

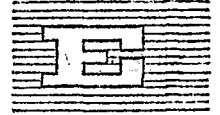
UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/1983/SR.23
18 February 1983

Original: ENGLISH



COMMISSION ON HUMAN RIGHTS

Thirty-ninth session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 16 February 1983, at 10 a.m.

<u>Chairman:</u>	Mr. OTUNNU	(Uganda)
later:	Mr. HAYES	(Ireland)

CONTENTS

Question of the violation of human rights in the occupied Arab territories, including Palestine (continued)

The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation (continued)

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) Question of enforced or involuntary disappearances.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth 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 meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.83-15370

The meeting was called to order at 10.10 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES INCLUDING PALESTINE (agenda item 4) (continued) (E/CN.4/1983/L.11-L.13)

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (agenda item 9) (continued) (E/CN.4/1983/L.14/Corr.1 and L.17; E/CN.4/1983/4, chapter I-A, draft resolution VII)

E/CN.4/1983/L.14/Corr.1

1. Mr. BEAULNE (Canada), speaking in explanation of vote, said that his delegation would abstain in the vote on draft resolution E/CN.4/1983/L.14/Corr.1 because of Canada's close ties with the various countries involved in the question of Western Sahara. It deferred completely to the OAU decision on the subject.

2. Draft resolution E/CN.4/1983/L.14/Corr.1 was adopted by 16 votes to 2, with 15 abstentions.

Draft resolution E/CN.4/1983/L.17

3. Mr. ZORIN (Union of Soviet Socialist Republics) said that his delegation would vote against draft resolution E/CN.4/1983/L.17. The observer for Afghanistan, as well as a number of other speakers, had already drawn attention to the heinous and unfounded nature of the comments made by certain delegations in their efforts to impose the draft resolution on the Commission. The draft resolution was chiefly a United States initiative aimed at camouflaging the undeclared war being waged on the Afghan people from the territory of Pakistan. Pakistan had in fact become a base for equipping and supplying saboteurs and terrorists for their incursions into Afghan territory.

4. The observer for Afghanistan had drawn attention to the illicit and indeed harmful nature of the draft resolution, which was totally contrary to the purposes and principles of the Charter and completely distorted the situation in Afghanistan and surrounding countries. It violated the sovereignty of Afghanistan and the Afghan people's right to self-determination and to organize their lives without outside interference. The draft resolution thus perpetuated tension in the area instead of reducing it.

5. Negotiation was the only road to détente in the region. As Soviet Foreign Minister Gromyko had stated at the thirty-seventh session of the General Assembly, a constructive step had been taken in that direction with the initiation of talks between representatives of Afghanistan and Pakistan, through the good offices of the personal representative of the Secretary-General. Now that a dialogue had been established which might provide a sound basis for a settlement, nothing should be done that might upset the negotiating process.

6. To introduce the so-called "question of Afghanistan" into the Commission's work was to play into the hands of those who were seeking to sabotage a peaceful settlement in order to further their own hegemonistic interests in the area. Those who supported the draft resolution were thus supporting continued tension in the area.

7. His delegation would vote against the draft resolution and called on all those who respected the principles and norms of international law and hoped for a return to normality in the area to do likewise.

8. Mr. KONSTANTINOV (Bulgaria) said that his delegation would vote against draft resolution E/CN.4/1983/L.17. It had always strongly opposed the introduction of the so-called "question of Afghanistan" into the Commission's work as a blatant violation of the Charter and the principles of international law. That so-called question had been invented and brought before the United Nations by certain Western and other countries for their own political ends and in order to prevent the Afghan people from exercising their right to self-determination and to choose their own way of life.

9. The terrorism and sabotage being launched by reactionary forces from neighbouring countries was the real cause of tension in the region and thwarted all Afghanistan's efforts to find a political solution. To adopt draft resolution E/CN.4/1983/L.17 would be to violate the sovereignty of a State Member of the United Nations and to interfere in its internal affairs. The draft resolution was thus illegal.

10. Mr. MA (China) said that his delegation would vote for draft resolution E/CN.4/1983/L.17, which reflected fully the real situation in Afghanistan. The draft resolution drew attention to the crux of the problem, namely the military occupation of Afghanistan by 100,000 Soviet troops which had undermined its sovereignty, independence, territorial integrity and non-aligned character and deprived its people of the right of self-determination, in violation of the purposes and principles of the Charter and basic norms of international relations. The international community could not remain indifferent to such hegemonistic acts and the Commission had every justification for considering the question under the item on self-determination. The purpose of the draft resolution was the immediate, unconditional withdrawal of all foreign occupation forces from Afghanistan and the restoration of the Afghan people's right of self-determination.

11. Not only had the Afghan people been denied their right to self-determination, but their fundamental human rights had been trampled on. The abundant evidence was there for all to see. It was therefore entirely necessary for the Commission to adopt the draft resolution in order to safeguard and restore the Afghan people's basic human rights.

12. The Commission must show deep concern over the sufferings of the millions of Afghan refugees who were not only homeless and forced to face endless misery but were also imposing a heavy economic and social burden on neighbouring countries, especially Pakistan. The draft resolution confirmed the right of the Afghan refugees to return to their homes in safety and honour - a minimum humanitarian demand. In order for the refugees to be able to return, however, an end must first be put to the foreign occupation of Afghanistan and to the suppression and persecution of its population by the occupying troops. There was certainly nothing controversial about such a demand. His delegation endorsed fully the appeal for humanitarian assistance made in operative paragraph 9 of the draft resolution.

13. He wished to reiterate that the Commission was entirely justified in considering the question of Afghanistan as a matter of priority and had a duty to adopt a resolution condemning acts of aggression and occupation. It was in the interests of justice that the overwhelming majority of members of the Commission had voted in favour of the resolutions on Afghanistan in the past.

14. Mr. KHMEL (Ukrainian Soviet Socialist Republic) said that draft resolution E/CN.4/1983/L.17 was illegal and offensive. Afghanistan was an independent sovereign State and a respected Member of the United Nations, and he wished to know why the situation in that country was being considered in the Commission under the item on self-determination. The draft resolution did not address itself to the crux of the problem and had been formulated purely to undermine Afghanistan's attempts to place the April 1978 revolution on a solid basis. Only those who had lived like parasites before the revolution were now opposing it. Many Afghans were already returning to their country and it was the counter-revolutionaries that were fighting as mercenaries of imperialism to regain their privileges by force. In so doing, they were opening the way for foreign intervention.

15. The draft resolution did not lay the blame for such illegal acts on the right quarter. Such acts flouted the wishes of the Afghan people and were perpetrated by terrorists trained and equipped in Pakistan by the CIA. That was the real threat to the Afghan people.

16. The draft resolution flouted elementary principles of equity and interfered in Afghanistan's internal affairs. It was dictated by the forces of imperialism. His delegation therefore categorically opposed the draft resolution.

17. A vote was taken by roll-call on draft resolution E/CN.4/1983/L.17.

18. Canada, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Australia, Bangladesh, Brazil, Canada, China, Colombia, Fiji, France, Gambia, Germany, Federal Republic of, Ghana, Ireland, Italy, Japan, Jordan, Mexico, Netherlands, Pakistan, Philippines, Rwanda, Senegal, Togo, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Yugoslavia, Zimbabwe.

Against: Bulgaria, Cuba, Libyan Arab Jamahiriya, Mozambique, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Cyprus, Finland, India, Nicaragua, Uganda.

19. Draft resolution E/CN.4/1983/L.17 was adopted by 29 votes to 7, with 5 abstentions.

E/CN.4/1983/4, chapter I - A, draft resolution VII

20. Mr. CARRIER (Canada), speaking in explanation of vote, said that the fact that his delegation was opposed to draft resolution VII submitted by the Sub-Commission (E/CN.4/1983/4, chapter I - A) in no way meant that his Government did not care about the needs of the people of East Timor; still less about any possible violations of their rights. Its opposition to the draft resolution was in conformity with the position which his Government had taken on the question in the General Assembly since 1980. While his Government did not approve of the way in which East Timor had been integrated into Indonesia, the complex events that had taken place between the time of the Portuguese departure from East Timor and the latter's integration into Indonesia caused it to doubt the usefulness of extending the debate on the subject to the Commission.

21. The international community should direct its attention to the humanitarian and developmental needs of East Timor and in that connection his delegation recognized the efforts made by the Indonesian Government to co-operate with the international agencies that were helping to improve the situation in the territory. It appealed to that Government to continue such co-operation and based its position on the hope that the Indonesian Government would continue to take steps to satisfy the humanitarian and developmental needs of the people of East Timor and to safeguard their fundamental human rights.

22. Mr. CHOWDHURY (Bangladesh) said that everyone agreed that colonialism was a bad thing. East Timor had managed to put an end to 400 years of Portuguese colonialism and had now participated in free and fair elections and exercised its rights through representation in the Indonesian parliament.

23. The representative of Indonesia and a number of other delegations had testified to how the Indonesian Government had done more for the people of East Timor over the past six years than had been done for them throughout 400 years of colonial rule. The Far Eastern Review of 6 August 1982 had also reported that most East Timorese credited the Indonesian Government with providing them with more opportunities than had the Portuguese. The former Portuguese governor had been invited back to the territory and had confirmed that more had indeed been done over the past five years than the Portuguese had done in 50 years. Most East Timorese agreed that Indonesia was spending more money and creating more opportunities for local people than the Portuguese had done. The Australian Financial Review of 25 January 1983 had published a report in the same vein that was substantiated by such individuals as former Prime Minister Gough Whitlam and a number of Australian journalists. UNHCR, UNICEF and ICRC had all expressed appreciation at the improvements in East Timor.

24. That information had not been available to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, with the result that it had been unable to take such developments into account when adopting draft resolution VII. When the British had decided to leave the Indian subcontinent, they had left the region to its own fate. Similarly, having left East Timor, Portugal should let that territory decide its own fate. The people of East Timor had done so unequivocally, and there was no point in reopening the question and creating disruption where there was now peace. His delegation therefore fully supported the position of the Indonesian Government and would vote against the draft resolution.

25. At the request of the representative of Bangladesh, a vote was taken by roll-call on draft resolution VII.

26. Zimbabwe, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Brazil, China, Cuba, Cyprus, Ghana, Ireland, Libyan Arab Jamahiriya, Mexico, Mozambique, Nicaragua, Togo, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania, Zimbabwe.

Against: Argentina, Australia, Bangladesh, Canada, Colombia, Fiji, Gambia, India, Japan, Jordan, Pakistan, Philippines, United States of America, Uruguay.

Abstaining: Finland, France, Germany, Federal Republic of, Italy, Netherlands, Poland, Rwanda, Senegal, United Kingdom of Great Britain and Northern Ireland, Yugoslavia.

27. Draft resolution VII was adopted by 16 votes to 14, with 10 abstentions.

28. Mr. CALERO RODRIQUES (Brazil), speaking in explanation of vote, said that his delegation had voted in favour of all the draft resolutions adopted by the Commission under items 4 and 9 in order to reiterate its concern for the human rights situation in territories under foreign occupation and wherever peoples were denied their right of self-determination. Its positive vote did not mean, however, that it agreed with every single element in the various draft resolutions. Where a separate vote had been taken on certain provisions, it had been able to express reservations or opposition and there were many instances in which it believed that better language should have been used. It hoped that future resolutions would create fewer problems for delegations such as his own.

29. Mr. FURSIAND (United Kingdom) said that the fact that his delegation had been unable to vote for some of the resolutions on the situation in the Middle East, and in particular the amendment proposed by Senegal to operative paragraph 3 of draft resolution E/CN.4/1983/L.12, did not indicate any lessening of its concern at problems in the region or at the brutal killings at Sabra and Shatila and elsewhere in Lebanon. His delegation had made such concern quite clear in its statement on item 4.

30. His delegation had abstained in the vote on draft resolution VII put forward by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, just as it had abstained in the vote on the corresponding resolution at the thirty-seventh session of the General Assembly. Its position remained as stated in the explanation of vote made at the thirty-seventh session in that connection.

31. Mr. HUTTON (Australia) recalled that his delegation had voted against draft resolution E/CN.4/1983/L.12. It wished to emphasize, however, that it shared the international community's horror at the massacres that had taken place at Sabra and Shatila during the Israeli occupation of Beirut. Those massacres had aroused the gravest public and governmental concern and widespread condemnation throughout Australia. Had a separate vote been taken on operative paragraph 3 of draft resolution E/CN.4/1983/L.12 as originally worded, his delegation would have supported it. Unfortunately, the last-minute insertion of a quite unbalanced reference to the involvement of the Israeli Government had obliged it to oppose the revised text of paragraph 3. His delegation agreed with certain elements of the draft resolution, but that agreement was outweighed by a number of completely unacceptable assertions on fundamental issues, with the result that his delegation had voted against the draft resolution as a whole.

32. His delegation had voted in favour of draft resolution E/CN.4/1983/L.14/Corr.1, which accorded with Australia's views on self-determination in general and, in particular, on the importance of a cease-fire and the holding of a referendum. However, his delegation would have preferred a text capable of attracting wider support. It had no wish to see the issue become more divisive, and fully supported the efforts within OAU aimed at achieving a genuine solution. It had supported that draft resolution because no alternative text had been submitted.

33. Mr. TALVITIE (Finland) said that the stand taken by his delegation on the situation in the Middle East reflected its belief in the need to achieve a just and lasting peace in the region, based on negotiations and on the provisions of Security Council resolution 242 (1967). The right of every State in the region, including Israel, to live within secure and internationally recognized boundaries must be guaranteed, and Israel must withdraw from the Arab territories occupied since 1967. At the same time, the Palestinians' legitimate rights, including the right of self-determination, must be heeded, and the PLO, as their representative, must have

the right to participate in all negotiations on their future, as part of a comprehensive settlement. However, draft resolution E/CN.4/1983/L.12 failed to reflect such a balanced and conciliatory position; his delegation, therefore, had abstained during the vote on it.

34. Finland continued to support the right of the Namibian people to self-determination, and was convinced of the need for free elections to that end, under United Nations supervision, pursuant to Security Council resolution 435(1978). It would have been better to word draft resolution E/CN.4/1983/L.15 in such a way as to command the widest possible support within the Commission; his delegation regretted that it had been unable to vote in favour of the text as it stood. The United Nations had been founded for the purpose of solving international problems by peaceful means; his delegation, therefore, could not support any text tantamount to a United Nations endorsement of the use of armed force. Nor was it consistent with the maintenance of the international consensus on the question of Namibia to single out individual countries selectively. Lastly, implementation of some of the resolution's provisions would encroach upon Finnish citizens' constitutional rights and freedoms. His delegation had abstained, therefore, during the vote on draft resolution E/CN.4/1983/L.15.

35. It had also abstained during the voting on draft resolutions E/CN.4/1983/L.16 and L.17, and on draft resolution VII recommended by the Sub-Commission, for reasons explained in other United Nations forums.

36. Mr. G. MARTINEZ (Argentina) said that his delegation had voted in favour of draft resolutions E/CN.4/1983/L.11, L.12, L.13 and L.14/Corr.1 on the basis of Argentina's position as explained at the previous session of the General Assembly.

37. With regard to draft resolutions E/CN.4/1983/L.11 and L.13, the Commission was not competent to make recommendations, even indirectly, to the Security Council on measures which it was for the Security Council alone, pursuant to the Charter, to decide upon. Nor was the Commission empowered to pass judgement on members of the Security Council for their attitude towards decisions submitted for the Council's consideration.

38. With regard to draft resolution E/CN.4/1983/L.12, his delegation believed that no initiative aimed at achieving peace in the Middle East, and no agreements entered into by States in accordance with their sovereign will, should be rejected. Moreover, it had been unable to support the uncorroborated assertion contained in the amendment to operative paragraph 3 of that resolution.

39. With regard to draft resolution E/CN.4/1983/L.14/Corr.1, the exercise of the right of self-determination should in no way be subject to conditions or its outcome prejudged.

40. Mr. COLLIARD (France) said that his delegation had voted in favour of part B of draft resolution E/CN.4/1983/L.11, but had abstained during the voting on part A and on the draft resolution as a whole. The reason for the abstention was the reference, in operative paragraph 11 of part A, to measures referred to in Chapter VII of the Charter; such measures had failed, in the past, to be effective. The proposal was hardly realistic and would not enhance the efforts to restore peace in the region, which was what France wished to see.

41. France deplored the massacres committed in the refugee camps of Sabra and Shatila. On legal grounds, however, it had abstained during the voting on the amended operative paragraph 3 of draft resolution E/CN.4/1983/L.12, which clearly went beyond the individual responsibilities set forth in the documents published. The French delegation had also abstained during the vote on that draft resolution as a whole.

42. His delegation had voted against draft resolution E/CN.4/1983/L.15, which endorsed armed struggle as one of the means to be used. France was a member of the Contact Group of Western States and was anxious to see a just settlement to the Namibian question; but the draft resolution concerned would only hamper efforts to that end.

43. Mr. O'TOOLE (Ireland) said that his delegation had abstained during the vote on draft resolution E/CN.4/1983/L.15, having balanced the positive elements of the text against certain formulations which seemed inappropriate, including operative paragraphs 2 and 3, which endorsed the legitimacy of armed struggle, and the representation, in various parts of the text, of the situation in South Africa as a colonial one. Ireland had no economic or cultural ties with South Africa, but his delegation could not support the general condemnation of Western States made in operative paragraph 13. It would have welcomed broader consultation among delegations during preparation of the text, with a view to obtaining greater support.

44. His delegation had voted in favour of draft resolution VII submitted by the Sub-Commission viewing the matter in a human rights rather than a political context, in support of United Nations efforts to solve the problem in accordance with General Assembly resolution 37/30, to which his delegation remained committed.

45. Mr. SOLA VILA (Cuba) said that his delegation had voted against draft resolution E/CN.4/1983/L.17. The Commission should avoid playing into the hands of imperialism, whose forces were striving daily by all means, including armed force, to overthrow a sovereign State freely brought into being by its own people.

46. With regard to draft resolution VII contained in the Sub-Commission's report, the Cuban delegation had voted in support of the principle of self-determination; like many other countries, Cuba sought a just solution to the problem of East Timor.

47. Mr. KOOLJMANS (Netherlands) said that his Government had persistently condemned Israel's invasion of Lebanon and had expressed outrage at the massacres at Sabra and Shatila. However, his delegation had been unable to support draft resolution E/CN.4/1983/L.12; the text was unbalanced, and the value of the Camp David Accords as a possible step towards a comprehensive settlement had been disregarded. His delegation had voted against operative paragraphs 11 and 12, and could not accept operative paragraph 4, in which the Sabra and Shatila massacres had been deemed an act of genocide. Likewise, it had voted against the amended operative paragraph 3, which was, to say the least, a misrepresentation of the Kahane report's conclusions.

48. His delegation had abstained during the vote on draft resolution E/CN.4/1983/L.15 because of the endorsement of armed struggle in operative paragraphs 2 and 3. Moreover, although the Netherlands Government took a positive attitude with regard to economic sanctions against South Africa, the idea of total isolation, implicit in operative paragraphs 7 and 13, was unacceptable.

49. Mr. SERGIWA (Libyan Arab Jamahiriya) said that his delegation had voted in favour of draft resolution E/CN.4/1983/L.12 because of its support for efforts to establish an independent Palestinian State. It had some reservations with regard to the preambular part, including the references to General Assembly resolutions 181 (II) and 194 (III), to the peace plan adopted at the Twelfth Arab Summit Conference and to other references which implied recognition of the Zionist entity, whose policies were based on terrorism and the violation of all international principles.

50. His delegation had voted against draft resolution E/CN.4/1983/L.17. Libya reiterated its support for the sovereignty and the non-aligned and Islamic character of Afghanistan - a country which had been exploited by the United States in its campaign against the USSR, in which campaign the forces of Zionism had been able to attack the sacred values of Islam. The situation was one for the Afghan people itself to resolve, free from outside interference.

51. Mr. BORCHARD (Federal Republic of Germany) said that his country strongly supported the principle of self-determination. However, his delegation had been unable to support draft resolution E/CN.4/1983/L.12, since the text was unbalanced in its accusations and conclusions, containing a number of questionable or unacceptable elements. His delegation had been obliged to vote against operative paragraphs 11 and 12, and especially against the amended operative paragraph 3, although his country strongly deplored the massacres committed in the Sabra and Shatila refugee camps. His country's position concerning the Palestinian people's right to self-determination had been set forth in the Venice Declaration of 13 June 1980 and elsewhere.

52. Mr. MACCOTTA (Italy) said that his delegation's vote on draft resolution E/CN.4/1983/L.12 was in keeping with the Italian Government's stand on the right of all Middle East States, including Israel, to live in peace within secure boundaries. Despite condemnation throughout Italy of the massacres at Sabra and Shatila and the outrage expressed by the Italian delegation in the appropriate United Nations forums, the amended operative paragraph 3 of the resolution in question had been unacceptable to his delegation. It shared the view of the Colombian delegation that the reference to the responsibilities of an occupying Power was unbalanced. With regard to operative paragraph 11, the Camp David Accords represented a genuine step towards peace and had in fact resulted in the return of some occupied territory.

53. Mrs. DUERA (Uruguay) said that her delegation had unfortunately not been present during the vote on draft resolution E/CN.4/1983/L.14/Corr.1. Had it participated, it would have abstained.

54. Mr. CHIKETA (Zimbabwe) said that, as a sponsor of draft resolution E/CN.4/1983/L.14/Corr.1, he regretted that a number of African delegations, including his own, had been attending another meeting at the time of the vote on it, and had not been notified that the vote was about to take place. His delegation would have voted in favour of that draft resolution.

55. Mr. FOLI (Ghana), Mrs. PURI (India), Mr. SEKULE (United Republic of Tanzania), Mr. SEBAZUNGU (Rwanda) and Mr. ANTONIO (Mozambique) said that their delegations would also have voted in favour of draft resolution E/CN.4/1983/L.14/Corr.1, if they had been present.

56. Mr. SENE (Senegal) said that his delegation, had it been present, would have voted against draft resolution E/CN.4/1983/L.14/Corr.1.

57. Mr. RHENAN (Costa Rica) said that his delegation, had it been present, would have voted in favour of draft resolutions E/CN.4/1983/L.14/Corr.1 and E/CN.4/1983/L.17.

58. Mrs. EKANGA KABEYA (Zaire) said that her delegation, had it been present, would have voted against draft resolution E/CN.4/1983/L.14/Corr.1 and in favour of draft resolution E/CN.4/1983/L.17, and would have abstained from the vote on draft resolution VII submitted by the Sub-Commission.

59. Mr. GASMI (Libyan Arab Jamahiriya), speaking in exercise of the right of reply, said that the statement made before the Commission on the previous day by the representative of the Zionist entity had consisted of a string of untruths. The Libyan delegation would base its reply on facts; the international community had repeatedly denounced Zionist violations of human rights and the heinous crimes committed against the indigenous population of the occupied territories. It had denounced the Zionists' actions in proclaiming Jerusalem their capital and in annexing the Syrian Golan Heights, contrary to all relevant United Nations decisions. The Zionists continued to flout all United Nations pronouncements, including those which had enabled them to form an independent State and join the Organization. They ignored Security Council resolutions on the question of Palestine and related matters, contrary to Article 25 of the Charter. They had committed acts of genocide against the Palestinian and Lebanese peoples and continued to pursue a blatantly racist policy. The rights of the Arab population of the occupied territories were continuously denied, by means of administrative malpractices, the introduction of armed settlers able to commit crimes against the indigenous inhabitants, the confiscation of property and resources and the displacement of communities. All those actions had been reflected in the Sub-Commission's report (E/CN.4/1983/4) and violated the 1949 Geneva Conventions and international law.

60. Such continued aggressive and expansionist activities, on the pretext of "security", were in stark contrast to the claim, made by the representative of the Zionist entity, that the latter respected human rights in the occupied territories and made no distinction between Arabs and its own citizens. The claim that capital punishment was not inflicted on the Arab population was unfounded. Conditions in the occupying Power's detention camps were well known and had been attested to even by some of its own nationals. The victims were either killed or mutilated, and subjected to forced labour. The situation was without precedent in civilized countries.

61. The delegations of peace-loving States had voted, during the Commission's current session, in favour of resolutions condemning the Zionist entity. But despite that heartening rebuke the Zionists persisted in their arrogant policies and statements, doubtless counting on support from the United States and elsewhere. The Zionists' actions, based on the racist notion of a chosen people, would ultimately destroy the human race unless stopped. The Libyan delegation paid tribute to the representative of Senegal for the statement he had made on the subject.

62. The CHAIRMAN said that the Commission had concluded its consideration of agenda items 4 and 9.

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) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES (agenda item 10) (continued)
(E/CN.4/1295, 1409, 1427 and 1493, E/CN.4/1983/14; E/CN.4/NGO/213;
E/CN.4/Sub.2/1982/15; E/CN.4/WG.1/WP.1)

63. Mr. G. MARTINEZ (Argentina) said that in the year under review his Government had co-operated closely with the Working Group on Enforced or Involuntary Disappearances, and, through oral and written replies and the dialogue carried on at meetings to which Argentine representatives had been invited, had kept the Working Group regularly informed of its efforts to elucidate the problem. In addition to such meetings and official submissions, his Government had maintained informal contacts with the Working Group, which had fostered an even smoother and more effective working relationship.

64. The two-way flow of information resulting from such contacts had helped his Government in its efforts to elucidate the problem. His Government had replied without fail to all communications from the Working Group, providing information either for public use or on a confidential basis, where it might be damaging to the reputation or violate the privacy of individuals presumed missing. The figures given in paragraph 37 of the Working Group's report (E/CN.4/1983/14) should therefore be seen in the light of his Government's respect for the principle of privacy. As a result of the mutual collaboration between the Working Group and his Government, the phenomenon of enforced or involuntary disappearances in the Argentine Republic had been subjected to a thorough analysis. Both the Working Group and the Commission had been informed on various occasions by his Government about the origins of that phenomenon, its causes, its true extent and the context in which it had occurred.

65. The detailed study which had been made of the problem had revealed, inter alia, that the consequences of the situation in his country had affected all its inhabitants equally, without distinction as to ethnic or national origin, religion, sex, occupation or social class. The only feature common to a large number of cases was that many of the individuals concerned were young, which seemed to be a characteristic of violent movements everywhere. The attempt at categorization therefore was arbitrary and mistaken, and did not contribute to an understanding of the problem, since it overlooked the main factor, which was the existence of a situation of widespread violence.

66. With regard to the investigation of individual cases, the Working Group had discovered how difficult it was to ascertain the fate of individuals reported missing. The main difficulties stemmed from the variety of causes for disappearances, the evasive tactics of various groups and the time elapsed since the occurrence of the alleged events. His Government's task had not been facilitated by the kind of "testimony" referred to in paragraph 27 of the Working Group's report, which in general had been given by individuals interested in using the Working Group for concealed political purposes.

57. The importance of the time factor was demonstrated by the effectiveness with which the Working Group had been able to react to emergency situations. His Government's experience was that prompt action usually yielded positive results. Conversely, investigations into events said to have taken place several years earlier encountered difficulties that were sometimes insurmountable, especially when the events had occurred in situations of domestic upheaval resulting from terrorist aggression.

68. The question of missing persons was a public issue in Argentina, of concern to the Government, political parties and other representative social groups, including the Catholic Church. While the circumstances which had given rise to the disappearances had been overcome, they had left in their wake various consequences which the Government was endeavouring to deal with. The matter would be clarified with the passing of time and with the participation of all relevant institutions as the process of constitutional normalization went forward.

69. The Working Group had thrown light on the problem and suggested a number of sound measures which needed to be taken, since the phenomenon had left deep scars which had to be treated with humanitarian concern. At the same time, the Working Group should, as a matter of priority, study and promote measures to prevent the occurrence of the phenomenon anywhere in the world by dealing not only with its effects but also with its underlying causes.

70. In his country, violence and chaos had created conditions which had given rise to the phenomenon. Once those causes had been eliminated, the phenomenon had disappeared. However, as could be seen from the Working Group's report, the problem subsisted in other parts of the world. The Commission might therefore wish, as a preventive measure, to authorize the Working Group to pursue its efforts guided by the noble humanitarian concerns which had led to its establishment.

71. The report of the Working Group reflected, on the whole, the even-handed and impartial approach of its members, who had conscientiously adhered to their mandate. The Working Group had stated that it would not draw conclusions or make value judgements but rather would limit itself to reflecting the various points of view on the situations brought to its attention. That intention of the Working Group would have been better served by a more careful drafting of the sections of the report dealing with situations in various countries. Indeed, the wording of several paragraphs might lead the unwary reader to conclude that the Working Group had endorsed the allegations summarized in the report, which was obviously not the Working Group's intention, as its Chairman had confirmed at an earlier meeting.

72. The Working Group should turn its attention to the search for ways to mitigate the effects of enforced or involuntary disappearances; it was within the purview of the Working Group to suggest measures for alleviating, if not the suffering caused by the phenomenon, at least its legal, moral and social consequences, thereby serving the humanitarian concerns which underlay the Commission's work on the item.

73. Mr. Hayes (Ireland) took the Chair.

74. Mr. MACCOTTA (Italy) said that his delegation was in favour of renewing the Working Group's mandate and considered that further efforts should be made, either by the Working Group or the countries concerned, to ascertain the whereabouts of missing persons. The countries concerned should also consider allowing the Working Group to make on-the-spot visits in strict compliance with its mandate, recognizing the right of families to know the fate of their missing relatives and taking all necessary measures for their protection.

75. The problem of missing persons was particularly painful since it involved the violation of the most fundamental human rights, the rights to life and to security of person. When those rights were threatened, the entire international community was concerned and had a duty to act. There was a growing awareness of that fact, despite the obstacles posed by other basic principles, such as the principle of respect for national sovereignty. But awareness was not enough; action had to be taken and it was inconceivable that the international community should not be able to intervene effectively when the most basic human rights were jeopardized, or violated. The results so far in dealing with the violation of those rights in the case of enforced disappearances had been inadequate, and improvement was necessary. The process would doubtless be long and difficult, since it entailed the establishment of mechanisms for the protection of human rights which transcended, where possible, mere co-operation. The Charter of the United Nations itself provided the means for progress along those lines. The Charter principle prohibiting intervention by the United Nations in the internal affairs of Member States applied to matters that were essentially within the domestic competence of the State. However, the massacre or disappearance of thousands of persons with the participation or connivance of Government authorities could hardly be considered such a matter. A broader view should therefore be taken of the range of enforcement measures envisaged in Article 55, in accordance with which the United Nations must promote respect for human rights and fundamental freedoms.

76. The problem of missing persons in Argentina was of particular concern to his Government for a number of reasons. Firstly, there were the bonds of kinship and friendship which united the two countries and which made Italy keenly interested in events in Argentina and anything which might affect that country's image. Secondly, there was the large number of individuals involved. Thirdly, a number of Italian nationals or individuals with relatives in Italy were among the missing. Feeling about the issue ran high in Italy and for that reason the Government was committed to obtaining the necessary clarifications. His Government had on many occasions requested the Argentine Government, through the bilateral diplomatic channel and other means and in other appropriate forums, to inform it of the findings of its investigations into the disappearances and to provide clarifications on the fate of all the missing persons. Realizing that the disappearances were a thing of the past, associated with difficult circumstances, his Government was confident that the current Government of Argentina would reply speedily to a request addressed to it by a great many countries. His country's Minister for Foreign Affairs had recently addressed the parliament on the issue and had informed it and the Argentine Ambassador to Rome that the Italian delegation would be raising the matter at the current session of the Commission. He urged the Commission and its Working Group to continue to accord high priority to the matter.

77. His delegation was equally concerned at enforced or involuntary disappearances wherever they might occur and its intention was certainly not to single out Argentina for its human rights record.

78. Mr. BEAULNE (Canada) observed that the third report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1983/14) was more concise than its previous reports and summarized situations without quoting at length from statements or allegations made. The work of the reader had thereby been greatly facilitated.

79. The Working Group had pursued its efforts with discretion and patience and in a purely humanitarian spirit, and had adopted special procedures which had increased its capacity for prompt action. The Centre for Human Rights had made substantial efforts to help the Working Group to clear a large backlog of cases. The report documented the painful and complex effects which the disappearances had on the victims themselves and on their families, and reminded members that behind the statistics were men, women and children, some of whom had been suffering for a long time. The Caracas Congress held in November 1981 had been particularly informative in that regard.

80. While the number of cases considered by the Working Group was high and the total number of replies received relatively small, the report revealed that, despite their initial reticence, the Governments in question seemed, with very few exceptions, to have become more willing to respond to the Working Group's invitations to co-operate with it.

81. The most disturbing and flagrant case of systematic non-co-operation seemed to be that of South Africa. Other countries had not always replied to the Working Group and they should be urged to do so without delay.

82. Some States had established their own domestic procedures and were making systematic investigations aimed at throwing light on the disappearances brought to their attention. That was an encouraging development.

83. The Working Group had rightly adhered to its specific mandate and had refrained from undertaking tasks which could more appropriately be carried out by the International Committee of the Red Cross, for example. In that connection, ICRC should play the role suggested by the Working Group in Indonesia and with regard to Iranian soldiers missing in the conflict between Iran and Iraq. The Working Group should, for its part, pursue its fruitful dialogue with other competent international bodies, including ICRC and the Committee on Missing Persons in Cyprus.

84. The Working Group had performed its commendable task with compassion, intelligence, tact and firmness, which had led to improvements in difficult conditions. The Working Group's mandate should therefore be renewed.

85. Turning to the question of states of siege or emergency, he recalled that the International Covenant on Civil and Political Rights provided that, in specific circumstances and conditions, States could derogate from some, but not all, of their obligations to guarantee human rights. The study on the implications for human rights of recent developments concerning states of siege or emergency prepared by the Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/1982/15) highlighted the need for vigilance on the part of the international community in such situations, in which

respect for inalienable human rights was particularly fragile. The report had the merit of dealing with the question on a universal, subject-oriented and non-discriminatory basis, and it was to be hoped that the Commission would consider the matter in the same spirit. His delegation endorsed the recommendations of the Sub-Commission in resolution 1982/32. The Commission should take account of the Special Rapporteur's conclusions and give particular attention to the question of respect in all parts of the world for inalienable rights. Should there be sufficient support in the Commission, his delegation would submit a draft resolution along those lines.

86. It was to be hoped that the Working Group on the drafting of a convention against torture would submit to the Commission in good time a draft convention which would mark a step forward in relation to the 1975 Declaration on that subject. The draft convention should include a provision on universal jurisdiction enabling any State to bring to justice an individual found guilty of a crime of torture, and a mandatory enforcement procedure. An optional procedure, whatever form it might take, would mean that the international community considered that efforts to eliminate torture should be left to the discretion of each Government. If that was to be the case, he wondered whether the drafting of a convention would be adequate to eliminate the cancer of torture, which was a disgrace to contemporary civilization.

87. Mr. GONZALEZ de LEON (Mexico) paid a tribute to the members of the Working Group for their objectivity, impartiality, strictly humanitarian spirit and understanding of the difficulties which Governments encountered, often to their dismay, in seeking to provide clarifications with respect to all the cases brought to their attention. Convinced of the importance of the Working Group's activities, his delegation supported the renewal of its mandate.

88. Mr. HERDOCIA ORTEGA (Nicaragua) said that his Government fully supported the work of the Working Group on Enforced or Involuntary Disappearances and was endeavouring to make Nicaragua a model of respect for and promotion of human rights.

89. Enforced disappearances were a form of barbarity which had started to spread in the 1970s. Enforced disappearance had distinctive characteristics which required that it should be classified separately and declared an international crime. The traditional means of defence were powerless to prevent enforced disappearances and citizens were plunged in anguish and terror, while the families of victims lived in uncertainty and fear. The crime of enforced disappearance resembled genocide in certain ways, since both were particularly cruel and systematic measures of repression carried out against defenceless victims by agents of the State with official complicity, which ensured them virtually complete impunity.

90. His country attached special importance to the problem and had attended various international meetings devoted to it, including the Paris seminar on enforced disappearances and the first and second Latin American Congresses of Relatives of Missing Persons in 1980 and 1981.

91. With regard to the references to Nicaragua in the report of the Working Group on Enforced or Involuntary Disappearances, he was grateful to the Chairman of the Working Group for having clarified that the request for information made by the Working Group would be addressed to the Government of El Salvador. Paragraph 84 of the Working Group's report gave the impression that a fishing vessel reported missing

had actually been taken to the nearest Nicaraguan port and released after having paid a fine. No such incident had taken place; the Nicaraguan official who had provided information to the Working Group had merely made a general reference to the usual practice followed in cases of illegal fishing. He was confident that the Secretariat would, after consulting the letter dated 29 November 1982 from his country's Permanent Mission to the United Nations Office at Geneva, make the necessary correction. He also trusted that, since all the allegations of disappearances had been clarified, Nicaragua would no longer be mentioned in future reports.

92. His delegation shared the concern of the Working Group over the specific human rights denied by enforced or involuntary disappearances and the impact of disappearance on health and family life, and had been co-operating with the Latin American Federation of Organizations of Relatives of Missing Detainees (FEDEFAM) in the preparation of a draft convention to declare enforced disappearance a crime against humanity, which must be punished in accordance with the general principles of international law, and the provisions of articles 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 6, 7, 9 and 10 of the International Covenant on Civil and Political Rights. His Government intended to continue to co-operate with the Working Group in its investigations and supported the proposal made in the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the effect that the General Assembly, should, through the Commission and the Economic and Social Council, request the International Law Commission to study the phenomenon of persons who had disappeared or whose whereabouts were unknown, with a view to determining whether enforced disappearance could be considered a crime against humanity.

93. Resolution 1982/5 of the Sub-Commission reiterated the right of the families of missing persons to information concerning their fate and urged the Commission to give consideration to the measures listed in paragraph 6 of Sub-Commission resolution 15(XXXIV)

94. Mr. KOOLJMANS (Netherlands) said that in the comfortable surroundings in which the Commission was meeting, it might easily forget the brutal reality of torture and enforced or involuntary disappearances, and that human beings in physical and psychological pain were the subject of all the reports it was considering. It was duty-bound to help to alleviate that suffering and should do its utmost to find ways to restore respect for the human rights of those people. His delegation greatly appreciated the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1983/14) and supported the proposed renewal of the Working Group's mandate.

95. In its first conclusion (paragraph 138), the Working Group paid tribute to the continuing and comprehensive support by the Centre for Human Rights and to the assistance of the whole international community. The information provided by the families and friends of missing persons, the reports of various non-governmental organizations and the world-wide campaign of Amnesty International to end the phenomenon of disappearances continued to play a vital role in bringing to light the thousands of cases which were documented in the archives of the Centre.

96. The report showed that in 1982 and 1983, involuntary disappearances had continued, contrary to the rights enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the constitutions and laws of most States. Chapter V outlined the human rights which were denied by the practice of enforced or involuntary disappearances, including the rights to liberty and security of person, to freedom from arbitrary arrest, to a fair trial and to freedom from torture and other cruel or degrading treatment or punishment. His delegation abhorred the fact that many of the victims had been tortured. Torture was shameful and one of the most serious crimes of modern times.

97. In chapter II, which dealt with 11 countries specifically, the Working Group welcomed the support and assistance it had received from Governments and concluded that that was a change from its earlier experience. The percentage of answers received on cases transmitted to Governments was very low, however. Since 1980, 4,168 cases had been transmitted to the 11 governments mentioned in the report, but the Working Group had received answers concerning only 142 of them. That picture was rather bleak. The Commission had established the Working Group for the precise purpose of getting information on the state and whereabouts of missing persons. The Governments concerned should co-operate with the Working Group, and his delegation strongly appealed to them to do everything in their power to shed light on the cases of those thousands of human beings.

98. His delegation had been surprised to read in paragraph 32 that the Government of Argentina contended that only the relatives of missing persons should be given information on individual cases and that therefore it would convey the results of its investigations to them alone. That seemed to be an extreme example of circuitous reasoning: the Working Group had been established precisely because of the failure of Governments to respond to the queries of the families and relatives of missing persons. His delegation appealed to the Argentine authorities to review their position on that point, taking guidance from the example of the many other Governments mentioned in the report which had supplied specific information to the Working Group.

99. With regard to paragraphs 118-120 relating to persons who had reportedly disappeared during the armed conflict between Iraq and Iran, he said that persons, whether civilian or military, who were reported missing during any international conflict fell within the mandate of the International Committee of the Red Cross. That should not, however, prevent the Commission from appealing forcefully to the authorities of Iraq and Iran to co-operate fully with ICRC, to give it access to all places of detention and to provide it with all possible data about the situation and location of the thousands of missing persons, who reportedly included children and elderly and sick people.

100. His delegation profoundly regretted that the need for international scrutiny concerning missing persons had not yet ended.

101. Mr. BALLESTEROS (Uruguay) said that his delegation endorsed the renewal of the mandate of the Working Group on Enforced or Involuntary Disappearances and would continue to co-operate with it, as it always had in the past.

102. Turning to agenda item 10 (a), he said certain aspects should be given special attention by the Commission. Various types of actions were often recommended in package form, which frequently prevented all their details and consequences from being discerned. That was the case with the Sub-Commission on Prevention of Discrimination and Protection of Minorities, whose surfeit of tasks left it with an overabundance of suggestions, reports and resolutions containing innumerable measures. The conversion of item 10 into a smokescreen for packages of resolutions proposing measures which required very thorough examination and whose consequences should be carefully weighed should be avoided. Furthermore, the Commission must ensure that its resolutions were legal and objective - characteristics which were often presented as obstacles in the face of the alleged benefits of prompt action in the human rights field. The golden mean between obstacles and benefits should be sought.

103. The United Nations had meticulously set up a system to monitor respect for human rights. For that purpose, a political balance had had to be struck, and it must be preserved and strengthened. In order for the actions of the system to be most effective, for them to be combined with the indispensable co-operation of Member States, for the measures suggested by the various bodies within the system to have the desired effect and application and for the faith of States in the system not to diminish, the bodies within the system must take into account the comments or objections which the suggested measures might prompt from States. In that connection, he drew attention to the consequences of two resolutions adopted by the Sub-Commission at its thirty-fifth session.

104. In its resolution 1982/10, paragraph 17, the Sub-Commission had exceeded its authority by proposing that the Working Group on Detention should become a new forum for the consideration of information relating to the human rights of persons subjected to detention or imprisonment. From a formal point of view, the adoption of that suggestion would entail the duplication of efforts with the system which had already been established for monitoring human rights. It was unclear how the proposal would be implemented and what would prevent the new forum from complicating and confusing the consideration of reports and information on the matter.

105. In its resolution 1982/32, the Sub-Commission wholeheartedly endorsed the conclusions and recommendations contained in the study prepared by the Special Rapporteur on the implications for human rights of recent developments concerning situations known as states of siege or emergency (E/CN.4/Sub.2/1982/15). If the Commission adopted draft resolution VIII submitted to it by the Sub-Commission, it would be recommending that the Economic and Social Council should arrange for the study to be published and given the widest possible dissemination in all the official languages of the United Nations. The study's conclusions and recommendations should be taken into account, but there were some discrepancies in them and he did not see the relationship between the study, which was a theoretical analysis of states of siege or emergency, and the item before the Commission. One of the discrepancies in the study related to Uruguay. In paragraphs 139-145, the document analysed in detail a draft constitution that, even before the study had been published, had been rejected by the people of Uruguay. Given that that was the situation, why should the draft constitution be treated in such detail? The references to Uruguay in paragraphs 164 and 165 were unfounded and his delegation did not know where the information contained in those paragraphs could have been gathered.

106. He suggested that, in order to give the Special Rapporteur time to clear up the ambiguities and discrepancies in her study, a task in which his Government would be glad to assist her, the question should be deferred until the Commission's next session.