COMMISSION ON HUMAN RIGHTS

Forty-fourth session

SUMMARY RECORD OF THE FIRST PART* OF THE 52nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 8 March 1988, at 3 p.m.

Chairman: Mr. SENE (Senegal)
later: Mr. DELGADO (Peru)

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Question of human rights in Chile

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

* The summary record of the second part of the meeting appears as document E/CN.4/1988/SR.52/Add.1.

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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.
Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular:

(a) Torture and other cruel, inhuman or degrading treatment or punishment;

(b) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(c) Question of enforced or involuntary disappearances.

Consideration of draft resolutions relating to agenda item 10
The meeting was called to order at 3.15 p.m.


1. The CHAIRMAN, speaking on behalf of the Commission, welcomed Mr. Walters, a member of the cabinet of the President of the United States of America and an outstanding witness of the events which had marked the second half of the twentieth century, who had distinguished himself in the arts of warfare, diplomacy and statesmanship and who combined the talents of a linguist with the abilities of a negotiator. Over the years, Mr. Walters had met all those who had made contemporary world history and, at the most recent session of the Economic and Social Council, had traced the history of that inspiring initiative, the Marshall Plan, of which he had been one of the architects and which had made possible the economic recovery of Western Europe after the Second World War.

2. Mr. WALTERS (United States of America) thanked the Chairman for his kind words. He pointed out that, for the purpose of discharging its mandate, the Commission on Human Rights had no army or police force and could not fine or incarcerate offenders. It had in fact only one tool at its disposal - public discussion and examination of the situation of human rights around the world. By those means it could often bring some light into the dungeons and torture chambers of many countries and give some hope to the victims; it had even helped to end certain heinous violations of human rights.

3. At the Commission's previous session, he had asked it to shine a beam of light into one of the world's darkest dungeons, one where for nearly 30 years millions of persons had suffered violations of their rights. For reasons which had more to do with politics than with the purposes of the Commission, however, it had not heeded that appeal. He accordingly renewed his request to the Commission for an inquiry into the situation of human rights in Cuba.

4. He very much understood the sense of Hispano-American solidarity, all the more so since his own country was the world's fifth largest Hispanic Power. That solidarity, however, should be expressed with the people of Cuba rather than with their non-elected rulers. The Commission was not being called upon to participate in a vendetta against the Government of Cuba. The initiative of the United States Government was not motivated by ideological or political concerns. Allegations of that kind had not been levelled against it when it had taken the initiative on a resolution regarding the situation of human rights in Chile. Nor were any such allegations levelled against the Cuban delegation when it sponsored a draft resolution calling upon the Government of Chile to respect human rights. Bilateral relations between the United States and Cuba were not, and should not be, a topic of discussion in the present debate. It was human rights in Cuba that were at stake.
5. The situation in Cuba could no longer be disputed. The country was governed by one of the longest surviving dictatorships in the world and one that continued to resist the wave of democracy sweeping over most of Latin America. For nearly 30 years, the people of Cuba had had no say in the way they were governed. One man, Fidel Castro, was the unelected head of State, head of Government, head of the only political party and commander-in-chief of the armed forces. With a small circle of persons dependent on him, he dominated Cuban social, economic and political life. Through the Ministry of the Interior, he controlled the border and police forces, orchestrated public demonstrations, determined what organizations and activities were legal, investigated "anti-revolutionary" activity and allegations of "non-conformity", regulated migration and maintained an intricate network of informers, block wardens and block committees, known as "committees for the Defence of the Revolution". The Cuban Constitution prohibited the exercise of civil rights "contrary to the decision of the Cuban people to build socialism and communism". In other words, freedom existed only to the extent allowed by Fidel Castro.

6. Torture and clandestine executions continued to occur. Amnesty International had reported unconfirmed indications that a number of secret executions had taken place during 1987. In Cuba, in over 200 prisons and labour camps, there were thousands of political prisoners - perhaps as many as 10,000 to 15,000, some of whom had been held since the earliest days of the régime. A group of long-term political prisoners known as "plantados" had begun a hunger strike on 3 March to protest against Havana's attempts to misinform the world about prison conditions, torture and other ill-treatment.

7. He proceeded to give the names of a number of "plantados" and drew attention to a new generation of political prisoners known as "nuevos plantados". Those were largely young prisoners, most of whom had been born since the revolution and could no longer endure certain aspects of the régime in Cuba. They too were subjected to very harsh conditions of detention. While international pressure had apparently brought some improvement in the treatment given to the "plantados", the same was not true of the "nuevos plantados" who, according to Amnesty International, were apparently deprived of medical attention, fresh air, exercise, family visits and correspondence because of their refusal to participate in the "re-education" programme.

8. Furthermore, political prisoners were not always released at the end of their terms. Their release often depended on a decision by Fidel Castro, who often used the release of prisoners as a way to curry international favour. Arrests for political "crimes" persisted. There was no independent judiciary; the freedoms of speech, press and assembly did not exist; religion remained under heavy official pressure, some sects being purely and simply banned; a person suspected of lack of revolutionary zeal could be expelled from his job or school.

9. Cubans continued to risk their lives to flee Cuba. Trying to leave Cuba without official permission was a crime punishable by years of imprisonment. Large numbers of Cubans had died in the attempt to flee, having been killed by the police and military guards or having drowned, died of exposure or been eaten by sharks as they had sought to navigate crude craft over the 90 miles
separating them from the coast of Florida and freedom. To quote the words of José Martí, champion of Cuban liberty, "vice has so many accomplices in the world that virtue, too, must have some accomplices". The members of the Commission should not become the accomplices of vice by remaining silent.

10. A draft resolution on Cuba would be submitted by Mr. Valladares, of the United States delegation. Although that delegation had no doubt as to the human-rights situation in Cuba, it did not ask the members of the Commission to take its word for it. It only requested the Commission to investigate that situation and give the Government of Cuba an opportunity to refute the serious allegations made about its rule by Amnesty International, Americas Watch, the Inter-American Commission on Human Rights of the Organization of American States, the European Parliament and the European Economic Community, as well as more than 1 million Cuban refugees living in the United States and elsewhere. One must not also forget the growing number of documents being smuggled out of Cuba and Cuban prisons which told a harrowing tale of life there. Some of those documents had been distributed as official documents of the Commission. The international community must be given an opportunity of determining the truth about Cuba. The Commission must not remain silent, for silence would make it the accessory of oppression. It was called upon to write a bright chapter in the otherwise bleak annals of Castro régime.

11. The CHAIRMAN observed that one of the major concerns of the Commission was to avoid all ideological antagonism and all politization; in view of its extensive debates, it could not be said to have remained silent. One must avoid forming judgements based on double standards. Since its inception, the Commission had been concerned with the search for practical solutions with the co-operation of the Governments concerned, for the purpose of ending violations wherever they occurred.

12. Mr. MEZZALAMA (Italy) said that agenda item 12, taken together with item 5, provided an opportunity of making general comments which went beyond the topics debated at the beginning of the session, since the Commission was now called upon to examine the situation of human rights throughout the world and to consider the best means of ensuring their protection and promotion. The celebration of the fortieth anniversary of the Universal Declaration of Human Rights, moreover, provided the Commission with an opportunity to draw up a balance-sheet of results obtained and future prospects.

13. The balance was undoubtedly a positive one, despite the numerous violations which must be put on record. It was, in fact, in the sector of human rights, as in the closely connected sectors of self-determination and co-operation for development, that the United Nations had achieved its greatest successes - successes which had enabled it to build a world which was on the whole more just and more stable than 40 years previously. That was a consideration which must always be kept in mind and which should encourage the activities conducted within the United Nations. That said, it should be remembered that great progress had thus been made possible not only through the commitment of each State party to the Covenants but also thanks to public opinion, the press and the non-governmental organizations, which had brought pressure to bear on Governments. He drew attention to the success achieved in the struggle for freedom and democracy in Latin America and other continents, and the enduring commitment to end apartheid, the Middle East crisis and the violation of fundamental rights in Chile.
14. Another general observation was called for, namely, that one of the worst obstacles impeding unequivocal protection of human rights was the growing politization of the Commission's debates. Politics, i.e. the options of the States represented in the Commission, tended to cause every judgement and every item of information to press through the filter of the national interests and evaluations which determined the international conduct of States.

15. With regard to future prospects, joint thought should perhaps be given to efforts to combat that trend, which was not always in itself a negative element but undoubtedly limited freedom of judgement. It was possible to avoid sacrificing human rights on the altar of realpolitik, by keeping constantly in mind the principles and ideals to which States had subscribed in 1948. Thus, the countries of the European Community had confirmed at the Hague on 26 July 1986 the fundamental principle whereby concern expressed about human-rights violations anywhere in the world would not be considered as interference in the internal affairs of a particular country. The setting-up of a Working Group in 1987 by the 12 countries of that Community reflected the development of that concept and constituted an expression of their determination.

16. It should not be forgotten that the Covenants enshrined a universal conception of human rights which went beyond a merely national or regional perspective. Just as regionalism must be integrated within the United Nations system and must not replace it, the efforts made by each State and each regional organization could not and should not rule out co-operation by the international community as a whole in ensuring greater respect for, and better promotion of, human rights. In the absence of such a principle, the question would arise as to how the struggle against apartheid could be sustained if the international community were to evade the problem, on the pretext that it was a matter solely for the Organization of African Unity or that it constituted an internal political affair of South Africa.

17. Another way of combating the danger of politization of the problems dealt with in the Commission was to endeavour gradually to broaden the scope of the thematic approach. The Commission had been setting up a system for monitoring the implementation of the provisions set forth in the Covenants, a system which had found one of its most significant expressions in the appointment of rapporteurs. His delegation had constantly supported that system, which was the most appropriate one for the purpose of introducing objective and balanced evaluation criteria and of achieving the principle of universality, which must remain one of the essential guidelines for the protection of human rights.

18. On another point, it had often been asserted that the Commission was unduly selective when it decided to examine one situation rather than another. In order to remedy that possible drawback, the thematic approach entrusted to ad hoc rapporteurs appeared to provide a solution which deserved to be encouraged. Moreover, the work of those rapporteurs supplemented that of the rapporteurs entrusted with investigating particular countries when the gravity of the situation justified recourse to that procedure.
19. Turning to the crisis situations on which his delegation considered it should express a view, he felt bound to refer in the first place to the question of apartheid. The system of institutionalized racial discrimination and separation in South Africa constituted a human-rights violation which could no longer be tolerated. It constituted a negation of the very principles underlying the basic relations of civil and social life within democratic States and harmonious coexistence among the members of the international community. Apartheid was a manifestation of violence both within South Africa and beyond its boundaries, and one which had dramatic human and social consequences throughout southern Africa, jeopardizing its security, stability and peace. The Pretoria Government had recently adopted further repressive measures against organizations representing the black community, measures which constituted a challenge to all persons engaged in the search for peaceful solutions based on dialogue. His delegation could not fail to voice its concern at, and condemnation of, those measures, which had been unanimously castigated by the international community. It urged the Pretoria Government to repeal all discriminatory laws and exceptional measures and promptly to open negotiations with the legitimate representatives of all the communities concerned, so that South Africa could embark on the task of building a new free and democratic society based on equality of civil and political rights for all its nationals.

20. A no less important situation, pregnant with consequences for international stability, was the denial by Israel of the legitimate right of the Palestinians of the occupied Arab territories to self-determination and to respect for their fundamental rights. The events of the past few weeks, which had made a deep impression on the whole world, had strengthened his delegation's conviction that the time had come to begin negotiations for the purpose of ending the sufferings of the Palestinian people. Any just and durable solution would have to take into account the right of Israel, and the Palestinians, to a secure existence within internationally recognized boundaries. Italy appealed to Israel to reconsider its policy and, in particular, to agree to apply in the occupied Arab territories the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War. Convinced that everything possible must be done to support those populations, Italy advocated the convening of an international conference under United Nations auspices and was supplying all possible material assistance, in conjunction with its European partners, to alleviate the difficult economic situation of the Palestinians in the occupied territories.

21. While in the two cases he had just mentioned there was, unfortunately, no immediate prospect of negotiations aimed at peaceful solutions, his delegation's grave concern at the human-rights situation in another country, namely Afghanistan, was tempered by the hope of a political solution which was perhaps not far distant. Italy took note of the Special Rapporteur's conclusions and, in particular, his statement that the human-rights situation in Afghanistan could only improve with the withdrawal of Soviet forces and the holding of free elections. His delegation hoped that the negotiations taking place in Geneva would soon yield results. When the time came, Italy would be prepared to provide substantial assistance to facilitate the return of the Afghan refugees and the rebuilding of the country.
22. Just as it supported the aspirations to peace and economic progress of the peoples of Latin America, Italy, by virtue of its long-standing friendship and community of ideas, culture and origin with those peoples, whole-heartedly supported their efforts to assert their fundamental rights. Like those peoples, Italy was conscious of the fact that democratic and individual rights were the indivisible heritage of the international community and that their defence, day after day, demanded resistance to not only the temptation of acting outside the law but also that of leaving to others responsibility for the future for, as John Locke had said, tyranny began where the rule of law ended. Even though the history of the past few years had illustrated the capacity of the peoples of Latin America to struggle for their own right to freedom, there still existed on that continent situations which required some attention.

23. With regard to Chile, his delegation noted, first, that it was a country with a long-standing democratic and cultural tradition, so that the example of its political institutions could be important not only for Latin America but also elsewhere. Secondly, the country was one whose opposition forces had a powerful ally in world public opinion. Italy was deeply disappointed at the fact that nothing had come of the political liberalization announced over a year previously. The Special Rapporteur continued to report cases of violence, ill-treatment, intimidation and torture, as well as cases of persistently and alarmingly unlawful conduct on the part of the civil and military courts. Italy could therefore only condemn the Chilean régime and express its deep concern at the plebiscite which had been announced, since it feared that it would amount to a manoeuvre on the part of the régime to ensure its own survival.

24. As to El Salvador, his delegation felt that the firm and resolute commitment of the Duarte Government to the protection of human rights deserved to be encouraged. It therefore favoured the modification and adaptation of the means so far used by the Commission to monitor developments in the situation, tailoring them to the guarantees which the Government was in a position to extend and to the action it was taking with satisfactory results, despite the continuing civil war, which was still causing bloodshed. The same applied to Guatemala. The decisions taken at the previous session by the Commission responded to the needs dictated by the situation and represented due recognition of the effective commitment of the Government to the defence and promotion of individual rights.

25. The picture he had drawn of the world human-rights situation would be incomplete without a reference to the extremely dangerous crisis in the Arab-Persian Gulf, which for eight years had embroiled Iraq and Iran in a conflict that had led to numerous massacres and widespread destruction, as well as the denial of the most fundamental rights of the individual. Italy had taken note with interest of the Special Rapporteur's statement that the Iranian Government had expressed a willingness to co-operate on certain conditions. That reply was manifestly unsatisfactory, since the Tehran Government should give the Rapporteur an opportunity of visiting the country and conducting investigations there.
26. In addition, he wished to refer to the human-rights situation on the African continent. The entry into force in 1987 of the African Charter on Human and Peoples' Rights represented a particularly important step in the development of humanitarian problems on that continent. One encouraging result had been to promote a greater awareness of the overriding importance of respect for human rights and fundamental freedoms. Despite its priority, economic development could not be separated from constant attention to the other essential rights of the individual.

27. In the foregoing statement he had dwelt on those situations in which the violations of human rights were most manifest. There existed, however, other cases where a greater spirit of co-operation between States at present divided by disputes could have a decisive effect on the search for a solution to the problems of concern to the Commission. The first case was that of East Timor, a problem on which two countries with which Italy maintained friendly relations had for many years held divergent views. Italy hoped that a just solution would be found to that problem in the light of the legitimate interests of the parties concerned. Nor should the situation in Cyprus be overlooked: following the events of 1974, many persons had disappeared in that country. It was to be hoped, in that respect, that the tripartite Committee on Missing Persons in Cyprus would resume its activities in order to contribute to the clarification of unsolved cases. Similarly, his delegation hoped that the constructive climate prevailing in relations between Bulgaria and Turkey, recently reflected in the signature of a protocol, would contribute to the examination of the question of minorities in a spirit of mutual understanding.

28. He could not fail to note that the upholding of human rights throughout the world was being hampered by several obstacles. Unlike other speakers, however, he had wished to draw attention to certain events that might encourage the Commission to adopt a less pessimistic approach. That view was illustrated by the mere comparison of the present situation with that which had obtained at the beginning of the present century: there now existed, alongside appropriate international machinery, a world public opinion which could take up the defence of human rights wherever they were flouted or violated. It was only with the passage of time that conduct, practices and customs were consolidated, as had been the case with international law as a whole.

29. Mr. Delgado (Peru), Vice-Chairman, took the Chair.

30. Mr. JAYEWARDENE (Sri Lanka) said that, since the previous session, the situation in Sri Lanka had evolved considerably, but although some problems had been solved, others unfortunately persisted and were still causing concern. The Commission's main sphere of competence was the promotion of human rights, but it must be recognized that many of the issues raised before it were complicated by political, economic and other factors, and the situation in Sri Lanka was no exception; it was difficult to describe in isolation from those factors. The immediate geographical environment of Sri Lanka and events in neighbouring States had influenced the course of events on the island itself, which included the appearance of the cancer of terrorism in political life.
31. The most important new development since March 1987 had been the agreement between India and Sri Lanka signed on 29 June in Colombo (Sri Lanka). That agreement embodied two vital principles: first, it emphasized the strengthening of the traditional friendship between the two countries; secondly, it acknowledged the imperative need to solve the ethnic problem of Sri Lanka, with its consequent violence, and to ensure the safety, well-being and prosperity of people of all national communities. Successful implementation of the agreement depended on the good faith of the Government of Sri Lanka, the Tamil minority and the Government of India. There was no denying that the agreement involved considerable sacrifices, compromises and grave risks for the signatories, but it was an agreement for peace. The text had been distributed to delegations.

32. For its part, the Government of Sri Lanka had taken the necessary steps to bear more than its share of responsibility under the agreement. Parliament had amended the Constitution and passed the necessary legislation for the establishment of provincial councils, which would have the effect of delegating a large measure of power and administrative authority to the regional political units, including the Northern and Eastern provinces, which had been the main areas of conflict. The Northern Province had a Tamil majority, while the Eastern Province had nearly equal numbers of Sinhalese, Muslims and Tamils. The Tamils had demanded a merger of the two provinces under a single administration, but the Sinhalese and Muslims, who represented two thirds of the population of the Eastern Province, were against it. A poll was to be taken to determine whether the people of the Eastern Province wished to continue the trial merger or to retain the multi-ethnic status they had enjoyed for generations. In addition, a separate ministry had been created to set up the provincial councils. The devolution of authority by the Sri Lankan Government to its citizens in the North and East had been described by the Prime Minister of India as offering the Tamils "more than they ever hoped for".

33. Article 2.11 of the agreement provided for the granting by the President of Sri Lanka of a general amnesty to those held in custody under the Prevention of Terrorism Act and other emergency laws, or who had been accused, charged or convicted under those laws; 3,400 persons had been released. It had been requested that the amnesty be extended to persons detained for crimes which could not be described as political offences, either under international law or under internal law. But those who had committed the acts of terrorism which had caused the deaths of 17 civilians at Colombo Airport and of 120 persons at the bus station in the centre of the capital, and those who had killed 127 Sinhalese bus passengers on 17 April 1987, could not claim to benefit from the amnesty, since their crimes had not even had the excuse of being directed against symbols of the police or the army; the Government of Sri Lanka regarded them as crimes against humanity.

34. The success of the agreement of July 1987 depended largely on continued co-operation between India and Sri Lanka. The agreement established the obligation of the Indian Government to take all necessary measures to ensure that Indian territory was not used for activities prejudicial to the unity, integrity and security of Sri Lanka; the fulfilment of that obligation would promote respect for the principle of non-interference in the internal affairs of States and would help to restore normal conditions. The Indian navy and
coastguard were to co-operate with the Sri Lankan navy in preventing Tamil militants from launching operations against Sri Lanka across the Palk Strait between the two countries. Those measures should substantially impede terrorist operations. At present, an Indian peace-keeping force sent to Sri Lanka was engaged in disarming terrorist groups and trying to convince the last intransigent group - the LTTE - to join the mainstream Tamil groups, which had accepted the political negotiating process for the redress of their grievances. It was terrorism that had thwarted all dialogue and negotiation.

35. The overwhelming majority of the Tamil community had always rejected violence, murder and destruction as means of political action. Only the LTTE still demanded the establishment of a mono-ethnic racist entity and endeavoured to terrorize, by expulsion and killing, those who had had the courage to remain in the Eastern Province. Their methods included the liquidation of rival groups, sneak attacks on villages at night, ambushes on public transport and massacring the passengers, bomb attacks in crowded public places, and the use of landmines and other explosives.

36. Those comments served to show the significance of the Indo-Sri Lankan agreement for a return to normality in Sri Lanka. In the final analysis, however, it would be the people of all the communities of Sri Lanka who must determine how their aspirations could best be fulfilled and their fundamental rights preserved, promoted and protected. The Government was taking every possible step to re-establish conditions under which the wishes of all individuals in Sri Lanka could be freely articulated through a peaceful political process. Elections to the provincial councils were to be held shortly and nominations had already been called for. At the national level, general elections would take place in the latter part of the year, followed by a presidential election before February 1989.

37. The release from custody of those who had eschewed violence had brought them fresh opportunities of participating in the political process. Young militants were being rehabilitated and moving into the democratic political mainstream. The EPRLF group, for example, had laid down its arms and registered as a political party willing to contest elections and accept the fiat of the ballot over the bullet. That approach was the most powerful antidote to terrorism and the threat to life it posed in Sri Lanka and throughout the world.

38. In the aftermath of the instability which had racked Sri Lanka, many of its citizens had left. Some had genuinely feared the violence, but many had exploited it to justify their claims to "refugee status" and to asylum in greener economic pastures. Commercial interests in Sri Lanka and abroad had readily profited, providing, for a fee, not only travel documents, visas and tickets, but also the facilities of professional lobbies projecting Sri Lanka in a suitably bad light to provide justification for what was, in most cases, an economic exodus. Many Governments had, in all good faith, accepted large numbers of Sri Lankan Tamils who had cynically claimed victimization. Many had made good in more affluent circumstances and with opportunities economically more advantageous than those at home. Others had taken short cuts to lucrative personal advancement by engaging in the illegal narcotics trade and other international crimes. Disenchantment had set in in many
countries hosting Sri Lankan Tamils and agitation for their repatriation had been steadily increasing. After hard-headed analysis of the situation, Governments had decided that there was indeed a distinction, although it was sometimes very blurred, between economic migrants and refugees.

39. His delegation wished to draw attention to a judgment rendered on 16 December 1987 by the House of Lords, the highest court of the United Kingdom, in a case in which it had had to decide the correct test to apply in determining whether six Tamils from Sri Lanka, who had arrived in the United Kingdom between February and May 1987, were entitled to refugee status. After an examination of the case, and of the United Nations Convention relating to the Status of Refugees, as well as decisions taken in the United Kingdom and the United States, the House of Lords had upheld the decision of the Secretary of State refusing the applications for refugee status made by the six Tamils. The Secretary of State, in his decision, had expressed the view that army activities aimed at discovering and dealing with Tamil extremists did not constitute evidence of the persecution of Tamils as such. That view had not been disputed by counsel for any of the applicants, nor was it seriously maintained that any subgroup of Tamils, such as young men in the north of the country, were being subjected to persecution within the meaning of the Convention. The Secretary of State had also considered whether any individual applicant had been subjected to persecution and had decided that none of them had. The delegation of Sri Lanka understood that, on 1 March 1988, the Council of State of the Kingdom of the Netherlands had expressed views similar to those stated by the House of Lords. It seemed that certain Governments of Western countries had often allowed themselves to be stultified by the so-called Tamil lobby and certain suborned non-governmental organizations.

40. With the return to normality, many Sri Lankans had come back to the country on their own initiative. Since December 1987, 5,000 had returned from southern India, in addition to those who had returned earlier, and more would come back when the ferry service between India and Sri Lanka was resumed. A Ministry of Rehabilitation had been set up to co-ordinate activities for people who had had to leave their homes because of terrorist violence. The World Bank had funded a programme for housing reconstruction, and a crash programme of development financing was scheduled for the Jaffna district. Under the terms of the Indo-Sri Lankan agreement, the Government of India was to expedite the repatriation of Indian citizens residing in Sri Lanka, concurrently with the repatriation of Sri Lankan refugees from the State of Tamil Nadu in India. UNHCR had started a programme to assist in the rehabilitation of returning Sri Lankans as well as the rehabilitation of those displaced within the country as a result of terrorist violence. The Government of Sri Lanka was also continuing its co-operation with the International Committee of the Red Cross (ICRC).

41. The situation in Sri Lanka had been presented as though it was solely a matter of violation of human rights by the State, but delegations which had taken part in the Commission's previous session knew very well who the victims had been. Today that situation was seen for what it had always been, namely, a conflict affecting a State which was trying to preserve democratic forms, freedoms and structures in a multi-ethnic society, fighting against violent racially motivated groups exploited by external elements. Whatever legitimate
minority grievances there might have been had never had the slightest chance of redress by peaceful means, because of the assistance given by external interest to a small, violent, radical fringe which had terrorized the very groups whose interests it claimed to represent. The efforts of the Sri Lankan Government to deal with that violence had been constantly obstructed by the interests which had benefited, or believed they had benefited, from the continuation of violence. At the international level, the true dimensions of the Sri Lankan conflict had not been appreciated: a small and inexperienced army of little over 10,000 men was fighting to defend a democratic society having several ethnic groups, several languages and several religions, against ruthless, externally-supported terrorist groups.

42. His delegation had presented its position openly. Sri Lanka was not a perfect society, but it was on the threshold of a new era of constitutional and administrative change; the decentralization and devolution of powers of government and administration to nine provincial units in equal measure would further enhance the rights of all the population. The farmer, the fisherman and the worker would be able to choose their own legislators and have a separate provincial government of their own choice, composed of elected representatives living in their own area and hence more responsive to their needs. The high courts of the provinces would hear a wider range of appeals from the regional courts already established in the provinces; the writ of habeas corpus and other constitutional remedies would be available to the citizen in the courts of the province in which he lived. That new charter of devolved rights should usher in a new era in Sri Lanka, where the authorities were determined to respect and protect universally-recognized fundamental rights and freedoms. They would do so despite unwarranted attacks against them by detractors who came before the Commission to pontificate on human rights in Sri Lanka in a completely one-sided manner. Sri Lanka was quite capable of looking after its own interests.

43. Mr. Sene (Senegal), Chairman, resumed the Chair.

44. Mr. TANIGUCHI (Japan), after alluding to International Women's Day, spoke on item 12 of the agenda. He said that, for the examination of situations that were of particular concern to the Commission, the practice of appointing special representatives and rapporteurs to study a specific country or geographical area or a specific category of rights was much appreciated by Japan, as was the work done by the special representatives and rapporteurs. His delegation would first comment on the reports relating to the human-rights situation in certain countries.

45. In Afghanistan, according to the report of the Special Rapporteur (E/CN.4/1988/25), serious violations of fundamental human rights were continuing. Although there were some signs of improvement, such as resumption of the activities of ICRC, there were also reports of torture, the killing of political prisoners in some areas, and violations of the right to life, liberty and security of the person due to the continued armed conflict. It seemed that some refugees had returned to the country, but the general outflow of Afghans from the combat areas was continuing, and the number of refugees remained at the very high level of about 5 million.
46. In those circumstances his delegation welcomed the Soviet Union's announcement of its willingness to withdraw foreign troops from Afghanistan. That withdrawal should have a favourable effect on the restoration of human rights and fundamental freedoms in the country, but, as the Special Rapporteur had suggested, it seemed that in post-war Afghanistan it would be essential to adopt measures to secure the observance of human rights. The Commission might have to continue to watch developments very carefully before deciding whether the advisory services programme was an appropriate means of assistance in the case of Afghanistan. His delegation believed that measures should be taken to enable refugees to return to their homes in safety and with dignity, and hoped that the present political trend would be the harbinger of a new era of respect for human rights in Afghanistan.

47. With regard to Chile, his delegation had welcomed in 1987 the lifting of the state of siege and the establishment of the Ministry of the Interior's Advisory Commission on Human Rights (see E/CN.4/1988/7, para. 149). The Special Rapporteur's report (E/CN.4/1988/7) recorded the positive steps taken by the Chilean Government to reduce the number of Chileans forbidden to return to their country and to prevent the practice of torture and other ill-treatment of detainees. On the other hand, the report also referred to persistent violations of human rights such as prolonged periods of incommunicado detention, torture, and measures severely restricting the autonomy of the civil courts. In those circumstances, there was still much to be done in view of the plebiscite announced for 1988, which would enable Chileans to reaffirm their commitment to the protection and promotion of human rights. His delegation hoped that the Government would take other measures to improve the situation in that respect by following the Special Rapporteur's recommendations.

48. The report on El Salvador (E/CN.4/1988/23) confirmed that the situation there reflected the course of the conflict which had been going on for eight years. His delegation therefore welcomed the signature of the document known as Esquipulas II, and noted with satisfaction that the FMLN-FDR appeared to be emphasizing the importance of respect for human rights. To judge from the reduction in the number of summary executions of civilians for political reasons and in the number of political prisoners, the situation appeared to be improving. On the other hand, it was reported that the promotion of human rights was meeting with obstacles, such as the recent resurgence of "death squads".

49. His delegation noted the Special Representative's recommendation calling on the international community to provide assistance to Salvadorian refugees and displaced persons. His Government had made a contribution of 50 million yen in 1987 through the UNHCR General Programme for Central America and would consider the possibility of increasing its effort in 1988.

50. The situation in Iran was the subject of numerous detailed allegations of violations of human rights, which were recorded in the Special Rapporteur's report (E/CN.4/1988/24). Japan hoped that the Iranian authorities would allow the Special Representative to visit their country soon, so that he could make a better assessment of the human-rights situation in Iran.
51. In Cyprus, there was a new positive element in the situation - the improvement of relations between Greece and Turkey, and that should give new impetus to the Secretary-General’s efforts to settle the question.

52. The situation in Cuba had attracted the Commission’s attention since the previous year. His delegation was concerned about the various allegations of violations of human rights in that country and thought that, as the allegations were serious, the Commission should make every effort to form an objective view of the actual situation. It was important that the Commission should be able to discuss any draft resolution relating to particular situations and, consequently, procedural motions preventing such discussion were out of place. His delegation hoped that the Government of Cuba would co-operate with the Commission in order to clarify the situation and that it would reaffirm its commitment to the protection and promotion of human rights and fundamental freedoms.

53. Turning to the situation regarding certain categories of human rights, he referred to the report by Mr. Wako on summary or arbitrary executions (E/CN.4/1988/22), which were continuing in all parts of the world and often went undetected. The report drew attention to the alarming phenomenon of the killing of unarmed civilians by groups which were opposed to the Government or were not under its control; the international community should make concerted efforts to eliminate the root causes of such violence. To that end, it should continue to monitor cases of summary or arbitrary execution and devise practical ways and means of intervening, such as training programmes for law-enforcement officers recommended in the report.

54. The violation of human rights was one of the principal factors in the mass exodus of refugees and displaced persons. More attention should be paid to the root cause of those problems, and the evolution of the human rights situation in all parts of the world should be carefully monitored to detect any sign of deterioration. The violation of human rights could indeed be regarded as an important indicator giving warning of a possible mass exodus.

55. Lastly, with regard to the draft Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society, to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, his delegation welcomed the progress made by the Working Group and hoped that it would continue its efforts (E/CN.4/1988/26).

56. Mr. FRAMBACH (German Democratic Republic) said that the debate which had been going on for the past few days had revealed yet again the critical human-rights situation in Latin America. In a number of Latin American States, gross violations of human rights were still prevalent, and had serious repercussions on whole populations. In Haiti, a people’s first attempt to give itself a president, a parliament and local government by means of elections had been crushed in blood. Sham elections had been held amid terror and intimidation; their outcome was in no way the expression of the people’s free will. The same applied to the elections in Paraguay which, like those to be held in Chile, merely reflected the alarming human-rights situation in those two countries. In El Salvador, there was no reason to expect an end to human-rights violations since, on the contrary, repression was on the increase. Government troops carried out arbitrary attacks, murders and destruction aimed at the civilian population.
57. The German Democratic Republic had learned with satisfaction of the signing of the Guatemala Peace Plan, which was a constructive step showing the effectiveness of the Contadora process. All States in the region should make a contribution to the peace process; that meant making serious efforts to improve their internal situation, as Nicaragua had done in such exemplary fashion. It was also necessary to end all foreign interference in the region and to ensure complete respect for the right of self-determination of peoples, that was to say, their right to choose freely and without interference from abroad their mode of political and economic development.

58. The recognition of that fundamental principle of international law was not a matter of course everywhere. That was reflected in draft resolution E/CN.4/1988/L.26 submitted by the United States. Once again, the Commission's session had been used by one delegation for a slander campaign against socialist Cuba. That campaign was masterminded by the forces that gave political, economic and military support to reactionary and inhuman dictatorships in Latin America, while confronted with serious problems at home when it came to guaranteeing the enjoyment of almost every human right. Cuba's efforts to achieve the implementation of human rights in their entirety - economic, social, cultural, political and civil - could serve as an example for several other countries in the region. His delegation would merely draw attention to the results of a fact-finding mission carried out in January 1988 by the International Association against Torture, a non-governmental organization in consultative status with the Commission. The report drawn up by that organization summarized the results of the mission thus: "Human rights are respected in Cuba and endeavours are undertaken to secure their full implementation nationwide. There are no missing persons, no cases of torture, no degrading and inhuman treatment or cruelties committed".

59. His delegation considered that the Commission should not allow itself to be abused for self-seeking political purposes. In particular, it called on the developing countries represented in the Commission to take appropriate positions.

60. The representatives of Ireland and Belgium had made utterly groundless attacks on the German Democratic Republic, attacks which he rejected categorically. It was also inadmissible that those two delegations had said nothing about Western Europe and had refused to support resolutions relating to the mass violations of human rights, including the activities of mercenaries, which affected millions of people in the Middle East and southern Africa. Obviously, the attitude of Ireland and Belgium was far from genuine concern for the human being, but rather reflected one-sided political goals.

61. In the statement he had made at the previous meeting, the representative of the Federal Republic of Germany had repeated an old claim which was irreconcilable with contemporary realities and with the treaties concluded between the German Democratic Republic and the Federal Republic of Germany, including the Basic Relations Treaty of 21 December 1972. The German Democratic Republic remained fully committed to those agreements and to the communiqué released after the visit to the Federal Republic of Germany, in September 1987, of Mr. Honecker, the Chairman of the Council of State of the German Democratic Republic. That communiqué had stated that the two sides had
agreed to preserve and develop what had been achieved so far, acting on the principle that each State respected the independence and autonomy of the other with regard to its internal and external affairs; and that the desire for understanding and realism should be the guideline for constructive co-operation between the two States with the aim of achieving practical results. The German Democratic Republic counted on mutual efforts to secure peace and attain disarmament, adopting a businesslike approach and taking account of legitimate interests in all areas of government-to-government dealings. His delegation vigorously rejected the misinterpretations contained in the statement by the representative of the Federal Republic of Germany; they were detrimental to the attainment of those objectives.

62. Mrs. CASCO (Nicaragua) said that since 1981 her country had endured a war of aggression waged by the Government of the United States which had caused more than 50,000 casualties and direct or indirect damage valued at $3.5 billion. The main features of that terror were the mining of ports, air raids and the destruction of dwellings, schools and infrastructure of various kinds. Despite condemnation by the international community, the United States was continuing its aggression against Nicaragua, and the President of the United States had decided to sign legislation authorizing the granting of further credits to the mercenary forces. The groups of mercenaries were assisted by United States military advisers, equipped with a variety of weapons and supported by the CIA, which provided them with detailed plans of the economic and civilian infrastructures that were their targets. The policy of State terrorism pursued by the Government of the United States, whose hallmark was assassination and kidnapping, had caused countless victims, including 2,038 women, more than 2,000 children, 176 teachers and 56 doctors. In Nicaragua, there were over 10,000 war orphans and more than 250,000 displaced persons. In the present century, few peoples had endured a martyrdom like that of the people of Nicaragua who, having lost more than 50,000 of its sons during the Somoza dictatorship, had lost another 50,000 in recent years as a result of aggression by the richest Power in the world against a small and poor country, whose scope for development had thus been considerably reduced.

63. The brutal methods of the bands of mercenaries controlled and paid by the United States were common knowledge. Those bands had caused many casualties in rural areas, mined Nicaraguan ports, attacked - in conformity with their "operational handbook" - civilian and economic targets, and thus threatened the existence of entire populations, in contempt of human dignity and international law. That conduct was particularly serious since it was the official policy of a world Power possessing material and technical resources that multiplied the destructive effects of its State terrorism, especially, when that terrorism was applied systematically to small, underdeveloped countries like Nicaragua.

64. According to a report prepared by Acción Permanente Cristiana por la Paz, teams which had included Americans had visited Nicaragua and found that the Contras carefully selected those they abducted and forced them to carry supplies, equipment or their dead or wounded comrades to their camps, usually in Honduran territory. Abducted persons identified as having been in the army or having done military service were executed as a matter of course. The same
report, which covered the period February-July 1987, indicated that the Contras were also hostile to women involved in community social work, including teachers and nurses. The authors of the report gave an account of the abduction by the Contras of four peasants on 16 March 1987 and the murder of one of them by members of the FDN. It would be recalled that a photograph published in 1985 in Newsweek showing a Contra stabbing a peasant to death with a bayonet had aroused reactions in the United States Congress, where Senator Tom Harkin, in particular, had said that the photo had reminded him of what he had seen in Viet Nam.

65. The controversy over the question of the illegal and immoral aid to the Contras in the American and international media usually disregarded the human aspect of that daily tragedy. A Canadian missionary working in a rural parish in Nicaragua had told a mission of the Canadian Ecumenical Committee for Human Rights in Latin America that those who had buried their friends and heard mothers and children weeping had their own opinion about the generosity of American aid to the Contras.

66. Her delegation had a report, which was available to the Commission, describing in detail the attacks made on the civilian population in 1987 by the bands of mercenaries and setting forth the results of what the Pentagon strategists called a "low intensity conflict" or a "total war at the grass-roots level", in other words, a conflict in which there were two or three times as many civilian casualties as military losses. Thus, three children were fighting for their lives in a Managua hospital after being grievously injured while playing with a United States mine which had been placed behind their house. Similar events had occurred on other occasions. That was an example of how the current United States Administration was striving to promote human rights in Nicaragua!

67. The representative of the United States had sought to persuade the Commission of his Government's interest in the human-rights situation in various parts of the world. Nicaragua wished to remind that representative that it was his country which had dropped the atomic bomb on Hiroshima and had carried out totally inhuman bombing raids in Cambodia and Viet Nam; which had directed and financed the destabilization and overthrow of the constitutional Government of President Salvador Allende and was directly responsible for the deaths of thousands of Chileans and the establishment of the military dictatorship currently ruling Chile; which had invaded and bombed Grenada, where it had caused, inter alia, the deaths of 25 patients in a hospital, an act that had led to its condemnation by the Inter-American Commission on Human Rights for violation of the right to life; which had unscrupulously ordered the CIA to place a bomb in an aircraft belonging to the Cubana de Aviacion Company in Barbados, thereby causing the deaths of 76 innocent persons; which did not hesitate to bribe waverers and induce them to change their nationality so as to be able to make subsequent use of their testimony, purchased at a high cost, in an attempt to justify its immoral and illegal policy; which had invaded and militarily occupied Nicaragua on three occasions, imposing on it for over 50 years a criminal military dictatorship that had murdered, executed, bombed and tortured hundreds of Nicaraguan peasants; which had organized, armed, maintained and financed former members of the Somoza guards, who today continued to murder and kidnap peasants and innocent civilians and
laid mines in public places. That was the conduct of a country which set itself up as a champion of human rights and used its influence to put pressure on other Governments, for reasons unconnected with the Commission's noble objectives, for the opening of an investigation into the human-rights situation in a country on which the United States imposed a total blockade whereas for historical reasons that country's survival depended almost exclusively on the American market.

68. There was a single point on which Nicaragua was in agreement with the statement by the representative of the United States and that was that all those crimes could not be overlooked by the international community which would otherwise become an accomplice in the policy of terror waged by the United States in Nicaragua and elsewhere in the world. The United States had no moral authority to speak of the human-rights situation in Nicaragua, for to do so it would have to bring its conduct into line with the elementary rules of international law and comply with the decision of the International Court of Justice, which, on 27 June 1986, had condemned the United States for violation of international humanitarian law, had rejected the charge that Nicaragua was exporting its revolution, and had taken the view that the Nicaraguan Government had, at the seventeenth consultative meeting of the Ministers for Foreign Affairs of the Organization of American States, made no promise that constituted a legal obligation, that if the Nicaraguan Government had made a promise, it had done so to the OAS and not to the United States, and above all that the Government of the United States could invoke no grounds to justify its policy of force and aggression against Nicaragua.

69. If the United States delegation was genuinely concerned at the human-rights situation in South Africa and Chile, why did its Government not adopt comprehensive and mandatory sanctions against the Pretoria régime, as the international community requested? Why did it continue to support Pinochet's criminal régime? Why did it press for more credits for the bands of mercenaries? Why did it continue its illegal war against Nicaragua? It was vital to end all assistance, whether direct or indirect, official or unofficial, to the Contras, as the International Court of Justice had recognized, in order to restore peace and respect for human rights in Latin America.

70. Mr. CASTELLON (Nicaragua), referring to the question of Cyprus, said that one of the principles proclaimed by the Charter of the United Nations was the right of all peoples to self-determination. That principle had also been incorporated in article 1 of the International Covenants on Human Rights, but the people of Cyprus had been denied its right to self-determination for 14 years by a foreign occupation which entailed other human-rights infringements, despite the resolutions of the General Assembly, the Security Council and the Commission calling for an end to that occupation. More than 200,000 inhabitants of the island, having been expelled from their land by the occupation forces, were refugees in their own country, and there were more than 65,000 settlers from Turkey in the occupied part of Cyprus, who together with the 35,000 soldiers of the army of occupation, made up a number of persons equal to that of the Turkish Cypriot community.
71. The Turkish policy of introducing settlers seemed to be aimed at modifying the demographic balance between Turkish Cypriots and Greek Cypriots in order to justify the claim by the Turks for a larger land area and greater political power in Cyprus; keeping a large number of Turks in the occupied part of Cyprus so as to secure the balance of political power and to ensure that Turkish Cypriots pursued the same policy as the Turkish Government, since Turkey did not trust the Turkish Cypriots; putting obstacles in the way of a solution to the problem of Cyprus; and forming new reserves for the occupation forces in Cyprus. The presence of a large number of settlers in the occupied part of Cyprus constituted, inter alia, an infringement of the rights of the Turkish Cypriots themselves. The occupation authorities had endeavoured to justify the breaches of human rights and fundamental freedoms of the Cypriot people by setting up a pseudo-State, which had been declared unlawful by the Security Council in resolution 541 (1983) and was recognized only by the invaders.

72. The solution of the Cyprus problem was dependent on the immediate withdrawal of the occupation forces. The parties concerned must make a determined effort to preserve the independence, sovereignty and territorial integrity of the island, together with its status as a non-aligned country, as the United Nations and the Non-Aligned Movement had advocated in several resolutions. Nicaragua reaffirmed its solidarity with the Government and people of Cyprus in their struggle for peace and territorial integrity.

CONSIDERATION OF DRAFT RESOLUTIONS RELATING TO AGENDA ITEM 10

Draft resolution E/CN.4/1988/L.30

73. Mr. PACE (Secretary of the Commission) said that the sponsors of the draft resolution had made a number of changes in their text. The fifth preambular paragraph should be replaced by the following:

"Noting that the United Nations, having adopted these various instruments, has an interest in ensuring that any difficulties affecting the functioning of the relevant monitoring bodies are appropriately addressed".

74. The sixth preambular paragraph should read:

"Bearing in mind that the Economic and Social Council is called upon to consider annual reports on the activities of all such bodies and that it can therefore make appropriate recommendations to the General Assembly".

75. Mr. DESPOUY (Argentina), introducing draft resolution E/CN.4/1988/L.30 on behalf of its sponsors, which had been joined by Austria, Costa Rica and Mexico, recalled that various international human-rights instruments drafted and adopted by the United Nations, in certain cases via the Commission, established bodies to monitor the implementation of their provisions. The work of those bodies could be financed from the United Nations regular budget, as in the case of the committees established to monitor the implementation of
the two Covenants, by the States parties, as in the case of the Committee against Torture, or by a mixed system, as in the case of the Committee on the Elimination of Racial Discrimination (CERD). Some of those methods for sharing costs had run into operational difficulties particularly in the case of CERD, so much so that it would not be able to meet in March as scheduled. Other organs seemed likely to experience difficulties in the future.

76. The draft resolution under consideration sought to draw the Economic and Social Council's attention to that question in order to keep it informed of that important issue, given the fact that the United Nations had an interest in ensuring that the machinery set up by the international community to protect human rights worked efficiently.

77. The sponsors of the draft resolution, and particularly the Netherlands, had held all necessary consultations to achieve a consensus text which the Commission should be able to adopt without difficulty.

Draft resolution E/CN.4/1988/L.42

78. Mr. TROUVEROY (Belgium) introducing draft resolution E/CN.4/1988/L.42 on behalf of the sponsors, to which should be added the delegations of Cyprus, Luxembourg and the Gambia, drew the Commission's attention to operative paragraph 7, which called for the mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to be continued for two years. Apart from the Special Rapporteur's outstanding qualities and the importance of his mandate, of which all were aware, the continuation of the mandate would have administrative and financial advantages, since it would make for improved management of the Commission's assured resources; moreover, the Special Rapporteur would have more time for discussions with Governments since, as the report stated, on several occasions Governments had not had time to reply to requests for information transmitted to them. It was obvious that that decision should be extended to the mandate of all special rapporteurs appointed by the Commission to study thematic issues, and the sponsors would be submitting a document along those lines in the very near future. The sponsors hoped that the draft resolution could be adopted by consensus.

Draft resolution E/CN.4/1988/L.44

79. Mr. STEEL (United Kingdom), introducing draft resolution E/CN.4/1988/L.44 on behalf of the sponsors, to which the delegations of Cyprus and Spain should be added, explained that the sponsors had wished to ensure that there was more co-ordination and co-operation among the many international agencies and United Nations bodies active in the defence of human rights, so as to enable the Commission to receive better guidance in its decisions. The sponsors hoped that the Commission would adopt the draft resolution by consensus as it had done in the case of the corresponding resolution at its forty-third session.

Draft resolution E/CN.4/1988/L.48

80. Mr. WARTIN (France), introducing draft resolution E/CN.4/1988/L.48 on behalf of the sponsors, to which the delegation of Luxembourg should be added, recalled that, as the General Assembly had requested the Commission in 1978 to
consider the question of disappeared persons with a view to making appropriate recommendations, the Commission had decided in 1980 to establish a working group consisting of five of its members to serve as experts appointed in an individual capacity. During its eight years of activity, the working group had made contact with 45 Governments in order to take up more than 15,000 cases. In 1987, there had apparently been reports of cases of enforced or involuntary disappearance in 14 of the 40 countries whose situation had been studied by the working group. In view of the persistence of the phenomenon and the large number of unclarified cases, the sponsors felt that the Commission should continue to pay careful attention to that phenomenon. That was the purpose of the draft resolution, which as in previous years, it should be possible to adopt without a vote.

Draft resolution E/CN.4/1988/L.53

81. Mrs. MERCHANT (Norway), introducing draft resolution E/CN.4/1988/L.53 on behalf of the sponsors, to which the delegation of Italy should be added, emphasized that the text was intended primarily to thank those Governments and organizations which had made or pledged contributions to the United Nations Voluntary Fund for Victims of Torture, and to secure further contributions on a more regular basis. The sponsors also wanted the fund's existence and humanitarian objective to be properly publicized, and to that end they requested the Secretary-General to make use of all existing possibilities in order to assist the Board of Trustees in making the Fund better known. They hoped that the draft resolution could be adopted by consensus.

Draft resolution E/CN.4/1988/L.54

82. Mr. HOYLAND (Norway), introducing draft resolution E/CN.4/1988/L.54 on behalf of the sponsors, to which Luxembourg should be added, explained that the purpose of the text was to secure the universal implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Those States which had not yet become parties to the Convention were accordingly urged to do so as a matter of priority and those that had ratified or acceded to it were invited to consider the possibility of making the declarations provided for in articles 21 and 22. The sponsors hoped that the Commission would adopt the draft resolution without a vote.


83. Mr. PACE (Secretary of the Commission), pointed out that in the English text of operative paragraph 3, "forty-fourth session" should be changed to "forty-fifth session".

84. Mr. STEEL (United Kingdom), introducing draft resolution E/CN.4/1988/L.55 on behalf of the sponsors, to which the delegations of Luxembourg and the Netherlands should be added, said that that text, which closely followed similar resolutions submitted at earlier sessions of the Commission, sought to promote respect by all States for the right to freedom of opinion and expression, which was infringed all too often around the world. The sponsors hoped that the draft resolution could be adopted without a vote.
Draft resolution E/CN.4/1988/L.56

85. Mr. WARIN (France) introduced draft resolution E/CN.4/1988/L.56 on behalf of the sponsors, to which the delegation of Honduras should be added. The sponsors, alarmed at the growing number of instances of hostage-taking whose victims in some cases continued to be deprived of freedom for very long periods, believed that the Commission should concern itself with that particularly serious violation of fundamental rights, and hoped that all States members of the Commission would also wish to express their condemnation of those inadmissible acts of violence by adopting the draft resolution without a vote.


86. Mr. PACE (Secretary of the Commission) said that in operative paragraph 2 of draft resolution E/CN.4/1988/L.61, the word "peacefully" should be placed after "seeking" and not after "exercise".

87. Mr. STEEL (United Kingdom) introducing the draft resolution on behalf of the sponsors, to which the delegations of Nicaragua and Senegal should be added, stressed that the text was not directed at any Government, region or system in particular and was therefore not controversial. It focused both on the arrest and detention of persons who had expressed their opinion in a peaceful manner and on the treatment received by those detainees. It had a triple objective: the Commission first expressed its concern at the large number of prisoners of opinion throughout the world; it went on to make a humanitarian appeal; and lastly, it decided to consider the question at its forty-fifth session. All the rights mentioned in operative paragraph 1 were established in the International Covenants on Human Rights and in the fundamental laws and constitutions of all States Members of the United Nations. As the views of many delegations belonging to all regional groups had been taken into account in the text, its sponsors hoped that it could be adopted without a vote.

Draft resolution E/CN.4/1988/L.64

88. Mr. STRUYVE (Belgium), introducing draft resolution E/CN.4/1988/L.64 on behalf of the sponsors, to which the delegations of Nicaragua and the Philippines should be added, recalled that at its forty-second session the Commission had adopted by consensus resolution 1986/32, in which it had requested the Sub-Commission to consider the report of the Special Rapporteur on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/1985/18 and Add.1-6). The Sub-Commission had not been able to do so since it had not held a session in 1986. His delegation had therefore taken the initiative of resubmitting a draft resolution to ensure a follow-up to Sub-Commission resolution 1987/23, whereby the Sub-Commission had decided to consider the draft declaration on the independence of justice, proposed by the Special Rapporteur, at its next session as a separate agenda item on a priority basis. It should be noted that the text of draft resolution E/CN.4/1988/L.64 had been agreed upon following lengthy negotiations with delegations from the various regions, whose helpful comments had been taken into account. The sponsors hoped that the Commission would adopt the draft resolution without a vote.
Draft resolution E/CN.4/1988/L.66

89. Mrs. GOMES (Portugal), introducing draft resolution E/CN.4/1988/L.66 on behalf of the sponsors, to which the delegations of Nicaragua and the Federal Republic of Germany should be added, recalled that every year about 100 staff members of the United Nations, the specialized agencies and related organizations were arrested, detained, imprisoned, reported missing or held in various countries against their will, in most cases by their own Government. Some were abducted and murdered by "persons unknown"; others died in detention without the slightest explanation by their Government.

90. The majority of cases of arrest and detention reported to the United Nations Co-ordinator for Security Measures were dealt with speedily, but some remained unresolved, despite all the efforts made by the United Nations system. The most recent information indicated that the rights of some 60 staff members were currently being violated.

91. In principle, all staff members in the United Nations system enjoyed the privileges and immunities necessary to enable them to perform their duties, in the interests of the Organization and not in their own interests. They were not exempted from fulfilling with their private obligations or complying with the laws and police regulations in force.

92. The Commission could not remain silent about practices which, apart from their inhumanity, were gradually undermining the United Nations by flouting the authority of the Secretary-General and the principles of the Charter. That was the rationale of the draft resolution, which its sponsors ventured to hope could be endorsed by all members of the Commission.

93. Mr. PACE (Secretary of the Commission) read out a draft decision recommending to the Economic and Social Council the extension, for a two-year period, of the mandate of all the Commission's Special Rapporteurs. That decision would concern the Special Rapporteur on the question of the use of mercenaries, the Special Rapporteur on the adverse consequences, for the enjoyment of human rights, of political, military, economic and other forms of assistance given to colonialist and racist regimes in southern Africa, the Special Rapporteur on the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the Special Rapporteur on torture and the Special Rapporteur on summary and arbitrary executions.

94. The CHAIRMAN said that, if there was no objection, he would take it that the Commission wished to adopt the draft decision without a vote.

95. It was so decided.

96. The CHAIRMAN reminded the Commission that draft resolution E/CN.4/1988/L.68 had been withdrawn. The Commission was now ready to take a decision on all the draft resolutions submitted under agenda item 10.

97. Mr. FRAMBACH (German Democratic Republic), speaking in explanation of vote before the vote, said that he did not intend to request a vote on draft resolution E/CN.4/1988/L.42 but wished to point out, with regret, that its sponsors had not been prepared to take account of the position of all States
in the text. His delegation was therefore compelled to repeat what it had said at the 31st meeting (see E/CN.4/1988/SR.31, para. 10), namely that, following the entry into force of the Convention against Torture and the establishment of machinery to monitor the implementation of that Convention, the Special Rapporteur should concern himself only with those States that had not ratified the Convention. He believed that the activities of the Special Rapporteur were liable to diminish the overall scope of the Convention, constituted a serious impairment of States' freedom of contract, and duplicated the work of other bodies, something which more than ever should be avoided in view of the financial crisis faced by the United Nations.

98. His Government was in the process of preparing its report on the implementation of the Convention against Torture and hoped to co-operate in a meaningful way with the Committee against Torture.


100. Mr. FRAMBACH (German Democratic Republic) said that he did not intend to request a vote on draft resolution E/CN.4/1988/L.54, but wished to repeat, in connection with operative paragraph 3 of the text, the position he had expressed at the 31st meeting of the Commission (loc. cit.); the statement by the Government of the German Democratic Republic on financing was a logical consequence of the reservations which it had entered concerning certain functions of the Committee against Torture and which were fully in keeping with article 19 of the Vienna Convention on the Law of Treaties.


102. Mr. OKONJI (Nigeria) said he did not intend to request a vote on draft resolution E/CN.4/1988/L.61, but suggested that the word "peacefully" should be deleted from operative paragraph 2, since it lent itself to a variety of interpretations and offered a flimsy pretext for arresting and imprisoning individuals.

103. Mr. STEEL (United Kingdom), supported by Mrs. MUKHERJEE (India), said that he appreciated the concern of the Nigerian delegation, but could reassure it on that score. The sponsors of the draft resolution had wanted to insert the word "peacefully" in connection with the methods used to exercise the freedom of expression in order to show clearly that the rights and freedoms enunciated in operative paragraph 1 must not admit of abuses. The text sought only to ensure respect for universally recognized principles.

104. Mr. OKONJI (Nigeria) said that he acknowledged the soundness of the arguments adduced by the United Kingdom delegation but was afraid that the word "peacefully" might be used against liberation movements.

105. Mr. HACENE (Algeria) said that he appreciated the position of the United Kingdom representative and, like other representatives, would not call for a vote on the draft resolution. But like the Nigerian representative, he thought that the wording in question might be prejudicial to liberation movements, particularly those combating apartheid.

107. The CHAIRMAN invited those delegations that wished to do so to comment on the resolutions which the Commission had just adopted.

108. Mr. MONTEMAYOR (Mexico), referring to the resolution contained in document E/CN.4/1988/L.48, considered that the method of operation of the Working Group on Enforced or Involuntary Disappearances should be reviewed carefully and defined more precisely. The Group should also make a more rigorous and balanced study of the information submitted to it, so as to secure increased co-operation from Governments.

109. Mr. PRASAD (India) said that his delegation had listened to the statements by the delegations of Nigeria and Algeria on paragraph 2 of the resolution contained in document E/CN.4/1988/L.61, and wished to recall its consistent view that the liberation movements of southern Africa were entitled to use all means available to them in their struggle against apartheid. His delegation had always supported explicit resolutions on that question.

110. Mr. JOHNSON (United States of America) referred to the text of document E/CN.4/1988/L.30. His delegation had joined the consensus on the resolution relating to financing of the implementation machinery for various human-rights instruments on the understanding that the text merely described the existing situation, in no way prejudged the outcome of the relevant deliberations of the Economic and Social Council, and did not seek to give any instructions on the approach to be adopted.

111. The CHAIRMAN observed that the Commission had thus concluded its consideration of agenda item 10.

The summary record of the second part of the meeting appears as document E/CN.4/1988/SR.52/Add.1