social Council resolution 1503 (XLVIII), the Secretariat had submitted to the Council a statement of financial implications making provision for travel and living expenses for five members only. If a change in the provisions relating to the membership of the working group was contemplated, the revised financial implications would be subject to the financial procedures of the Organization.

He saw no new financial implications in the part of Mr. Khalifa's proposal calling for merely the presence of members of the Sub-Commission at meetings of the working group even if they were authorized to speak.

The CHAIRMAN put Mr. Khalifa's amendment to the vote.

Mr. Khalifa's amendment was rejected by 9 votes to 8, with 4 abstentions.

The CHAIRMAN put draft resolution E/CN.4/Sub.2/L.539/Rev.1, as a whole, as amended, to the vote.

The draft resolution was adopted by 20 votes to 1, with 1 abstention.

Mr. DAOUDY noted that the resolution just adopted did not provide that the list of the five members appointed was to be transmitted to the Sub-Commission. He asked the Chairman whether he intended to transmit the list to the Sub-Commission before the end of the current session.

The CHAIRMAN said he intended to undertake consultations immediately and that if there were no objections, he would take it that the Sub-Commission decided that the membership of the working group should be determined before the end of the twenty-fourth session.

It was so decided.

Mr. RYBAKOV drew the attention of the Sub-Commission to the fact that the terms of office of its members would be renewed in 1972 and asked whether legally speaking, the Sub-Commission had the right to appoint five of its members to serve on the working group at the next session, since there was no certainty that the terms of office of the members who were appointed would be renewed in 1972.

The CHAIRMAN said that operative paragraph 1 (b) of the resolution just adopted provided for just such a contingency.

Mr. CRISTESCU feared that by appointing the members of the working group at its current session the Sub-Commission might prejudice the election of members of the Sub-Commission by the Commission on Human Rights. He therefore felt it might be preferable, in the present instance, for the appointment of the members of the working group to be left to the Commission on Human Rights.

The CHAIRMAN said that since the resolution just adopted did not provide for any alternative procedure, he would, within the next few days, undertake the appointment of the members of the working group.

Mr. HUMPHREY said that he supported that course of action.

Mr. RYBAKOV, speaking in explanation of his vote, said that progress had been made in the discussion on the question of the criteria for the admissibility of communications relating to violations of human rights and fundamental freedoms and on the question of establishing a working group. The resolution on which the Sub-Commission had just voted contained positive elements

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(Mr. Rybakov)

in that the members of the working group were to be chosen with due regard to geographical distribution and the confidential character of their discussions was safeguarded. However, as an expert from one of the geographical areas concerned and in view of the Sub-Commission's rejection of Mr. Khalifa's and Mr. Cristescu's proposals, he had found draft resolution E/CN.4/Sub.2/L.539/Rev.1, as amended, unacceptable and had voted against it. He had on many occasions clearly stated his position regarding Council resolution 1503 (XLVIII). He requested that his statement should be reflected in the record of the discussion.

The CHAIRMAN announced that the consideration of agenda item 3 (a) had been concluded.

(b) REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS
RESOLUTION 8 (XXIII) (E/CN.4/Sub.2/NGO.46) (continued)

Mr. KHAN raised a point of order concerning the request by the representative of the International Commission of Jurists to speak in connexion with the statement contained in document E/CN.4/Sub.2/NGO.46.

He was keenly aware of the fact that the non-governmental organizations had, by and large, performed a useful service; that was why they had been granted consultative status by the Economic and Social Council.

Under the terms of Council resolution 1296 (XLIV), non-governmental organizations were entitled to submit to the Economic and Social Council and its subsidiary organs "written statements" on matters which were included in the agenda of a particular body and on which they possessed special competence. The same resolution provided that the Council and its subsidiary organs might consult non-governmental organizations on such matters.

The question arose, however, whether non-governmental organizations were entitled to submit statements and seek consultations on matters which did not essentially concern human rights but arose primarily out of internal and external threats to the territorial integrity and sovereignty of States. In situations of civil and military conflict it was very difficult to assess the human rights standards which were to be observed, and it was clear that in such situations normal standards were not applicable. That was recognized by several of the

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(Mr. Khan)

instruments on human rights, and even article 3 of the 1949 Geneva Convention concerning internal conflicts did not protect those who were either directly or indirectly involved in an insurgency; in fact, the interpretation and application of the provisions of article 3 of the Convention were left almost entirely to the discretion of the State concerned. In the absence of readily applicable standards, any judgement concerning alleged violations of human rights in a situation of civil strife was bound to be purely subjective. In such situations, a subjective judgement was even more irrelevant if it was based on second-hand, biased or even hostile information. The concern expressed by the non-governmental organizations in document E/CN.4/Sub.2/NGO.46 had obviously been inspired by information disseminated by the mass media or emanating from sources hostile to Pakistan.

In their communication, the twenty-two non-governmental organizations had submitted a statement on the internal political situation of a Member State - a statement that affected its integrity and sovereignty. It related to an armed insurgency, that is to say, a situation in which no objective criteria existed for determining what "violations" had occurred. In the statement, the non-governmental organizations talked vaguely about violations of human rights without defining them. It was doubtful that the organizations concerned were "acting in good faith, in accordance with recognized principles of human rights", i.e., in accordance with the resolution on the admissibility of communications adopted by the Sub-Commission. If they were acting in good faith, they would not have felt the need to engage in lobbying among the members of the Sub-Commission. The privileges granted to non-governmental organizations did not entitle them to become "pressure groups" and to carry on political propaganda against a Member State in collaboration with other elements hostile to the State in question.

Despite what he had just said, he had refrained from making any objection to the circulation of the document by the Secretariat, believing that its vagueness and other shortcomings would be fully apparent to the jurists of the Sub-Commission. Members had, moreover, received the text of the confidential reply of the Government of Pakistan to the allegations levelled against it.

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(Mr. Khan)

However, he viewed with misgivings the request of the representative of a non-governmental organization to speak on the subject. First of all, it was difficult to see how an oral statement could add anything to the contents of the document circulated in the Sub-Commission. Secondly, the members of the Sub-Commission required time to study the document in which the Permanent Representative of Pakistan to the United Nations had set forth the position of his Government. Thirdly, if the representative of the non-governmental organization concerned was permitted to speak in the Sub-Commission, he would undoubtedly raise issues on which he, Mr. Khan, would feel bound to speak in reply. In the circumstances, it would be extremely difficult to avoid a discussion of political issues relating to more than one Member State. It was more than likely that the Sub-Commission would become embroiled in a protracted and futile political debate. A solution to the problem currently facing the subcontinent called for the co-operation and reconciliation of all the parties concerned, and that was the goal towards which the Sub-Commission's efforts should be directed.

The crisis had undeniably led to human suffering which had to be alleviated. The United Nations was already engaged in humanitarian operations; the success of those operations depended on co-operation between the Organization and the States concerned. Such co-operation would not be enhanced by moral pronouncements and judgements rooted in insufficient knowledge.

Under Council resolution 1296 (XLIV), the Sub-Commission could establish consultative relations with a non-governmental organization at the latter's request. He was, however, certain that the Council had not envisaged that such consultations would lead to discussions of matters falling outside the competence of the Sub-Commission, the consideration of which might produce the gravest consequences for peace and security.

He therefore urged the Sub-Commission to ponder carefully whether a statement by the representative of the non-governmental organization concerned would serve any useful purpose. It was not his intention to deny that representative the right to speak; he wished, rather, to urge that all the Sub-Commission's efforts and energies should be concentrated on the alleviation of human pain and suffering - an objective that must take precedence over all other considerations.

The meeting rose at 1.05 p.m.

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SUMMARY RECORD OF THE SIX HUNDRED AND TWENTY-NINTH MEETING

Held on Monday, 16 August 1971, at 3.15 p.m.

Chairman:

Mr. GROS ESPIELL

(Uruguay)

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES (continued):

(b) REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (E/CN.4/Sub.2/NGO.46)(continued)

Mr. CRISTESCU, referring to Article 2, paragraph 7 of the Charter, said that the situation in East Pakistan was a matter essentially within the domestic jurisdiction of Pakistan, a sovereign State. He was, therefore, opposed to discussion by the Sub-Commission of the draft resolution contained in document E/CN.4/Sub.2/NGO.46.

Mr. JANKOVIC said that despite all the work done by the Sub-Commission, the Commission on Human Rights and the Third Committee of the General Assembly, the United Nations had made little progress in its effort to ensure that all peoples enjoyed human rights and fundamental freedoms. As a member of the ad hoc Working Group of Experts on the Treatment of Political Prisoners in the the Republic of South Africa of the Commission on Human Rights he had evidence of the violation of human rights in southern Africa and was convinced that such violations would end only when the last vestiges of colonialism and imperialism had been removed and the policy of apartheid abolished. Responsibility for meaningful progress in that area lay with South Africa's and Portugal's main trading partners. In so far as the territories occupied by Israel were concerned, human rights would continue to be violated until those responsible abandoned their policy of oppression, occupation, subjugation, interference and the use of force. The same held true for the situation in Viet-Nam.

Turning to the situation in East Pakistan, he said that the Secretary-General had repeatedly drawn attention to the seriousness of the situation and to the role the international community could play in restoring peace and normal conditions in the region. Public opinion in Yugoslavia had been concerned over the fact that many of the victims of the disturbances were children, women and old people, and the Yugoslav League for Peace had stated that military terror could never solve economic, political or social problems.

The Sub-Commission had very properly spent many days discussing the question of the protection of the rights of individuals. It did seem, however, that when faced

(Mr. Jankovic)

with a situation affecting tens of thousands of persons, members were inclined to suppress their feelings and consciences. But in such a situation, the Sub-Commission should not remain silent. It was true that, being a body of experts on human rights, it could not deal with the political aspects of the question. Nevertheless, it could not ignore the mass destruction of human life, particularly when women, children and old people were involved.

In conclusion, he said that it was sad that so much of the Sub-Commission's effort was expended on the protection of the rights of individuals and so little on the tens of thousands of victims of mass violations.

The CHAIRMAN said that, if there was no objection, he would give the floor to Mr. Salzberg, who had requested permission to make a statement on behalf of the International Commission of Jurists concerning the situation in East Pakistan. Before calling on Mr. Salzberg, however, he wished to stress the delicate nature of the question of human rights in East Pakistan. In broaching that question the Sub-Commission should be aware of its responsibilities and mindful of its sphere of competence as defined by the Commission on Human Rights.

Mr. SALZBERG (International Commission of Jurists), introducing document E/CN.4/Sub.2/NGO.46, said that the 21 international non-governmental organizations which had submitted the document constituted a variety of religious, legal, educational, civic, and social organizations with affiliates throughout the world. His own organization, which had members in more than 60 countries, sought to promote the rule of law and respect for human rights in all parts of the world.

Document E/CN.4/Sub.2/NGO.46 dealt with the tragic developments in East Pakistan, which were reported to have resulted in the deaths of perhaps as many as 200,000 persons, the destruction of countless homes and villages and the creation of more than 6 million refugees. The Secretary-General of the United Nations had referred to the situation as "one of the most tragic episodes in human history" and, in a press release dated 2 August 1971, had expressed his concern about the possible consequences of the situation, not only in the humanitarian

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(Mr. Salzberg)

sense, but also for peace and security and for the future of the United Nations as an effective instrument for international co-operation and action. Furthermore, the Secretary-General had observed that the situation presented a challenge to the United Nations as a whole which must be met.

While the Sub-Commission was to be commended for establishing machinery for the review of communications alleging violation of human rights, that machinery would not become operative until the summer of 1972. The urgency of the situation in East Pakistan required the Sub-Commission to take action at its current session under the authority extended to it by the Commission on Human Rights in resolution 8 (XXIII) and under Economic and Social Council resolution 1235 (XLII).

The Sub-Commission could draw on several sources of information for evidence to support the allegations of violations of human rights in East Pakistan. It had access to communications sent to the United Nations by victims of such violations. It could also take into consideration press reports written by journalists who had been eyewitnesses to certain atrocities or had been told of such incidents by eyewitnesses. Non-governmental as well as intergovernmental organizations had prepared reports on the situation on the basis of field investigations. Finally, the Pakistan Government had issued a White Paper alleging certain violations of human rights. Those sources of information might not in every instance be acceptable in a court of law, but the Sub-Commission was not a court nor was it responsible for making a final judgement on the situation. Under its terms of reference, the Sub-Commission was empowered only to report that a situation appeared to reveal a consistent pattern of violations of human rights on the basis of available information. Clearly there was sufficient information available for the Sub-Commission to investigate the situation and make recommendations for action.

Violations of human rights which were alleged to have occurred in East Pakistan included: killing and torture; mistreatment of women and children; mistreatment of civilians in armed conflict; religious discrimination; arbitrary arrest and detention; arbitrary deprivation of property; suppression of the freedom of speech, the press and assembly; suppression of political rights; and suppression of the right to emigrate.

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(Mr. Salzberg)

A report by a mission of the International Bank for Reconstruction and Development, excerpts of which had appeared in the 13 July 1971 issue of The New York Times, had described the punitive action taken by the West Pakistan army against the civilian population. The report had stated that the army was terrorizing the population, in particular Hindus and suspected members of the Awami League.

Mr. KHAN, intervening on a point of order, observed that Mr. Salzberg had incorrectly referred to the "West" Pakistan army; there was only one army in the country, the Pakistan army. He cautioned that such tendentious references should be avoided in future in the interests of the harmonious conduct of the Sub-Commission's work.

Mr. SALZBERG, continuing his statement, drew attention to an authoritative report by Mr. Anthony Mascarenhas which had appeared in The Sunday Times of London on 13 June 1971. Mr. Mascarenhas, a Pakistan citizen and a leading journalist, had been invited by the Pakistan Government to fly to East Pakistan and observe at first hand the developments in the area. He had written a report describing, inter alia, the killings and other inhumane acts which he had witnessed. Mr. Mascarenhas, as well as other responsible journalists, had asserted that the Government of Pakistan was pursuing a policy of genocide against the Hindu population and also against university students and staff and against members of the Awami League. Many other eyewitness accounts were available to the Sub-Commission which indicated that a consistent pattern of violations of human rights was occurring in East Pakistan. It was significant, in that connexion, that 14 diplomats had resigned from the Pakistan Embassy in Washington, D.C. and from the Pakistan Mission to the United Nations, asserting that their Government was violating elementary norms of civilized conduct and was committing crimes against humanity.

Lastly, the Pakistan Government had issued a White Paper alleging that the Awami League's reign of terror had claimed the lives of 100,000 persons and caused incalculable damage to public and private buildings, transport and communications

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(Mr. Salzberg)

and industrial establishments. The report stated that unmentionable brutalities had been committed with the active assistance of Indian armed infiltrators.

He hoped that the Sub-Commission would give consideration to all available sources of information and that it would investigate all reports alleging violations of human rights in East Pakistan.

Some speakers had said that the Sub-Commission should not discuss the situation in East Pakistan. Their argument was that no violations of human rights had occurred and that the reported killings had been necessary to maintain law and order, and furthermore, that human rights problems were matters of domestic jurisdiction and not within the competence of the United Nations. The General Assembly, however, in resolution 2144 (XXI) had taken a different view, inviting the Economic and Social Council and the Commission on Human Rights "to give urgent consideration to ways and means of improving the capacity of the United Nations to put a stop to violations of human rights wherever they may occur". The General Assembly had made it clear that situations which revealed a consistent pattern of violations of human rights were not exclusively within the domestic jurisdiction of a Member State, but were also within the jurisdiction of the United Nations.

The International Commission of Jurists believed that the reported violations of human rights in East Pakistan required the Sub-Commission to exercise its full authority. The Sub-Commission should either set up a committee of inquiry to review the various reports of violations of human rights in East Pakistan or it should recommend to the Commission on Human Rights that the latter establish an investigatory body.

The International Commission of Jurists deplored the reported intention of the Pakistan Government to try Awami League leaders, including Sheikh Mujib Rahman, before special military tribunals. If Sheikh Rahman or other Awami League leaders had committed any offence under the law of Pakistan, there was no reason why they should not be accorded due process before the civilian courts of that country. The International Commission of Jurists had urgently appealed to the

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(Mr. Salzberg)

Pakistan Government to discontinue the military trial of Sheikh Rahman and recommended that the Sub-Commission should make a similar appeal. The Secretary-General of the United Nations had already expressed his deep concern with respect to that trial and its effect on the possibility for peace in the area.

The International Commission of Jurists and the other 21 international non-governmental organizations which had submitted document E/CN.4/Sub.2/NGO.46 urgently appealed to the Sub-Commission to take constructive action at its current session with a view to ensuring respect for human rights in East Pakistan.

Mr. KHAN reserved the right to make a considered reply to Mr. Salzberg's statement at a later meeting.

INTERNATIONAL YEAR FOR ACTION TO COMBAT RACISM AND RACIAL DISCRIMINATION

Mr. SCHREIBER (Director, Division of Human Rights) said that the item had been included in the agenda because, in resolution 2544 (XXIV), the General Assembly had invited the organs of the United Nations and the specialized agencies concerned to co-operate and participate in the preparatory work in the observance of the International Year for Action to Combat Racism and Racial Discrimination. The Sub-Commission had displayed great interest in the International Year and made a significant contribution towards its success. At its twenty-third session it had submitted a number of draft resolutions on the subject, the majority of which had been adopted by the Commission on Human Rights, and the Economic and Social Council.

The General Assembly had designed 1971 as International Year for Action to Combat Racism and Racial Discrimination in order to ensure that all enjoyed human rights and fundamental freedoms without any discrimination on such grounds as race, colour, national or ethnic origin and also in the interests of peace and the social progress of peoples. It had appealed to all States to intensify and expand their efforts at the national and international levels towards ensuring the rapid and total eradication of racial discrimination, including the policy of apartheid, nazism and all of its contemporary forms, as well as other manifestations of racism.

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(Mr. Schreiber)

The idea of observing an international year in order to intensify action against racism and racial discrimination dated from the 1968 International Conference on Human Rights, the purpose of which had been to review the progress made in the field of human rights since the adoption of the Universal Declaration, to evaluate the effectiveness of the methods used by the United Nations and to formulate and prepare a programme of further measures to be taken subsequent to the celebration of the International Year for Human Rights. Many of the resolutions adopted by the Conference concerned racial discrimination and the policy of apartheid. Far from being satisfied with the adoption of those resolutions, the Conference had insisted that the international community's effort should be continued and had requested the Secretary-General, in consultation with Member States, to prepare suggestions for a programme for the observance of an International Year for action to combat racism and racial discrimination. The General Assembly had confirmed that request in its resolution 2446 (XXIII). After studying the suggestions made by several Member States, and on the basis of activities which had proved particularly effective during the International Year for Human Rights, the Secretary-General had submitted an outline programme to the General Assembly at its twenty-fourth session. By its resolution 2544 (XXIV), the General Assembly had approved the Secretary-General's programme and decided that the International Year should be observed in the name of the ever-growing struggle against racial discrimination in all its forms and manifestations and in the name of international solidarity with those struggling against racism. The programme had stipulated that the International Year should be devoted to intensified action by States, the United Nations, the specialized agencies concerned, regional organizations and non-governmental organizations.

Governments, on which the success of United Nations action depended to a large extent, had been requested to take action at several levels. It had been suggested, for instance, that they should draw the attention of their citizens to the objectives of the International Year by such means as issuing special messages in the name of the Head of State or Government and by holding special meetings of their Parliament. It had also been recommended that they should promote the widest and most intensive possible dissemination of the United Nations

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(Mr. Schreiber)

Declaration and the International Convention on the Elimination of All Forms of Racial Discrimination; ensure that the curricula of their schools and other educational institutions included teaching of the scientific facts about race; and provide that invidious distinctions about peoples should not be made in textbooks or in classrooms and that all material susceptible of leading to racial discrimination and prejudice be eliminated from textbooks. It had also been suggested that they should promote the publication of books and pamphlets and the organization of radio and television broadcasts on the subject. Another suggestion had been that national committees should be set up to work out programmes for the observance of the International Year.

In so far as the international work of Governments was concerned, emphasis had, of course, been placed on the importance and urgency of signing and ratifying the International Convention on the Elimination of All Forms of Racial Discrimination and on recognizing the right of communication provided for in article 14 thereof. It had also been suggested that States which had not done so should ratify the other conventions having a bearing upon the elimination of racial discrimination, including the Convention on the Prevention and Punishment of the Crime of Genocide, the Slavery Convention, the UNESCO Convention against Discrimination in Education, the ILO Convention of 1958 concerning Discrimination in respect of Employment and Occupation and, the International Covenants on Human Rights and the Optional Protocol to the International Covenant on Civil and Political Rights.

Equal emphasis had been placed on the moral and material assistance to be given to peoples struggling against all forms of racial discrimination.

The importance the United Nations attached to the Year had already been stressed in the special messages issued by the President of the General Assembly, the Secretary-General, the executive heads of several specialized agencies, the Executive Secretaries of the regional economic commissions, the Chairman of the Commission on Human Rights, the Chairman of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, the Chairman of the Special Committee on Apartheid, the President of the Trusteeship Council and others.

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The Programme for the International Year provided for a comprehensive review of measures and decisions taken to eliminate racial discrimination in order to evaluate their effectiveness and the stages reached in their implementation, to identify obstacles encountered and to determine the necessity of taking further measures and decision with a view to achieving the rapid and total elimination of racial discrimination, including the policy of apartheid and manifestations of nazism and racial intolerance. The Commission on Human Rights, with the assistance of the Sub-Commission, had undertaken that task, in which it had been greatly helped by the admirable study on racial discrimination in the political, economic, social and cultural spheres prepared for the Sub-Commission by Mr. Santa Cruz. That study had been examined by the Sub-Commission in the summer of 1970 and by the Commission in March 1971. The Commission had adopted several resolutions calling for a veritable mobilization of all international forces against racism and had referred some of them to the Economic and Social Council and to the General Assembly for their endorsement.

The International Year had given impetus to a new United Nations programme, initially proposed in resolution VII of the International Conference on Human Rights at Teheran. That programme called for the preparation by the Secretary-General of regular reports summarizing material contained in studies on the problems of race relations and the creation of racial attitudes prepared by the specialized agencies, the United Nations Institute for Training and Research, and other institutions active in the field and to make them available to the United Nations bodies concerned for use in their consideration of the problems. As part of the same programme, Governments were to be invited to make available to the Secretary-General reports of their experience in dealing with problems of race relations in particular fields so that the reports could be compared to mutual advantage.

In the context of the International Year, all the United Nations organs whose work related to racial discrimination had been encouraged to establish specific programmes. The Secretary-General had been invited to organize, under the programme of advisory services in the field of human rights, a world-wide seminar on measures to be taken at the national level to combat and eliminate racial discrimination and promote harmonious race relations. The seminar had been held

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in the Federal Republic of Cameroon and a further seminar was due to begin shortly in France. The Secretary-General had also been requested to remind Governments of the availability of United Nations technical assistance in drafting legislation to prohibit racial discrimination, in such fields as employment, education and housing in particular, and also to undertake a vigorous international information campaign.

The programme for the Year also involved the specialized agencies, whose work had a bearing on the promotion of respect for human rights, notably, the ILO, UNESCO, FAO and WHO. Of particular interest among the activities planned in that context was the Special Report of the Director-General of the ILO on the application of the Declaration concerning the Policy of "Apartheid" of the Republic of South Africa and a general study by the ILO Committee of Experts on measures taken to implement the Discrimination (Employment and Occupation) Convention and Recommendation of 1958 in countries which had ratified it and in those that had yet to do so. Those reports were submitted to the International Labour Conference. A regional seminar on equality of opportunity in employment was to be held. Also noteworthy was UNESCO's programme for the International Year. It entailed a series of public lectures in Paris, designed to disseminate modern knowledge on questions of race and culture, the reissue in 1971 of the study: Modern Science and the Theory of Race, first published in 1956, and the distribution through the information services of States members of UNESCO of publications describing the effects of apartheid on education, science and culture together with additional information on the Convention against Discrimination in Education.

Regional organizations had also been associated with United Nations activities under the programme and had confirmed their willingness to co-operate with the Organization. Notable among related activities were the resolution of 31 October 1969 adopted by the Committee of Ministers of the Council of Europe, which urged Governments of member States of the Council to sign and ratify the Convention on the Elimination of All Forms of Racial Discrimination and to undertake a review of their legislation to ensure that it provided for effective measures in the field of the eradication of racial discrimination and in fields related to the elimination of all forms of intolerance and discrimination based

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on religion or belief. The League of Arab States and the Organization of American States had undertaken parallel activities, which included special meetings of their commissions responsible for the protection of human rights, the publication of commemorative booklets and the organization of seminars on racism and racial discrimination. The moving appeal by the Organization of African Unity, issued on 1 January 1971 in connexion with the International Year, was also noteworthy.

A special place in the programme had been reserved for non-governmental organizations, whose co-operation in ensuring the success of the Year was essential. An appeal had been made to non-governmental organizations in consultative status with the Economic and Social Council and to other organizations, national United Nations associations, research institutions, universities and other institutions of higher learning. They had been advised of a variety of ways in which they could participate. It was suggested in the programme that non-governmental organizations should adopt the elimination of all forms of racial discrimination as the theme of their annual conferences in 1971 or that they should organize special conferences or ceremonies during the Year. Attention had been drawn to the importance of organizing special activities at the local community level of taking public opinion polls and encouraging radio stations and television networks to broadcast special programmes, and also of encouraging newspaper editors to publish appropriate editorials and book-publishing firms to issue pertinent works. It was hoped that non-governmental organizations would disseminate among their members the texts of United Nations instruments directed against racial discrimination in increased numbers of copies, undertaking their translation into languages other than those used in United Nations publications. A special appeal had been made to trade unions to develop among their membership a "social sense based on respect for the inherent dignity of all human beings without distinction as to race, colour, descent or national or ethnic origin" and to religious organizations to intensify their efforts to eliminate prejudice and discrimination. A message had been sent to educational institutions and other appropriate national organizations encouraging them to undertake hospitality programmes, to open homes to students and visitors of different races for short or long periods of time, and to organize cultural exchanges.

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(Mr. Schreiber)

It was obviously rather early to evaluate the effects of the General Assembly's recommendations on the objectives of the International Year. The Secretary-General was to inform the Assembly, at its next session, of the information gathered on the various activities which had taken place. Reports already received from various regions of the world showed that numerous activities and serious efforts were being undertaken, including special messages or other declarations by Heads of State or by senior members of Governments. The reports indicated that there would be special sessions of national parliaments and that special legislation would be introduced with a view to facilitating the ratification, by the countries concerned, of the International Declaration on the Elimination of All Forms of Racial Discrimination. The International Day for the Elimination of Racial Discrimination, 21 March 1971, had been celebrated in many countries in the course of public ceremonies and events organized in schools. Numerous national committees had been established, composed of representatives of Governments and non-governmental organizations.

Two studies had been initiated by the United Nations Institute for Training and Research, one on the prevention of racial discrimination in Great Britain, prepared by the Institute of Race Relations of the United Kingdom and another dealing with the Indian aboriginal population of Peru, prepared by the Instituto de Estudios Peruanos de Lima. A third study had been undertaken by the Centre of International Race Relations of the University of Denver. A special issue, in January 1971, of the United Nations publication Objective Justice, which had been devoted to the International Year, had appeared in English, Arabic, Chinese, Spanish, French, Dutch, Portuguese, Russian and Swahili and was particularly noteworthy. The activities of Jewish and Catholic organizations, including those relating to publications, also deserved mention, as did the important ecumenical programme for the struggle against racism, several stages of which would be carried out during the International Year. The programme, which encouraged member churches and national and regional church councils to give priority in their activities to the problem of racism, involved the formation of research teams which would concentrate on certain areas of the Americas, Asia, Australia and the Pacific, Europe and southern Africa to demonstrate concern over the problem and to help

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in the formulation of guidelines for ecumenical action and greater understanding. The World Council of Churches had initiated its campaign against racism by granting financial assistance amounting to \$200,000 to groups of freedom-fighters in southern Africa. The intensive programme undertaken by the World Federation of United Nations Associations, the three-year programme adopted by the Y.W.C.A., the programme of the World Federation of Scientific Workers and that undertaken by the major trade union organizations were among many others worthy of note.

The international community, desirous of combating racism and racial discrimination, had thus ensured that 1971 would be an especially fertile year for events designed to demonstrate its determination to act against any racial discrimination, to promote the greatest possible awareness of the scourge which racial discrimination still represented in the contemporary world and to foster increased understanding among all peoples of the earth.

Mr. DAUDY said that the statement by the Director of the Division of Human Rights concerning activities undertaken at the national, regional and international levels by a variety of international and other organizations to commemorate the International Year would be of considerable value for reference purposes. He proposed that it should be made available in extenso to all members of the Sub-Commission.

The CHAIRMAN thought Mr. Daoudy's proposal excellent.

Mr. CRISTESCU said that the statement provided a useful survey of the considerable efforts undertaken in connexion with the International Year and commended the Secretariat on its related activities. He had particularly welcomed the statement that the Sub-Commission had contributed to the Year by making proposals to its superior organs.

Romania, which had participated fully in the preparation of the Convention on the Elimination of All Forms of Racial Discrimination, was also whole-heartedly engaged in activities related to the International Year. A number of events had been organized at Bucharest and other cities, with the assistance of the United Nations Information Centre. A statement of the results of the international campaign at the conclusion of the Year would be extremely valuable.

The meeting rose at 4.35 p.m.

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SUMMARY RECORD OF THE SIX HUNDRED AND THIRTIETH MEETING

Held on Tuesday, 17 August 1971, at 10.50 a.m.

Chairman:

Mr. GROS ESPIELL

(Uruguay)

QUESTION OF SLAVERY AND THE SLAVE TRADE IN ALL THEIR PRACTICES AND MANIFESTATIONS, INCLUDING THE SLAVERY-LIKE PRACTICES OF APARTHEID AND COLONIALISM (E/CN.4/Sub.2/322)

The CHAIRMAN said, in regard to agenda item 5, that the members of the Sub-Commission had before them the report on the question of slavery and the slave trade submitted by the Special Rapporteur, Mr. Mohamed Awad (E/CN.4/Sub.2/322) and a draft resolution submitted by Mr. Abu Rannat, Mr. Ferguson, Mr. Ingles, Mr. Humphrey and Mr. Nikiema (E/CN.4/Sub.2/L.552). He invited Mr. Awad, the Special Rapporteur, to take a place at the Sub-Commission table and to introduce his report.

Mr. Awad, Special Rapporteur, took a place at the Sub-Commission table.

Mr. AWAD said that his report followed the main lines of the progress report he had submitted the previous year. In the present text, however, he had taken into account the very interesting discussions which had taken place on the subject in the Sub-Commission, the Commission on Human Rights and the Economic and Social Council and had endeavoured to remove those elements which had given rise to objections and to fill in the gaps which had been brought to his attention.

Since the submission of the progress report which had been approved by the Sub-Commission, the Commission on Human Rights and the Economic and Social Council, there had been little in the way of spectacular developments. However, he drew the attention of the members of the Sub-Commission to the conclusion of a special arrangement between the International Criminal Police Organization (INTERPOL) and the Economic and Social Council, which marked a decisive step forward in the campaign against slavery viewed as an international crime.

In the present report, he had endeavoured to present some suggestions regarding measures which might be taken to implement the International Slavery Convention of 1926 and the Supplementary Convention of 1956. He had retained the distinction which had already been established between the traditional forms of slavery and more modern and pernicious forms such as apartheid and colonialism, which affected not merely a few individuals but millions of people.

As a result of the existing international agreements and instruments only vestiges of the traditional forms of slavery persisted, but they persisted none the less. Some Member States recognized that fact in their official

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documents, whereas others were reluctant to accept the idea that even vestiges of that institution might persist in their territories. Others admitted that there were slaves in their countries, but took the view that, in order to free them, they might have to offer their owners considerable sums in compensation. The most difficult cases arose in countries where slavery took a clandestine form, and the country either concealed its existence or had taken steps to try to end it but the practice continued in secret. In such cases, it was extremely difficult to come to the assistance of its victims who, out of fear of their masters, were hesitant to approach the authorities in order to ask for protection or to assert their right to freedom. The most effective way of assisting them was to try and improve the economic, social and cultural conditions of their lives through community development projects, in which the United Nations and such specialized agencies as the ILO, FAO, UNESCO and WHO might participate. He mentioned in that connexion a project which had been successfully implemented in the countries of the Andes region, in South America, thanks to the co-operation of the countries concerned and the personal efforts of the local population. He was not implying that those were countries in which slavery still existed, but that such projects helped to bring about a considerable improvement in the living conditions of communities and to create an atmosphere in which any abuse would become unthinkable. In Niger another project had been carried out with the aid of FAO to prevent the reappearance of conditions which would enable slavery to take root again after it had been eliminated. That kind of experiment could be extended to other countries, and technical assistance programmes in which the organizations of the United Nations system co-operated were one of the soundest ways of ensuring the elimination of all vestiges of slavery.

He then reviewed the measures which might be taken to implement the 1926 and 1956 Conventions. With regard to the need to increase the number of States Parties to the two Conventions, he said that the various United Nations bodies might try to achieve results by the use of persuasion, without resorting to the measures worked out by the ILO to induce member States to ratify the various

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(Mr. Awad)

Conventions it had drawn up. Some countries felt that they had no need of legislation on slavery, because the practice had disappeared in their territory. In his view, legal texts must always specify that certain acts constituted crimes. Within the United Nations, action might be taken to that end during sessions of the General Assembly or other organs or when missions were sent to the different countries; each mission member should find out whether the country concerned had or had not ratified the two Slavery Conventions and should raise the question whenever the occasion presented itself.

The need for States to promulgate appropriate legislation implied the need to ascertain whether in reality the practice of slavery was subject to severe penalties under the legal system of every Member State of the United Nations. The public authorities should ensure that the laws in force were complied with, and a special service might be entrusted with the task of exercising the appropriate supervision in each country.

Greater utilization of available technical assistance resources was one of the most important factors in combating slavery.

With regard to the need for increased regional activities, regional organizations comprising a large number of countries, such as the Arab League, the Organization of American States, and the Organization of African Unity might be used as a framework for combating all types of abuses, including the various forms of slavery. A Commission on Human Rights had been set up in the Arab League and had entered into operation. It should not be very difficult for the United Nations to conclude an arrangement with the League whereby the Commission would concern itself with the question of slavery. The same applied to the OAU, which had given proof of its readiness to co-operate with the United Nations in achieving objectives of particular concern to Africa. The Secretary-General of the United Nations might be requested to negotiate agreements with all regional organizations with a view to improving economic, social and cultural conditions in the member countries of those organizations.

Expanded land reform and vocational guidance programmes should make it possible to remedy such situations as inequality in land distribution which were likely to promote certain forms of servitude.

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(Mr. Awad)

The need for national legislation to abolish debt bondage might not be apparent in European countries, but debt bondage was a problem, particularly in certain parts of Asia, where the system of pledging the services of an individual until a debt was paid was considered legal. The United Nations should embark on joint action with various philanthropic organizations to bring about the legal abolition of the system of debt bondage. Legal abolition would, in time, cause the practice to cease.

He emphasized the need for special action during the "transition period" to ensure that persons freed from slavery did not revert to a state of bondage. They should, for example, be given assistance in acquiring vocational skills and finding employment.

With regard to the need for permanent machinery to secure the implementation of the Slavery Conventions, he felt that there should be a United Nations body to supervise the various activities which he had mentioned and to lay down guidelines for action in that area. In 1964 and 1965 he had suggested that the Economic and Social Council should establish a special committee, which would meet two or three times a year, to review all complaints relating to slavery. That suggestion had been rejected on account of its financial implications. Consideration might also be given to the possibility of assigning to a senior official in the Division of Human Rights the task of ensuring that decisions taken by the Sub-Commission with regard to slavery were implemented.

He stressed that the problem of apartheid concerned all United Nations bodies as was evidenced by the existence of the Special Committee on Apartheid and, within the Secretariat, the Unit on Apartheid.

South Africa was a country where a great many laws were passed, some of them unbelievably cruel. For example, the Terrorism Act, which was aimed at people who had travelled abroad and were suspected of having learned the guerilla techniques there, had retroactive force and provided for sentences ranging from five years' imprisonment to death. It might be said that South Africa had actually become a police State. The police force had a special branch whose task was to track down persons suspected of involvement in prohibited political activities. To oppose apartheid was in itself a grave and punishable offence.

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(Mr. Avad)

Some South Africans of more liberal tendencies seemed to want to modify the present system, but there was reason to question the sincerity of their efforts. For example, some time ago the South African Government had received an official visit from Mr. Banda, President of Malawi, the only African country maintaining close relations with South Africa. It went without saying that the South African Government had used Mr. Banda's visit for propaganda purposes. Moreover, Mr. Vorster, the Prime Minister of South Africa, was currently trying to establish a dialogue with other African States, one of which had even shown willingness to accept Mr. Vorster's invitation to negotiate. However, the Organization of African Unity was resolutely opposed to any dialogue with the South African Government so long as its attitude remained unchanged.

Some people felt that it was useless to hope that South Africa would give up its racist policy so long as it enjoyed the support of certain European and American financial interests. The Secretariat study of foreign investments in the Republic of South Africa showed that certain countries including the United Kingdom and, to a lesser extent, the United States of America, had made numerous investments in South Africa. It was, however, interesting to note the divergences of opinion, in one and the same country, between the financial, commercial and industrial interests which maintained very close relations with South Africa and the mass of the people. The attitude of the people of the United Kingdom, for example, was unmistakable; in 1964, they had organized a four-day international conference in London on the economic sanctions against South Africa. The conference had reached the conclusion that it would be perfectly possible to impose and apply mandatory sanctions against South Africa under Chapter VII of the Charter of the United Nations. He was convinced that, although financial, industrial and commercial circles in the United Kingdom maintained excellent relations with the South African Government, the United Kingdom Government would never venture to defy public opinion as manifested at the conference.

The United States of America could certainly put enough pressure on South Africa to make it abandon its policy of apartheid by deciding to put an end to all financial, industrial and commercial relations with South Africa. That view was widely held in the institutes and centres dealing with African affairs in the United States and elsewhere. He had himself established an institute of African

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(Mr. Awad)

studies at Cairo and hoped that the Secretariat would ask him to organize a meeting in New York of the directors of all such institutes and centres since the South African problem must be given unremitting attention. If the question of apartheid, as well as the questions of slavery and colonialism, were given a permanent place on the work programmes of all United Nations bodies, practical results were bound to ensue.

He stressed one aspect of the struggle against apartheid which, in his view, deserved the attention of the Sub-Commission and all other United Nations bodies. All United Nations bodies should endeavour to provide increased assistance to all States bordering directly on South Africa, i.e., Swaziland, Botswana, and Lesotho. With regard to Botswana, at the time of the settlement following the Boer War, a tribal chief from Bechuanaland had gone to Great Britain to petition Queen Victoria to retain Bechuanaland as a British colony rather than ceding it to South Africa. That was sufficient proof of the fear in which the indigenous population has always held the white man in South Africa. It was true that at present Swaziland, Botswana and Lesotho were obliged to maintain some relations with South Africa because of their geographic position, but everyone was aware that South Africa wished to absorb them. Nevertheless, the three countries were now independent, and the United Nations, of which they were Members, should take every step to help them to resist South African pressure.

Although it was not in danger of being absorbed by South Africa, Zambia too needed help from the United Nations in order to stabilize its economy and improve its social situation. The United Nations should therefore, as part of the campaign against apartheid, extend its support to the small States neighbouring on South Africa, particularly since those States were all members of United Nations bodies, unlike South Africa, which had been expelled from the ILO and had recently withdrawn from UNESCO.

Turning to the chapter on colonialism, he explained that in it he had dealt with Namibia, where apartheid of the South African brand prevailed, because it was a Territory under direct United Nations responsibility which South Africa claimed as part of its territory.

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(Mr. Awad)

In the continent of Africa, which was made up of independent States, only three regions were still under foreign domination: Namibia, a Territory over which the Republic of South Africa exercised an illegal mandate; Southern Rhodesia, headed by an illegal racist minority régime; and the three Portuguese Territories, Angola, Mozambique and Guinea (Bissau).

Recapitulating the background to the situation in Namibia, he recalled that the Territory had formerly been known as South West Africa and had been a German colony. After the First World War, the Territory had been placed under a League of Nations Mandate and administered by the Government of South Africa. At the time, no South Africans had been living in Namibia; since then, land had been taken from the indigenous population and given to South Africans. Between the two wars South Africa had been reluctant to carry out its obligations as the Mandatory Power and send a report annually to the Mandates Commission. Immediately after the Second World War, South Africa had made known its intention of annexing the Territory and making its mandate an exception to any new trusteeship system. It had, however, been compelled to accept the application of that system to South West Africa and had then refused to co-operate with the United Nations. The International Court of Justice, from which an advisory opinion on the international status of the Territory had been requested, had rendered its decision on 11 July 1950 to the effect that South West Africa was a Territory under the international mandate assumed by the Union of South Africa and that the trusteeship system should therefore be applied. South Africa had disregarded that opinion, arguing that it was only an advisory opinion.

In 1961, Ethiopia and Liberia placed before the International Court of Justice two applications stating that Namibia had been badly treated and that South Africa had not carried out its obligations as the Mandatory Power. Thus, on 18 July 1966, the International Court of Justice, in a famous decision in which the President had had to employ his casting vote since the votes of the members of the Court had been equally divided, had declared that Ethiopia and Liberia had not established that they had any legal right or interest in the observance of the Mandatory's obligations.

Subsequently, the General Assembly and the Economic and Social Council had decided that South Africa's mandate over Namibia was terminated and that the

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(Mr. Awad)

Territory came under the direct responsibility of the United Nations. The Council for Namibia had then been established and a High Commissioner appointed, but the situation had not changed for all that and Namibia was still under South African domination.

An important event had occurred in June 1971, when the International Court of Justice, asked once again for an advisory opinion, had decided that South Africa should withdraw its administration from Namibia and restore the authority of the United Nations. The Organization, fortified by that decision, should therefore try to recover its authority: it should not use force but should apply mandatory sanctions, in the interests not only of Namibia but also of all southern Africa. The Organization's presence in that region would help to improve the situation prevailing there, particularly in Botswana and Angola. The United Nations could not afford to ignore the question of Namibia or to postpone a solution.

He recalled that the population of Southern Rhodesia included 224,000 Europeans or Whites and 4,150,000 indigenous inhabitants. The Whites wanted to impose their rule on the indigenous peoples and had gone so far as to proclaim their independence from the United Kingdom. The latter country had not recognized the Republic of Southern Rhodesia and had urged the United Nations and other countries not to recognize the illegal racist minority régime.

The United Kingdom wished to solve the problem of Southern Rhodesia smoothly and diplomatically but with the greatest possible firmness. It wanted to persuade the Government of Southern Rhodesia to establish a more moderate régime which would in time lead to the installation of a democratic government and a majority régime. However, the slowness of the negotiations between the United Kingdom and Southern Rhodesia had disappointed several States Members of the United Nations and the Special Committee of Twenty-Four, which had recommended that the United Kingdom should use force against the minority régime to make it relinquish power in favour of the majority of the population: following the adoption by the Special Committee of Twenty-Four of a resolution condemning the failure and refusal of the United Kingdom to take effective measures to end the illegal régime in Southern Rhodesia, Australia, the United Kingdom and the United States of America had withdrawn from the Committee. That was regrettable since the problem of Southern Rhodesia could be solved by the procedures suggested by the United Kingdom.

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(Mr. Awad)

There was no doubt that the Portugese Territories in Africa - Mozambique, Angola and Guinea (Bissau) - were in the throes of a rebellion and that 120,000 Portugese soldiers were there to contain it. Such a war effort was very costly for a small country like Portugal, and the people and intelligentsia of Portugal were wondering if the effort was worthwhile. Portugal was certainly better equipped militarily than the rebels but the latter benefited from the assistance of neighbouring countries.

The question which should engage the Sub-Commission's attention was not whether or not the United Nations should assist the rebels. What was important was that the United Nations should assist the refugees fleeing from the three Territories.

Tanzania and Zambia were making tremendous efforts in the case of Mozambique, to give the numerous refugees seeking shelter in their territory some education and vocational training. Some of those refugees had even received scholarships to continue their studies in the United States or in Europe through the generosity of philanthropic or religious organizations. The United Nations should grant assistance to the refugees from the three Territories in question, who were victims of Portugese colonialism.

Angola was receiving valuable assistance from the Government of the Democratic Republic of the Congo, a country whose economic situation was steadily improving. He did not believe that Portugal would dare to attack the Democratic Republic of the Congo, as it had attacked Guinea and Senegal. In the two latter cases, the United Nations had taken special action to prevent Portugal from committing aggression against western Africa. The attacks in question showed that the Portugese Government was worried about the rebellion in Guinea (Bissau). The United Nations should not give military assistance to those Territories but should rather assist the refugees who sought shelter in Senegal or Guinea.

Several international organizations were already providing the refugees with educational or medical assistance. That was the path the United Nations should follow until the aggressor surrendered.

The meeting rose at 1 p.m.

SUMMARY RECORD OF THE SIX HUNDRED AND THIRTY-FIRST MEETING

Held on Tuesday, 17 August 1971, at 3.30 p.m.

Chairman:

Mr. GROS ESPIELL

(Uruguay)

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QUESTION OF SLAVERY AND THE SLAVE TRADE IN ALL THEIR PRACTICES AND MANIFESTATIONS, INCLUDING THE SLAVERY-LIKE PRACTICES OF APARTHEID AND COLONIALISM (E/CN.4/Sub.2/322; E/CN.4/Sub.2/L.552, L.557) (continued)

The CHAIRMAN on behalf of the Sub-Commission invited Mr. Montgomery, the representative of the Anti-Slavery Society, to make a statement.

Mr. MONTGOMERY (Anti-Slavery Society) paid a tribute to the Special Rapporteur, Mr. Mohamed Awad, for the valuable report (E/CN.4/Sub.2/322) he had prepared on the question of slavery. The report implicitly recognized the survival of slavery in many different forms and in many parts of the world. It did not identify the countries in which institutions forbidden under the Supplementary Convention of 1956 survived nor did it give an estimate of the number of persons held in slavery or servitude. Indeed, such an estimate would be hard to arrive at, because not only were Governments understandably reluctant to acknowledge the continued existence of proscribed institutions and practices, but they did not necessarily know of the existence of such practices.

He welcomed the distinction made in paragraph 29 between apartheid and slavery. The Anti-Slavery Society had long been active in the campaign against apartheid and continued to be steadfastly opposed to that practice, but it considered that the problem of slavery should be dealt with separately.

A correction was needed in paragraph 110 of the report, which read: "The Anti-Slavery Society has reason to believe that chattel slavery, serfdom, debt bondage, the sale of children and servile forms of marriage survive today to the extent that they constitute a recognizable element in the pattern of society in some African countries." The original wording of the memorandum submitted by the Society, in May 1970, at the Secretary-General's request was: "The Anti-Slavery Society has reason to believe that either chattel slavery or serfdom or debt bondage or the sale of children or servile forms of marriage survive today to the extent that they constitute a recognizable element in the pattern of society in 17 African countries, 15 Asian countries and 6 Latin American countries."

(Mr. Montgomery)

The fate of Mr. Awad's previous Report on Slavery (United Nations publication, Sales No. 67.XIV.2) was referred to in paragraphs 22 to 24 and again in paragraph 165. The Special Rapporteur's recommendation, made five years earlier, that machinery should be set up to implement the Supplementary Convention, had not been heeded. In the past five years, many more children had been born or sold into slavery. His Society hoped that before another report on slavery was commissioned, the recommendations made in the present and previous reports would be put into effect and that real progress would be made towards effective implementation of the Convention.

Despite repeated efforts by the Economic and Social Council to persuade Member States to make use of the available technical assistance resources, Governments were still reluctant - as was noted in paragraph 130 - to request technical assistance for the purpose of dealing with the eradication of slavery and there was a general lack of interest in the immediate eradication of slavery and servitude.

It was true, perhaps, that no official sanctions could be imposed to eradicate the vestiges of slavery, but if Governments were unable or unwilling to act, the final recourse of concerned persons would be to appeal to public opinion.

The Anti-Slavery Society regretted that no request had yet been made to the Secretary-General for the services of any of the 36 experts recommended by Governments and accepted by the Secretary-General as being competent to advise on the elimination of slavery.

As the report stated, much of the surviving slavery existed in inaccessible places. Moreover, the institution was protected by those with vested interests in its perpetuation. For example, the Society had recently discovered that peasants in a remote region of one country had been required to grow opium under conditions of virtual serfdom. In the same country chattel slavery also survived, and children of both sexes were sold or given as gifts.

While such widespread servitude survived only in remote areas, other customs were openly practised. The Society had recently received evidence from an

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(Mr. Montgomery)

eyewitness concerning an influential family in a Middle Eastern country which had bought some African boys for domestic service. Most of the boy servants were treated harshly and were kept at work from dawn until after dark.

Paragraph 39 of the report described the excellent machinery whereby the ILO supervised the implementation of its conventions. The Anti-Slavery Society had repeatedly advocated similar machinery for the Supplementary Convention.

The Anti-Slavery Society had long felt that the techniques used to control the traffic in narcotics could be adapted for the purpose of dealing with the question of slavery. But there were differences between the two problems. The production and sale of narcotics in many countries was legal. Governments could therefore, without embarrassment, accept the services of United Nations experts to help them fulfil their obligations under the Single Convention. Slavery, on the other hand, was against the law in every country. And Governments would not appreciate confirmation of its persistence by foreign experts.

The Anti-Slavery Society did not suggest that there was any appreciable traffic in persons across national frontiers. The real problem existed within the boundaries of individual States, that is, in the area which Governments could claim to be within their domestic jurisdiction. Moreover, there were a few Governments which saw no need to eliminate slavery or serfdom; they were typically traditionalist régimes which resisted social and economic reforms.

One of the Society's informants had recently described a particularly distressing incident he had witnessed while in the company of Government officials in a Middle Eastern country. He had seen two young girls, with their wrists chained, being dragged behind camels to their purchaser. He had tried to intervene but without success. An official complaint had been made but no action had been taken.

There were many more examples of such conditions which were tolerated and perpetuated because they were customs of the region. Since that was so, the Society could not agree that the problem of eliminating slavery and servitude should be reserved for regional discussion.

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(Mr. Montgomery)

It was not only the backward regions of the world which were to be blamed for the persistence of slavery. Outside influences bore a share of the responsibility for the social and economic conditions which bred slavery. Three such influences were of special importance. First, there were those Governments which persuaded developing countries to accept, in payment for their exports of raw materials, armaments instead of items which could contribute to higher living standards for the population. Secondly, there were the influences which, disregarding overwhelming human suffering, hindered the acceptance of the more merciful methods of population control. Thirdly, there were donors of aid to developing countries who attached strings to their assistance programmes, requiring, for example, that interest on loans should be paid through the purchase of labour-saving machinery, which only served to aggravate problems of unemployment.

While the Anti-Slavery Society was greatly encouraged by Mr. Awad's excellent report, progress towards the elimination of slavery would call for a genuine desire and determination on the part of Governments to institute reforms, and it would be unrealistic to expect such reforms without social, educational and economic changes. It would also call for sufficient courage at the governmental level, to insist on a change in social attitudes. Nevertheless, the Anti-Slavery Society looked forward with confidence to the acceptance by Governments of the measures advocated in Mr. Awad's report.

Mr. HUMPHREY, introducing the draft resolution contained in document E/CN.4/Sub.2/L.552, said that the intention of the sponsors had not been to draft a controversial document but simply to include in a draft resolution all the recommendations made by the Special Rapporteur in his report. The sponsors would be happy to accept any amendments or suggestions for the improvement of the text from other members of the Sub-Commission.

Mr. NETTEL pointed out that the second part of operative paragraph 2, as worded, might conflict with the extradition procedures established in recognized instruments of international law. To prevent the possibility of such a conflict, he recommended that the words "provided such State has made out a prima facie case" should be deleted. If they were retained, he would ask for a separate vote on them.

/...

(Mr. Nettel)

In operative paragraph 10 it was recommended to Governments that travel documents should be made easily available to the victims of racial discrimination who had to leave their countries to escape the slavery-like practices of apartheid, enabling them in particular to return to their country of refuge. The recommendation there should be addressed not to Governments in general but specifically to the Governments of the country of refuge, since only those Governments would have the power to issue travel documents enabling refugees to return to that country of refuge.

Operative paragraph 11 contained a recommendation concerning the organization of conferences and seminars on the question of slavery and the slave trade. In his view, a conference on slavery would be of little use since the States where slavery still existed would not in all probability be persuaded to take action by any resolutions that a conference might adopt.

In operative paragraph 12 the Sub-Commission was requested to prepare a five-year plan of technical co-operation to eradicate slavery. He was not sure that the Sub-Commission was the appropriate body to prepare such a plan; such work was usually entrusted to the Secretary-General, who would prepare the plan and then transmit it to the competent organ. He also felt that the five-year time-limit was not essential and suggested that the paragraph should be amended to read: "Requests the Secretary-General to prepare a plan of technical co-operation to eradicate slavery and the slave trade in all their practices and manifestations and to submit it to the Sub-Commission for consideration."

Mr. RYBAKOV congratulated the Special Rapporteur on his admirable introductory statement, in which he had correctly emphasized that it was important to bear in mind that the close relationship of the three evils of slavery, apartheid and colonialism could not be denied. He endorsed Mr. Awad's statement that the question of South Africa must remain on the agendas of the Sub-Commission and other United Nations bodies until the policy of apartheid had been eliminated. He agreed, too, with Mr. Awad's comments on the effectiveness of sanctions and the role played by foreign investments in the economy of South Africa; were it

(Mr. Rybakov)

not for the assistance afforded by certain States to South Africa, slavery would no longer exist in that part of the world. He agreed with the representative of the Anti-Slavery Society that any solution to the problems in South Africa must be based on improved economic and social conditions.

Turning to draft resolution E/CN.4/Sub.2/L.552, he proposed that the following paragraph should be inserted as operative paragraph 2: "Draws attention to the close relationship between slavery, apartheid and colonialism and to the need to take concrete measures to ensure the effective implementation of the relevant international conventions and decisions of the United Nations with a view to bringing about the complete elimination of these shameful phenomena."* The text was based on comments made by the Special Rapporteur in his introductory statement, so he hoped that members would be able to accept it.

He endorsed Mr. Nettel's comments on operative paragraph 12, which should be either amended or deleted. In any case, the word "technical" seemed superfluous and should be deleted.

In conclusion, he requested information on the financial implications of the proposals made in the draft resolution.

Mr. DAUDY said that in his excellent report (E/CN.4/Sub.2/322) and introductory statement, the Special Rapporteur had drawn attention to practices and manifestations of slavery to which the Sub-Commission should devote attention.

Mr. Humphrey had said that draft resolution E/CN.4/Sub.2/L.552 was based on ideas expressed by the Special Rapporteur. He wondered, however, whether operative paragraph 7 fully reflected Mr. Awad's ideas on the subject. In any case, to ensure consistency between paragraphs 2 and 7, he proposed that the word "Recommends" in operative paragraph 7 should be replaced by the word "Calls upon", that the words "is taking place" should be replaced by the words "has not taken place" and that the words "to accelerate emancipation and" be inserted before the words "to absorb such persons...". States should not merely be recommended to emancipate slaves; they should be categorically and firmly called upon to do so.

* Subsequently issued as document E/CN.4/Sub.2/L.558.

Mr. FERGUSON congratulated Mr. Awad on his report.

Turning to the draft resolution, he pointed out that time would be wasted if the sponsors were to confer together with a view to reaching agreement on each of the amendments proposed. He suggested, therefore, that, in order to expedite the Sub-Commission's work, the Chairman should put the amendments to the vote.

Personally, he would have no difficulty in accepting Mr. Rybakov's amendment. The additional paragraph would strengthen the resolution by drawing attention to the fact that the Sub-Commission was dealing with a tri-faceted phenomenon.

Mr. Daoudy's redrafting removed the apparent contradiction between operative paragraphs 2 and 7. It should be noted, however, that the text of operative paragraph 7 had been taken from paragraph 62 of Mr. Awad's report. The sponsors had attempted both to call for emancipation and, in a spirit of realism, to recognize the fact that there would necessarily be an interim period before the goal of full emancipation was achieved.

With regard to Mr. Nettel's comment on operative paragraph 2, both he and Mr. Humphrey agreed that the proviso clause should be deleted. It should be left to the normal practices of international law to supply such tests as might be reflected in bilateral or multilateral extradition procedures.

Operative paragraph 10 should indeed be redrafted in order to make it quite clear that there were two classes of Government to be addressed, namely, the Governments of the States of refuge and the Governments of States providing such facilities as travel documents which would enable refugees to return to their country of refuge.

He endorsed the general comments on operative paragraph 12 and agreed that the words "five-year" and "technical" might be deleted. The paragraph did, however, draw attention to an area in which the Sub-Commission could do useful work. It seemed, therefore, that its substance should be retained.

Mr. CALVOCORESSI said that although members had not had much time to study Mr. Awad's excellent report, he would be prepared to vote in favour of draft resolution E/CN.4/Sub.2/L.552, bearing in mind that the report was the Special Rapporteur's report, and that the Sub-Commission was merely being asked to endorse its tenor.

(Mr. Calvocoressi)

He nevertheless wished to comment on certain paragraphs in the draft resolution. While he agreed with Mr. Daoudy that there was some conflict between operative paragraphs 2 and 7, he wondered whether the sponsors had not been endeavouring, in operative paragraph 7, to provide for the consequences of emancipation by requiring States to absorb emancipated slaves into the general labour force and to give them access to vocational guidance and training facilities. In other words, the sponsors were taking emancipation, which had been called for in other paragraphs of the resolution and in other United Nations documents, as an accomplished fact and, in operative paragraph 7, were providing for the consequences of that emancipation.

Operative paragraph 10 did indeed contain two separate ideas and should be redrafted.

Operative paragraph 11 endorsed an idea about which he had reservations. He was by no means convinced that the regional approach to the question of slavery and the slave trade would always be the best. There might be cases in which the people of a region would be more than willing for their situation to be discussed by outsiders. Moreover, the proposal that conferences and seminars should be organized on the question ran counter to the generally accepted idea that little progress would be made in eliminating slavery unless the problem was tackled tactfully and in such a way that accusations were not levelled against certain States. A conference seemed a sure way of ensuring that accusations would be levelled. He would request a separate vote on operative paragraph 11 and would vote against it.

He endorsed Mr. Nettel's and Mr. Rybakov's comments on operative paragraph 12. The Sub-Commission was not the body to draw up plans to deal with the problem. Despite Mr. Ferguson's comments, the paragraph should be deleted. He would request a separate vote on that paragraph too.

The purpose of Mr. Rybakov's amendment was to stress the relationship between slavery, colonialism and apartheid. It seemed, however, that that argument was being overstated. He did not deny some of the connexions between those evils, to which Mr. Awad had drawn attention in his report, but it had become part of the mythology of the United Nations that the connexions were greater than they were. Slavery, colonialism and apartheid were separate ills and should be dealt with separately.

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Mr. JUVIGNY said that he shared Mr. Calvocoressi's opinions about Mr. Rybakov's amendment. The Sub-Commission should not, by overemphasizing colonialism and apartheid in a text on slavery, detract from the importance of the problem of slavery itself.

He congratulated Mr. Awad on his report. The fact that the report had been called for indicated that the question of slavery had regained its rightful place in the programmes of the United Nations and specialized agencies. It was satisfactory, too, that the Special Rapporteur had emphasized the need for collaboration with the non-governmental organizations and INTERPOL.

He failed to understand Mr. Daoudy's difficulties with operative paragraph 7. Admittedly, the wording could be improved but it seemed clear that the sponsors had wanted to provide for the fact, which had been stressed in many other reports on the subject, that real emancipation would be taking place even after emancipation had been legally achieved, and that provision must be made to absorb emancipation slaves into the general labour force and give them access to vocational guidance and training facilities.

While he would not oppose operative paragraph 10, he felt that account should be taken of the spirit and terms of the United Nations Declaration on Territorial Asylum. One of the bases of international work on the question of asylum had been recognition of the obligation devolving on the international community as a whole in cases in which, as a result of historical, political or military circumstances, States were inundated with refugees who could not be absorbed permanently into their territory or economy. To say that the State of refuge should act in such a way that even if an individual left it he should be able at any time to return might be legally attractive but did not correspond to the need for international collaboration in certain cases.

The last words of operative paragraph 11 were unrealistic. There might be a region with a common cultural background which was composed of States which had recently abolished slavery, States which had not yet abolished slavery and States which had never experienced slavery.

In so far as operative paragraph 12 was concerned, unfortunately the hopes that had been placed in technical assistance as a means of eliminating slavery had proved vain. States were reluctant to request assistance in the matter and

(Mr. Juvigny)

their reluctance was understandable. The Sub-Commission must continue its efforts to inform States of the technical assistance facilities available. It should be remembered, however, that technical assistance could not be imposed; it could only be supplied at the request of a State. He proposed, therefore, that the words "to eradicate slavery" should be replaced by the words "to contribute towards the eradication of slavery...".

Mr. ABU RANNAT said that Mr. Awad's excellent report and the statement by the representative of the Anti-Slavery Society indicated that evils believed to have disappeared from the world were still to be found in the twentieth century. It was for the Sub-Commission to find ways of contributing towards the eradication of such practices. It should also determine what kind of help was required by the United Nations system - co-operation with INTERPOL was one example - and draw attention to relevant developments in various parts of the world.

As a sponsor of the draft resolution, he could accept Mr. Rybakov's proposal for a new operative paragraph. It could be argued that the inclusion of such a paragraph was inadvisable because other bodies had been established within the United Nations system to deal with the question of apartheid and colonialism and that reference to those problems might weaken the impact of the text on the question of slavery. As an African conversant with feelings in that continent, however, he felt that the text would be strengthened by Mr. Rybakov's paragraph.

As a sponsor, he would accept Mr. Nettel's proposal for the deletion of the proviso at the end of operative paragraph 2. He also agreed with Mr. Daoudy's observations on operative paragraph 7. The point made by Mr. Nettel with regard to operative paragraph 10 was sound and he hoped that suitable wording could be found to reflect it in the text. He agreed with Mr. Calvocoressi's observations on operative paragraph 12; the Sub-Commission was, by virtue of the manner of its election, in no position to draw up plans for technical co-operation. It would be better to delete the whole paragraph.

Mr. RYBAKOV welcomed Mr. Abu Rannat's support of his proposal. There was undoubtedly a close relationship between slavery, apartheid and colonialism and he fully agreed with the conclusion to that effect in Mr. Awad's report.

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(Mr. Rybakov)

Mr. Calvocoressi had emphasized that the three problems should be considered separately. That was a quite different matter; his own proposal was concerned with the interrelationship and not with the question of how interrelated problems should be examined. The draft resolution was based on a scientific analysis of the problem by Mr. Awad and its provisions should also be scientific. He did not understand Mr. Juvigny's fears that the three problems might be confused; there was no question in his text of confusing or compounding them. The consideration of slavery should not be confined to its traditional manifestations - Mr. Awad's analysis had not been based solely on the past. The Sub-Commission was not a group of aged scholars; the past must be examined through the prism of the present. There were two forms of slavery, the traditional form and that related to apartheid and colonialism. That was a scientific reality. The Sub-Commission should not be shy of stating that colonialism and apartheid were modern forms of slavery. It was for the colonialists and supporters of apartheid to feel shame. Slavery resulted from certain economic and social conditions rooted in the age-old system of colonialism and the plundering of subject territories. Colonialism and apartheid were not very different from slavery, they were merely more sophisticated phenomena based as they were on the exploitation of enslaved peoples. He agreed with Mr. Abu Rannat that the impact of the text would be stronger if it referred to the interrelationship between the three phenomena.

Mr. DAUDY welcomed the acceptance in principle of his oral amendment by Mr. Abu Rannat and Mr. Ferguson. In operative paragraph 7, the words "the emancipation... is taking place" were vague and most equivocal. In any given country, such emancipation might be at an initial, intermediate or concluding stage and it would be better to request States to accelerate the process. His proposal showed no lack of political realism. The Sub-Commission was an expression of the human conscience, as was the United Nations itself. Were it otherwise, the Declaration on the Granting of Independence to Colonial Countries and Peoples could never have been adopted. His proposal did not conflict with the Sub-Commission's mandate or the capacity of its members as international experts responsible for drafting texts.

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(Mr. Daoudy)

As to the new operative paragraph proposed by Mr. Rybakov, the link between slavery, apartheid and colonialism had been described and discussed on many occasions in the United Nations system. At the International Conference on Human Rights at Teheran, for example, some 50 delegations had drawn attention to those links. It was not for the Sub-Commission to take a backward step by implying that there were no such links. The very title of the agenda item and of the draft resolution linked the three phenomena and the Special Rapporteur himself had drawn attention to their interrelationship.

Mr. NIKIEMA said that Mr. Daoudy had anticipated his own comments by drawing attention to the title of the draft resolution and the wording of the agenda item. The comments of Mr. Calvocoressi and Mr. Juvigny might be justified from the intellectual standpoint; however, any possible misunderstanding as to the origins of the three phenomena would be avoided by the insertion of "with regard to their effects" after mention of them in Mr. Rybakov's text. He formally proposed that insertion.

Mr. RYBAKOV said he was convinced that there was an interrelationship not only between the effects but also between the phenomena themselves. It would therefore be more judicious and effective to adopt his proposal.

Mr. CALVOCORESSI said that Mr. Nikiema had understood his point perfectly and had made a suggestion that would have met his objection. As a historian he objected to statements about the past which were untrue.

The CHAIRMAN suggested that the Sub-Commission should vote first on Mr. Nikiema's subamendment to Mr. Rybakov's amendment and then on the amendment itself.

Mr. Nikiema's subamendment was adopted by 10 votes to none, with 10 abstentions.

Mr. Rybakov's amendment, as subamended, was adopted by 20 votes to none, with 1 abstention.

The CHAIRMAN, recalling Mr. Nettel's request, invited the members of the Sub-Commission to vote on the phrase "provided such State has made out a prima facie case" in paragraph 2 of the draft resolution.

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The phrase was rejected by 12 votes to none, with 7 abstentions.

The CHAIRMAN invited the Sub-Commission to vote on Mr. Daoudy's amendment to operative paragraph 7.

The amendment was adopted by 19 votes to none, with 2 abstentions.

The CHAIRMAN invited the Sub-Commission to take a decision on Mr. Nettel's amendment to operative paragraph 10, whereby the words "of countries of refuge" would be inserted after the word "Governments".

The amendment was adopted unanimously.

The CHAIRMAN, recalling that Mr. Calvocoressi had requested a separate vote on operative paragraph 11, suggested that that paragraph should be put to the vote.

Operative paragraph 11 of the draft resolution was rejected by 9 votes to 1, with 9 abstentions.

The CHAIRMAN put to the vote Mr. Calvocoressi's proposal to delete operative paragraph 12.

The proposal was rejected by 7 votes to 6, with 7 abstentions.

Mr. JUVIGNY recalled his proposal that the words "to contribute towards the eradication of" should replace "to eradicate" in operative paragraph 12.

Mr. DAUDY wondered whether Mr. Nettel would agree to changing the word "submit" in operative paragraph 12 to "transmit". It would be more appropriate since the Secretary-General was referred to.

Mr. NETTEL accepted those suggestions.

After a brief procedural discussion in which Mr. NETTEL and Mr. CALVOCORESSI participated, the CHAIRMAN invited the Sub-Commission to vote first on Mr. Juvigny's subamendment, then on Mr. Nettel's amendment as a whole and, thirdly, on paragraph 13.

Mr. Juvigny's subamendment was adopted by 18 votes to none, with 4 abstentions.

Mr. Nettel's amendment, as subamended by Mr. Juvigny and Mr. Daoudy, was adopted unanimously.

Paragraph 13 was adopted by 8 votes to 7, with 6 abstentions.

Mr. LAWSON, replying to Mr. Rybakov's question concerning the possible financial implications of operative paragraph 12, said that, as adopted, that paragraph would have no financial implications.

Mr. DAUDY pointed out that in the first line of the third preambular paragraph the word "it" was ambiguous. It should be replaced by "the Sub-Commission".

The CHAIRMAN said he agreed with Mr. Daoudy's suggestion and invited the Sub-Commission to vote on the draft resolution as a whole.

The draft resolution as a whole was adopted unanimously.

The meeting rose at 5.55 p.m.

SUMMARY RECORD OF THE SIX HUNDRED AND THIRTY-SECOND MEETING

Held on Wednesday, 18 August 1971, at 10.35 a.m.

Chairman:

Mr. GROS ESPIELL

(Uruguay)

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CONSIDERATION OF THE FUTURE WORK OF THE SUB-COMMISSION (E/CN.4/Sub.2/L.559, L.560)

The CHAIRMAN informed the Sub-Commission that it had before it a draft resolution (E/CN.4/Sub.2/L.559) submitted by all members of the Sub-Commission, with the exception of Mr. Rybakov.

Mr. RYBAKOV requested that his name be added to the list of sponsors of the draft resolution, but he expressed reservations regarding the reference in the text to Sub-Commission resolution 7 (XIII).

The CHAIRMAN put draft resolution E/CN.4/Sub.2/L.559 to the vote.

The draft resolution was adopted unanimously.

QUESTION OF SLAVERY AND THE SLAVE TRADE IN ALL THEIR PRACTICES AND MANIFESTATIONS, INCLUDING THE SLAVERY-LIKE PRACTICES OF APARTHEID AND COLONIALISM (E/CN.4/Sub.2/322) (concluded)

Mr. RYBAKOV said he wished to draw the Sub-Commission's attention to a technical error in Mr. Awad's report (E/CN.4/Sub.2/322). Annex III of that document contained a map of the world on which two States - the German Democratic Republic and the Federal Republic of Germany - were not marked. In the place of those two countries appeared a single country, designated as "Germany". He did not know whether the Germany in question was the Third Reich or the Germany of Wilhelm II. In any event, he trusted that the error would be quickly corrected.

The CHAIRMAN said that the same error had been pointed out in a Secretariat document at the last session of the Economic and Social Council at Geneva.

INTERNATIONAL YEAR FOR ACTION TO COMBAT RACISM AND RACIAL DISCRIMINATION (E/CN.4/Sub.2/L.556) (concluded)

Mr. RYBAKOV, introducing draft resolution E/CN.4/Sub.2/L.556, said that the struggle against racism and racial discrimination was one of the most important items not only on the Sub-Commission's agenda but also on those of many other United Nations bodies. The Sub-Commission must therefore play its part in the observance of the International Year for Action to Combat Racism and Racial Discrimination.

(Mr. Rybakov)

He thanked Mr. Schreiber for his very interesting statement at the 629th meeting regarding the contribution of the various Governments to the implementation of the programme for the observance in 1971 of the International Year for Action to Combat Racism and Racial Discrimination; the programme had been the subject of General Assembly resolution 2544 (XXIV).

The defeat of the fascist States at the end of the Second World War, the emergence of the socialist States after that War, and the failure of the colonial system were all positive historical factors which, in a general manner, had reduced the likelihood of a resurgence of racial theories.

Unfortunately, racism had not yet been eliminated everywhere, and the United Nations, UNESCO and other competent bodies, which had so often condemned racism, must see to it that the struggle against racism did not cease at the end of the International Year, for in certain States reactionary forces continued to use racist theories to justify the subjugation of certain races or social groups.

The members of the Sub-Commission had often considered the question of racism and were aware that increasing efforts were being made in certain States to justify racism "scientifically". For example, in 1969, a United States university professor had published an article stating that blacks were inferior to whites by 15 per cent in intelligence and technical ability. That inferiority had been ascribed to the genetic characteristics of blacks, rather than to the unfavourable social conditions imposed on them. Blacks should therefore accept that fact and recognize that they had no right to make any claims on whites. He emphasized the dangers of that theory, which was disturbingly reminiscent of the theories of the German Third Reich. The professor's theory had unfortunately received a sympathetic welcome from some members of the United States Congress, Nobel prize winners and elements of the United States press. Impressed by the theory, the United States Government had established a national educational institute to determine why children of different races were not endowed with equal aptitudes.

Similarly, during the 1970 election campaign in the United Kingdom, a leading member of the Conservative Party, Mr. Powell, had advocated racist theories.

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(Mr. Rybakov)

In introducing his report at the 630th meeting, Mr. Awad had drawn the Sub-Commission's attention to the fact that racism had the upper hand in South Africa and that the African population was denied all its rights and lived under a quasi-penitentiary system. For more than ten years, successive racist South African Governments had been waging a bloody racist struggle, which had begun with the Sharpeville massacres.

Racist theories also thrived in Israel and in the territories occupied by Israel, where Arabs were oppressed. He nevertheless emphasized that the racist theories of Zionism were rejected by honest and objective Jews.

The racist theories of nazism were also applied in certain Western European States which, while employing foreign workers, denied them all political rights and exploited them shamelessly.

In many underdeveloped countries there were ethnic groups which were not receiving equitable treatment; that was a problem which the members of the Sub-Commission could not pass over in silence. Many of the newly independent States had been established on the basis of frontiers which had been drawn up by the colonial Powers under arrangements made between themselves and which failed to take into account ethnic realities. It was for that reason that the racial composition of many of those States was extremely heterogeneous; while that fact was in itself unimportant, it became a serious matter when combined with other legacies of the colonial era resulting from the principle of "divide and rule" applied by the colonialist Powers in order to maintain their supremacy.

It was somewhat ironic that in the International Year for Action to Combat Racism and Racial Discrimination many studies on relations between States of different ethnic composition were being published. Most of those studies were based on the theory of cultural relativism, which maintained that there was no point of comparison between certain African and Asian cultures and modern European cultures. According to that theory, the peoples of the former colonies were primitive in their thinking and way of life and consequently behaved inconsistently and reasoned illogically. The theory of cultural relativism led on to what might be termed psychoracism. In any event, that ideology was widely used to stir up tribal

(Mr. Rybakov)

intolerance, hatred and dissension and to prevent the opponents of colonialism from joining forces.

He emphasized that, in the socialist countries, the minorities problem had been overcome owing to the recognition of equal rights, in accordance with Leninist theories.

While recognizing that the task of combating racism and racial discrimination in the world was a difficult and complex one, he was convinced that the Sub-Commission could make a positive contribution. It was for that reason that he was submitting draft resolution E/CN.4/Sub.2/L.556, in which he had set forth a number of ideas which he felt to be of value. However, he wished to point out that his draft resolution did not cover all aspects of the observance of the International Year, and he would welcome any proposal for the insertion of additional paragraphs.

Mr. KHALIFA drew the attention of the Sub-Commission to the vital role of science and scientific research in the struggle against racism.

In South Africa, an attempt was being made to provide racism with a scientific basis. Thus the South African Institute of Race Relations was using science as a tool with which to perpetuate the belief in racial separatism. Among other activities, it was conducting research aimed at proving that the mixing of races led to degeneracy and was even trying to interpret the history of mankind in a way which would emphasize the superiority of the white man.

Any educated person knew that no single race, creed or religion was responsible for mankind's great achievements. The Renaissance and the scientific and technological revolution which it had produced - which were the glory of Europe - dated back only 500 years. Before that, great civilizations had flourished in Africa, Asia, Latin America and other parts of the world, and it should be borne in mind that the ancient Egyptians had been half Negro. During the Middle Ages, the Moslem Arab culture had been the vehicle by which the Greco-Roman heritage was transmitted to Europe, where it eventually sparked the Renaissance. It was therefore obvious that the theory of racial supremacy was a fallacy based on the contingencies of the moment. It was quite possible that, in 500 years' time, the world would be dominated by black or yellow men.

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(Mr. Khalifa)

Regarding the observance of the International Year for Action to Combat Racism and Racial Discrimination, he congratulated Mr. Schreiber on his excellent presentation at the 629th meeting. However, he had failed to note any mention in Mr. Schreiber's description of the world-wide activities to eliminate racism of the possible contribution of science.

In 1970, the Sub-Commission had adopted a voluminous report on racial discrimination. The report, which was an excellent document, had consisted mainly of facts and figures but had failed to emphasize sufficiently that discrimination was brought about by prejudice, which was rooted in myths and ignorance. In order to contribute to the struggle against racism and racial discrimination, the Sub-Commission needed a solid scientific base from which to launch a counter-attack against the premises of racism. The question of whether prejudice was mystical, biological, political, economic or cultural in nature could be debated at length. The fact remained, however, that children were not born racist; racism was imparted to them during the educational process. It was useless to try to fight a long-established idea or way of life by appealing to conscience, wisdom or even force. The phenomenon needed to be attacked at its very roots. Experience had shown that prejudice was far stronger than all the declarations and resolutions of United Nations bodies. Even in a country like the United States of America, where Government policy was to combat discrimination, prejudice was stronger than the law and blacks and Indians held inferior social and economic status.

For those reasons, the United Nations should establish a permanent institute to carry out research on race relations.

In the space age, when the peoples of the planet were looking outwards towards the rest of the universe, it was hard to believe that some men should be discriminated against because of race, religion or any other reason. It was time to bring up a generation that knew nothing of racism.

Mr. JUVIGHY said he wished to make some comments of principle concerning draft resolution E/CN.4/Sub.2/L.556.

(Mr. Juvigny)

While he well understood the concern underlying the draft resolution, he wished to emphasize that the Charter provided for a distribution of competence between the various bodies. In his view, the Sub-Commission, as a subsidiary body of experts, was not competent to recommend that Member States should implement General Assembly and Security Council decisions. The views expressed in the draft resolution lay, rather, within the sphere of competence of higher organs of the United Nations, namely the General Assembly and the Security Council.

He emphasized that he had been speaking as an independent expert and had not been motivated by any political consideration.

The CHAIRMAN, speaking as a member of the Sub-Commission, proposed two oral amendments to draft resolution E/CN.4/Sub.2/L.556. He entirely agreed with the general trend of the document, but felt that the provisions of operative paragraphs 2 and 3 might be amended slightly in order to bring them more into line with the terms of reference of the Sub-Commission. Consequently, he suggested that the two paragraphs should be replaced by the following text:

"2. Decides to consider at its twenty-fifth session the question of the consequences for the effectiveness of human rights of the aid which in some cases might be given to the racist and colonial régimes of southern Africa.

3. Takes note of the need to adopt within the Sub-Commission's sphere of competence and respecting the principles of the Universal Declaration of Human Rights measures designed to prevent the activities of the racist or nazist groups wherever they may occur."

Mr. RYBAKOV said that he could accept the wording proposed by the Chairman.

Mr. NETTEL asked whether it would not be possible to replace the word "requests" in operative paragraph 1 by the word "recommends" since the Sub-Commission was answerable to the Commission on Human Rights.

Mr. RYBAKOV said that he was able to accept Mr. Nettel's amendment.

The CHAIRMAN said that, if he heard no objection, he would take it that the members of the Sub-Commission wished the draft resolution as a whole to be put to the vote.

The draft resolution, as amended, was adopted by 21 votes to none, with 3 abstentions.

The CHAIRMAN said that Mr. Barmore, the Observer for Israel, had requested to speak on item 4. Invoking rule 72 of the rules of procedure, he said that, if he heard no objection, he would take it that the members of the Sub-Commission agreed to hear Mr. Barmore.

At the Chairman's invitation, Mr. Barmore (Israel) took a place at the Sub-Commission table.

Mr. BARMORE (Israel) congratulated the Sub-Commission on adopting new procedures for dealing with communications relating to violations of human rights and fundamental freedoms. Unfortunately, however, not all the victims of discrimination throughout the world were able to enjoy the same right of appeal. On one side, there were politically privileged victims who would find many advocates to plead their cause, and would approach, not a sub-commission of experts or the Commission on Human Rights, but the General Assembly; they could have a committee of investigation set up and would be assured in advance that their cause would be gained. On the other hand, there were victims whose fate was disregarded, and whose protests were unheeded for reasons of convenience. If, by chance, someone happened to voice indignation at their plight, he would be branded as a provocateur, a politically-motivated troublemaker and a defender of parasites. Individuals or members of a non-governmental organization who protested against discriminatory measures, particularly when they affected their brethren, would be thus threatened, would see their powers curtailed, and would be reduced to silence. That was an intolerable situation.

It was regrettable that procedures for dealing with communications relating to human rights had not been established 19 years earlier, when the élite of Jewish culture had been destroyed by a ruthless despot. It was true that the writers concerned had been rehabilitated and that their families had been told that there had been an unfortunate mistake, but since that time no attempt had been made to resuscitate the Jewish culture, education, press and theatre in the place where they had been suppressed. There was no wonder that after such a cultural and spiritual strangulation, Jews wished to join their families in Israel in order to be able to speak Hebrew and practise their religion openly.

(Mr. Barmore, Israel)

Thousands of applications for permission to emigrate to Israel were refused, in violation of principles recognized throughout the world.

In Europe, Jews who had wished to mark the anniversary of the Nazi holocausts by praying together had been ordered to disperse that year. Those who questioned the legality of the order were arrested and sentenced to 15 days' imprisonment under a special judicial procedure. On 20 May 1971, three nationally and internationally renowned scholars had sent a letter to the Presidium of the Supreme Soviet of the USSR protesting against the unlawful actions taken by the authorities to prevent the emigration of persons wishing to leave the Soviet Union, and in particular the free repatriation of Jews to Israel.

It was his hope that in the future statements of that kind would be unnecessary.

Mr. Barmore withdrew.

Mr. RYBAKOV said that the Sub-Commission had just considered a very important question, which was of particular significance in the International Year for Action to Combat Racism and Racial Discrimination. He wished to stress the need to combat all forms and manifestations of racism, particularly international Zionism. International Zionism constituted a danger for the contemporary world, by advocating racial discrimination and hatred in more or less disguised forms, and by adhering to exclusivist ideas which were comparable to those proclaimed by the Third Reich and which found expression in the massacre of millions of people in the gas chambers.

At the beginning of 1971 he had watched on American television a scene filmed in Jerusalem which had shown venerable Jews being bludgeoned and trampled on, because they were not from Europe, but from Africa or Asia, and because they were dark-skinned. It was no mere violation of human rights but the concept of Zionism in concrete form.

Externally, the theories of international Zionism had one single objective: to reunite all persons of Jewish origin in the Promised Land and to establish an increasingly large army to implement policies of expansion and aggression against neighbouring countries and of enslavement of the peoples of those countries.

International Zionism had no scientific or political foundation. It was incompatible with the spirit of the United Nations.

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(Mr. Rybakov)

In every society, the movements of individuals had to be regulated by provisions based on recognized principles of international law. While Article 13 (2) of the Universal Declaration of Human Rights specified that "Everyone has the right to leave any country, including his own, and to return to his country", the International Convention on the Elimination of All Forms of Racial Discrimination prohibited all manifestations of racism, and Zionism was such a manifestation.

The Sub-Commission should be all the more interested in the elimination of all manifestations of racism as its current session coincided with the celebration of the International Year for Action to Combat Racism and Racial Discrimination.

The CHAIRMAN announced that Mr. Barmore had asked to exercise his right of reply.

Mr. RYBAKOV asked the Chairman to specify on which agenda item Mr. Barmore wished to speak. He noted that the Observer for Israel had already spoken, under rule 72 of the rules of procedure, and recalled that the Sub-Commission had concluded its consideration of item 4 of its agenda with the adoption of a resolution. Speaking as an expert, he emphasized that it did not seem appropriate to him for the Sub-Commission to be used as a platform for the dissemination of racist ideas. Moreover, the Sub-Commission still had many matters on its agenda, and its session was drawing to a close.

Mr. ABU RANNAT, endorsing Mr. Rybakov's point of view, pointed out that if the Observer for Israel were granted the right of reply, the Sub-Commission would find itself involved in a discussion which did not deal solely with violations of human rights and which would be transformed into a political debate. The Sub-Commission was an expert body, not a political body. In his view, the right of reply of the Observer for Israel was not justified. If the question of granting the right of reply to the Observer for Israel were put to a vote, he would vote against it.

Mr. KHALIFA associated himself with the comments made by Mr. Rybakov and Mr. Abu Rannat. He formally moved the immediate closure of the debate on item 4. The Sub-Commission should not waste its time and risk failing to complete its consideration of the items on its agenda.

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Mr. AKRAM endorsed the observations made by Mr. Khalifa, Mr. Abu Rannat and Mr. Rybakov. The Sub-Commission had ended its consideration of item 4 by adopting a resolution, and, under the rules of procedure, speakers could be given the floor only for explanations of vote.

The CHAIRMAN said the closure of the debate on the item under discussion had been moved; he would put the motion to the vote in accordance with rule 48 of the rules of procedure.

The motion was adopted by 10 votes to none, with 14 abstentions.

PROTECTION OF MINORITIES (E/CN.4/Sub.2/L.553)

GENOCIDE (E/CN.4/Sub.2/L.554)

COMPLETE AND COMPREHENSIVE STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST INDIGENOUS POPULATIONS (E/CN.4/Sub.2/L.555)

The CHAIRMAN said that the Sub-Commission had before it three draft resolutions circulated as documents E/CN.4/Sub.2/L.553, L.554 and L.555, corresponding to agenda items 8, 9 and 10, respectively.

He suggested that the draft resolutions be considered immediately, in the order of the agenda items to which they related. He noted that elections of individuals were involved and that the vote must therefore be taken by secret ballot, in accordance with rule 62 of the rules of procedure.

Mr. MOHAMMED said he would like the sponsors of the draft resolutions in question to introduce the texts.

Mr. DAUDY said he shared the views of Mr. Mohammed. He drew the Sub-Commission's attention to the fact that there were two candidates for the post of Special Rapporteur for the study of the implementation of the principles set out in article 27 of the International Covenant on Civil and Political Rights, namely, Mr. Capotorti and Mr. Jankovic, and that a single draft resolution nominating Mr. Capotorti (E/CN.4/Sub.2/L.553) had been submitted in that connexion. The Sub-Commission had to decide in favour of one or the other of the candidates, and a vote by secret ballot was entirely appropriate.

The CHAIRMAN informed Mr. Daoudy that there was another draft resolution, E/CN.4/Sub.2/L.561, which had not yet been circulated to members of the Sub-Commission and in which Mr. Jankovic was nominated. In the present case, where there were two candidates, the application of rule 62 of the rules of procedure was especially appropriate.

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Mr. RYBAKOV said that he had great respect for Mr. Capotorti, who was a personal friend of his, but pointed out that no expert from a socialist country had ever been given a post as Special Rapporteur. Therefore, in a spirit of fairness, he would support the candidacy of Mr. Jankovic.

Mr. CRISTESCU said he shared the point of view of Mr. Rybakov.

Mr. NETTEL asked the sponsors of draft resolution E/CN.4/Sub.2/L.561 whether its text was very different from that of draft resolution E/CN.4/Sub.2/L.553, concerning Mr. Capotorti's candidacy. In his view, if only the names of the candidates were different, the Sub-Commission could proceed immediately to the vote without awaiting the circulation of draft resolution E/CN.4/Sub.2/L.561.

At the Chairman's request, Mr. ALEXIDZE (Secretary of the Sub-Commission) read out the draft resolution submitted by Mr. Khalifa nominating Mr. Jankovic for the post of Special Rapporteur for the study on the question of minorities (E/CN.4/Sub.2/L.561).

The CHAIRMAN, noting the slight differences between the two draft resolutions E/CN.4/Sub.2/L.553 and E/CN.4/Sub.2/L.561, suggested that either Mr. Jankovic or Mr. Capotorti be elected by secret ballot and that the draft resolution nominating the Special Rapporteur thus elected be adopted.

Mr. KETTANI, supported by Mr. MOHAMMED, said he desired that the vote be postponed till the next meeting. He recalled that there was no instance in which a Special Rapporteur assigned to carry out a study on a particular item of the Sub-Commission's agenda had been chosen by election.

Mr. CALVOCORESSI said he found it extremely awkward to have to choose between two distinguished members of the Sub-Commission. However, when one was faced with two formal nominations, the only solution was to take a vote by secret ballot.

Mr. HUMPHREY, replying to Mr. Mohammed, said that he knew of no rule requiring that the sponsors of a draft resolution should introduce it. He, together with Mr. Martínez Báez had nominated Mr. Capotorti, in the belief that he would prove an excellent rapporteur, as was equally the case with Mr. Jankovic. Like Mr. Calvocoressi, he felt that, in the present unfortunate situation, there was nothing to do but proceed to the vote.

Mr. MOHAMMED said he shared the viewings of Mr. Calvocoressi. He held the two eminent jurists, Mr. Jankovic and Mr. Capotorti, in equal esteem.

Mr. NETTEL said he was of the same opinion. The two candidates were both friends of his; moreover, they came from countries neighbouring his own, both of which had minority problems to settle. He proposed that the two Special Rapporteur posts for which there was only one candidate be filled, and that the appointment of the Special Rapporteur for the question of minorities be postponed until the afternoon.

The CHAIRMAN, taking Mr. Kettani's suggestion into account, suggested that the appointment of the Special Rapporteur on agenda item 8 be postponed until the afternoon meeting and that the Special Rapporteurs on items 9 and 10 be appointed immediately.

Mr. FERGUSON supported the suggestion.

Mr. DAUDY said he feared that the Sub-Commission was merely prolonging a situation which was awkward both for the two candidates and for its entire membership. He was convinced that neither Mr. Jankovic nor Mr. Capotorti would withdraw his candidacy and that the best course would consequently be to proceed immediately to the vote.

Mr. KHALIFA felt that the two candidates were equally qualified, but that in all fairness, a jurist from a socialist country should be appointed.

Mr. CALVOCORESSI supported Mr. Daoudy's proposal.

Mr. KETTANI supported Mr. Nettel's proposal.

The CHAIRMAN observed that he had two proposals before him, one to take an immediate vote, and the other to postpone the vote until the following meeting.

Mr. JUVIGNY said that, although it was certainly important to take a decision on the question of minorities, which had been neglected for so long, the decision could perhaps be postponed for a few hours.

Mr. MOHAMMED supported Mr. Nettel's proposal, in the hope that the postponement requested would make a compromise possible.

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Mr. DAOUDY said that he personally would vote for Mr. Jankovic; however, he wished to press for an immediate vote.

The CHAIRMAN put Mr. Daoudy's proposal to the vote.

The proposal was adopted by 8 votes to 7, with 8 abstentions.

The CHAIRMAN put the candidacies of Mr. Capotorti and Mr. Jankovic to the vote.

A vote was taken by secret ballot.

Number of ballot papers: 25

Invalid ballots: 1

Number of valid ballots: 24

Number of votes obtained:

Mr. Capotorti 15

Mr. Jankovic 9

Having obtained the required majority, Mr. Capotorti was elected Special Rapporteur for the question of minorities.

The CHAIRMAN suggested that a vote should be taken on draft resolution E/CN.4/Sub.2/L.554 and announced that Mr. Mohammed had become a sponsor of that document.

The draft resolution was adopted unanimously.

Mr. Ruhashyankiko was elected Special Rapporteur for the question of genocide.

Mr. RYBAKOV expressed the hope that the next post of Rapporteur would be filled by an expert from one of the socialist countries.

Mr. FERGUSON observed that the post of Special Rapporteur had never, in the history of the Sub-Commission, been filled by an expert from one of the major Powers. He hoped that in the future that point would be taken into account together with the wish expressed by Mr. Rybakov.

Mr. RYBAKOV endorsed that view.

Mr. CALVOCORESSI added that, until Mr. Capotorti's election, no expert from a Western European country had ever been selected as a Special Rapporteur.

Mr. MOHAMMED, speaking on behalf of the developing countries, said that the appointment of a Special Rapporteur had never been based on political considerations.

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Mr. SCHREIBER (Director of the Division of Human Rights) observed that the Secretary-General was required to submit budget estimates concerning the full financial implications of the decisions of the various United Nations bodies some time before those bodies established the procedures for implementation. Following the pattern of the Sub-Commission's activities in previous years, his budget estimates had provided only enough resources for the Division of Human Rights to assist one or two Special Rapporteurs of the Sub-Commission. If the Sub-Commission appointed a third Special Rapporteur, as it proposed, the workload of the Secretariat, and particularly of the Division of Human Rights, would be increased beyond the limit of the staff resources currently available. The Secretariat was in the process of calculating the minimum additional resources that would be required and intended to submit an estimate in writing that afternoon. In any event, provision would have to be made for two additional P-5, or one P-5 and one P-4, posts, and two additional posts for shorthand-typists. Moreover, the Special Rapporteurs would have to come to Headquarters, first of all to discuss their plans of work with the Secretariat and to assign certain tasks to it and then later when finalizing their report to the Sub-Commission. However, the Secretariat had noted that the three reports were to be provisional; the extent to which the substantive matters would be dealt with in the provisional reports would depend on the Rapporteur himself and on the resources which the Secretariat could make available to him. He had also observed that there was no provision requiring the Special Rapporteur and the Secretariat to follow past procedures and to arrange for all the monographs on the practices and legislation in force in the States Members of the United Nations to be prepared.

The CHAIRMAN suggested that a vote should be taken on draft resolution E/CN.4/Sub.2/L.555 when its financial implications were made known.

Mr. RYBAKOV said he also thought that it would be better to follow the usual procedure and wait until the Secretariat had circulated an estimate of the financial implications before taking a decision.

Mr. NETTEL felt that the appointment of two rather than three Rapporteurs would constitute a form of discrimination. The financial implications that had been referred to should have been taken into account when the matter was considered

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(Mr. Mettel)

by the Economic and Social Council. The Sub-Commission was simply implementing the Council's resolution.

Mr. CALVOCORESSI said he did not think that the financial implications of having two or three Special Rapporteurs would differ greatly. As a solution to the problem, he proposed that the report on the question of discrimination against indigenous peoples should be submitted at the twenty-sixth session instead of the twenty-fifth.

Mr. SCHREIBER (Director of the Division of Human Rights) said that a report on the financial implications had been prepared when the Economic and Social Council had considered the matter, but the financial implications varied according to the decisions taken by the Sub-Commission itself. The solution proposed by Mr. Calvocoressi did not eliminate those financial implications; it meant that they would not all affect the 1972 financial year. The fact that the three reports would be drafted concurrently also had to be borne in mind.

Mr. RYBAKOV supported Mr. Calvocoressi's proposal.

Mr. INGLES, referring to the Sub-Commission's past practices, said that there would be no financial implications until after the forthcoming session. At that session the Special Rapporteurs would submit only a broad outline of the study they intended to make and the draft questionnaire to be sent to interested Governments. It was only after approval of these documents that the Secretariat would be confronted with a sizable increase in work.

Mr. SCHREIBER (Director of the Division of Human Rights) agreed. If only a preparatory stage was involved, it would not imply additional expenditures, and the resources of the Division of Human Rights would even be sufficient for entering into the substance of the issues to some extent.

Mr. LAGOS said he favoured adoption of the solution proposed by Mr. Calvocoressi.

Mr. RYBAKOV said that he would prefer the solution that did not involve additional expenditures to be adopted.

Mr. SCHREIBER (Director of the Division of Human Rights) said he was pleased that the debate had made it possible to clarify what could be done during the current year and in the following years, and what considerations had to be taken into account, especially in submitting the budget estimates to the General Assembly. However, provision would have to be made for travel and subsistence expenses connected with the visits to Headquarters of the Special Rapporteurs.

The CHAIRMAN put draft resolution E/CN.4/Sub.2/L.555 to the vote.

Draft resolution E/CN.4/Sub.2/L.555 was adopted by 23 votes to none, with 1 abstention.

Mr. Martinez Cobo was elected Special Rapporteur for the question of discrimination against indigenous peoples.

The meeting rose at 1.10 p.m.

SUMMARY RECORD OF THE SIX HUNDRED AND THIRTY-THIRD MEETING

Held on Wednesday, 18 August 1971, at 3.30 p.m.

Chairman:

Mr. GROS. ESPIELL

(Uruguay)

later,

Mr. NETTEL

(Austria)

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COMPLETE AND COMPREHENSIVE STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST INDIGENOUS POPULATIONS (E/CN.4/Sub.2/L.555) (concluded)

Mr. MARTINEZ COBO expressed his appreciation for his election as special rapporteur of the study of the problem of discrimination against indigenous populations. Latin America provided a magnificent example of peaceful coexistence and elimination of discrimination. One third of the population of his own country was indigenous while in some countries of the region the indigenous population constituted a majority. Any policy of integrating such populations should ensure the preservation of their individuality and values. While Minister of Education he had tried to ensure that indigenous children had the same opportunities for schooling as white children, for the best way to solve the problem was through education. Integration would only come about if it proceeded simultaneously with economic and social development and with efforts to raise the standard of living.

REVIEW OF FURTHER DEVELOPMENTS IN THE FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (E/CN.4/Sub.2/318-321)

The CHAIRMAN suggested that, unless there were any further comments, it could be assumed that the Sub-Commission had completed its consideration of the item, having noted the contents of paragraph 7 of document E/CN.4/Sub.2/317.

It was so decided.

CONSIDERATION OF THE FUTURE WORK OF THE SUB-COMMISSION (E/CN.4/Sub.2/L.559 and 560) (concluded)

Mr. RYBAKOV, referring to the future work of the Sub-Commission in relation to the protection of minorities, said that when the time came to decide upon an approach to that question, emphasis should be placed on the problems connected with the economic and social situation of racial minorities in places where discrimination existed and where human rights were violated. It sometimes seemed that disproportionate attention was paid to the protection of small religious and linguistic groups while the large-scale violations of human rights

(Mr. Rybakov)

in certain countries he had referred to earlier were neglected. The problem of racial minorities should be emphasized and should be viewed from various angles.

Mr. CRISTESCU introduced the draft resolution contained in document E/CN.4/Sub.2/L.560. The main purpose of the proposal was to enable the Sub-Commission to make a study of the right to self-determination. That would contribute towards elucidating the concepts of human rights in related Covenants.

Mr. NETTEL pointed out that United Nations organs adopted instruments not documents. The word "documents" in the relevant portion of the English text of the resolution should be changed accordingly.

Mr. HUMPHREY felt that the resolution had been submitted at a rather late stage. The question was difficult and highly political and the Sub-Commission should have had more time to study it. He wondered whether it was fair to the new members who would be elected at the next session to decide upon their work beforehand. Three studies were now in the preliminary stages of preparation and he suggested that the resolution might be held over until the Sub-Commission's next session.

Mr. JUVIGNY thought that for stylistic reasons the word "base" in the French text should be replaced by the word "fondement". With regard to the substance of the resolution the study of the concept of the right to self-determination should not only be based on the Charter and other United Nations instruments but also on United Nations practice, for instance, the organization of referendums. He wondered whether the right to self-determination was understood in its political sense or whether the term covered the right of peoples to freely dispose of their natural resources. The question would raise problems of competence, for other United Nations organs might feel that it lay within their province. It was a vast problem and merited consideration at greater length than would be possible in the time remaining at the present session.

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Mr. ILAKO said that the definition of self-determination differed from one region to another and from one ideology to another. The resolution should therefore be considered at greater length. If its sponsors pressed for a vote he would be obliged to abstain.

Mr. NETTEL pointed out that, at its twenty-seventh session, the Commission on Human Rights had covered the subject in its resolution 8, whereby it had requested the Secretary-General to prepare an annotated collection of all the resolutions relating to the right of peoples to self-determination and decided to make use of the collection to continue consideration of the question with a view to appointing a special rapporteur at its twenty-eighth session. He could not see how that resolution and the draft resolution that had just been introduced fitted together. If the purpose of the draft resolution was to enable the Sub-Commission to study the question and submit a report to the Human Rights Commission, which would continue its consideration, there was no objection, although that was not required by operative paragraph 2 of Commission resolution 8 (XXVII). If the purpose was to suggest that the Sub-Commission could propose to the Commission on Human Rights the special rapporteur mentioned in resolution 8 (XXVII), the Sub-Commission would appear to be trying to take some responsibility away from the Commission, and the Commission might not appreciate such action.

Mr. DAUDY welcomed the draft resolution and endorsed the idea that the Sub-Commission should submit a special study on the right of self-determination to the Commission on Human Rights. As far as he knew, there had never been any study prepared within the United Nations which dealt exclusively with that very important subject. He wished, however, to propose a few drafting changes in the single operative paragraph of the draft resolution. First, he would suggest making the operative paragraph more conspicuous by putting the number 1 before it. Secondly, he suggested that in the French text the expression "Le droit des peuples à décider d'eux-mêmes" should be changed to "Le droit des peuples à disposer d'eux-mêmes", since that was the language used in the Charter. Finally, he suggested that the proposed title of the agenda item would read more smoothly if it was changed to: "The historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs".

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Mr. LAGOS supported the drafting changes proposed by Mr. Daoudy and also the ideas contained in operative paragraph 1. The history of international politics over the past 50 years or more could be viewed as a struggle to establish and enshrine the principle of self-determination of peoples in international law. While he recognized that there were sensitive political issues involved in the question of self-determination, he felt that the Sub-Commission as an independent body of experts was in an excellent position to analyse the subject impartially and in detail. The proposed study would contribute to the clarification of the concept of self-determination and would reveal those areas in the application of the principle in which interpretations differed. The study would be a useful contribution if it did nothing more than illuminate those differences in interpretation; at best, such a study held forth the prospect of a broader consensus among nations concerning the meaning of the concept. He enthusiastically endorsed the draft resolution and wished to join Mr. Gros Espiell and Mr. Cristescu as a co-sponsor.

Mr. RYBAKOV also endorsed the draft resolution. Although the principle of self-determination of peoples was almost universally accepted and enshrined in many instruments of international law, there had never been a study of that principle as it applied to the general question of human rights. The Sub-Commission was undoubtedly qualified to undertake such a study. The sponsors of the draft resolution had very wisely not set a time-limit for the completion of the study, which might be undertaken at the next session or at a later date.

He did not share the misgivings of Mr. Nettel as to the possibility that a study of the question of self-determination by the Sub-Commission might duplicate the work or infringe on the prerogatives of the Commission on Human Rights. The Sub-Commission's assumption of a portion of the burden of studying the question of self-determination would only assist and not hamper the work of the Commission on Human Rights. For his part, he had no misgivings with regard to the draft resolution and was prepared to support it, including such drafting changes as the sponsors might see fit to adopt.

Mr. FERGUSON said that, while he fully supported the principle of self-determination of peoples, he had a number of reservations concerning the

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(Mr. Ferguson)

draft resolution. He appreciated the point made by Mr. Lagos that a careful study of the question of self-determination might lead to a broader measure of agreement among nations as to the meaning of the principle. Such a study, however, would be a difficult and complex task, parts of which might fall outside the sphere of competence of the Sub-Commission. The principle of self-determination was intricately related to other great principles of international law, not the least of which was the principle of national sovereignty. There were areas where the principle of self-determination might conflict with that of national sovereignty, and that was a matter more appropriately within the purview of the political organs of the United Nations. Very serious and sensitive problems might arise in connexion with the study, which would create considerable difficulty for many States. He had in mind, for example, such delicate problems of national sovereignty as those involved in the question of the right to self-determination as applied to the peoples of Biafra, East Pakistan, the southern Sudan or Puerto Rico. He was not suggesting, however, that the Sub-Commission should abandon the question of the right to self-determination simply because complex political issues were at stake, but he stressed that the Sub-Commission must proceed very carefully in the matter.

In particular, he was opposed to the suggestion contained in the last line of the draft resolution that the Sub-Commission should submit a special study on the subject to the Commission on Human Rights. That would have the effect of prejudging the relationship between the Sub-Commission and the Commission on Human Rights concerning the question of the right to self-determination. Since there was insufficient time left at the current session to consider the multiple implications of such a study, he would propose the deletion of that last line in the draft resolution and suggest that the Sub-Commission might discuss the question of a possible study in greater detail at its next session.

Mr. RUHASHYANKIKO said that he fully supported the principle of the right to self-determination and agreed that a study of the question should be made. He recalled, however, that at its twenty-seventh session the Commission on

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(Mr. Ruhashyankiko)

Human Rights had decided to continue the consideration of the principle of self-determination of peoples with a view to appointing a special rapporteur at its twenty-eighth session. Many delegations had felt that a special rapporteur should be entrusted with the task of preparing a study on the right to self-determination. It would therefore be inappropriate for the Sub-Commission to encroach on the sphere of competence of the Commission on Human Rights and to prejudge its decision in the matter of a study. He would therefore propose replacing the present text of operative paragraph 1 by the following wording: "Draws the attention of the Commission on Human Rights to the urgency of and the need to study this problem".

Mr. CRISTESCU thanked the members of the Sub-Commission for their helpful comments on the text of the draft resolution. The sponsor could accept the drafting changes proposed by Mr. Daoudy and the deletion of the last line of the draft resolution as proposed by Mr. Ferguson.

He was pleased to note that all his colleagues, whether or not they had supported the draft resolution, had accepted the importance of the question of self-determination. Reference had been made to the political sensitivity of the question and the opinion had been expressed that it should be properly dealt with by the political organs of the United Nations. In reply to that argument, he would draw attention to General Assembly resolution 2649 (XXV). In operative paragraph 6 of that resolution, the Assembly had requested the Commission on Human Rights to study the implementation of United Nations resolutions relating to the right of self-determination. Thus, the General Assembly had not considered that the question of self-determination fell exclusively within the province of the political organs.

He did not share the view that examination of the question by both the Sub-Commission and the Commission on Human Rights might entail needless duplication of effort. It was of course for the Commission on Human Rights to take any final decision on the task entrusted to it by the General Assembly, but that did not prevent the Sub-Commission from offering its full co-operation and assistance in the accomplishment of that task. In his opinion, the Sub-Commission was the most suitable organ to carry out work on the proposed study.

Mr. INGLES said that the concept of self-determination was undoubtedly complex; he would not, however, go so far as to say that it was therefore beyond

(Mr. Ingles)

the competence of the Sub-Commission. Indeed, he was convinced that it was within the Sub-Commission's terms of reference to prepare the study referred to in the fourth preambular paragraph of the draft resolution. Under its terms of reference one of the questions the Sub-Commission was required to deal with concerned the prevention of discrimination, and the studies it had made had shown clearly that the denial of political rights to the majority of a country's population was the worst form of discrimination. Denial of political rights was per se a denial of self-determination even if it was conceded that the right to self-determination was a right of peoples, not of individuals. Another of the Sub-Commission's tasks was that to deal with the question of the protection of minorities, and in that connexion members must consider to what extent the right of self-determination could be conceded to minorities. In any case, the Sub-Commission would not, in its study, be breaking new ground, for the archives of the United Nations must contain a quantity of material on which it could draw to illustrate the right to self-determination.

He had no misgivings about the Sub-Commission's competence to act in the matter. The draft resolution recommended that the Commission on Human Rights should entrust the Sub-Commission with the task of preparing the study. Some members' fears that the draft resolution would be adopted without sufficient discussion therefore seemed groundless, for the matter would be thoroughly discussed in the Commission on Human Rights, with which the decision would lie and which could, if it so wished, provide the Sub-Commission with guidelines for the preparation of the study. There seemed to be no reason why the draft resolution should not be adopted at the current session.

Mr. RYBAKOV suggested that, as the sponsors had accepted the amendments proposed by Mr. Ferguson and Mr. Daoudy, the draft resolution might be put to the vote.

The CHAIRMAN invited members to vote on draft resolution E/CN.4/Sub.2/L.560, bearing in mind the fact that the sponsors had accepted the oral amendments of Mr. Daoudy and Mr. Ferguson.

The draft resolution, as amended, was adopted by 13 votes to none, with 2 abstentions.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES (concluded):

(b) REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (E/CN.4/Sub.2/NGO.46) (concluded)

The CHAIRMAN recalled that at the 629th meeting, Mr. Khan had reserved the right to make a considered reply to the statement made by the observer for the International Commission of Jurists. He invited Mr. Khan to make his statement.

Mr. KHAN said that before the Sub-Commission had decided to allow the observer for the International Commission of Jurists to speak, he had informed members that any objective understanding of recent events in East Pakistan would require the examination of matters beyond their terms of reference. He had great respect for the non-political and expert character of the Sub-Commission and would be positive and constructive in his remarks.

What he had feared had happened. In his statement (E/CN.4/Sub.2/SR.629, p. 3-5), the observer for the International Commission of Jurists had alleged, on the basis of precipitate and unjustified conclusions from certain selective sources he had cited, that a consistent pattern of violations of human rights was occurring in East Pakistan. He had ignored the political imperatives which existed in the recent situation in East Pakistan and distorted the perspective within which it must be viewed in order to reach an unbiased, non-partisan judgement.

The confidential letter on the subject from the Permanent Representative of Pakistan to the Secretary-General, his aide-memoire of 13 August and the summary of the Government of Pakistan's White Paper, which had been circulated to members of the Sub-Commission, would provide members with information about the issues involved in the crisis and about the measures required to settle them and restore normal conditions in the area. Members should study those documents very carefully and draw their own conclusions.

The role the United Nations and the Sub-Commission played in ensuring observance of human rights and fundamental freedoms did not extend to questions arising out of situations affecting the sovereignty and territorial integrity of

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(Mr. Khan)

Member States. The United Nations could not countenance any action which, while ostensibly protecting human rights, encouraged such elements as wished to bring about the dismemberment of a Member State, for to do so would be to act in contravention of the provisions of the Charter and of the Universal Declaration of Human Rights, which stipulated that rights and freedoms might in no case be exercised contrary to the purposes and principles of the United Nations.

In East Pakistan, the demand for autonomy had escalated into a planned move for secession, and a situation affecting the very existence of Pakistan had arisen. The action taken to grapple with it had not been motivated by any doctrine of discrimination involving deliberate denial of rights or freedoms to the people of East Pakistan. It had derived from the primary and universally recognized obligation of a Government to safeguard the existence of the State. It was beyond the Sub-Commission's terms of reference to pronounce on the legitimacy of action taken by a State in self-preservation. As the Permanent Representative of Pakistan had stated in his aide-memoire, it was the established jurisprudence of the United Nations that, while the principle of self-determination governed the liberation of territories under colonial rule or in dispute between Member States, it could not be extended to areas that were recognized as integral parts of the territories of Member States. Any such extension on the ground of ethnic, linguistic or racial composition of the people, or of economic disparities within a country, would give rise to such a multiplicity of disputes and cause such anarchy and strife as to destroy the present international order. Such a development would be disastrous even from a purely human point of view, particularly for the newly independent States of Asia and Africa. Pakistan was only one among the many multi-racial, multi-linguistic or multi-religious States which would then be exposed to the dangers of fission and disintegration.

The sovereign State of Pakistan had come into being on 14 August 1947 as the result of the expression of the united will of the Muslims of the subcontinent. As the Permanent Representative of Pakistan had stated in another United Nations body, there was no comparable example of such a voluntary association of a people with a State. It was an association brought about not by accident or territorial contiguity but by true self-determination, by the shared history, common experience and identity of aspirations of the peoples of East and West Pakistan.

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(Mr. Khan)

In situations of civil strife, derogations from the normal standards of human rights were inevitable. That fact was recognized in the very instruments setting out those standards. Thus, article 4 of the International Covenant on Civil and Political Rights provided that in time of public emergency which threatened the life of the nation, the States Parties to the Covenant could take measures derogating from their obligations under the Covenant. Similar provisions were contained in article 15 of the European Convention on Human Rights and article 27 of the American Convention on Human Rights. Thus, the standards of human rights established by international instruments were not operative in toto in the context of the situation in East Pakistan.

In his statement, the observer for the International Commission of Jurists had referred to the statement made by the Secretary-General as contained in United Nations Press Release No. SG/SM/1516 of 2 August 1971, to press reports, particularly the despatch of Mr. Anthony Mascarenhas and to extracts from the report of the World Bank and had concluded therefrom that there was a consistent pattern of violation of human rights and fundamental freedoms in East Pakistan. In referring to the Secretary-General's statement of 2 August 1971, the observer for the International Commission of Jurists had omitted to point out that it had been taken from a memorandum addressed to the President of the Security Council. He had misunderstood the contents and meaning of the communication. In addition he had quoted from paragraph 6 of the memorandum, implying that it had been the conclusion of the Secretary-General's statement. In the final paragraph of the memorandum, however, the Secretary-General had said that it was for the members of the Security Council themselves to decide whether to consider the situation formally or informally, in public or in private. His primary purpose, the Secretary-General had added, was to provide a basis and an opportunity for such discussions to take place and to express his grave concern that all possible ways and means should be explored which might help to resolve the tragic situation. Similarly, the observer for the International Commission of Jurists had somewhat misleadingly stated that the Secretary-General had referred to the interrelationship between the humanitarian, economic and political problems of the situation, whereas what the Secretary-General had in fact said was that the humanitarian, economic and

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(Mr. Khan)

political problems were mixed in such a way as almost to defy any distinction between them. Indeed, that statement of the Secretary-General clearly refuted the contention of the observer for the International Commission of Jurists that the factors relating to human rights could be isolated and investigated by the Sub-Commission or the Commission on Human Rights.

The Secretary-General had pointed out in his memorandum that the relationship of the Governments of India and Pakistan was also a major component of the problem. The question was essentially political. What the Secretary-General had stressed was that political tensions existed which posed a threat to peace and could nullify current United Nations efforts to alleviate suffering. That could not be construed as a call to the Sub-Commission to act. The very fact that the attention of the Security Council had been invited to the situation made it abundantly clear that it was beyond the power and competence of lesser bodies. In a statement accompanying the memorandum to the President of the Security Council of 2 August 1971 and the aide mémoire of 19 July 1971 to the Permanent Representatives of India and Pakistan, the Secretary-General had stated that the memorandum dealt with a far-reaching political matter relating to international peace and security and primarily within the competence of the Security Council.

Of all the alleged press reports of "eye witnesses" to atrocities, the observer for ICJ had quoted from only one, an article in The Sunday Times of 13 June by Mr. Anthony Mascarenhas. A previous despatch by the same correspondent in that newspaper on 2 May 1971 had praised the action by the Pakistan Army to suppress a secessionist force of 176,000. The atrocities referred to in that earlier article were those committed by the secessionists. It could well be asked whether credence should be accorded to such sudden and swift reversals of position. Much news-media coverage of the East Pakistan situation had been so controversial that even journalists had felt it necessary to investigate in depth. A correspondent of the Manchester Guardian had recently spent some weeks in East Pakistan to that end and had concluded, in a despatch of 17 July 1971, that there had been great exaggeration in every category. Biased and contradictory accounts could not form

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(Mr. Khan)

a valid basis for concluding that there was a consistent pattern of violations of human rights committed by the Pakistan Army.

The ICJ observer had also referred to the report of the World Bank mission which, together with personal impressions of an official of the Bank, had been leaked to the press. Possibly contrary impressions of other Bank officials had not been released. It was regrettable that the ICJ observer should have attributed the authority of the World Bank to the observations of one individual. East Pakistani leaders visiting the same places as the Bank official a few days later had told a completely different story. One, Mr. Mahmud Ali, had written to the President of the World Bank and to The New York Times expressing surprise and resentment at the publication of such obviously biased impressions. Mr. Ali had said that he could understand the Bank official's difficulties in communicating through interpreters with Bengali-speaking people but could not overlook his visual inaccuracies. Mr. Ali had said that it was absolutely untrue that more than 50 per cent of the shops at Jessore had been destroyed - the impression conveyed by the Bank official - and that he had seen scores of shops there open and trading. Mr. Ali's letter had pointed out that the first to be killed at Jessore had been non-Bengali Muslims but that the American press, notably The New York Times, had published photographs of their bodies as evidence of the Pakistani Army's brutality against Bengali civilians. Local Bengali political leaders had told Mr. Ali that a reasonable estimate for those killed would be a few thousand, non-Bengalis making up the larger proportion. Such accounts showed the clear features of civil strife, which inevitably brought with it loss of human life and human suffering. It was in that context that the situation must be viewed.

In its resolution 1503 (XLVIII) the Council had authorized the Sub-Commission to refer situations which revealed a consistent pattern of gross and reliably attested violations of human rights to the Commission on Human Rights. The ICJ observer's allegations against the Pakistan Army obviously could not be construed as "reliably attested". Nor could it justifiably be concluded that the events in East Pakistan constituted a "consistent pattern" of violations. The words "consistent pattern" implied at least periodic recurrences of mass violations of human rights. Such a pattern emerged over a considerable period of time. Due

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(Mr. Khan)

allegations suggested that two groups had mistreated each other in a situation of civil strife, not that the same group was constantly denying rights to another group. The events in East Pakistan had been the result of turmoil as the consequence of an armed insurgency, and dated only from March 1971. Insufficient time had elapsed to draw the conclusion that a "consistent pattern of violations of human rights" had occurred.

The ICJ observer had referred to a statement by the Secretary-General that the situation was one in which political, economic and social factors had produced a series of vicious circles. Mr. Gunnar Myrdal had explained the vicious circle in which the developing countries were caught by saying that they were poor because they were over populated and over populated because they were poor. A vicious circle was thus a situation in which cause and effect were so interrelated that it was impossible to separate them. The contention of the ICJ observer was therefore invalidated in that it was impossible to isolate factors in the situation on which to base a pattern. That observer had himself alleged that there had been violations on both sides, in which case it could not be established to the satisfaction of reasonable people that there was a "consistent pattern" of violations.

Of course, there had been immeasurable human suffering and the United Nations must do all in its capacity to help to alleviate it. The Government of Pakistan had responded positively to every proposal made by the Secretary-General and the High Commissioner for Refugees to that end. The steps taken by the Government of Pakistan itself were outlined in the aide mémoire of the Permanent Representative of Pakistan of 13 August 1971.

The need at the moment was for a healing touch, with conscious and constructive moves towards restoring conditions of normalcy in the area and rehabilitating those whose lives had been disrupted. That required co-operation among the States concerned within and outside the United Nations. The Government of Pakistan had shown that it was fully prepared for such constructive co-operation.

The CHAIRMAN announced that the observer for India had asked to be allowed to make a statement.

Mr. KHAN reserved the right to reply to the observer for India.

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The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission would hear the observer for India.

It was so decided.

Mr. JAIN (Observer for India) said that his delegation had followed with interest the constructive work of the Sub-Commission in safeguarding human rights. It had at all times been recognized that the Economic and Social Council, its parent body, could discuss violations of those rights, wherever they occurred, with a view to finding ways of alleviating suffering. The situation in East Pakistan had already been discussed by the Economic and Social Council, and the matters brought to the attention of the Sub-Commission in the statement submitted by non-governmental organizations in document E/CN.4/Sub.2/NGO.46 were clearly not irrelevant to its work or that of the Council. The matters discussed by the Sub-Commission were related to an aspect of the problem with which the Commission on Human Rights and the Sub-Commission itself should be vitally concerned. It was in that context alone that the problem should be discussed by the Sub-Commission; the latter was no forum for a politically-charged discussion of its political aspects. Discussion should be confined to those aspects which related to violations of human rights. It was therefore to be regretted that Mr. Khan should have made detailed references to documents such as the aide mémoire from the Permanent Representative of Pakistan to the Secretary-General and circulated to members of the Sub-Commission a white paper prepared by the Pakistan Government. He was surprised that such a document should have been circulated to the Sub-Commission because it contained allegations against his country which had no basis in fact and which he would have rebutted had the Sub-Commission been the correct forum. It was clearly an effort to divert the attention of the expert body from the basic issues regarding violation of human rights in East Pakistan as brought to the notice of the Sub-Commission by the 22 non-governmental organizations.

Mr. Khan had said that the entire problem was a matter within the domestic jurisdiction of Pakistan and that, in any case, four months was too short a period for a pattern of violations to emerge. He expressed surprise that Mr. Khan had not considered a four to five month period as sufficient to determine a consistent pattern of gross violation of human rights particularly when, even during that period, a steadily increasing number of refugees had fled in panic from East Pakistan

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(Mr. Jain)

into India and had undergone so much misery, suffering and deprivation. Those who had sought refuge now totalled almost 8 million. The massive refugee influx had had a severe impact on his country which had brought the situation to the attention of the Economic and Social Council and the international community. It was clear the world was face to face with a terrible tragedy which in the words of the Secretary-General was a terrible blot on the page of human history and one of the most tragic episodes in human history. It was interesting that the massive exodus, which was continuing, had not even been mentioned in the statement made by the Pakistan expert. Yet some 40,000 to 50,000 people were still fleeing in panic and distress to India each day. Many Governments had responded to the need for humanitarian assistance but much remained to be done. The problem in terms of human suffering was tremendous and a tremendous burden had been placed on India and the international community. Something must be done, and done quickly, to halt the massive exodus and the reasons underlying it must be tackled at the roots. On the occasion of Human Rights Day in 1964, the Secretary-General had pointed out that whereas it had traditionally been held that relations between a sovereign State and its citizens were a matter of purely internal concern, that was no longer the case. On 24 May 1971, referring to the massive influx of refugees into India from East Pakistan, the Prime Minister of India had indicated that what was an internal problem of Pakistan had also become an internal problem for India, which was therefore entitled to ask Pakistan to desist immediately from action which it was taking in the name of its domestic jurisdiction. Mr. Khan had referred to the genesis of Pakistan as the culminating expression of the Muslims of the subcontinent. To put the matter in perspective, however, he would point out that, even after partition, India had one of the largest Muslim populations in the world - some 60 million persons. In answering the statement by the non-governmental organizations, Mr. Kahn had referred to many aspects of the problem on which, given time and the appropriate forum, he would have wished to comment and rebut. However, his remarks were designed to place the matter in its correct perspective, not to provoke discussion.

Mr. RYBAKOV said that the Soviet people and others could not help but be concerned at the suffering of the people of East Pakistan. The Soviet people were convinced that a political solution would have to be found for the complex problems

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(Mr. Rybakov)

in East Pakistan, without the use of force. Measures should be adopted immediately to establish conditions of security so that the refugees might return to their homes. That was in the interest of all the people of Pakistan. He suggested that the debate should be closed.

Mr. KHAN, exercising his right of reply, said that since May various steps and measures had been taken to facilitate the return and repatriation of refugees. The President of Pakistan had issued several appeals to citizens of East Pakistan who had left their homes to return, offering them relief and rehabilitation assistance and a general amnesty. On 28 June announcement had been made of a plan for restoring the civil constitution within four months; on 15 July the President had announced the appointment of a special assistant with cabinet rank to deal with the returning refugees. Moreover, Pakistan had accepted the proposal made by the Secretary-General of the United Nations on 19 July to the effect that representatives of the UNHCR should be stationed at various points along the India-Pakistan border. The reference by the observer for the International Commission of Jurists to alleged violations of human rights in East Pakistan raised matters that were essentially political and could not be dealt with unless all the political factors were analysed. There was an urgent need to create normal conditions along the India-Pakistan border so that refugees could return and all Members of the United Nations should conduct themselves in accordance with the principles of international law.

The CHAIRMAN said that, although the observer for India had reserved the right to reply, the debate seemed to have taken a political turn. He suggested that, if there was no objection, the Sub-Commission should consider that item 3 (b) had been dealt with.

It was so agreed.

The meeting rose at 6.20 p.m.

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SUMMARY RECORD OF THE SIX HUNDRED AND THIRTY-FOURTH MEETING

Held on Friday, 20 August 1971, at 10.45 a.m.

Chairman:

Mr. GROS ESPIELL

Jruguay

REPORT ON THE TWENTY-FOURTH SESSION (E/CN.4/Sub.2(XXIV)/CRP.1 and 2, 4 and 5 and 7 to 15)

Miss GICHURU, Rapporteur, introduced the draft report and drew attention to certain minor additions which needed to be made to documents E/CN.4/Sub.2/(XXIV)/CRP.1 and CRP.2 and which would appear in the final text of the report.

The CHAIRMAN suggested that the Sub-Commission should consider the documents in numerical order and paragraph by paragraph.

E/CN.4/Sub.2(XXIV)/CRP.1

The document was adopted.

The CHAIRMAN said that document E/CN.4/Sub.2(XXIV)/CRP.2 consisted only of the attendance list of members and alternates. Since document E/CN.4/Sub.2(XXIV)/CRP.3, which contained a list of oral amendments proposed to draft resolution E/CN.4/Sub.2/L.549, had not yet been circulated, the Sub-Commission might, while awaiting it, consider document E/CN.4/Sub.2(XXIV)/CRP.4.

E/CN.4/Sub.2(XXIV)/CRP.4

Paragraphs 1 and 2 were adopted.

Paragraph 3

Mr. GOWEN pointed out that the text of draft resolution E/CN.4/Sub.2/L.539 should also appear in the final report.

The CHAIRMAN concurred.

Miss GICHURU, Rapporteur, said that the omission would be made good in the final report.

Paragraph 3, as amended, was adopted.

Paragraphs 4 and 5 were adopted.

Paragraph 6

Mr. GOWEN said that he would like to see the final text of the much-amended resolution that had been adopted. He hoped it would be circulated to members before the end of the session.

The CHAIRMAN said that the text of the resolution was in document E/CN.4/Sub.2(XXIV)/CRP.6.

Paragraph 7

Mr. NETTEL said that the second clause of the third sentence should be deleted, or at least redrafted. What had been said was that Council resolution 1503 (XLVIII) was still valid because it had not been amended. He suggested, therefore, that the third sentence should end with the word "valid".

The CHAIRMAN agreed. He suggested further that the word "urged" in the second sentence should be replaced by the word "requested".

Miss GICHURU, Rapporteur, accepted Mr. Nettel's and the Chairman's amendments.

Paragraph 7, as amended, was adopted.

Paragraphs 8, 9, 10 and 11 were adopted.

Paragraph 12

Mr. HUMPHREY said that he did not recall any member having said that the Working Group should interpret documents. He himself had said that the Working Group should bring to the Sub-Commission's attention those communications which seemed to reveal a consistent pattern of gross violations of human rights. He proposed, therefore, that the penultimate sentence be amended to read: "The Working Group, it was stressed, was only requested to bring to the attention of the Sub-Commission those communications which appear to reveal a consistent pattern of gross violations of human rights".

Miss GICHURU, Rapporteur, said that account would be taken of that proposal in the preparation of the final report.

Mr. RYBAKOV agreed with Mr. Humphrey and proposed that the sentence should be deleted.

Mr. GOWEN suggested that it would be sufficient merely to delete the word "purely" from the preceding sentence.

Mr. NETTEL agreed with Mr. Gowen and suggested that for the sake of accuracy, the word "juridical" should be replaced by the word "judicial".

Mr. RUHASHYANKIKO said that one member had stressed that the Working Group would not be a court responsible for judging communications, but would merely sort them, interpret them and transmit them to the Sub-Commission.

Mr. GOWEN said that he could accept Mr. Humphrey's amendment. He did not, however, agree with Mr. Rybakov's proposal that the sentence should be deleted.

Mr. RYBAKOV said that he could accept the wording proposed by Mr. Humphrey.

Miss GICHURU, Rapporteur, accepted the amendments.

Paragraph 12, as amended, was adopted.

Paragraph 13

Mr. RYBAKOV suggested that it would be more appropriate to speak of the composition, or establishment, of the Working Group rather than of its appointment. In fact, the Working Group had not yet been appointed.

Mr. RUHASHYANKIKO, supported by Mr. HUMPHREY, said that the discussion had actually centred on the procedure for appointing the Working Group. He proposed, therefore, that that wording should be used in paragraph 13.

Mr. RYBAKOV accepted Mr. Ruhashyankiko's and Mr. Humphrey's proposal.

Miss GICHURU, Rapporteur, accepted the amendment.

Paragraph 13, as amended, was adopted.

Paragraph 14

Mr. KHAN proposed that, in order to avoid repetition, the words "the provisions of" before the words "these instruments" should be deleted from the second sentence of the English text.

Miss GICHURU, Rapporteur, accepted the amendment.

Paragraph 14, as amended, was adopted.

Paragraph 15

Mr. RYBAKOV proposed that the second sentence should begin with the words "Some experts felt ..."; the Sub-Commission had not been unanimous on that point.

Mr. CASSESE said that the last sentence was imprecise and inconsistent with those that preceded it. He proposed that it should be replaced by the following text: "References to the Charter and the other United Nations instruments would therefore be irrelevant in so far as the admissibility of communications was concerned".

Mr. HUMPHREY, referring to the penultimate sentence, said that he did not recall any member having made such a statement. Articles 55 and 56 of the Charter did not merely set out guidelines for the Organization and Member States; they imposed obligations on Member States. He wondered whether the sentence was necessary in any case.

Mr. CASSESE said that he recalled having said that Article 55 set out guidelines for the United Nations and that Article 56 imposed specific obligations on Member States. As Mr. Humphrey had said, the provisions of the two Articles should not be confused. He proposed, therefore, that it should be made clear that Article 55 set out guidelines for the Organization and that Article 56 laid down an obligation which was legally binding on Member States. He insisted that the reference to the Charter should be maintained in the final report.

Mr. HUMPHREY said that he could accept Mr. Cassese's proposal but hoped that the word "guidelines" could be replaced by the word "objectives".

Mr. CASSESE said that he could agree to Mr. Humphrey's proposal.

Mr. NETTEL, referring to Mr. Rybakov's proposal, said that if that approach were adopted, it would be necessary in each case to specify whether the opinions referred to had been supported by a majority or a minority within the Sub-Commission.

Miss GICHURU, Rapporteur, agreed with Mr. Nettel. In her opinion, the present wording should be retained. If Mr. Rybakov insisted on his proposal, a great many changes would have to be made throughout the draft report.

Mr. RYBAKOV observed that the expression "some members" had been used in paragraph 14.

Mr. NETTEL said he would agree to the change proposed by Mr. Rybakov.

Mr. HUMPHREY said that the compromise reached by Mr. Rybakov and Mr. Nettel went too far. When a member of the Sub-Commission expressed an opinion, the other members were not under any obligation to indicate whether or not they agreed with that opinion. The number of speakers did not indicate whether a particular opinion was shared by a majority or a minority. Judging from Mr. Rybakov's remarks, it appeared that only a minority had agreed with him.

Mr. KETTANI proposed an amendment which would link up the two concepts involved. He suggested replacing the second and third sentences of paragraph 15 by the following text: "Several experts maintained that Article 2, paragraph 7, of the Charter, which deals with the question of non-interference in the domestic affairs of States, could not be invoked in the case of gross and systematic violations of human rights, Articles 55 and 56, which deal directly with questions of human rights, enunciated principles which were legally binding on Member States".

Mr. RYBAKOV said that he would support the amendment proposed by Mr. Kettani provided that the word "Several" was replaced by "Some", which more accurately reflected the situation.

Mr. CASSESE approved of the wording proposed by Mr. Kettani but asked him if he could accept the insertion of the words "on the Organization and" before the words "on Member States", since Article 55 stipulated that "the United Nations shall promote...".

Mr. KITTANI said that he could agree to that change. In reply to Mr. Rybakov, he observed that although there might conceivably be room for disagreement regarding the application of some Articles of the Charter, there should be complete agreement concerning the application of the Charter as a whole.

Mr. JUVIGNY suggested that the second sentence of paragraph 15 should begin with the more neutral formula: "It was said that...", to avoid further discussion concerning the merits of "several", "a few", and "some".

Mr. RYBAKOV said he could agree to Mr. Juvigny's suggestion.

Miss GICHURU, Rapporteur, accepted the amendments proposed by Mr. Cassese, Mr. Kittani, Mr. Rybakov and Mr. Juvigny and said that the different views expressed would be reflected in the final report.

Paragraph 15, as amended, was adopted.

Paragraph 16

Mr. RUHASHYANKIKO said that it was not clear how paragraph 16, which began with the phrase "Other members", linked up with the preceding paragraph.

Mr. RYBAKOV, returning to paragraphs 14 and 15, observed that paragraph 14 began with the expression "According to one view"; actually, several speakers had expressed that particular view, including Mr. Cristescu and himself. He proposed that the paragraph should begin with the words "On the one hand the opinion was expressed that" and that subsequently the formula "it was said" should be used to restore the balance between paragraphs 14, 15 and 16.

Miss GICHURU, Rapporteur, accepted Mr. Rybakov's suggestion.

Paragraph 16 was adopted.

Paragraph 17

Mr. MARTINEZ COBO pointed to the inconsistency of saying "There was general agreement" at the beginning of the paragraph and "several members" at the

(Mr. Martinez Cobo)

and; however, the inconsistency might only appear in the Spanish text. The drafting might be improved if the paragraph began with the words "The great majority of the Sub-Commission...".

Mr. RYBAKOV suggested that "take note of" might be preferable to "consider". As Mr. Martinez Cobo had observed, the second sentence was unclear; since that sentence did not appear to add anything significant to the report, he proposed that it should be deleted.

Miss GICHURU, Rapporteur, said that she would prefer to leave the sentence as it stood: the expression "consider" was quite appropriate in view of the nature of the task entrusted to the Working Group.

Paragraph 17 was adopted as drafted.

Paragraphs 18 and 19 were adopted.

Paragraph 20

Mr. RUHASHYANKIKO said that he had not forgotten the long and, at times, heated discussions that had taken place in connexion with the question of non-governmental organizations. No doubt some of them might have abused their privileges, but he felt that the second sentence of paragraph 20 unfairly placed the blame on all non-governmental organizations. He proposed the deletion of the phrase "questioned the objectivity of these organizations".

Mr. RYBAKOV stressed the importance of the question of non-governmental organizations. In acting as intermediaries between individuals and the United Nations, there had been occasions when NGO's had abused their privileges. He agreed with Mr. Ruhashyankiko, however, that some of them were perfectly respectable. He proposed the following wording: "Some members questioned the objectivity of many such organizations", which in his opinion more accurately reflected the views expressed during the debate.

Mr. RUHASHYANKIKO said that he would prefer to say: "A few members questioned the objectivity of some organizations in certain cases".

Mr. RYBAKOV considered that the report should reproduce the words used during the debate. He had used the word "many".

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Mr. RUHASHYANKIKO said in that case the passage should read "One member...".

Mr. RYBAKOV pointed out that he had not been the only one to express the view in question.

Mr. RUHASHYANKIKO felt that it would be incorrect to say that all organizations in all cases had abused their privileges. Accordingly, he had suggested the wording: "some organizations in certain cases...".

Mr. RYBAKOV agreed that not all organizations were guilty of abusing their privileges, but he could not accept the other changes proposed by Mr. Ruhashyankiko. For the sake of objectivity, the passage should read: "many such organizations...", as several speakers had used those very words.

Miss GICHURU, Rapporteur, said that she would be willing to follow the wording used by Mr. Rybakov.

Mr. JUVIGNY said that the third sentence of paragraph 20, reading "Referring to... politically motivated communications" seemed to impugn the motives of non-governmental organizations in advance. In his opinion, that sentence went even further than the one which had prompted the misgivings expressed by Mr. Ruhashyankiko. It would be better to moderate the language used in that sentence, which appeared to imply that non-governmental organizations would unquestionably have recourse to procedures which in reality they might seek to avoid, if only for the sake of expediency.

Mr. RYBAKOV said that he would like to be as optimistic as Mr. Juvigny, but he could not ignore past experience. He would prefer the sentence to be left as it stood.

Mr. JUVIGNY said that at least the word "provocative" should be deleted.

Mr. RYBAKOV reiterated his view that the report should reflect as accurately as possible the tenor of the discussions. The word "provocative" had indeed been used.

Miss GICHURU, Rapporteur, said that she would prefer to leave the sentence as it stood, if there were no strong objections to it. Perhaps the question could be put to the vote.

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The CHAIRMAN said that he saw no need to take a vote. The draft report should faithfully reflect the discussions which had taken place during the session. Every member was entitled to have his views reflected in the report as they had been originally expressed. He therefore suggested that the text of paragraph 20 should remain unchanged.

Paragraph 20 was adopted.

Paragraph 21

Subparagraph (a) was adopted.

Subparagraph (b)

Mr. MARTINEZ COBO said that, at the end of the first line of the Spanish text, the word "en" should be replaced by the word "de".

Mr. NETTEL observed that there had been no divergent views expressed during the debate as to the requirement that non-governmental organizations should act in good faith. He therefore proposed the deletion of the words "should act in good faith and".

Miss GICHURU, Rapporteur, accepted the proposals of Mr. Martinez Cobo and Mr. Nettel.

Mr. MARTINEZ BAEZ proposed that the words "and should not resort to" should be replaced by the words "by not assuming".

Mr. KITTANI proposed that the whole of the first sentence should be deleted.

Mr. LAGOS said that a disadvantage of the proposal by Mr. Martinez Baez was that it implied that divergent views had also been expressed regarding the requirement that non-governmental organizations should act in good faith.

Mr. NETTEL withdrew his proposal.

Miss GICHURU, Rapporteur, observed that all the current difficulties stemmed from the words "divergent views" and proposed, therefore, to delete the word "divergent".

Subparagraph (b) was adopted.

Subparagraph (c)

Mr. MARTINEZ COBO proposed the deletion of the whole of subparagraph (c).

Mr. HUMPHREY drew attention to a typing error in the second line of the English text; the word "include" should be replaced by the word "exclude".

Miss GICHURU, Rapporteur, regretted that she was unable to accept Mr. Martinez Cobo's proposal.

Subparagraph (c) was adopted.

Subparagraphs (d) and (e) were adopted.

Paragraph 21, as a whole, as amended, was adopted.

Paragraph 22

Mr. HUMPHREY, referring to the words "There was general agreement" at the beginning of the paragraph, agreed that the text finally worked out had commanded unanimous support when put to the vote. It had, however, taken a long time to reach that compromise and he therefore thought that, in the report, it would be better to say: "It was said that a communication should contain a description of the facts and indicate...". He further proposed that the beginning of the second sentence of paragraph 22 should be amended to read: "It was also said that...".

Mr. NIKIEMA considered that the second sentence did not reflect exactly the views expressed during the debate; discussion had centred not on language but on the substance of the issue.

Miss GICHURU, Rapporteur, accepted Mr. Humphrey's proposals.

Paragraph 22, as amended, was adopted.

Paragraph 23

Mr. HUMPHREY said that he could not accept the wording of either the first or the second sentence of the paragraph.

Mr. NETTEL suggested that the two sentences should be replaced by the following text: "The proposal was made that a communication should be inadmissible if its contents were leaked to the press in spite of the confidentiality of the communication".

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Miss GICHURU, Rapporteur, accepted Mr. Nettel's proposal.

Paragraph 23, as amended, was adopted.

Paragraph 24

Mr. HUMPHREY proposed that the words "It was generally agreed", at the beginning of the paragraph, should be replaced by the words: "It was said...".

Miss GICHURU, Rapporteur, accepted Mr. Humphrey's proposal.

Subparagraph (a) was adopted.

Subparagraph (b)

Mr. RUHASHYANKIKO proposed that the following phrase should be added at the end of the subparagraph: "it was nevertheless agreed that an appeal for pardon should not constitute an obstacle to the admissibility of a communication;".

Miss GICHURU, Rapporteur, accepted that amendment.

Subparagraph (b), as amended, was adopted.

Subparagraphs (c), (d) and (e) were adopted.

Paragraph 24, as a whole, as amended, was adopted.

Paragraph 25

Paragraph 25 was adopted.

Paragraph 26

Mr. CRISTESCU proposed that the second sentence of the paragraph should be amended to read: "As regards the method of selection, one proposal was that the Sub-Commission, on the proposal of the members coming from each geographical area, should select the members of the Working Group on a yearly basis; another was that members of the Working Group should be selected by the Chairman. A further proposal was made to the effect that the Chairman of the Sub-Commission should take action in consultation with members of the Sub-Commission".

Mr. DAOUDY proposed that the second sentence in the text proposed by Mr. Cristescu should be replaced by the following text: "It was finally decided that the Chairman should take action in consultation with the members of the Sub-Commission".

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Miss GICHURU, Rapporteur, accepted Mr. Daoudy's proposal, together with the first sentence of the text proposed by Mr. Cristescu.

Paragraph 26, as amended, was adopted.

Paragraph 27

Paragraph 27 was adopted.

Paragraph 28

Mr. RYBAKOV proposed that the following sentence should be added at the end of the paragraph: "A number of experts were opposed to denying other members the right to participate in the activities of the Working Group because they considered that, in such circumstances, the consideration of important questions could not be undertaken in accordance with the rules of democracy".

Miss GICHURU, Rapporteur, agreed to include in the report the first part of Mr. Rybakov's proposal, namely, the following text: "A number of experts were opposed to denying other members who so desired the right to participate in the activities of the Working Group".

Mr. RYBAKOV thanked the Rapporteur but nevertheless considered that the second part of his proposal should be included because it justified the first part.

Miss GICHURU, Rapporteur, agreed to Mr. Rybakov's request.

Mr. MARTINEZ COBO proposed the addition of the following sentence: "In order to ensure the independence of the Working Group, a new criterion was proposed to the effect that a member should never participate in any way whatsoever in the consideration of a communication containing a complaint against the Government to which he was subject".

Miss GICHURU, Rapporteur, accepted Mr. Martinez Cobo's proposal.

Paragraph 28, as amended, was adopted.

Document E/CN.4/Sub.2/(XXIV)/CRP.4, as a whole, as amended, was adopted.

COMPOSITION OF THE WORKING GROUP ESTABLISHED UNDER SUB-COMMISSION RESOLUTION 2 (XXIV)

The CHAIRMAN announced that he had appointed four of the five members who were to constitute the Working Group. Those members were: Mr. Martinez Baez, Mr. Humphrey, Mr. Ingles and Mr. Kittani. He would appoint the fifth member, who was to be an expert from the Eastern European region, in April 1972 after consultation with the experts from that region appointed members of the Sub-Commission by the Commission on Human Rights.

Mr. MARTINEZ BAEZ, Mr. DACUDY, Mr. ESPEJO, Mr. RYBAKOV and Mr. JUVIGNY, having learned that the Chairman would not be able to be present at the closure of the session and speaking on behalf of the Sub-Commission, tendered him their congratulations and thanks for the ability, wisdom and skill which he had displayed in guiding the debates.

The meeting rose at 1.15 p.m.

SUMMARY RECORD OF THE SIX HUNDRED AND THIRTY-FIFTH MEETING

Held on Friday, 20 August 1971, at 3.20 p.m.

Chairman:

Mr. NETTEL

(Austria)

DRAFT REPORT ON THE TWENTY-FOURTH SESSION (E/CN.4/Sub.2(XXIV)/CRP.5 and CRP.7-15; E/CN.4/Sub.2(XXIV)/CRP.6) (concluded)

The CHAIRMAN suggested that as, logically, document E/CN.4/Sub.2(XXIV)/CRP.7 followed document E/CN.4/Sub.2(XXIV)/CRP.4, it should be discussed next.

It was so agreed.

Document E/CN.4/Sub.2(XXIV)/CRP.7

Mr. CASSESE, referring to paragraph 24 A, said that he had proposed the deletion of the whole of subparagraph 3 (b).

Miss GICHURU, Rapporteur, said that paragraph 24 A would be amended to reflect that fact.

After a discussion in which Mr. MARTINEZ COBO, Mr. RYBAKOV and the CHAIRMAN took part, the CHAIRMAN suggested that the first two lines of paragraph 35 should be amended to read: "Mr. Martinez Cobo proposed to include an additional subparagraph before subparagraph 4 (a) which, after a debate and an amendment submitted by Mr. Rybakov, read as follows:".

Miss GICHURU, Rapporteur, said that the amendment would be made.

Mr. RYBAKOV, referring to paragraph 55, said that his proposal had also contained the idea that the working group should meet in private.

Miss GICHURU, Rapporteur, said that the idea would be reflected in paragraph 55.

Document E/CN.4/Sub.2(XXIV)/CRP.7, as amended, was adopted.

Document E/CN.4/Sub.2(XXIV)/CRP.6

The CHAIRMAN reminded members that they had not yet seen the final written text, incorporating all the amendments made at the 626th and 627th meetings, of the resolution they had adopted on procedures for dealing with communications relating to violations of human rights and fundamental freedoms under Economic and Social Council resolution 1503 (XLVIII). The text was now

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(The Chairman)

available in document E/CN.4/Sub.2(XXIV)/CRP.6. He suggested that members should read through it on the understanding that the debate on the substance of the resolution would not be re-opened.

The Sub-Commission took note of the written text of its resolution 1 (XXIV).

Document E/CN.4/Sub.2(XXIV)/CRP.12

Mr. KHAN proposed some additions to paragraphs 3 and 4. Two new sentences should be inserted at the end of paragraph 3, reading as follows: "Before the Sub-Commission acceded to the request of the above-mentioned non-governmental organization to speak, one member of the Sub-Commission pointed out that discussion of the matter would lead to a political controversy and was outside the terms of reference of the Sub-Commission. The statement circulated by the non-governmental organizations was based on one-sided, biased or hostile press reports." In paragraph 4, after the second sentence, the following new sentences should be added: "In such situations derogations from normal humanitarian standards were expressly allowed. There was no pattern of violations of human rights, much less a consistent pattern of such violations. The situation had the clear features of a civil strife and was within the domestic jurisdiction of the Member State concerned."

After the sentence ending "the existing conditions" the following two new sentences should be inserted: "As the memorandum of the Secretary-General of 2 August to the Security Council indicated, the matter was essentially political and primarily within the competence of the Security Council. The humanitarian concern of the United Nations should concentrate on providing relief and assistance to alleviate human suffering."

The paragraph should end as follows: "One member of the Sub-Commission, in reply, enumerated the measures and steps taken by the Government of Pakistan to facilitate the return of refugees. It was doing all within its power to bring about the repatriation. The return of refugees was prevented due to the existence of armed clashes and clandestine raids on the border which they would have to cross. He invited attention to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, adopted by

(Mr. Khan)

the General Assembly, which provided that any attempt aimed at the disruption of the national unity and territorial integrity of any other State was contrary to the Charter, and that Member States must respect the territorial integrity and political independence of other States.

Mr. MOHAMMED felt that a precedent was being established in paragraphs 3 and 4. He had two questions to ask: first, was it permissible for a report to reflect statements by non-governmental organizations on subjects that were not clearly within the terms of reference of the Sub-Commission and, second, was it feasible for the Sub-Commission to deal with such subjects in its report?

Mr. MOUSSA wondered why specific reference had been made to the representative of the International Commission of Jurists in paragraph 3; the usual practice in reports was to avoid any mention of names. He therefore proposed that the words "International Commission of Jurists" should be deleted and the reference left vague. He also suggested that the word "heard" in the first line should be replaced by "accepted to hear." Since the person concerned was not a member of the Sub-Commission that wording seemed more appropriate.

Miss GICHURU said she had no objection to Mr. Khan's proposals. However, the proposed second sentence in paragraph 3 should start with the words "He further stated that" in order to make it quite clear that the opinion expressed was not the opinion of the Sub-Commission as a whole but that of one member. She also pointed out that a phrase had been omitted in the fifth line from the bottom of paragraph 4, the words "involving as it did violations of human rights" should be inserted after the word "situation."

The CHAIRMAN said that the observer for India wished to comment on the draft report. He personally felt that the report was the property of the Sub-Commission and that non-members should not participate in its drafting. He invited comments from members of the Sub-Commission.

Mr. GOWEN, supported by Mr. RYBAKOV and Mr. HUMPHREY, said that since the last part of paragraph 4 reflected the opinion of the observer for India he should be entitled to say whether or not it was an accurate summary of his comments.

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Mr. MANI (Observer for India) said he did not wish to participate in the discussion of the draft report but if Mr. Khan's amendments to paragraph 4 were all to be included he wished to suggest some amendments of his own. The sentence "He expressed surprise that one Member had not considered a four to five months period as sufficient to determine a consistent pattern of gross violations of human rights, particularly when, as a result of tragic events in East Pakistan during that period, nearly eight million refugees had crossed over to India in panic and distress" should be inserted before the last sentence in place of the existing penultimate sentence. The last sentence, after the words "flight of the refugees", should be expanded to read "and to stop any further exodus forthwith". If Mr. Khan's proposals were accepted, then the following sentence should be added: "The observer for India requested the floor to clarify the points raised by the distinguished expert of Pakistan but on the request of the Chairman did not insist on it."

The CHAIRMAN said he had a proposal for a new paragraph, signed by Mr. Gros Espiell, that would cover the last proposal. It read "The Chairman said that further discussion would be fruitless since the matter was political and outside the jurisdiction of the Sub-Commission. The Sub-Commission closed the debate on item 3 (b)." He asked whether there were any other proposals in that connexion.

Mr. MANI (Observer for India) said that, to his recollection, the Chairman had not used such categorical language at the meeting in question. In particular, it had not been stated that the situation in East Pakistan was a political matter and therefore beyond the Sub-Commission's jurisdiction. The Chairman had merely asked him not to insist on replying to the statement made by Mr. Khan and had suggested closing the debate on the subject. The report should reflect what the Chairman had actually said.

The CHAIRMAN suggested that, as a compromise measure, the wording used in the summary record of the 633rd meeting, in reference to the Chairman's statement, could be adopted for the report.

Mr. KHAN said that, rather than rely on a summary record, he would prefer to accept the Chairman's own statement of what had been said. If necessary,

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(Mr. Khan)

the tape recordings of the meeting could be consulted to remove any doubts as to the Chairman's exact words.

Mr. HUMPHREY said that in the absence of Mr. Gros Espiell he did not wish to challenge the signed statement which had been given to the Rapporteur; however, he felt that it would be preferable to use the language of the summary record. It would be a grave mistake for the Sub-Commission to take the position that any matter was beyond its jurisdiction simply because political considerations were involved. If that point of view were adopted, the Sub-Commission would be precluded from considering most situations which revealed a consistent pattern of violation of human rights since there were practically always political issues at stake in such situations.

The CHAIRMAN pointed out that heretofore the rule in the Sub-Commission had been that if the report made a reference to a statement by any individual member of the Sub-Commission, that member was entitled to amend the reference as necessary so that it would accurately reflect the views expressed. The precedent had been set by allowing Mr. Khan and the observer for India to have their remarks recorded in the report; Mr. Gros Espiell should be extended the same courtesy.

Mr. KHAN expressed his complete agreement with the statement just made by the Chairman.

Mr. MOHAMMED said that he wished at all costs to avoid giving the impression that the Sub-Commission had discussed the situation in East Pakistan under the terms of its mandate to examine situations which appeared to reveal a consistent pattern of gross and reliably attested violations of human rights. The Sub-Commission had not, of course, considered the situation in East Pakistan in that light. It had merely listened to the statement made by the representative of the International Commission of Jurists and the subsequent statements on the same subject made by Mr. Khan and the observer for India. Although the question of East Pakistan had been raised, it had not been seriously considered by the Sub-Commission. He felt that in the circumstances it would be best to delete paragraphs 3 and 4 from the report.

Mr. SCHREIBER (Director, Division of Human Rights), referring to the questions raised by Mr. Mohammed, said that in preparing its report at previous

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(Mr. Schreiber)

sessions, the Sub-Commission had always been guided by the desire to give a full and accurate account of the discussions which had taken place and the decisions taken during the session. The report was intended to be an independent document, not a condensation of the summary records, and its purpose was to inform the Commission on Human Rights of the questions raised in and the work accomplished by the Sub-Commission. There were precedents for the inclusion in the report of the Sub-Commission of discussions concerning events in particular countries. He emphasized, however, that the Sub-Commission was the final arbiter of its own report and it alone was competent to decide whether or not mention of any particular topic should be made.

Mr. MOHAMMED thanked the Director of the Division of Human Rights for clarifying the issue and reiterated his conviction that the report should not convey the impression that the Sub-Commission was recommending action with regard to the situation in East Pakistan. The report would be greatly improved by the deletion of paragraphs 3 and 4.

Mr. HUMPHREY said that he could not agree with Mr. Mohammed. He felt, on the contrary, that the report should faithfully reflect what had taken place in the Sub-Commission. It would be most unfortunate if, owing to the deletion of paragraphs 3 and 4, the members of the Commission on Human Rights and others were led to believe that the Sub-Commission wanted, as it were, to sweep the question of East Pakistan under the carpet.

Mr. ABU RANNAT also felt that paragraphs 3 and 4 should be retained. Perhaps some members of the Sub-Commission had not wanted the question of East Pakistan to be raised at all, but once the subject had been broached, it was impossible to disregard the statements that had been made. Moreover, the document submitted by the 22 non-governmental organizations (E/CN.4/Sub.2/NGO.46) was already part of the official documentation of the current session, and the Sub-Commission could scarcely pretend that it did not exist. In paragraphs 3 and 4 of document E/CN.4/Sub.2 (XXIV)/CRP.12, the Sub-Commission was not making any specific recommendations to the Commission on Human Rights but was merely noting statements made in the course of debate.

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Mr. MOHAMMED said that the fundamental question was whether or not the matter of East Pakistan had really been brought before the Sub-Commission. In his view that matter had merely been referred to in passing. He recalled that on previous occasions, for example when the Sub-Commission had considered allegations of violations of human rights in Greece and Haiti, the subject had been thoroughly debated and specific conclusions had been reached. The present case of East Pakistan was totally different; there had been no general discussion of the question in the Sub-Commission and no recommendations for action had been made. He therefore requested that a vote should be taken on paragraphs 3 and 4.

The CHAIRMAN, acting upon Mr. Mohammed's request, invited members to vote on paragraphs 3 and 4 of document E/CN.4/Sub.2 (XXIV)/CRP.12.

Paragraph 3 was adopted by 9 votes to none, with 5 abstentions.

Paragraph 4 was adopted by 10 votes to none, with 4 abstentions.

Miss GICHURU, Rapporteur, said that she would make the necessary changes in paragraphs 3 and 4 to accommodate the additions proposed by Mr. Khan and by the observer for India. She would also add to the report the statement submitted by Mr. Gros Espiell.

With regard to the amendments proposed by Mr. Moussa, she could accept the rewording of the beginning of paragraph 3, which would now read: "The Sub-Commission accepted to hear". She felt, however, that the reference to the specific non-governmental organization mentioned in paragraph 3 should be retained since a further specific identification had been made in paragraph 4, namely, the identification of the country of the observer who had made a statement.

Mr. MOUSSA thanked the Rapporteur for accepting his first proposal and said that he would not insist on the second proposal. He felt obliged to observe, however, that as things now stood, non-members of the Sub-Commission enjoyed the privilege of being mentioned by name but members were accorded anonymity in the formula "one member of the Sub-Commission pointed out...".

Mr. HUMPHREY, pointed out that any member of the Sub-Commission who wished to have his name associated with a particular idea expressed in the report was free to do so. It was, however, the established practice of the Sub-Commission not to refer to a member by name unless a special request to that effect was made by the member concerned.

Mr. RYBAKOV, referring to the written statement submitted by Mr. Gros Espiell, asked whether the statement had been verified from the tape recordings of the meeting in question. He also wished to record his position that the reference to the document submitted by the non-governmental organizations in the present report did not set any precedent for references to similar documents in future reports of the Sub-Commission.

The CHAIRMAN, in reply to Mr. Rybakov's question, said that the document in Miss Gichuru's possession bore the Chairman's signature and was unquestionably authentic. If there was no objection, therefore, he would take it that the Sub-Commission agreed to adopt document E/CN.4/Sub.2(XXIV)/CRP.12 with the modifications and drafting changes that had been proposed.

Document E/CN.4/Sub.2(XXIV)/CRP.12, as amended, was adopted.

Document E/CN.4/Sub.2/(XXIV)/CRP.5

Document E/CN.4/Sub.2/(XXIV)/CRP.5 was adopted.

Document E/CN.4/Sub.2/(XXIV)/CRP.8

Document E/CN.4/Sub.2/(XXIV)/CRP.8 was adopted.

Document E/CN.4/Sub.2/(XXIV)/CRP.9

Mr. GOWEN suggested that the first word of paragraph 4 should be replaced by the word "All".

Miss GICHURU, Rapporteur, concurred.

Mr. RYBAKOV proposed that an additional paragraph should be inserted after paragraph 4 indicating that a few members had drawn attention to the advisability of insuring that the appointment of special rapporteurs was made in such a way that account was taken of the various geographical regions represented in the Sub-Commission.

Mr. RUHASHYANKIKO said that inclusion of such a paragraph would imply that in the past the Sub-Commission had failed to follow that practice.

Mr. RYBAKOV pointed out that no member of a socialist country had ever been appointed a special rapporteur.

The CHAIRMAN said that unless any member raised an objection he would assume that the Sub-Commission agreed to the insertion of a paragraph along the lines suggested by Mr. Rybakov.

It was so agreed.

Document E/CN.4/Sub.2/(XXIV)/CRP.9, as amended, was adopted.

Document E/CN.4/Sub.2/(XXIV)/CRP.10

Document E/CN.4/Sub.2/(XXIV)/CRP.10 was adopted.

Document E/CN.4/Sub.2/(XXIV)/CRP.11

Document E/CN.4/Sub.2/(XXIV)/CRP.11 was adopted.

Document E/CN.4/Sub.2/(XXIV)/CRP.13

Miss GICHURU, Rapporteur, said that the following paragraph should be inserted after paragraph 3:

"During the discussion of this item, it was pointed out that as racial discrimination still existed in certain States and as there were forces in various countries which were attempting to keep certain groups of people in an inferior state, the United Nations, UNESCO and other competent organs which have repeatedly condemned racism should continue their activities in this area during and after the International Year. It was further pointed out that while the struggle against racial discrimination was a difficult one, the Sub-Commission should nevertheless make further contributions in this area. The attention of the Sub-Commission was drawn to the relationship between science and the struggle for racial equality. In this connexion, it was proposed that a permanent United Nations institute be envisaged to carry out research work in race relations".

Mr. RYBAKOV suggested that in the last sentence of the paragraph, the words "it was proposed" should be replaced by the words "one member proposed".

It was so agreed.

Document E/CN.4/Sub.2/(XXIV)/CRP.13, as amended was adopted.

Document E/CN.4/Sub.2/(XXIV)/CRP.14

Document E/CN.4/Sub.2/(XXIV)/CRP.14 was adopted.

Document E/CN.4/Sub.2/(XXIV)/CRP.15

Mr. RYBAKOV requested that the following words should be added at the end of the second sentence of paragraph 2: "on the understanding that his position with respect to the resolution mentioned in the draft resolution remained unchanged".

Miss GICHURU, Rapporteur, agreed to the addition of those words.

Document E/CN.4/Sub.2/(XXIV)/CRP.15, as amended, was adopted.

In reply to a question from the CHAIRMAN, Mr. LAWSON (Deputy Director, Division of Human Rights) said that the Economic and Social Council had agreed that the next session of the Sub-Commission should be held at Headquarters, New York, from 14 August to 1 September 1972.

The CHAIRMAN suggested that the Sub-Commission should adopt the report as a whole on the understanding that the amendments proposed would be incorporated and the blank spaces filled in. The Sub-Commission's decision, taken at the previous meeting, concerning the composition of the working group on the admissibility of communications would also be included.

Mr. CALVOCORESSI said that while he had full confidence in the Rapporteur and appreciated the work she had done he was nevertheless not fully satisfied with the procedure followed for the adoption of the report. For the first time in its history, the Sub-Commission had skimmed through a great many paragraphs in a very short time. The report had been available only very shortly before members had been called upon to adopt it and in the circumstances he had found it impossible to participate in the discussion on a document of such length and complexity. He would be unable, therefore, to vote on the report.

The draft report as a whole, as amended, was adopted by 14 votes to none, with 1 abstention.

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Mr. RYBAKOV, speaking in explanation of vote, said that his support of the report and related decisions had been based on the fact that the Sub-Commission's work at the current session had been mainly positive. Although not entirely satisfied with certain aspects of the results, he felt that the majority of the decisions had been useful. At the present juncture, substance rather than detail was important. The most significant document prepared had been that on criteria governing the admissibility of communications on human rights, which was one of the most positive elements in the work of the session. The provisions of that document would make for a constructive solution of any problems which might arise. The divergence of views and concepts which had preceded the adoption of the document were hardly surprising in that, over the years, two approaches to the question of communications had developed. The first was based on the consideration that the procedures should be an expression of international co-operation and should guarantee human rights in accordance with the Charter of the United Nations. The second was based on the contention that the procedures should be used for purposes that were in no wise connected with the defence of human rights and fundamental freedoms. The underlying aim in the second approach was to distract world public opinion from situations involving a systematic pattern of gross violations of human rights. The forces and motives which had prompted that approach were known to all. Those forces were not interested in unmasking violators of human rights but only in distracting the attention of the world from massive violations of those rights, including the shooting to death of peoples struggling for their independence, boundless vandalism in occupied territories and the ostracism of persons of different confessions. Those responsible spread unforgivable slanders on the pretext of defending human rights. Unhappily, the current session had shown what hopes were harboured in some quarters with regard to the consideration of communications. A Zionist statement had been made publicly before the Sub-Commission in order to poison the healthy atmosphere that had been created. Any attempt to use the working group established to consider communications for the purpose of slandering the Union of Soviet Socialist Republics or other socialist countries was destined to fail. In the capitalist struggle against socialism, bourgeois ideologists endeavoured to assert that there was a lack of

(Mr. Rybakov)

democracy in the socialist countries and to advise the latter with regard to the improvement of socialism. Such persons were not concerned with socialism but only with an attempt to impose on the socialist countries their own brand of bourgeois democracy based on exploitation. Their endeavours were vain. The socialist countries had their own principles as a basis for the development of democracy. There could be no freedom of democracy in the abstract. For the socialist countries, democracy involved the ever-increasing participation of the masses on the processes of government, leading to the creation of a new social system based on the principles of Marxism-Leninism.

A United States magazine had recently published an article describing the results of an opinion poll, taken in Israel, which indicated that an overwhelming majority of Israelis considered that Arabs were not entitled to full rights. In a year designated as the International Year for Action to Combat Racism and Racial Discrimination it was appropriate that the Sub-Commission's report should reflect the struggle against racism. The provisions adopted by the Sub-Commission testified to the fact that it rallied to the struggle against racism, which must be intensified. The Universal Declaration of Human Rights embodied the right to freedom of conscience but it contained no provision relating to the lack of conscience. Sir Winston Churchill, who could hardly be described as a socialist, had said on 9 April 1948, referring to the massacre of 250 Arabs at the village of Deir Yasin by members of the Zionist Irgun Zvei Leumi, that if hopes for Zionism were to die under the shots of mercenaries and efforts to create a better future were to bring into the world a new band of gangsters worthy of Nazi Germany, many persons would have to review their past positions, to which they had so steadfastly adhered. Zionism was a voice in the wilderness and it had become apparent in recent years that slanders won no support in the United Nations. The Sub-Commission's current session, however, had shown again that some people would endeavour to distort the meaning of texts. Nevertheless, it was too late for such endeavours to succeed; the criteria and procedures relating to communications contained all that was necessary to prevent the misuse of communications for purposes of slander. The designs which had prompted the activities of certain organizations would be thwarted. Direct contact with victims of violations of human rights was

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(Mr. Rybakov)

possible and he was convinced that measures would be adopted to ensure that the appropriate bodies of the United Nations should concern themselves with the problem of gross violations of human rights. He had welcomed the improved atmosphere which had prevailed during the current session; progress did not lie only in documents.

The CHAIRMAN announced that the observer for Israel had asked to be allowed to address the Sub-Commission.

Mr. RYBAKOV, speaking on a point of order, said that the Sub-Commission was now engaged in hearing explanations of vote, such as his own statement had been; only members of the Sub-Commission who had participated in the vote in question were entitled to speak.

The CHAIRMAN agreed that Mr. Rybakov had been speaking in explanation of vote. There was no specific provision in the rules of procedure as to the action to be taken in such cases but as the observer for Israel was not a member of the Sub-Commission he thought that the request to speak should not be granted.

Mr. RYBAKOV said that his remarks had been directed solely to world Zionism. The observer for Israel could have no grounds for requesting the right of reply, because he did not represent world Zionism.

CLOSURE OF THE SESSION

After the customary exchange of courtesies, the CHAIRMAN declared closed the twenty-fourth session of the Sub-Commission on Prevent of of Discrimination and Protection of Minorities.

The meeting rose at 6.15 p.m.
