COMMISSION ON HUMAN RIGHTS

Forty-fourth session

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

Held at the Palais des Nations, Geneva, on Thursday, 25 February 1988, at 3 p.m.

Chairman: Mr. SENE (Senegal)

CONTENTS

Advisory services in the field of human rights (continued)

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

*/ The summary record of the second part of the meeting appears as document E/CN.4/1988/SR.36/Add.1.

This record is subject to correction.

Corrections should be submitted in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.6108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.
The meeting was called to order at 3.15 p.m.

ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS (agenda item 22) (continued)
(E/CN.4/1988/6, 38, 39 and Add.1, 40 and Add.1, 42 and 60)

1. Mr. OLSSON (Observer for Sweden) said that it was not enough for human rights to be set forth in national laws; the requisite steps had also to be taken to make them known to individuals, who should also have access to effective remedies in the event of violation of their rights.

2. Much had been done to establish a system to ensure respect for the existing standards and instruments. Monitoring played an essential role in the efforts to ensure respect for all human rights and fundamental freedoms. That was one of the most important - if not the most important - functions of the Commission. At the same time, however, Governments that wanted help to build up their national legal structures for the protection of human rights should be assisted. A Government that was sincerely trying to improve the situation in its country should not feel wounded in its national pride because it was co-operating with the Commission. On the contrary, it should regard the representative of the Commission as a positive link between its country and the Commission.

3. In that context, he commended the Under-Secretary-General for Human Rights and his staff on their efforts to develop further the programme of advisory services in the field of human rights. The approach outlined in the Secretary-General's report (E/CN.4/1988/40) was worth pursuing.

4. His delegation supported the philosophy underlying those endeavours and approved of the means suggested to achieve them. One of the objectives of the advisory services could be to make Member States more aware of the existence of human-rights instruments and of the importance of universal accession thereto. Regional seminars and training courses could be organized to that end as well as to help States that were already parties to the various instruments to prepare the country reports required thereunder or to overcome obstacles encountered in the application of those instruments. The services of experts should also be made available to Governments that requested them.

5. Mr. Gros Espiell's report on Guatemala clearly illustrated the contribution that could be made by experts in that field. Since reference had also, quite rightly, been made to that report under item 12 of the annotated agenda, his delegation would be making more extensive comments thereon in due course. For the moment, he merely wished to state that his delegation was interested in the approach adopted by the Expert, whose recommendations and conclusions it supported.

6. Mr. Braunschweig's report on Haiti gave cause for concern. In 1987, the Commission had decided to discontinue its consideration of the situation in Haiti under the procedure provided for by Economic and Social Council resolution 1503 (XLVIII). However, in view of what had since happened in that country, his delegation wondered whether that decision might not have been premature and thought that the monitoring carried out under item 12 should not be discontinued too early. His delegation hoped that the Expert would soon be able to visit Haiti to establish direct contacts with the Government, as envisaged in Commission resolution 1987/13.
7. Commission resolution 1987/37 concerning advisory services was intended to make the competent United Nations bodies, the special rapporteurs, representatives and working groups of the Commission more aware of the possibility of linking their task of monitoring violations to the provision of assistance for States in which problems existed. His delegation had already had occasion to mention that both the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on questions related to torture had made useful suggestions concerning the role that advisory services could play in that regard. The Special Rapporteur on Summary or Arbitrary Executions had also mentioned the possibility. His delegation was favourable to such an approach being adopted by all those required to submit reports to the Commission on specific situations or on the perpetration of particularly serious violations of human rights.

8. Extrabudgetary resources would undoubtedly be needed to make the programme of advisory services effective. Accordingly, his Government would give favourable consideration to the question of contributing to the Voluntary Fund that had been established under the terms of Commission resolution 1987/38.

9. Mr. de VEV MESTDAGH (Observer for the Netherlands) said that the programme of advisory services would celebrate its thirty-fifth anniversary on 23 October 1988. Since 1953, the services of experts, scholarships and seminars had developed and the programme had become a useful means of reaching the general public. In the words of the Secretary-General, quoted in his statement by the Under-Secretary-General for Human Rights, "preventive medicine is usually preferable to the performance of autopsies". His delegation also agreed with the Under-Secretary-General that a fundamental objective must be to help to prevent violations of human rights and to assist Member States to build up the necessary infrastructures to ensure the widest possible realization of human rights.

10. The Commission should adopt a two-track approach of detecting and denouncing violations of human rights and fundamental freedoms wherever they occurred and, at the same time, assisting countries that needed to strengthen their infrastructure in order to prevent violations of or further encroachments on human rights. That second aspect of its activity, of which the programme of advisory services was an important vehicle, should be developed.

11. He congratulated Mr. Gros Espiell on his report on Guatemala, the introduction of which had illustrated that two-track approach. It was clear that, to a certain extent, the Guatemalan Government had induced the Commission to change its policy by co-operating with Lord Colville of Culross, the Commission's Special Representative, for many years. It was the continuous efforts of the Guatemalan Government - which in the meantime had been democratically elected - to guarantee the full enjoyment of fundamental freedoms that had prompted the Commission to request the Secretary-General to provide such advisory services and other assistance as that Government might need.
12. His delegation supported the recommendations contained in paragraph 58 of the Expert's report (E/CN.4/1988/42), particularly with regard to the organization of human-rights courses at all educational levels, as well as seminars for members of the judiciary, the police and the armed forces, to which should be added, in his delegation's view the law enforcement officials and medical and paramedical personnel assigned to places of detention. The approval and implementation of that programme would help Guatemala to fulfil its obligations with regard to human rights and the Guatemalan project could set an example to be followed in other situations considered under the current agenda item. In that connection, he urged the Haitian Government to do its utmost to facilitate the task that the Commission had entrusted to Mr. Braunschweig.

13. Although voluntary funds had proliferated in recent years, his delegation thought, on the one hand, that the pursuit of an active policy under the programme of advisory services required a certain amount of resources and, on the other, that the tasks to be accomplished through funds of that type were highly important. In fact, his delegation had helped to establish such funds in the past. However, it might be more logical if the international community's commitment to the accomplishment of those tasks were expressed by financing them from the regular budget. The Commission should make its views known so that the requisite funds could be allocated to advisory services.

14. Through its bilateral co-operation programme, his Government was promoting the process of democratization in newly re-established democracies and had also set up a human-rights emergency assistance project under which funds had been provided for various activities such as legal aid, information campaigns and the establishment of co-operatives, human-rights information systems and victim support groups, etc.

15. In the light of his Government's policies for assisting human rights-oriented development projects, and within the context of its priorities in regard to the implementation of human-rights instruments, he announced a contribution to the Fund of an amount equivalent to $55,000. He hoped that the policy outlined in 1987 by Mr. Kurt Herndl, the former head of the Centre for Human Rights, still remained valid, namely that a more practical approach and concrete sectoral help were needed rather than general promotional endeavours.

16. Notwithstanding voluntary contributions and the $765,000 budget of the programme of advisory services, the recipient countries also had a responsibility to finance projects from the sums placed at their disposal by UNDP in terms of its so-called Indicative Planning Figure (IPF). The Netherlands was one of the principal UNDP donors, contributing some 160 million Netherlands guilders (about $90,000) per year. The provision of advisory services in the field of human rights was a form of technical assistance for the development of human resources, one of the main objectives of UNDP. Since the countries receiving UNDP assistance indicated their own priorities, the Commission should urge them to accord appropriate priority to advisory services projects in the field of human rights.
17. It was gratifying to note from document E/CN.4/1980/40/Add.1 that 39 countries had indicated their needs in various fields relating to their legal institutions. However, it would be wishful thinking to expect all the necessary activities to be financed from the programme of advisory services or the Voluntary Fund. The technical assistance funds provided through UNDP should also be used by the recipient countries to that end. The Centre for Human Rights and its programme of advisory services could provide help during the project development phase and could act as an executing agency.

18. Mr. MacDERMOT (International Commission of Jurists) said it was quite obvious that, in the last 12 months, the military junta in power in Haiti had made a mockery of Commission resolution 1987/13. It had shown its supposed "commitment ... to restore the enjoyment of human rights" by resorting to fraudulent elections, systematic extrajudicial executions, torture, abductions and the deliberate creation of a climate of fear, as had been reported in detail by non-governmental organizations such as Americas Watch and Amnesty International. Instead of keeping the promises made to the Commission and its Special Representative, the National Governing Council (NGC) had organized a campaign in November against the independent and duly constituted electoral commission and had intimidated voters in a manner that had culminated in the bloodbath of 29 November 1987. The military Government had then organized its own elections in which candidates, journalists and independent observers, but not soldiers, had been barred from the polling stations. Officials had been allowed to examine the ballot-papers before they were deposited in the boxes. The junta had appointed a new electoral council, which was completely under its thumb. The principal candidates in the abortive elections had joined church groups, trade unions, human-rights groups and others in calling for a boycott of the elections, which had led to an extremely low level of participation since, according to Americas Watch, only 4 to 6 per cent of the voters had gone to the polling stations, as opposed to the figure of 35 per cent asserted by the Government.

19. Leslie Manigat, the successful candidate, had announced his intention of appointing and leading a democratic Government. He would need all the assistance he could get, since the abuses had not ceased.

20. The International Commission of Jurists shared the concern of Amnesty International about the persons arrested in Haiti in recent months: arrests carried out without warrant by uniformed or plain-clothed security personnel; incommunicado detention for weeks without access to lawyers or family; frequent torture and ill-treatment; the death of many persons detained by the Criminal Investigations Service at Port-au-Prince as a result of beatings, injuries, malnutrition, dehydration and diarrhoea; and the summary execution of at least 46 young persons in Fort Dimanche Prison at Port-au-Prince in November 1987.

21. Amnesty International had reported two other recent cases: Edner Dorsainville had been arrested in December by the Criminal Investigations Service of the Port-au-Prince police. On his release a few days later, he had declared on television that he had been severely beaten while in custody. On 31 January, 12 days after the second ballot, he had been abducted by armed men in civilian clothes, apparently members of the security forces, who had taken him to an army barracks. His arrest had not yet been officially acknowledged.
22. Madsen Abadi had been arrested without a warrant on 19 January, taken to
an army barracks and released a few days later. He had told journalists that
he had been accused of advocating abstention (which had been declared illegal
in that supposedly free election) and that he had been tortured.

23. It was clear that the assistance that the new President would need
grew beyond advisory services. This organization hoped that
Mr. André Braunschweig, the Expert on Haiti, would soon be able to begin work
in accordance with his mandate which, unfortunately, was limited in that it
did not include fact-finding. In the circumstances, therefore, the Commission
should appoint someone to submit to it at its forty-fifth session a
comprehensive and detailed report on the human-rights situation in Haiti.
Although it could broaden the mandate of the Expert, that might complicate his
task in the field of advisory services and it would be better if the
Commission were to appoint a special rapporteur or a special representative
who would, of course, maintain contact with Mr. Braunschweig and pass on to
him any information that he might find useful. Such an appointment would be
welcomed by the churches, trade unions, peasant groups, women's organizations
and democratic political parties, and the other components of the vast
majority of the electorate which had expressed its suspicions by abstaining
on 17 January.

24. The International Commission of Jurists felt continuing concern at the
human-rights situation in Guatemala. It was significant that, while making
general references to persistent violations of human rights (assassinations
and enforced disappearances, for example), Mr. Gros Espiell did not describe
those violations in detail and had not placed the blame on the security
forces, which were primarily responsible therefor. Although his reticence was
understandable it illustrated - as in the case of Haiti - the incompatibility
of the advisory function with that of monitoring and fact-finding.

25. Mr. CASTILLO (World University Service) said that he was a Guatemalan,
Executive-Secretary of the Guatemalan National Committee of the World
University Service and an exile in Mexico, a country that had given fraternal
asylum to hundreds of thousands of refugees and exiles from the Americas - who
had been forced to flee dreadful military dictatorships.

26. According to a special survey conducted by the Institute of Nutrition of
Central America and Panama (INCAP), 80 per cent of all Guatemalan children
under five years of age were suffering from malnutrition. Recording the fact
was not sufficient, however, something had to be done about it.

27. The Commission had never before been faced with such serious, clear and
objective reports on the constant and systematic violation of human rights in
Guatemala. If the reports of the Expert and the Working Group on Enforced or
Involuntary Disappearances were not enough, those of the Inter-American
Commission on Human Rights (IACHR), an organ of the OAS, and the International
Verification and Follow-up Commission that had been set up in accordance with
the procedure for the establishment of a firm and lasting peace in
Central America, better known as the Esquipulas II Agreement, supplied
abundant proof of the persistence of such violations and identified the
persons responsible therefor.
28. His organization welcomed the efforts being made by the United Nations to advise President Cerezo's Government. The statements made on the previous day by the representatives of that Government proved how much it needed such advice. However, the advisory services, although necessary, were not enough if the aim was to restore human rights in Guatemala in accordance with resolution 1987/53. It was useful for Guatemalan students, trade-unionists, Christians and indigenous peoples to know what their rights and freedoms were, but a knowledge of those rights and freedoms would not save them from persecution, torture, detention, abduction and extra-judicial execution by the Guatemalan security forces. He wondered what it would cost the United Nations to organize a simple eight-day awareness course for the 90,000 members of the Guatemalan army and police and how much it would cost to train as well as instruct the Guatemalan soldiers and policemen and how many experts and specialists the Secretary-General would need to carry out the enormous task of organizing such courses.

29. Guatemala was the scene of an internal armed conflict. It would be unrealistic to expect that instruction alone would be able to remedy malnutrition and stop the bombing of which the non-combatant civilian population was the victim. The question thus arose as to what other measures could be taken in those circumstances.

30. From 7 to 9 October 1987, at Madrid, civilian and military officials of the Guatemalan State had held talks with representatives of the Guatemalan National Revolutionary Unit which, under the Geneva Conventions, constituted the army of the opposition. If that dialogue were continued and led to a political settlement of the conflict, the foundations needed for national reconciliation would be laid and the dialogue among all sectors and all social and political forces in Guatemala would be facilitated. An open, representative and non-exclusive national dialogue would not only further the cause of peace but would also help to establish democracy and social justice. There would be no point in teaching 2 million Guatemalan children how to balance their diet if they had nothing to eat.

31. His organization supported the efforts that the United Nations was making with regard to advisory services and technical assistance in the field of human rights and was in favour of renewing the mandate of Mr. Gros Espiell. Among other positive measures, it thought that there was a need for practical instruction in human rights in Guatemala, with a view to the early restoration of respect for human rights and fundamental freedoms in the country. Accordingly, it called upon the Commission on Human Rights to continue to monitor the human-rights situation in Guatemala.

32. Mr. RAJKUMAR (Pax Romana) said that the primary objective of advisory services remained the creation of national infrastructures for the promotion and protection of human rights. Those services were by no means an isolated initiative, but were closely linked with the growing need for guidance to States in human-rights concepts and values. Thus advisory services should basically aim at providing an environment in which peoples' expectations had a fair chance of being realized. Unfortunately, due to a combination of factors, United Nations advisory services had been given a low priority, although efforts were being made to reactivate them.
33. If the Member States of the United Nations pursued a lively human-rights programme aimed at the development of their citizens, there would be less need to devote attention to advisory services and the emphasis would be on promotion and participation. That was not currently the case. An important factor when considering advisory services, therefore, was the concrete situation prevailing. A hasty delinking of monitoring functions would very much reduce the effectiveness of the services. Institutions or agencies specifically set up to protect or promote human rights ought to be aware that concerns other than those of human rights were at work.

34. The tables presented in document E/CN.4/1988/40/Add.1 showed that the requests from Member States for technical assistance to strengthen their legal institutions indicated the following order of priorities: development of adequate law libraries: 32; publication of official law journals: 23; collection and classification of legal material: 20; training of judges: 20; establishment or strengthening of law faculties: 14; and drafting of legal texts: 9. That order of priorities demonstrated that countries sought technical assistance for information and peripheral needs, without touching the core of promoting and protecting human rights. As had been pointed out, 9 persons out of 10, even law school graduates, were totally unaware of the existence of the Covenants. The low number of requests for drafting of legal texts in conformity with the provisions of international human-rights instruments and the fact that some of the countries seeking technical assistance had not ratified the international instruments called into question the criteria, if any, used when providing technical assistance.

35. The training programmes that came under advisory services tended to be more theoretical than practical. Imparting information to national officials had many facets. In that respect, the comments made by the Working Group on Enforced or Involuntary Disappearances were valuable ones: "In many countries where there is a regular flow of information on missing persons, it is often found that the human-rights infrastructure - in terms of non-governmental organizations, national commissions, citizens committees, etc. - is well-established and that public opinion is well-informed" (para. 246). The Group added that in its opinion, many Governments faced with disappearances on their territory, or trying to cope with their aftermath, would greatly appreciate assistance from the United Nations (para. 249). It would be worth while to follow up that recommendation, care being taken to ensure that such assistance was not misconstrued by the States.

36. In the same line of ideas, the consultative status of non-governmental organizations might be extended and they might be invited to prepare training courses in a given field. An educational process should also be evolved at the national level, in which States and their citizens would be partners in promoting human rights. That aspect went beyond training and required a well-informed public opinion throughout the country. Such efforts would also mean that relevant human-rights issues were taken into account by official agencies concerned with development programmes since, as everyone knew, there could be no authentic development without respect for human rights, personal and social, economic and political, the rights of peoples and of nations.
37. Pax Romana wished to express its concern about the countries mentioned in connection with advisory services, namely, Haiti, Guatemala and Equatorial Guinea. Haiti's bishops had criticized the presidential elections held on 17 January as being neither free nor honest and said that certain fundamental moral values had been violated in the course of the electoral process and on the day of the elections. In situations such as that of Guatemala, Pax Romana believed that monitoring had a vital role to play, in parallel with advisory services, in order to encourage realization of the democratic aspirations of the people through the rule of law. Otherwise, mechanisms of terror and political violence would continue.

38. Mr. HOENES (International Federation of Human Rights) said that his organization was deeply concerned about the human-rights situation in Guatemala. The fact that there was a civilian Government has not put an end to serious violations, attested both by the reports of various non-governmental organizations and by the three official United Nations reports, namely the report on the visit of two members of the Working Group on Enforced or Involuntary Disappearances to Guatemala (E/CN.4/1988/19/Add.1), that of the Special Rapporteur on Summary or Arbitrary Executions (E/CN.4/1988/22) and the report of the Expert on Guatemala concerning advisory services in the field of human rights (E/CN.4/1988/42).

39. The three reports showed that, in the case of Guatemala, the most significant fact was that the civilian Government had not taken specific steps to ensure the protection of human rights and, more particularly, to see to it that the public authorities and official organs applied the provisions of the law. The civilian Government had adopted a passive attitude of tolerance, leaving the armed forces and other security forces completely free to continue to act with utter impunity and violate the citizens' most basic rights. In those circumstances, his organization requested the members of the Commission to extend the mandate of the Expert, Mr. Gros Espiell, to allow him to submit a detailed study of the development of the human-rights situation in Guatemala to the forty-fifth session and to provide the Commission with a serious and reliable basis for continuing to help the Guatemalan Government to take effective measures to re-establish human rights.

40. The International Federation of Human Rights also believed that more thought should be given to advisory services in the field of human rights. It was not sufficient to furnish assistance services; the effective implementation of the recommendations must also be supervised, and that must be done in co-operation with the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteurs on questions related to torture and on summary and arbitrary executions. In that connection, his organization believed that the resolution on Haiti adopted by the Commission in 1987 (resolution 1987/13) had been somewhat premature. It was obvious that advisory services alone were not sufficient when the situation was still completely unstable and the armed forces had the upper hand. Consideration should also be given to the role played by the army in many countries where systematic human-rights violations occurred, in countries that were in a period of transition towards the re-establishment of human rights and even in those where the régime was a democratic one but not yet very solid. In the name of an exaggerated conception of national security, the armed forces took complete control of society and even of the civil authorities, interfering in areas that had nothing to do with their role, which was to protect the country's territorial integrity.
41. **Mr. ZOLLER** (Pax Christi International) said that his organization welcomed the gradual development of an advisory services programme whose principal aim was to help States to implement the international human-rights conventions. It was wise to give practical assistance to States that so desired to establish law faculties, build up law libraries, train judges, etc., for all those measures helped to strengthen the independence of the judiciary, which was the prime requisite for enhancing human rights.

42. However, the programme was also a source of abuse: the unanimous desire of the Member States to see it strengthened went hand in hand with more and more attempts to prevent specific situations of human-rights violations from being considered under agenda item 12 and have them, in a way, transferred to the category of advisory services. If the Commission wanted to stop considering the situation in a country under item 12, although that situation had not improved, it could do so, with a completely clear conscience, by granting the country in question some modest assistance.

43. In other words, the advisory services programme was being used as a pretext. That had been clear for several years from the reports on Equatorial Guinea, which obviously did not want any help from those services; it had also been evident in 1987 when the cases of Guatemala and Haiti had been transferred from agenda item 12 to agenda item 22. In the case of Haiti, after considering the situation under a confidential procedure for eight years, the Commission had noted the commitment of the Government of Haiti "to develop full respect for human rights and fundamental freedoms", and consequently decided that the matter would henceforth be dealt with under the advisory services item. In the light of recent events in Haiti, such a statement must inevitably call into question the credibility of the Commission.

44. One year later, the measures adopted appeared very meagre as compared with the cruelty and systematic nature of the repression organized by General Namphy's junta: while the Haitian Ministry of Foreign Affairs was asking the United Nations for documents to build up a human-rights library, the armed forces were attacking the provisional electoral council and murdering candidates for the elections. The United Nations was making itself ridiculous.

45. Precisely because of that lack of international pressure, the elections of 29 November 1987 had been accompanied by bloodshed. Pax Christi had sent a mission of observers who had witnessed attacks by the armed forces against groups of citizens patiently waiting in front of the polling booths. People were terrified by the abductions and murders being committed by the armed forces and the paramilitary groups. Moreover, the situation prevailing in Haiti still revealed a consistent pattern of gross violations of human rights. The population, which lived in miserable conditions, was once again experiencing insecurity and arbitrariness. In many respects, the current terror was worse than it had been under the Duvalier régime. Thanks to a disproportionate military assistance granted by the United States, the Haitian armed forces had been sharply increased. They had recruited extra manpower from among the "tontons macoutes", which explained the current partnership between the army and the paramilitary groups.
46. The question arose, in view of such developments, what the Commission on Human Rights was to do: carry on offering advisory services and sending copies of the Universal Declaration and the International Covenants to Port-au-Prince. It was obvious that people who had murdered so many innocent civilians as part of a specific plan by the armed forces were not going to become angels over-night. The murderers had first to be tried and convicted, and that could not be done by the advisory services programme. His organization believed, therefore, that, without necessarily abandoning the idea of promoting the independence of the Haitian judiciary, the Commission should take some exceptional steps and decide to resume consideration of the question of Haiti under agenda item 12, entrusting a special representative with the preparation of a detailed report for 1989.

47. It would be unpardonable to continue a mistaken approach. In 1987, Pax Christi had asked the Commission not to end its consideration of the situation of Guatemala under agenda item 12, but its appeal had gone unheard. Despite the advisory services, the situation had not significantly improved in Guatemala. In 1988, however, there were members of the Commission who were advocating a similar measure once again with respect to El Salvador. His organization, which was quite familiar with the situation in Central America, found it incomprehensible that the delegation of Costa Rica could take the initiative of proposing that the Commission should compound the mistake it had already made in the cases of Guatemala and Haiti and end its confidential consideration of the question of El Salvador. To do so would be to forget the recent assassination of the President of the Salvadorian Commission on Human Rights, and also to forget a lesson provided by the recent history of Latin America as a whole: any "punto final" meant playing into the hands of the military and the extremists.

48. Mr. EYA-NCHAMA (International Movement for Fraternal Union among Races and Peoples) said that advisory services in the field of human rights made it possible for the United Nations to help a State that so requested to incorporate into its national legislation provisions relating to civil and political rights and to economic, social and cultural rights. Such assistance should enable all the citizens of a State to participate in the development process. In his own view, there were three specific areas which should be given high priority in the framework of advisory services, namely legislation, education and information.

49. In the area of legislation, Governments should be helped to put an end to the laws dating from colonization, dictatorship and slavery and to introduce new laws protecting human rights and fundamental freedoms. Many countries that had become independent had kept the laws of the colonial era. Similarly, countries that had gone from a dictatorial régime to a democratic one should also rid themselves of the legislation of the old régime.

50. In the area of education, Governments should be helped to introduce the teaching of human rights into all sectors of society, beginning with the army and police, and extending to the various public services (transport, hospitals, etc). Similarly, educational programmes should take local situations into account.
51. In the area of information, Governments should be helped to disseminate the international instruments on human rights and fundamental freedoms. On the occasion of the fortieth anniversary of the Universal Declaration of Human Rights, the United Nations Department of Public Information had announced that the Declaration had been translated into 67 languages. However, of those 67 languages, there were only five African languages, whereas numerous human-rights violations occurred in Africa and there were also very many vernacular languages on that continent. It should not be forgotten that the worst enemy of human rights was silence.

52. It went without saying that, if a State that requested human-rights assistance had the political will to implement the principles that defended those rights, the task of the United Nations experts would be an easy one. However, if the leaders of that State did not have such political will, the experts would be practically unable to give any assistance because in actual fact the two parties were not defending the same principles. That was what was happening in Haiti, Equatorial Guinea, and, to some extent, in Guatemala.

53. The Republic of Equatorial Guinea had received assistance from an Expert designated by the Secretary-General, Mr. Volio Jiménez, who had submitted a report on the Plan of Action that had been accepted by the Government of Equatorial Guinea. To all intents and purposes, however, that Plan had not been implemented, and the jurists sent by the Secretary-General complained that the authorities were not taking their views into account to put the plan into effect. Not only was the Government of Equatorial Guinea ignoring the Plan of Action to which it had agreed, it also continued systematically to violate human rights and fundamental freedoms. In the circumstances, the human-rights defence organizations believed that countries like Equatorial Guinea agreed to advisory services not in order to apply the principles of human rights but to give the international community the impression that they were co-operating with the United Nations and thus avoid having their cases considered under item 12 of the Commission's agenda. More generally, it was interesting to note how many States were devoting most of their efforts not to protecting fundamental rights and freedoms, but to bringing pressure to bear on the Commission not to include them under agenda item 12. His organization appealed, therefore, to the international community to pay very close attention to the cases of States that requested advisory services in the field of human rights solely to make a show of their co-operation with the United Nations.

54. Miss MENCHU (International Indian Treaty Council) said that the situation in Guatemala deserved urgent attention because of the serious and systematic violations of rights and freedoms which continued in that country and which were evidenced in the studies and reports by various non-governmental organizations and the documents before the Commission. In his report on advisory services to Guatemala in the field of human rights (E/CN.4/1988/42), the Expert wrote that the situation of the indigenous populations continued to be a crucial problem, and that the habitual discrimination and the exploitation of those populations had been a constant source of human-rights violations (para. 57). The growing militarization of Guatemala was aggravating the situation still further, especially in the indigenous villages.
and communities. That militarization was aimed not only at controlling the life and organization of the villages and impeding freedom of association, movement and expression, but also at eliminating the cultural values of those populations.

55. In November 1987, the army had decided to increase its establishment to 52,000 men. It had proceeded to conscript young Guatemalans who were subjected to a training and a dehumanization process designed to incite them to attack their brethren. In late 1987, the army had waged an offensive, termed "Year's End", which had created victims among the civilian population but had above all terrorized the Guatemalans, for it had reminded them of the last six years of military Government. For most of the population, none of the talk about laws, institutions and the organization of the judiciary had been given practical expression. Harves continued to be burned, just as in the time of the generals. Population groups were still being moved, and the situation of non-combatant civilians remained serious. In addition to the massacres and disappearances, there was economic and social injustice: a Guatemalan child was buried every 15 minutes, and the sole hope of the indigenous population was to survive, since it was totally excluded from the health and education services.

56. Words and documents were not enough. Investigations must be held of the crimes committed under the military régimes, and those responsible for the destruction of 440 villages and for massacres such as the one that had occurred at the Spanish Embassy and elsewhere must be identified and brought to trial. The disappearances, mass killings and bombings like those that had occurred in 1986 and 1987 must be ended. United Nations recommendations and advisory services should emphasize that approach. Her organization requested, in particular, that the Commission ensure that the following objectives were reached: firstly, that the violations of the right to life and the violations of rights and freedoms deriving from the power held by the military be ended, and, secondly, that civil, economic, social, political and cultural rights be effectively respected.

57. In his report (E/CN.4/1988/42), the Expert on Guatemala, Mr. Gros Espiell, spoke of the Peace Agreement signed on 7 August 1987 by the Presidents of the five Central American countries and noted that, pursuant to that Agreement, Guatemala had established a reconciliation commission and embarked upon peace negotiations with the guerrillas in Madrid (paras. 39 and 40). Her organization, too, wished to stress the importance of the dialogue in question which, it believed, should be continued. However, the situation that the Guatemalan people was actually enduring would justify consideration of the situation under item 12 of the Commission's agenda and she hoped that it would be considered in a fair and appropriate way.

58. Mrs. ALARCON (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that it was clear from the report by Mr. Gros Espiell, the Expert on Guatemala, and the report on the visit to Guatemala by members of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1988/42 and E/CN.4/1988/19/Add.1, respectively) that violations of human rights had continued in that country in 1987, that
previous violations had not been investigated and that new disappearances had occurred. In January 1988, the Chairman of the National Reconciliation Commission had informed the International Verification and Follow-up Commission, established under the Esquipulas II commitments, that the war had caused as many deaths as the 1976 earthquake, i.e. more than 20,000 victims, and that no family had been spared. He had added that thousands of Guatemalans had taken refuge abroad and that many others had been displaced. Although noteworthy progress had been made in the application of the peace agreements, respect for human rights was still uncertain. The Human Rights Commission of Congress had also admitted to the Inter-American Commission on Human Rights of the Organization of American States that human rights were still being violated in Guatemala.

59. Among the numerous disappearances that had occurred recently, reference should be made to the abduction, on 17 and 19 October 1987, of Danilo Sergio Alvarado Mejía and René Aroldo Leiva Cayax, whose tortured corpses had been found on 23 October. The Minister of the Interior had admitted, under pressure from the families and from Guatemalan and international public opinion, that the persons responsible were the chief of police at Quetzaltenango and five members of the national police. On 24 January 1988, Lucía Hernández López, an 18-year old girl, had been abducted by a group of armed men and detained for 16 days. The torture to which she had been subjected had resulted in permanent blindness and a psychological trauma. On 9 February 1988, Ana Elizabeth Paníaga Morales, 25 years of age, mother of a four-year-old daughter and two months pregnant, had been abducted. Her corpse, bearing signs of torture, had been found on 11 February.

60. It was regrettable that, in his examination of the current legal framework of the human-rights situation in Guatemala, Mr. Gros Espiell had not drawn attention to the harmful effects of Decree No. 8-86, whereby the military authorities had granted themselves an amnesty in respect of their actions. That Decree, which violated the spirit and the letter of the Guatemalan Constitution and the international instruments to which the country had acceded, remained in force despite its unconstitutional nature. In his report, Mr. Gros Espiell had mentioned that Guatemala was still maintaining a dubious reservation in respect of the Inter-American Convention to Prevent and Punish Torture, which was irreconcilable with its recognition of the jurisdiction of the Inter-American Court of Human Rights. Incidentally, that jurisdiction had been recognized by the Guatemalan authorities solely in respect of events occurring after the declaration of recognition. Those legal limitations, which were designed to ensure that the guilty civilian and military personnel remained unpunished, gave reason to doubt whether the Guatemalan Government really had the political will to protect human rights.

61. In its report on its visit to Guatemala (E/CN.4/1988/19/Add.1), the Working Group on Enforced or Involuntary Disappearances mentioned that the families of missing persons had tried to use many legal remedies. Although the association known as the "Mutual Support Group so that our disappeared relatives may be found alive" (GAM) had made representations to the Executive Power, the Supreme Court and the Legislature on the subject, the authorities had still, after two years of constitutional Government, taken no
effective steps to clarify the fate of the missing persons. On 16 October 1987, GAM had lodged a complaint with a court of first instance against 22 military and civilian persons accused of abduction, unlawful entry, robbery and violations of the Constitution as a result of their involvement in the abduction and disappearance of Guatemalan citizens. That complaint contained all the requisite details, including the names of the persons responsible, and indicated that the testimony of persons who had witnessed the occurrences would be produced if necessary. Article 45 of the Constitution and Article 353 of the Code of Criminal Procedure stipulated that proceedings against persons responsible for infringements of human rights must be conducted in public, that they could be instituted on the basis of a simple complaint and that only complaints concerning acts that did not constitute an offence or which were obvious fabrications would be rejected automatically. However, on 4 November 1987, the complaint submitted by GAM had been dismissed by the Court merely on the grounds that it should have been submitted through a barrister-at-law. That was inadmissible since, if no Guatemalan lawyer was willing to run the risk of such representation, the Public Prosecutor's Department should itself satisfy that condition as a standard practice. Her organization could not accept special pleadings of that kind being used to hamper the administration of justice in a country such as Guatemala, where respect for justice and human rights was a prerequisite for peace and development.

62. On 22 January 1988, GAM had called upon the Commissioner for Human Rights to put an end to the abductions and murders, to look into the complaint that had been submitted by GAM and rejected by the Supreme Court and to investigate the situation of the missing persons. Article 29 of the Act establishing the office of Commissioner for Human Rights stipulated that the official in question must reach a decision within eight days of the date on which the complaint or the request for an investigation had been submitted. A whole month had passed, however, and the Commissioner for Human Rights had taken no action.

63. In his report, Mr. Gros Espiell, the Expert on Guatemala, had rightly emphasized that it had not yet proved possible to ensure genuine, effective and full respect for human rights in Guatemala. Accordingly, her organization asked the Commission to consider the report of the Working Group on its visit to Guatemala and the report by Mr. Gros Espiell in the light of its own resolutions concerning the situation in Guatemala, to keep the situation in that country under review, to renew the mandate of the Expert - who should urge the Guatemalan Government to make every endeavour to solve the problem of missing persons - and to request the Guatemalan Government to take into account all the comments of the Working Group, as well as the Expert's conclusions and recommendations.

64. Mr. CHEA URRUELA (Observer for Guatemala), speaking in exercise of the right of reply, said that the report by the Expert on Guatemala and the report of the Working Group on its visit to his country showed that considerable progress had been made in regard to respect for human rights. The Working Group, which had thanked his Government for inviting it to undertake a mission to the country and for extending a large measure of co-operation to
its members, stated that the new democratic régime had made great strides towards the re-establishment of the rule of law and respect for basic rights. On the whole, violations of human rights were diminishing and the number of disappearances had decreased notably as compared with the years of military rule, particularly in urban areas (E/CN.4/1988/19/Add.1, paras. 76 and 77). During the discussions that the members of the Working Group had held with personalities from various segments of society, the view had been expressed that the situation had improved since the current Government had come to power and that positive steps had been taken to ensure respect for human rights. The existing situation in Guatemala was reflected in the last paragraph of the report on the visit of the Working Group, which pointed out that a nation emerging from 20 years of carnage could not be expected to change radically overnight (op. cit, para. 86). His Government, incidentally, quite agreed that the question of the human-rights situation in the country should remain on the Commission's agenda.

65. Mr. GROS ESPIELL, the Expert on Guatemala, said he thought there was a sincere desire and a resolute intention at all levels to ensure greater respect for human rights. In his view, it had rightly been affirmed that the situation in Guatemala was due not to governmental practices, actions or instructions, but rather to the persistence of a climate of violence that it had not yet proved possible fully to control. The legal framework for the recognition, guarantee and protection of human rights had certainly been developed and the Guatemalan Government definitely had the firm political will to ensure respect for those rights. The continuing violations of rights, far from being the result of governmental policy or orders, were unfortunately attributable to other power centres and to the persistent climate of violence. Generally speaking, the situation had undoubtedly improved despite some persistent negative factors (E/CN.4/1988/42, paras. 45, 46 and 57).

66. From the two reports before the Commission, it might be concluded that the human-rights situation in Guatemala had improved appreciably, even though uncontrolled phenomena remained in some sectors of the country. However, subversive elements were attempting to give a false picture of the situation. One non-governmental organization, for instance, had referred to the case of two Guatemalan students without mentioning that the policemen responsible for the acts in question had been prosecuted and sentenced to terms of imprisonment. Whenever the Guatemalan authorities had the information needed to investigate incidents of that type, they took appropriate action. The President of Guatemala had announced that the exiled political leaders could return to their country to collaborate with the current Government. No one contested the fact that the non-governmental organizations had an important role to play, but they were supposed to express their criticism in good faith with a view to promoting the development of democracy and not to furthering individual interests.

67. The CHAIRMAN thanked all the delegations, observers, experts and non-governmental organizations for their contributions to a rich, varied, fruitful and useful debate. The critical assessment that the Commission had undertaken would make it easier to find solutions to the outstanding problems. The Commission had thus completed its consideration of agenda item 22.

68. Mr. MARTENSON (Under-Secretary-General for Human Rights) recalled that, in its resolution 17 (XXXVII) of 10 March 1981, the Commission had requested the Sub-Commission, in drawing up its annual report to the Commission, to present and indicate clearly in an introductory chapter all matters requiring the approval of the Commission, including all resolutions and decisions of the Sub-Commission other than those bearing on internal procedural questions or those which followed up previously approved or specifically mandated courses of action.

69. At its thirty-eighth session, the Commission had requested the Sub-Commission by its resolution 1982/23 to attach to its report in the future a complete list of the studies under preparation, with relevant information on the legislative authority and the timetable for the completion of the studies.

70. The report brought to the attention of the Commission in document E/CN.4/1988/37 had been drafted in accordance with those guidelines. The confidential part of the report, which had been published in another document, would be considered by the Commission under item 12 (b) of its agenda.

71. Chapter I of the report listed the questions addressed to the Commission for decision or consideration. The list of studies and reports entrusted to the members of the Sub-Commission, in accordance with legislative authority, was annexed to that document.

72. Section A of chapter I contained the draft resolutions recommended for adoption by the Commission, while section B contained the resolutions and decisions of the Sub-Commission concerning matters which had been drawn to the Commission's attention and which required consideration or action on its part.

73. Mr. DESPOUY (Chairman of the Sub-commission at its thirty-ninth session) said that the report submitted to the Commission in document E/CN.4/1988/37 would be the first to be considered since 1985 because, in accordance with General Assembly decision 40/472, the Sub-Commission had not met in 1986. The Sub-Commission had thus held its thirty-ninth session in 1987.

74. The Sub-Commission's report was divided into chapters. In accordance with the Commission's resolution 17 (XXXVII), section A of chapter I listed the draft resolutions that the Sub-Commission recommended for adoption by the Commission, which he read out.

75. Under the terms of draft resolution II, entitled "War crimes files - access and guidelines", the Commission would encourage the Secretary-General to pursue his efforts to set new guidelines for access to the files compiled by the War Crimes Commission and would suggest to the Secretary-General that the Sub-Commission might make a useful contribution to those efforts. Since
the adoption of that draft resolution, the Secretary-General had consulted the
17 States that had formerly been members of the War Crimes Commission and
revised norms had been adopted allowing broader access by Governments to the
files and a system to facilitate such access had been established in
New York. It seemed, therefore, that the Commission need not take a decision
on draft resolution II.

76. With regard to the order of presentation that had been followed in the
report, it should be noted that section B of chapter I also contained the
resolutions and decisions of the Sub-Commission which required action or
consideration by the Commission. Other resolutions and decisions adopted by
the Sub-Commission at its thirty-ninth session were reproduced in chapter II.
Chapter III related to the organization of the thirty-ninth session and
contained the agenda, as well as information on the work, the meetings and the
documentation of the session. Chapters IV to XVII dealt with the
Sub-Commission's consideration of the various items on its agenda. Annex I
contained the list of participants in the session. He recalled that the
Economic and Social Council had decided to extend to 1987 the mandate of the
26 members of the Sub-Commission elected in 1984 and to postpone until the
current session of the Commission the election of new members. Finally, he
mentioned that the Sub-Commission had expressed deep regret at the decease of
Mr. Abu Sayeed Chowdhury, former Chairman of the Commission and member of the
Sub-Commission, who had died while on his way to participate in the
thirty-ninth session of the Sub-Commission.

77. Annex II contained the administrative and programme budget implications
of the resolutions and decisions of the Sub-Commission, which had duly taken
into consideration the difficult period through which the United Nations was
passing, and the relevant recommendations concerning the limitation of
expenditure. In accordance with Commission resolution 1982/23, annex III
listed the studies and reports entrusted to the members of the Sub-Commission
and, for the first time, made a distinction between (i) studies having no
financial implications, (ii) studies having no new financial implications, and
(iii) studies having new financial implications. That list gave the names of
the authors of the studies, the decisions of the legislative authority by
which they had been entrusted with those studies, and the deadlines for
completion. Annex IV, which listed the documents issued for the session, made
it possible to evaluate the quantity of information submitted to the
Sub-Commission each year by Governments, the Secretariat, other United Nations
organs, the specialized agencies, intergovernmental and non-governmental
organizations and the working groups or rapporteurs of the Sub-Commission
itself. The views expressed by the members of the Sub-Commission, which were
extremely important for a proper understanding of the resolutions and
decisions it had adopted, could be found in the separate summary records of
the meetings. It was very important to realize that, as a result of the
decisions and resolutions of the Commission and the Economic and Social
Council, the Sub-Commission had had to give up its traditional way of drafting
the report, to omit the summary of the experts' statements and to confine
itself to a simple procedural report. However, to facilitate reading and make
it possible to follow the discussions, Mr. Joinet, the Rapporteur of the
Sub-Commission, had referred, under each item in the report, to the statements
that could be found in the summary records.
78. Several important reports had been submitted to the Sub-Commission at its thirty-ninth session, such as Mr. Eide's study on the achievements made and obstacles encountered during the Decade for Action to Combat Racism and Racial Discrimination; Mr. Khalifa's annual update of the list of banks, transnational corporations and other organizations assisting the colonial and racist régime of South Africa; Mr. Despouy's first annual report and list of countries which had proclaimed, extended or terminated a state of emergency; Mr. Bossuyt's study on the elaboration of a second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty; Mr. Eide's study on the right to adequate food and Mrs. Odio-Benito's study on the current dimensions of the problem of religious intolerance.

79. Mr. Mazilu, the Romanian expert, had not yet been able to submit to the Sub-Commission the report entitled "Human rights and youth". He earnestly hoped that the difficulties that had prevented Mr. Mazilu from coming to submit his report would soon be overcome and that the Sub-Commission and the Commission would shortly have the benefit of that important study.

80. In his introduction of the report of the Sub-Commission, he had endeavoured, at a session during which new members of the Sub-Commission were to be elected, to draw the Commission's attention not only to the quality and technical nature of the work carried out for the Commission by its subsidiary body, but also to the need to maintain the level of qualifications and intellectual contribution that the Commission was entitled to require from an independent body of experts. In conclusion, he said that the experts expected clear directives and precise guidelines from the Commission in order to carry out their work effectively.

81. The CHAIRMAN said he congratulated the members of the Sub-Commission who, by virtue of their competence, their technical qualifications and their objectivity, had submitted a remarkable report to the Commission. He hoped that that high level of competence would be maintained on the election of new members of the Sub-Commission.

82. Ms. ANSBACH (German Democratic Republic) said she regretted that the Sub-Commission had, to some extent, lost sight of its raison d'être as a body of experts supposed to prepare studies and make recommendations with a view to facilitating the adoption of political decisions by the Commission.

83. However, at its thirty-ninth session, the Sub-Commission had endeavoured to discharge its mandate in a stricter and more efficient way by avoiding political confrontation wherever possible, with a view to obtaining more practical results. For example, the updated report on the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the colonial and racist régime in South Africa (E/CN.4/Sub.2/1987/8/Rev.1) constituted an effective instrument in the struggle against apartheid and colonial oppression in Namibia, since it contained a realistic analysis of the structural causes of the gross and flagrant human-rights violations in that region. She thanked the Special Rapporteur and expressed her delegation's support for draft resolution V, as proposed by the Sub-Commission.
84. For several years, the Sub-Commission had been engaged in the delicate task of dealing with indigenous peoples, which could not be equated with ethnic minorities. Indigenous peoples had always been threatened with extinction, and that threat still persisted, owing to the lack of the material requirements needed to enable them to maintain their traditional way of life. Nevertheless, some progress had been made towards the drafting of a declaration in that area, which had helped to direct international public attention to the issue. The Commission should encourage the Sub-Commission to continue its efforts to that end, since that was a field in which there was a real need for its technical expertise. Accordingly, her delegation supported draft resolutions VI, VII, VIII and IX, as proposed by the Sub-Commission.

85. At its thirty-ninth session, the Sub-Commission had avoided the pitfall that had characterized its previous sessions and which consisted in the failure to attach equal importance to civil and political rights, on the one hand, and to economic, social and cultural rights, on the other. That change of attitude had resulted in the welcome adoption of resolution 1987/29.

86. On the whole, the report of the Sub-Commission (E/CN.4/1988/37) led to the conclusion that the resolutions most likely to help the Commission in its work were those which dealt with substantive matters rather than with the situations in individual countries. In future, the Sub-Commission would therefore do well to focus its efforts on the major issues relating to its mandate.

87. Mr. STRUYE (Belgium) said that his delegation had a special interest in the activities of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the title of which had long been completely unrelated to the functions which the Commission had entrusted to that body.

88. His delegation had regretted the cancellation of the Sub-Commission's 1986 session but it had noted with satisfaction that all those who were sincerely concerned with the protection of human rights, and especially the non-governmental organizations working in that field, had also expressed regret, which was a vivid indication that United Nations activities in the field of human rights were of considerable interest to world public opinion. Those reactions should be emphasized at a time when the United Nations was going through a serious financial crisis and a crisis of credibility.

89. Under those circumstances, the thirty-ninth session of the Sub-Commission had been awaited with great interest, and it was unfortunate therefore that the results had not responded to expectations. Nevertheless, the members of the Commission who criticized the Sub-Commission, seemed to forget that that body was composed of individuals elected by the Commission, i.e. by governmental delegations, since Governments alone could present candidates. Criticizing the Sub-Commission thus amounted to self-criticism. Since the Commission was preparing to elect the 26 members of the Sub-Commission, half of whom would hold office for four years, the crucial importance of that choice would be stressed. It was astonishing that some of the experts in the Sub-Commission hardly participated in any of its discussions or working groups, soon after their country's delegation had made such great efforts to have one of its nationals elected. The seat of one member elected in 1984 had
been occupied for the first time in 1987 and, in the same year, 4 seats out of 26 had remained empty for the entire session. One of those absences had unfortunately been due to the death of one of its members, Mr. Chowdhury, to whom the Belgian delegation wished to pay tribute, but two were unexplained. As for the fourth absent member, everything went to show that he had been prevented from attending by his own Government, which was extremely disturbing; his delegation protested strongly against such an attitude which undermined the principle of the independence of experts, the very basis of the Sub-Commission's work. The member in question who, with the agreement of the Commission, had been entrusted with the task of preparing a study on human rights and youth, should be invited to submit his report to the Sub-Commission at its next session. The matter took on particular significance in the light of Sub-Commission resolution 1987/21 concerning staff members of the United Nations and specialized agencies in detention.

90. His delegation, which was closely following the activities of the Sub-Commission's working groups, supported the proposal to change the name of the Working Group on Slavery, which was anachronistic and inappropriate to the point of sometimes depriving the Sub-Commission of the co-operation of States. The new title proposed by the Sub-Commission ("Working Group on Contemporary Forms of Slavery") or else a title such as "Working Group on Contemporary Forms of Human Exploitation" would be far preferable. As for the series of recommendations and proposals contained in resolution 1987/32, the Sub-Commission should be urged to be more selective and to draw up an order of priorities. His delegation commended the Government of Mauritania for its co-operation with the Sub-Commission's expert, who had been able to present his final follow-up report on his mission to that country.

91. The work of the Working Group on Indigenous Populations had aroused extraordinary interest among the people most directly concerned. The Group should devote itself, as a matter of priority, to the preparation of a draft declaration of principles on the rights of indigenous populations; the other proposals were less urgent or should be considered further before adoption by the Commission.

92. His delegation, which attached particular importance to item 9 of the Sub-Commission's agenda ("The administration of justice and the human rights of detainees"), regretted the fact that arbitrary detention, and more precisely administrative detention without charge or trial, had not yet formed the subject of the "thematic" procedure the Commission had been adopting for several years to deal with certain types of particularly abominable human-rights violations. The question of administrative detention had been well defined in a Sub-Commission report (E/CN.4/Sub.2/1987/16), and that should facilitate the implementation by the Commission of a thematic procedure for dealing with that form of human-rights violation. The Sub-Commission should also be commended on its decision to entrust one of its members with the task of considering the information to be gathered at the request of the sessional Working Group on Detention. Particular mention should also be made of the document containing the list of States that had proclaimed, extended or terminated a state of emergency (E/CN.4/Sub.2/1987/19), the report on the independence and impartiality of the judiciary (E/CN.4/Sub.2/1985/18 and Add. 1 to 6 and Add.5/Rev.1) and the report on the right of everyone to leave any country including his own.
93. His delegation was impatiently awaiting the analysis of the proposal to prepare a second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. It was particularly unfortunate that the Sub-Commission should have decided by 4 votes to 3, with 6 abstentions, and in the absence of the main sponsor of the draft resolution, not to take a decision concerning it. It was absolutely unacceptable that a body of experts should allow one single member to block consideration of reports on the pretext that some documents had not yet been issued in his language, whereas the corrected version of the documents had been communicated to him by the reviser. In view of the financial crisis in the United Nations, it should be recalled that rule 29 of the rules of procedure of the functional commissions of the Economic and Social Council provided for three working languages only. However, the Secretariat should intervene when the translation of a document was unduly delayed.

94. The Sub-Commission sometimes wasted precious time on sterile procedural debates, but the Commission did not always give a good example in that regard. A more basic problem was the Sub-Commission's tendency to adopt resolutions similar to those of the Commission on the same subjects; the same criticism could be made of the Commission, which sometimes reproduced resolutions adopted by the General Assembly shortly before, but in those cases the resolutions had been adopted by intergovernmental bodies. It was difficult to imagine the Commission refraining from adopting resolutions on certain particularly disturbing aspects of human rights simply because its higher body had already done so, and the same was true for the Sub-Commission. In fact, most of the criticisms of the Sub-Commission came from Governments that were aware that their behaviour in the field of human rights was not beyond reproach and, if the Sub-Commission disturbed them, it was often because it was effectively carrying out the responsibilities delegated to it by the Commission, because such responsibilities could not be taken on by an intergovernmental body.

95. His delegation wished to renew its support for the Sub-Commission, despite its imperfections. The election of its members would be an occasion to help improve the quality of its work, and if all the States reached decisions based exclusively on the independence and competence of the candidates, the Commission would have the satisfaction, at its forthcoming session, of noting the progress made.

96. Mr. HILGER (Federal Republic of Germany) said that the resumption of the work of the Sub-Commission, after the unfortunate cancellation of the 1986 session, had not come up to the expectations of his delegation. The Sub-Commission had, indeed played a valuable role in initiating new developments in the field of human rights, and its examination of human-rights violations throughout the world had always been remarkable, but it had a growing tendency to act as if it were a smaller version of the Commission on Human Rights. However, according to the division of labour agreed upon when it was established, the Sub-Commission had an advisory role and the Commission a policy-making role. Items which were extensively discussed elsewhere within the United Nations system should be examined in the Sub-Commission only in cases where the Sub-Commission could make a specific and distinctive contribution; according to its mandate, it should consider cases of discrimination and human-rights violations and the protection of minorities. The activities of its Working Group on Slavery were illustrative of the tasks within its purview.
97. There was no doubt that the Sub-Commission must improve its methods of work and above all lighten its agenda. The Commission had already requested it to propose a new study only when a study previously authorized had been fully completed. The Sub-Commission should concentrate on a small number of studies (three at most) which should be discussed in depth and systematically; it could then prepare conclusions and recommendations and transmit the study to the Commission without further delay, which was not the current practice. Thus, his delegation had been disappointed that the report by Mr. Bossuyt on the elaboration of a second protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (E/CN.4/Sub.2/1987/20), a paper of fundamental importance, had not yet been forwarded to the Commission. It hoped that the Sub-Commission would approve the report at its next session so that the Commission could discuss it at its forty-fifth session. It was equally regrettable that the Sub-Commission had not considered the study by the Special Rapporteur on the right of everyone to leave any country including his own.

98. To enable the Sub-Commission to pay specific attention to the standard-setting activities assigned to it by the Commission, thematic priorities should be set within the programme of work, which could be met by the biennialization of certain items and by adhering to time-frames for the completion of studies. In addition, the Sub-Commission should request comments from Governments only with regard to those studies that had received prior explicit approval from the Commission.

99. His delegation associated itself with the Belgian delegation in regretting the absence of a number of members of the Sub-Commission for the entire session or the greater part of it. The presence and active participation of all the members, or their alternates, in the sessions of the Sub-Commission and its working groups were of crucial importance. In order to devote as much time as possible to questions of substance, the Sub-Commission should adopt a system of time-limits for speakers and should avoid procedural quibbles. The contributions of the non-governmental organizations were certainly important, but the presentation of their contributions and those of governmental observers should be organized in such a way as to leave sufficient time for debate among the members of the Sub-Commission. Governmental observers should, as a rule, restrict themselves further in their interventions, for, while they should speak up when they had been specifically addressed during the debates, the Sub-Commission was certainly not the forum for politically-motivated exchanges.

100. The Secretariat should continue to provide strong support for the Sub-Commission, and his delegation appealed not only to the Centre for Human Rights but also to the Conference Services Division for the necessary documents to be made available in all languages for the Sub-Commission sessions. In conjunction with other delegations, his own had tried to prepare a draft resolution on the basis of resolution 1986/38 to cover some of the points he had just raised. His delegation welcomed comment on the subject since it hoped, as usual, to submit a draft that could be adopted without a vote. The Commission on Human Rights should not simply criticize; it was duty-bound to help the Sub-Commission improve its methods of work, strengthen existing mechanisms for the promotion of human rights and build upon the accomplishments they represented.
101. Mr. BLISHENKO (Union of Soviet Socialist Republics) having stressed the importance of the Sub-Commission's contribution to the consideration of all the items of the Commission's agenda, said that the report on the work of the thirty-ninth session (E/CN.4/1988/37) attested to the usefulness of its role but also pointed up certain negative aspects of the Sub-Commission's work. It had prepared some extremely useful resolutions on the apartheid régime, the territories occupied by Israel and on Namibia; it had brought the list of banks, companies and other bodies giving assistance to the South African régime up-to-date and had condemned human-rights violations in Chile, all of which was to its credit. Obviously, not all the studies undertaken could be of equal quality but, generally speaking, experience showed that they had served for the preparation of useful instruments that had facilitated the consideration of human-rights situations by the various United Nations bodies.

102. Although the Sub-Commission was fulfilling its mandate perfectly well with respect to specific manifestations of racism and of discrimination in given situations, it was not coming up to expectations in the area of the elimination of racism and of racial discrimination in general. To enhance its role in that area, it should apply itself more to preparing international instruments which, on account of their binding nature, would be the most effective means of achieving that goal. For example, it might work on the preparation of international instruments on humanitarian questions - such as the rights of persons interned in psychiatric hospitals or the problem of the involuntary disappearance of persons - which would bring about the standardization of States parties' domestic legislation. It might also prepare declarations which, although they were only recommendations, had the advantage of expressing a meeting of minds within the international community. That was the type of task on which a body of experts such as the Sub-Commission should concentrate so as not to make the mistake of politicizing its discussions, which unfortunately happened all too often. It would certainly be naive to attempt to achieve a completely apolitical atmosphere, but the Sub-Commission's mandate - which had never been changed - obliged it to deal with questions of a common and universal interest.

103. The Sub-Commission should also avoid encroaching upon the Commission's area of activity and create difficulties for its superior body by exceeding its mandate. It should indeed seek ways of rationalizing its work and, in fact, had made some constructive proposals to that end at its thirty-ninth session, but the Commission could also help it to do so. The important thing was that all decisions should be carefully thought out and realistic and should be the result of agreement among its members.

The summary record of the second part of the meeting appears as document E/CN.4/1988/SR.36/Add.1.