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COMMISSION ON HUMAN RIGHTS

Fortieth session

SUMMARY RECORD OF THE 42ND MEETING

Held at the Palais des Nations, Geneva,  
on Tuesday, 6 March 1984, at 3 p.m.

Chairman: Mr. KOOLJMANS (Netherlands)

Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights (continued)

Status of the International Covenants on Human Rights (continued)

Question of the human rights of all persons subjected to any form of detention or imprisonment: (continued)

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

Question of enforced or involuntary disappearances (continued)

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, including:

(a) Question of human rights in Cyprus

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The meeting was called to order at 3.20 p.m.

QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS; AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS (agenda item 8) (continued) (E/CN.4/1984/L.26, L.34, L.50 and L.63; E/CN.4/1984/3, chap. I.A, draft resolution XV)

1. Ms. PAGE (Canada), speaking in explanation of vote before the vote on draft resolution E/CN.4/1984/L.26 concerning popular participation in its various forms as an important factor in development and in the full realization of human rights, said her delegation believed that such participation was most important in ensuring the practical application of international human rights instruments to which Canada was committed.
2. In his opening remarks to the Commission, the Assistant Secretary-General for Human Rights had rightly stressed that the International Covenants and Conventions were important tools for public education that could lead to a better understanding and enjoyment of human rights. Her delegation was strongly of the view that the concept of popular participation must be more than an ideological and philosophical exercise and must embrace participation in all areas of society - political and public life, mass media, trade unions, Churches, schools, non-governmental organizations and other social organizations.
3. Her delegation was therefore of the opinion that the study on the right to popular participation should not concentrate unduly on defining the term "popular participation" but should rather focus on the application of the right to popular participation in its various forms as an important factor in development and in the full realization of human rights. Her delegation would vote in favour of draft resolution E/CN.4/1984/L.26.
4. Mr. BEAULNE (Canada), speaking in explanation of vote before the vote on draft resolution E/CN.4/1984/L.34, said that his Government was in favour of reconvening the Working Group of Governmental Experts on the Right to Development. His delegation would, however, have preferred the draft resolution authorizing the Group to continue its work on the formulation of a draft declaration to be of a purely procedural nature or to be as close as possible to a procedural resolution. Some questions referred to in the text, particularly the definition and nature of the right to development, and the relationship between development and disarmament and between the establishment of a new international economic order and the promotion of human rights were still under discussion by the Group, which had unfortunately been able to provide the Commission with clear ideas on those points. His Government also noted with regret and concern that the discussions in the Group during the current year had too often been characterized by polemics and had taken place in an atmosphere of politicization and antagonism, which made the task entrusted to the experts all the more difficult to accomplish.
5. His delegation would therefore be obliged to abstain in the vote on the draft resolution in order to express its very strong reservations on certain points. It deeply regretted that the draft resolution adopted positions on certain questions on which there had been no agreement in the Working Group. It was nevertheless in favour of renewing the Group's mandate and hoped that,

during the current year, the Group could work smoothly and realistically enough to enable it to fulfil its task of submitting to the Commission at the earliest possible date a text reflecting a consensus on the important question before it.

6. Mr. KHMEL (Ukrainian Soviet Socialist Republic) said that his delegation supported draft resolutions E/CN.4/1984/L.26 and L.34 and hoped that the proposed comprehensive analytical study on the right to popular participation in its various forms as an important factor in development and in the full realization of human rights would be completed as soon as possible.

7. His delegation was, however, taken aback by the administrative and financial implications of the draft resolution, as set forth in document E/CN.4/1984/L.50. The engagement of an outside consultant at the P-4 level for a period of six months, at an estimated cost of \$34,300, was in its view entirely unjustified. The work involved should be undertaken, within existing resources, by the staff of the Centre for Human Rights as part of their everyday activities; there should be no question of any additional expenditure.

8. Mr. HERNDL (Assistant Secretary-General for Human Rights) said he wished to assure members of the Commission that, in the atmosphere of stringent budgetary control that prevailed in the United Nations, the Centre for Human Rights made every effort to absorb within existing resources any additional tasks entrusted to it. At each session of the Commission, Sub-Commission and General Assembly, the Centre was requested to prepare new reports, to service labour-intensive fact-finding missions, and to assist rapporteurs and special envoys, and yet its manning table had remained unchanged for nearly a decade. It naturally followed that when it was requested to undertake additional, highly labour-intensive tasks for which the existing staff were insufficient, it was obliged to request the allocation of temporary assistance, which was kept to the barest minimum.

9. With respect to draft resolution E/CN.4/1984/L.26, members of the Commission had before them the preliminary report by the Secretary-General (E/CN.4/1984/L.12), which had been prepared with the help of an outside consultant; the Centre believed that such outside help would again be needed in order to finalize the study. If the necessary resources were not forthcoming, the Centre would have difficulty in complying with the request contained in draft resolution E/CN.4/1984/L.26, and it might even be necessary to rearrange priorities and programmes - a procedure that should be avoided at the current stage. The Centre was thus obliged to inform the Commission that, if draft resolution E/CN.4/1984/L.26 was adopted, the services of an outside consultant, at an estimated cost of \$34,300 for 1984, would be essential.

10. Ms. ILIC (Yugoslavia) said that she had had some doubts on hearing the explanation by the Assistant Secretary-General for Human Rights. As she understood the position, there could be no follow-up to the Commission's views or finalization of the study in question unless the allocation referred to in the administrative and programme budget implications (E/CN.4/1984/L.50) was forthcoming. She asked whether any funds were available within the existing resources of the biennial programme budget to take account of the United States amendment to draft resolution E/CN.4/1984/L.26. If so, her delegation could support the amendment but if not, it urged that the necessary additional resources should be provided so as to enable the study to be finalized.

11. Mr. HERNDL (Assistant Secretary-General for Human Rights) said that the consultancy funds of the Centre for Human Rights under the 1984/1985 budget had been severely curtailed. Less than \$20,000 had been made available for all the consultancy fees which the Centre might need for advice on certain studies over a two-year period, and part of that amount had already been committed. It would be impossible to implement draft resolution E/CN.4/1984/L.26 without the additional manpower referred to in document E/CN.4/1984/L.50.

12. Mr. SCHIFTER (United States of America) said that the work involved in finalizing the study should take very little time and should not require the services of an outside consultant.

13. The CHAIRMAN announced that Congo and Peru had joined the sponsors of draft resolution E/CN.4/1984/L.26, and that Cameroon, Colombia, Greece and Uganda had become sponsors of draft resolution E/CN.4/1984/L.34.

14. The United States delegation had proposed that the following operative paragraph 5 should be added to draft resolution E/CN.4/1984/L.26:

"Decides that the final study requested by Economic and Social Council resolution 1983/31 is to be prepared within existing resource levels as provided in the programme budget for the biennium 1984/1985".

15. He invited the Commission to vote on the United States amendment.

16. The amendment was rejected by 11 votes to 11, with 20 abstentions.

17. At the request of the representative of Gambia, a vote was taken by roll-call on draft resolution E/CN.4/1984/L.26.

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

In favour: Argentina, Bangladesh, Brazil, Bulgaria, Cameroon, Canada, China, Colombia, Costa Rica, Cuba, Cyprus, Finland, France, Gambia, German Democratic Republic, Germany, Federal Republic of, India, Ireland, Italy, Japan, Jordan, Kenya, Libyan Arab Jamahiriya, Mauritania, Mexico, Mozambique, Netherlands, Nicaragua, Philippines, Rwanda, Senegal, Spain, Syrian Arab Republic, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Yugoslavia, Zimbabwe.

Against: United States of America.

Abstaining: None.

19. Draft resolution E/CN.4/1984/L.26 was adopted by 41 votes to 1.

20. At the request of the representative of Cuba, a vote was taken by roll-call on draft resolution E/CN.4/1984/L.34.

21. Mexico, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Brazil, Bulgaria, Cameroon, China, Colombia, Costa Rica, Cuba, Cyprus, France, Gambia, German Democratic Republic, Germany, Federal Republic of, India, Italy, Japan, Jordan, Kenya, Libyan Arab Jamahiriya, Mauritania, Mexico, Mozambique, Netherlands, Nicaragua, Pakistan, Philippines, Rwanda, Senegal, Spain, Syrian Arab Republic, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Yugoslavia, Zimbabwe.

Against: None.

Abstaining: Canada, Finland, Ireland, United States of America.

22. Draft resolution E/CN.4/1984/L.34 was adopted by 39 votes to none, with 4 abstentions.

23. At the request of the representative of Cuba, a vote was taken by roll-call on draft resolution XV in the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its thirty-sixth session (E/CN.4/1984/3, chap. I.A).

24. Mozambique, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Brazil, Bulgaria, Cameroon, Canada, China, Colombia, Costa Rica, Cuba, Cyprus, Finland, France, Gambia, German Democratic Republic, India, Ireland, Italy, Jordan, Kenya, Libyan Arab Jamahiriya, Mauritania, Mexico, Mozambique, Netherlands, Nicaragua, Pakistan, Philippines, Rwanda, Senegal, Spain, Syrian Arab Republic, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania, Uruguay, Yugoslavia, Zimbabwe.

Against: United States of America.

Abstaining: Germany, Federal Republic of, Japan, United Kingdom of Great Britain and Northern Ireland.

25. Draft resolution XV in the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its thirty-sixth session (E/CN.4/1984/3, chap. I.A) was adopted by 39 votes to 1, with 3 abstentions.

26. Mr. EKBLÖM (Finland), speaking in explanation of vote, said it was the firm view of his Government that the realization of human rights and fundamental freedoms was an unconditional responsibility which all Governments had assumed as Members of the United Nations. His delegation did not share the view that human rights and fundamental freedoms could be promoted only in particular economic and social circumstances. They must be respected everywhere, without conditions or qualifications. The very essence of human rights was the protection of individual human beings. The human right to development was, in his delegation's view, the right of the individual to participate fully in the process of development and to

benefit from it. There was as yet, however, no universally-accepted definition of the concept of the right to development; the Working Group, too, had been unable to agree on a definition. The question was complex. The definition should reflect all the various views expressed, which should also be reflected in a balanced manner in a resolution providing guidelines for the future activity of the Working Group.

27. His delegation had abstained in the vote on draft resolution E/CN.4/1984/L.34 since it felt that the call for recognition of the right to development had not yet been given a framework that would guarantee adequate recognition of the rights of the individual. His delegation's position on the draft resolution should not be interpreted as implying a reservation as to the continuation of the mandate of the Working Group with the aim of formulating a draft declaration on the right to development.

28. Mr. BYKOV (Union of Soviet Socialist Republics), speaking in explanation of vote, said that his delegation had voted in favour of draft resolutions E/CN.4/1984/L.26 and L.34 and draft resolution XV recommended by the Sub-Commission because of the great importance it attached to popular participation in development and because of its support for the right to development and for the work on a draft declaration on the subject. His delegation also supported the aspirations of the developing countries to establish a new international economic order as provided for in United Nations decisions. What was required was to restructure the existing unjust international economic system and place it on an equitable basis.

29. His delegation's position with respect to the financial implications set forth in document E/CN.4/1984/L.50 was that the Centre for Human Rights, which was a sizable unit comprising a substantial number of qualified experts, should be obliged to finalize the study in question from its own resources.

30. Ms. COLL (Ireland), speaking in explanation of vote, said that her delegation supported the extension of the mandate of the Working Group and looked forward to making an objective evaluation of the outcome of its work. The inclusion in draft resolution E/CN.4/1984/L.34 of concepts that had not been agreed upon by the international community was unhelpful and her delegation had therefore abstained in the vote on that text.

31. Mr. BORCHARD (Federal Republic of Germany), speaking in explanation of vote on draft resolution E/CN.4/1984/L.34, recalled that, in its statement on agenda item 8 on 17 February 1984, his delegation had expressed support for United Nations efforts to formulate a declaration on the right to development. It therefore welcomed the continuing discussion aimed at defining the scope and content of the right to development and supported the Commission's decision to enable the Working Group to continue its work on a definition and on the formulation of a draft declaration. But that did not mean that his delegation's doubts concerning certain trends in the current discussion had been dispelled. There were some elements in draft resolution E/CN.4/1984/L.34 which his delegation found difficult to accept, while a number of elements which it considered essential had been omitted. It hoped the Working Group would take those reservations into account in future deliberations so that full support could be given to the results of the Group's work.

32. The concept of the right to development should focus on the development of the human person in harmony with the community, but the operative part of draft resolution E/CN.4/1984/L.34 contained no reference to the importance of individual rights. His delegation was concerned about the basic idea in operative paragraph 1 that so-called "conditions" should be created for the full promotion and protection of human rights. The establishment of "conditions" must not be a prerequisite for the realization and protection of human rights and fundamental freedoms. Similar reservations applied to operative paragraph 2. In addition, the draft resolution placed too much emphasis on the economic aspect of the concept of development, and his delegation still had reservations concerning operative paragraph 4. It had nevertheless voted in favour of draft resolution E/CN.4/1984/L.34 because it considered it essential that the Working Group should complete its important work. It appreciated the efforts of a number of delegations, particularly the delegation of Senegal, to find common ground on the important issue of the right to development.

33. The CHAIRMAN said that the Commission had concluded its consideration of agenda item 8.

STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS (agenda item 18) (continued)  
(E/CN.4/1984/L.24 and L.25)

34. Ms. RASI (Finland), introducing draft resolution E/CN.4/1984/L.24, said it was gratifying that the number of countries which had acceded to the International Covenants on Human Rights was increasing, since the Covenants could not fulfil their role without universal application. The draft resolution thus invited States which had not yet done so to become parties to those instruments.

35. The work of the Human Rights Committee should receive greater publicity, but the publication of Committee documentation, referred to in paragraph 9, should be financed from existing resources. The text also referred to the need for advisory services for States parties in preparing reports. Her delegation trusted that the draft resolution could be adopted without a vote.

36. Mr. HÖYNCK (Federal Republic of Germany), introducing draft resolution E/CN.4/1984/L.25, said that General Assembly resolution 37/192 had requested the Commission on Human Rights to consider the idea of elaborating a draft of a second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, at its thirty-ninth and fortieth sessions. Little time was available, therefore, for a thorough discussion of the matter. The Sub-Commission on Prevention of Discrimination and Protection of Minorities could make a useful contribution in that respect. His delegation had attempted to take account of the interests of all the regional groups in drafting the text, which was purely procedural.

37. The CHAIRMAN announced that Italy had joined the sponsors of draft resolution E/CN.4/1984/L.24.

38. Mr. GUTSENKO (Union of Soviet Socialist Republics) said that his delegation supported draft resolution E/CN.4/1984/L.24. Draft resolution E/CN.4/1984/L.25, however, did not appear to comply with General Assembly resolution 37/192, which requested the Commission alone to consider drafting a second optional protocol.

His delegation accordingly wished to propose the deletion of paragraph 2 of draft resolution E/CN.4/1984/L.25, and, in paragraph 3, the deletion of the words "... on the draft optional protocol ..." and "... and by the Sub-Commission at its thirty-seventh session".

39. Mr. HÖYNNCK (Federal Republic of Germany) said that his delegation appreciated the rationale of the Soviet amendments, which could, however, perhaps be accommodated by amending paragraph 2 to read "Invites the Sub-Commission to consider establishing a sessional working group ...". While his delegation could endorse the first deletion from paragraph 3 proposed by the Soviet Union, it felt that the second would be inappropriate since the General Assembly would wish to be kept informed of what had happened in the Sub-Commission.

40. Mr. GUTSENKO (Union of Soviet Socialist Republics) welcomed the spirit of co-operation demonstrated by the representative of the Federal Republic of Germany, whose counter-proposals he agreed to.

41. The CHAIRMAN said that, if there was no objection, he would take it that the Commission wished to adopt draft resolutions E/CN.4/1984/L.24 and E/CN.4/1984/L.25, as amended, without a vote.

42. It was so decided.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT (agenda item 10) (continued) (E/CN.4/1984/3, chap. I.A, draft resolution XIV; E/CN.4/1984/L.12, L.14, L.32 and L.55)

43. The CHAIRMAN announced that Peru had joined the sponsors of draft resolution E/CN.4/1984/L.32.

44. Mr. GOLEMANOV (Bulgaria) said that his delegation had submitted, in writing, a number of amendments to draft resolution XIV. In order to allow time for them to be circulated in all languages his delegation requested that consideration of that draft resolution should be deferred.

45. Mr. GIAMBRUNO (Uruguay) said that since the matter dealt with in draft resolution XIV had already been considered by the Sub-Commission, his delegation would prefer the Commission not to take action on that text.

46. The CHAIRMAN said that, if there was no objection, he would take it that the Commission wished to defer consideration of draft resolution XIV.

47. It was so decided.

48. Mr. DHAVERNAS (Canada) said that draft decision E/CN.4/1984/L.12 was a follow-up to resolution 1983/18 adopted unanimously by the Commission at its thirty-ninth session. That resolution had called upon the Commission to consider the question of states of siege at its fortieth session and had requested the Sub-Commission to make proposals on the protection of human rights in states of emergency.

49. The Sub-Commission was proposing to submit to the Commission an annual report on human rights in such situations. The draft decision proposed that the Commission should consider those reports from its forty-first session onwards



and then decide what action to take. There was no question of making any political judgement on states of siege. The draft decision was an attempt to ensure the legal and practical protection of certain fundamental human rights in such situations. His delegation trusted that the draft decision could be adopted unanimously.

50. Mr. CULD TAYA (Mauritania), introducing draft resolution E/CN.4/1984/L.14, said that the aim of the text was essentially humanitarian since it related to prisoners and missing persons. The text was basically similar to that adopted at the previous session, with the exception of the last preambular paragraph and operative paragraph 3, which referred to the situation which had arisen as a result of the Israeli invasion of Lebanon. The Israeli authorities had agreed with ICRC to release certain prisoners, but had later re-arrested them. The draft resolution appealed for respect for individual freedoms. His delegation trusted that the Commission as a whole would support its humanitarian intent.

51. Mr. BEAULNE (Canada), speaking on behalf of the delegations of Belgium, Colombia, Costa Rica and Spain as well as his own, introduced draft resolution E/CN.4/1984/L.32 on the right to freedom of opinion and expression. At present, in more than 60 countries, persons were imprisoned because of their opinions, religion, race or nationality although none of them had used or advocated violence. In order to be imprisoned, it was sufficient to be a member of a trade union, to go on strike or to take part in a demonstration. Among those arrested, either in an individual capacity or as members of a group, some had been opposed to the Government, while others had carefully avoided any confrontation with the authorities within the established system. Some had been imprisoned not because they had committed a crime but because of the political activity of members of their family or friends or because they belonged to a minority group.

52. To demand the release of those prisoners did not necessarily mean support for their ideas. What was at stake was the right to have opinions and to express them freely. No State could claim to have a monopoly of the truth; Governments should not pose difficulties for citizens because of their opinions. Furthermore, they had an obligation to protect the freedom of everyone to seek, receive and impart information and ideas of all kinds, regardless of frontiers, as stated in the International Covenant on Civil and Political Rights. The draft resolution was clear and brief and worded in simple language.

53. Mr. GEVORGIAN (Union of Soviet Socialist Republics) said that the purpose of his delegation's amendments (E/CN.4/1984/L.55) to draft resolution E/CN.4/1984/L.32 was to bring it into line with the wording of the International Covenant on Civil and Political Rights.

54. With regard to article 19 of the Covenant, he said that draft resolution E/CN.4/1984/L.32 reflected the first two paragraphs but not the third, and his delegation therefore proposed the appropriate additions to the second preambular paragraph and operative paragraph 2 of the text.

55. It also proposed the addition of a new paragraph between the first and second preambular paragraphs. The new preambular paragraph, which used the exact wording of article 20 of the Covenant, was necessary because a number of States, under the pretext of respecting the right to freedom of expression, refused to prohibit by law the activities referred to in article 20. The Human Rights Committee had drawn special attention to that point in its general comments on article 20.

56. With regard to the third amendment, his delegation proposed the replacement of the words "without recourse to violence" by "lawfully", since the former expression had no legal meaning. It was possible, for example, without having recourse to violence, to make propaganda for war, to advocate racial and national discrimination, and to engage in a number of other activities incompatible with the right to freedom of opinion and expression.

57. His delegation's fourth amendment was prompted by its desire to bring the draft resolution into line with the relevant provisions of the Covenant.

58. He hoped that his delegation's amendments, which were reasonable and substantially improved the text would be accepted by the Commission.

59. Mr. DOWEK (Observer for Israel) said that in resolutions such as E/CN.4/1984/L.14, the world community was called upon to endorse terrorism, recognize it as a legitimate means of action, support it actively and provide protection to terrorists by granting them the legal status of military personnel. Every year, delegations used agenda item 10 and other items for the purpose of getting the international community to condone blind and bloody terrorism, thereby giving such activities the semblance of legality and respectability. In the past 15 years, that had been the aim of those countries which constantly strove to destabilize world order from within and to change the world status quo in their favour, using all available means, including subversion, terror, assassination, sabotage and hijacking. The cost in human life and the terrible suffering inflicted on thousands of innocent victims, including women, children and elderly persons, were completely irrelevant. Only the goal was sacred. Those countries had succeeded, through aggressive diplomacy and realpolitik, in mustering a quasi-automatic majority in international organizations and used it not only to prevent the adoption of positive steps for eradicating terrorism, but also to pass resolutions whose practical effect was the strengthening of individual and group terrorism.

60. Countries which abided by international morality and legality seemed to be more reluctant to engage in major confrontations on matters of principle, even on such a vital topic to mankind as the containment of organized international terrorism. They appeared to have adopted a fatalistic approach to the situation prevailing in the international organizations and to put pragmatic considerations above hopeless efforts to achieve the implementation of universally-recognized standards by certain regimes and States that controlled the majority of votes. They were keen to preserve the semblance of dialogue in the hope that they might eventually influence the final outcome. In the process, terrorism and the States which used it as a tool of international politics had gained the upper hand and terrorism had spread to the extent that it had become a plague in most peace-loving countries, mortgaging the future of whole societies and of mankind itself.

61. Mr. EL KASMI (Libyan Arab Jamahiriya), speaking on a point of order, said that the Commission was now considering draft resolution E/CN.4/1984/L.14 and that the speaker had departed from the subject. His delegation objected to the fact that the speaker was addressing issues unrelated to the draft resolution.
62. The CHAIRMAN reminded delegations not to use the opportunity to comment on draft resolutions as a means of reopening the debate.
63. Mr. DOWEK (Observer for Israel) said his remarks related to the contents of the draft resolution and, in that connection, he drew attention to operative paragraph 2 of the text.
64. He stressed that his Government would not condone terrorism and would wage a relentless struggle for survival against it. The Government of Israel held the firm conviction that that was its sacred duty and it would make its voice heard everywhere until enlightened mankind outlawed terrorism and united to uproot terrorism from world politics.
65. The very fact that some of the countries which stood behind international terrorism were full members of the Commission was not only cynical but also symptomatic of the grave moral crisis prevailing in world affairs. Delegations had heard from some of the most outspoken countries, such as the Libyan Arab Jamahiriya, the Syrian Arab Republic, the Islamic Republic of Iran, the German Democratic Republic and the Union of Soviet Socialist Republics.
66. Mr. EL KASMI (Libyan Arab Jamahiriya), speaking on a point of order, said that the Commission was not discussing the internal affairs of the countries which had sponsored the draft resolution. He therefore requested the Chairman to remind the speaker that he must refer only to the draft resolution.
67. The CHAIRMAN said that the observer for Israel had only mentioned the names of certain countries and had not referred to the internal situation in those countries. He requested the observer for Israel to confine his remarks to the draft resolution.
68. Mr. EL KASMI (Libyan Arab Jamahiriya), speaking on a point of order, said his delegation regretted that the observer for Israel had described the Libyan Arab Jamahiriya as a supporter of terrorism. Everyone was aware that Israel had intervened in Lebanon and massacred thousands of persons. Everyone knew the truth about Israel and its violations of human rights.
69. The CHAIRMAN appealed to delegations not to reopen the debate and once again requested the observer for Israel to confine his remarks to the subject of the draft resolution.
70. Mr. DOWEK (Observer for Israel), said that the draft resolution gave international protection to terrorists. Terrorists were criminals and no resolution could make of them "freedom fighters" or military personnel to whom the Third Geneva Convention should be applied. He had already stated his Government's position, namely that despite the irrefutable non-applicability of that Convention to terrorist detainees from the legal and moral standpoints, Israel nevertheless applied and would continue to apply all the humanitarian provisions embodied in that Convention as well as other aspects of humanitarian law and norms. Israel co-operated fully with ICRC and allowed it to fulfil its humanitarian mandates to the best of its ability.

Israel acted in that manner not because of the resolutions adopted in the Commission, but because they were the standards set by Israel itself as a free and democratic society where human life and humanitarian principles were sanctified.

71. In the draft resolution, Israel was implicitly blamed for not having released all the Palestinian detainees in compliance with the agreement signed with ICRC. A communiqué from ICRC to the effect that Mr. Abu Ein and a few other terrorists had not been released had been adduced as undeniable proof. He wished to state that there was a difference of interpretation between ICRC and his Government regarding the provisions of the agreement and events on the night of the exchange. The Government of Israel was convinced that it had carried out the agreement to the best of its understanding and ability. Israel had already released about 4,500 terrorists. Some of them had already resumed their "active service" by planting bombs and carrying out gruesome terrorist actions in Israel and other parts of the world. There was no point in releasing more terrorists of that kind as a gesture of goodwill. Nevertheless, it was more than possible that his Government would in the future release more terrorists in return for the bodies of four of its soldiers which were shamelessly being used as barter merchandise. But it must always be remembered that released terrorists were going to swell the forces of evil and that many innocent people in many parts of the world might in the near or remote future pay with their lives because those criminals had been unleashed on them.

72. Mrs. PURI (India) said that in general the non-aligned group supported draft resolution E/CN.4/1984/L.14 and commended it for adoption by the Commission.

73. Mr. BEAULNE (Canada) said that his delegation appreciated the advance notice given to it by the Soviet delegation concerning the amendments (E/CN.4/1984/L.55) to draft resolution E/CN.4/1984/L.32. His delegation could agree to the replacement of the words "throughout the world" by "in many parts of the world" in the last preambular paragraph of the draft resolution. It had difficulty, however, with the other amendments proposed by the Soviet delegation.

74. The purpose of draft resolution L.32 was to underscore the right to freedom of opinion and expression, to express concern for the people in many parts of the world held in prison for exercising that right, and to appeal to States to release them. The Soviet Union was seeking to limit that right. In its amendment to the second preambular paragraph, it sought to curb that right and state that it was subject to restriction. It suggested that the International Covenant on Civil and Political Rights imposed restrictions in general, but the Covenant did not do so. Only two limitations, by no means of a general nature, were mentioned - in article 19, paragraph 3.

75. The proposed new third preambular paragraph merely repeated article 20 of the Covenant. In substance it was unobjectionable, but the draft resolution dealt with freedom of opinion and expression, not with the Covenant as a whole, and there seemed no point in quoting article 20 in isolation.

76. His delegation could not agree to the replacement of the expression "without recourse to violence" by the word "lawfully" in the last preambular paragraph. Many countries had laws which curtailed freedom of speech; that being so, the proposed amendment would nullify the effect of the draft resolution. The proposed amendment to operative paragraph 1 was vapid, falling far short of the Covenant's provisions and the purpose of the draft resolution. The proposed amendment to

operative paragraph 2, while seemingly seeking to reflect the provisions of article 19, paragraph 3 of the Covenant, made small but important distinctions. To assert that the right to hold opinions and the right to express them should be subject to law and to the exigencies of national security, public order and so on did not accurately reflect article 19, which implied no restriction in regard to opinions held. Although 1984 had arrived, it was hard to believe that any States could wish to place restrictions on citizens' thoughts. The qualification was, in any case, clearly covered in the second preambular paragraph and need not be repeated in operative paragraph 2.

77. However, his delegation, in a desire to achieve consensus and in a spirit of compromise, wished to propose a number of sub-amendments:

78. Mr. MIDDLETON (Canada) proposed that the words "certain restrictions" at the end of paragraph 1 of document E/CN.4/1984/L.55 should be followed by: "but these only shall be those as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or public order, or of public health or morals". In paragraph 2, the words "the International Covenant on Civil and Political Rights states that" should be added between the words "Bearing in mind that" and "any propaganda ...". The proposal contained in paragraph 4 was too weak and inconsistent with the spirit of the draft resolution. In paragraph 5, the words "these rights shall" should be replaced by "freedom of expression may". That amendment accurately reflected the distinction made in article 19 of the Covenant between the right to hold an opinion and the right to exercise it.

79. Mr. RAMLAWI (Observer, Palestine Liberation Organization), said that the observer for Israel, speaking on draft resolution E/CN.4/1984/L.14, had followed his delegation's unflinching practice of treating all questions raised in the Commission about the protection of the Palestinian people's rights as tantamount to a defence of terrorism. It should not be forgotten that Israel had been responsible for the murder of a United Nations mediator, Count Bernadotte, in 1948. Under the agreement - referred to in operative paragraph 3 of the draft resolution - on the exchange of prisoners, Israel was to have released all detainees from Ansar Camp, closed that camp and released a further 62 prisoners held in ordinary prisons. He himself had been a party to the negotiations for that agreement. However, Israel had violated the agreement: not only had it failed to release all those in ordinary prisons but had rearrested 128 persons and detained them again in Ansar Camp, according to ICRC, which had subsequently been forbidden to visit the detainees. Israel had in fact reopened that camp and detained even more persons there, according to an ICRC communiqué dated 13 December 1983.

80. Draft resolution E/CN.4/1984/L.14 accurately reflected the situation and was fully in keeping with the corresponding draft resolution submitted at the Commission's previous session.

81. Mr. SEKULE (United Republic of Tanzania) said that his delegation appreciated the Canadian delegation's comments on draft resolution E/CN.4/1984/L.32, but had some doubts about the phrase "without recourse to violence" in the last preambular paragraph. There were occasions when all peaceful means failed to achieve just ends, leaving no alternative to the use of force, that was the situation in

which national liberation movements in southern Africa found themselves. His delegation would therefore prefer the word "lawfully" to "without recourse to violence" in the last preambular paragraph and operative paragraph 1, and appealed to the sponsors of the draft resolution to accept that amendment.

82. Mr. FRAMBACH (German Democratic Republic) said that draft resolution E/CN.4/1984/L.32 dealt with the important human right to freedom of opinion and expression. However, its text was not balanced since, specifically, it took no account of essential elements of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In times marked by international conflict and tension it was essential to establish a link between the right to freedom of opinion and expression and the prohibition of war propaganda and dissemination of ideas based on racial superiority. The draft resolution's sponsors would have done well to take account of the Human Rights Committee's general comments (CCPR/C/21/Add.2, p. 3) on article 20 of the Covenant. Moreover, the right to freedom of opinion and expression could not be stipulated under articles 19 and 20 of that Covenant and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. For those reasons his delegation welcomed the amendments proposed in document E/CN.4/1984/L.55.

83. Mrs. PURI (India) said that her country was committed to the ideas which the sponsors of draft resolution E/CN.4/1984/L.32 sought to assert and which were upheld in the two International Covenants and in India's Constitution. In drafting such a resolution, however, care must be taken to adopt a realistic approach, avoiding any implied licence to abuse the freedom of opinion and expression to the detriment of society, and eschewing texts which only led to burdensome amendments.

84. A careful distinction should be made between freedom of opinion and freedom of expression. The former must be unrestricted; the right to the latter, however, could in no way be invoked for the purpose of inciting unrest. With a view to adoption of a balanced text, her delegation could support the sub-amendments proposed by the Canadian delegation and hoped that that delegation and the Soviet delegation could agree on a compromise text.

85. Mr. MIDDLETON (Canada) said that his delegation was ready to consider drafting a compromise text.

86. Mr. GEVORGIAN (Union of Soviet Socialist Republics) said that his delegation, too, was prepared to consider a compromise text, and wondered why the Canadian delegation had not taken account earlier of the Soviet delegation's proposed amendments and observations.

87. Mr. CHARRY SAMPER (Colombia) said that his delegation, as a sponsor of draft resolution E/CN.4/1984/L.32, supported the suggestion that the Commission should defer consideration until a compromise text had been drafted.

88. Some delegations seemed to find difficulty with the expression "without recourse to violence" in the fourth preambular paragraph and operative paragraph 1 of the text. Surely that expression was, inter alia, a tribute to the memory of an unswerving exponent of non-violence, Mahatma Gandhi.
89. Mr. SENE (Senegal) said that his delegation appreciated the efforts of the sponsors of draft resolution E/CN.4/1984/L.32 to secure adoption of a text on the right to freedom of opinion and expression. To that end, his delegation was ready to participate in efforts to draft a consensus text.
90. The CHAIRMAN said that, if there was no objection, he would take it that the Commission wished to defer consideration of draft resolution E/CN.4/1984/L.32 and document L.55.
91. It was so decided.
92. The CHAIRMAN invited delegations which wished to do so to speak in explanation of vote before the votes on draft decision E/CN.4/1984/L.12 and draft resolution L.14.
93. Mr. SCHIFTER (United States of America) said that his delegation would vote against draft resolution E/CN.4/1984/L.14, whose text related only to persons detained by one side in the war in Lebanon. His delegation failed to understand how members of the Commission could propose a text which utterly disregarded the rights of prisoners belonging to one side in the conflict. Adoption of such a text would be an indictment of the Commission's procedure.
94. Mr. BEAULNE (Canada) said that his delegation would vote in favour of draft resolution E/CN.4/1984/L.14, without prejudice to the fact that Canada took no stand with regard to the difference of views between Israel and ICRC about the agreement on the exchange of prisoners. His delegation agreed that the text should have referred to prisoners detained by all parties to the conflict in Lebanon.
95. Mr. BODDENS HOSANG (Netherlands) said that, although his delegation would vote in favour of draft resolution E/CN.4/1984/L.14, it had difficulty with the last preambular paragraph and operative paragraph 2. The text reflected a one-sided view of the situation in Lebanon, for example by failing to mention that the Syrian Arab Republic, too, was an occupying Power. Although his delegation did not see why Israel should regard PLO prisoners as having the status of combatants of a State, it was able to support the draft resolution for humanitarian reasons.
96. Mr. SENE (Senegal) said that his delegation urged respect for the various international instruments relating to the treatment of prisoners of war, including the Third Geneva Convention of 12 August 1949, and on previous occasions had expressed grave concern about the condition of persons detained in the occupied Arab territories, including Palestine. It fully supported draft resolution E/CN.4/1984/L.14, which was of an essentially humanitarian nature and, inter alia, stressed the real value of ICRC's role. The text simply called on all parties to the conflict to provide full information about all persons detained or imprisoned as a result of Israel's invasion of Lebanon. His delegation hoped that the process initiated by the exchange of prisoners under the agreement

concluded between Israel and ICRC in November 1983 would be continued. References to terrorism were irrelevant to consideration of draft resolution E/CN.4/1984/L.14, which contained specific humanitarian proposals deserving the Commission's overwhelming support.

97. The CHAIRMAN announced that Pakistan and Senegal had joined the sponsors of draft resolution E/CN.4/1984/L.14. He invited the Commission to take action on the draft decision contained in document E/CN.4/1984/L.12.

98. Draft decision E/CN.4/1984/L.12 was adopted without a vote.

99. The CHAIRMAN announced that the United States delegation had requested a vote on draft resolution E/CN.4/1984/L.14.

100. Mr. CALERO RODRIGUES (Brazil) requested a separate vote on the second part of operative paragraph 3, from the words "as well as those ..." to the end of the paragraph.

101. The second part of operative paragraph 3 of draft resolution E/CN.4/1984/L.14 was adopted by 35 votes to 1, with 7 abstentions.

102. At the request of the representative of the Libyan Arab Jamahiriya, a vote was taken by roll-call on draft resolution E/CN.4/1984/L.14 as a whole.

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

In favour: Argentina, Bangladesh, Brazil, Bulgaria, Cameroon, Canada, China, Colombia, Cuba, Cyprus, Finland, France, Gambia, German Democratic Republic, Germany, Federal Republic of, India, Ireland, Italy, Japan, Jordan, Kenya, Libyan Arab Jamahiriya, Mauritania, Mexico, Mozambique, Netherlands, Nicaragua, Pakistan, Philippines, Rwanda, Senegal, Spain, Syrian Arab Republic, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Yugoslavia, Zimbabwe.

Against: United States of America.

Abstaining: Costa Rica.

104. Draft resolution E/CN.4/1984/L.14 as a whole was adopted by 41 votes to 1, with 1 abstention.

105. Mr. GEVORGIAN (Union of Soviet Socialist Republics), speaking in explanation of vote, said that, although his delegation had raised no objection to the adoption of draft decision E/CN.4/1984/L.12, he wished to record its reservations, which were based on a number of controversial and dubious points contained in Sub-Commission resolution 1983/30. The Sub-Commission was not competent to deal with the question of implementing the provisions of the International Covenant on Civil and Political Rights, particularly article 4 concerning derogation in time of public emergency. The Human Rights Committee existed for consideration of such matters. Furthermore, Sub-Commission resolution 1983/30 added a further item, and a questionable one, to that body's already overloaded agenda - an addition hardly conducive to the effectiveness of the Sub-Commission's work.



TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT  
(agenda item 10 (a)) (continued) (E/CN.4/1984/L.36 and L.60)

106. The CHAIRMAN invited the Commission to consider the draft resolutions (E/CN.4/1984/L.36 and L.60) submitted under agenda item 10 (a). With respect to the first of the draft resolutions, the delegations of Colombia, Costa Rica and Jordan, and the observer delegations of Peru and Sweden, should be added to the sponsors. With regard to the second, Italy and the Netherlands had joined the sponsors.
107. Mr. EKBLOM (Finland), introducing draft resolution E/CN.4/1984/L.36, recalled that the General Assembly, in its resolution 32/62, had requested the Commission to draw up a draft convention on torture and other cruel, inhuman or degrading treatment or punishment in the light of the principles embodied in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. That request had been renewed annually.
108. The open-ended Working Group which had been working on the text of that draft convention for five years had been able to reach agreement on most articles of the draft convention and the sponsors of the draft resolution accordingly suggested that the draft convention should now be transmitted to the General Assembly for consideration, together with the report of the Group and the relevant summary records of the Commission.
109. Under operative paragraph 3 of the draft resolution, the Secretary-General was requested to bring those documents to the attention of Governments and to invite them to submit their comments for transmission to the General Assembly. Lastly, operative paragraph 5 recommended that the General Assembly should consider the draft convention with a view to the early adoption of a convention against torture and other cruel, inhuman or degrading treatment or punishment.
110. He also wished to introduce draft resolution E/CN.4/1984/L.60 concerning the United Nations Voluntary Fund for Victims of Torture, which had been established by the General Assembly in 1981 to provide humanitarian, legal and financial aid to the victims of torture. In November 1982, the Secretary-General had appointed a four-member Board of Trustees for that Fund, with Mr. Danelius (Sweden) as Chairman. By 31 January 1984, 13 Governments had made or pledged contributions to the Fund. Contributions had also been made by a number of organizations and individuals.
111. Operative paragraph 1 of the draft resolution expressed gratitude to those Governments, organizations and individuals who had made contributions. In view of the continuing need for financial support, operative paragraphs 2 and 4 made a further appeal for contributions.
112. During the present session, much further testimony had been heard confirming the continued existence in many parts of the world of the practice of torture and other forms of inhuman or degrading treatment; hence the importance of intensifying work to prevent torture and to help its victims. His delegation and the other sponsors of draft resolution E/CN.4/1984/L.60 were convinced that its adoption would constitute a step towards that end. They hoped that it would be adopted without a vote.

113. The CHAIRMAN noted that there had been no request for a vote on either of the two draft resolutions submitted under agenda item 10 (a).

114. Draft resolution E/CN.4/1984/L.36 was adopted without a vote.

115. Draft resolution E/CN.4/1984/L.60 was adopted without a vote.

QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES (agenda item 10 (b)) (continued)  
(E/CN.4/1984/L.33 and L.59).

116. The CHAIRMAN invited the Commission to consider the draft resolution (E/CN.4/1984/L.33) submitted under agenda item 10 (b) and announced that Costa Rica, Nicaragua and the United Kingdom had joined its sponsors. In connection with the draft resolution, he drew attention to the statement of administrative and programme budget implications (E/CN.4/1984/L.59).

117. Mr. COLLIARD (France), introducing draft resolution E/CN.4/1984/L.33, recalled the decision taken by the Commission at its thirty-sixth session in 1980 to establish for a period of one year a Working Group consisting of five of its members serving as individual experts to examine questions relevant to enforced or involuntary disappearances of persons. The Group's mandate had been extended for further periods of one year in 1981, 1982 and 1983.

118. The draft resolution called, in operative paragraph 2, for a further one-year extension of the Group's mandate. The text of the draft resolution, however, differed from that of the Commission's previous resolutions on the subject. Those differences consisted essentially of additions.

119. In the preamble, the additions consisted of the introduction of the fifth and sixth paragraphs which expressed concern about the persistence, in certain cases, of the practice of enforced or involuntary disappearances, and emotion at the anguish and sorrow of the families concerned.

120. In the operative part, the new paragraph 4 called upon the Group to present to the Commission all appropriate information and all concrete suggestions and recommendations regarding the fulfilment of its task, as formulated by the Group itself in its report (E/CN.4/1984/21), and more particularly in chapter VIII (Conclusions and Recommendations) and paragraph 174 of that report. Operative paragraph 5 emphasized the humanitarian nature of the Group's task and the need for it to observe United Nations standards and practices concerning the receipt of communications, their consideration, their transmittal to Governments and their evaluation. Bearing in mind operative paragraph 6, which requested the Secretary-General to appeal to all Governments to co-operate with the Group, the new operative paragraph 7 encouraged the Governments concerned to consider with special attention the wish of the Group to visit their countries.

121. In view of the humanitarian purpose of the draft resolution, its sponsors hoped that the Commission would adopt it without a vote.

122. Mr. SIRJANI (Observer for the Islamic Republic of Iran) noted the reference in the last preambular paragraph of the draft resolution to the report of the Working Group and drew attention more particularly to paragraph 20 of that report concerning the Group's request, formulated in 1983, that investigations should be made into the fate of persons missing as a result of the armed conflict between the Islamic Republic of Iran and Iraq (E/CN.4/1983/14, paras.118-120).

123. At the Commission's previous session, when it had discussed the report of the Working Group under agenda item 10 (b), his delegation had had occasion to refer to the relevant United Nations resolutions, in particular Security Council resolution 237 (1967) and General Assembly resolutions 2252 (ES-V) and 2443 (XXIII) and 2444 (XXIII), which represented a solid legal basis for the consideration of the issue by the Group. All those resolutions called for the proper application of the relevant Geneva Convention. They also provided an indication of the alarming fact that certain functions essential for the safeguarding of human rights and the proper application of the Geneva Conventions were not being fulfilled. It was for that reason that a number of fact-finding missions and *ad hoc* bodies to investigate violations of the Conventions had been established. In particular, General Assembly resolution 2443 (XXIII) of 1968 had established a Special Committee of investigation consisting of three members. As for the Commission on Human Rights, by its resolution 6 (XXV) of 4 March 1969, it had established a special working group of experts to investigate allegations concerning violations of the Fourth Geneva Convention.

124. The International Conference on Human Rights held in Teheran in 1968 had drawn attention to the need to bring up to date and to develop international humanitarian law in general; there had followed a series of General Assembly resolutions from 1969 onwards and a succession of reports by the Secretary-General, all of them under the title "Respect for human rights in armed conflicts". The first of those reports (A/7720) had been submitted on 20 November 1969. That new United Nations interest in humanitarian law reflected an increasing awareness among its Members of the inadequacy of existing law.

125. In that drive to clarify humanitarian law, particular attention must be paid to the comparative ineffectiveness of the system of scrutiny provided for by the Fourth Geneva Convention and the Protocols thereto. It was the firm belief of his delegation that the failure to scrutinize violations properly would lead to an erosion of the very principles which the Geneva Conventions aimed to safeguard.

126. There could be no doubt that the question of missing persons represented a gross violation of human rights, since it involved many thousands of persons; no less than 9,405 Iranians had thus been reported missing (E/CN.4/1983/14, para.118). In that connection, there was evidence, in particular in the communications from ICRC, of a repetition of certain acts throughout all prison camps in Iraq. Those acts were tolerated and even encouraged by the official Iraqi authorities. The element of repetition and the substantial number of missing persons pointed to the systematic character of the administrative practice in question. Since the disappearances were directly due to the practices followed by the State concerned, the international responsibility of that State was unquestionably involved.

127. The CHAIRMAN requested the speaker to confine his comments to the content of the draft resolution under discussion and not to reopen the earlier debate.

128. Mr. SIRJANI (Observer for the Islamic Republic of Iran) recalled that his delegation had placed before the Working Group all the documents and facts in support of its claim and the request for an investigation into the disappearance of nearly 10,000 Iranians. His delegation hoped that, in its future initiatives, the Commission would succeed in commencing its efforts in respect of missing persons. He most sincerely hoped that on that occasion all other considerations could be set aside in favour of humanitarian action.

129. Mr. MAHBOUB (Observer for Iraq) reserved his right of reply.

130. The CHAIRMAN noted that no request had been made for a vote on draft resolution E/CN.4/1984/L.33. If there was no further comment, he would take it that the Commission wished to adopt the draft resolution without a vote.

131. It was so decided.

132. The CHAIRMAN said that he had to announce with regret the resignation of Lord Colville of Culross as Chairman/Rapporteur of the Working Group on Enforced or Involuntary Disappearances. After consultation with the Group of Western European and Other States, he had decided to appoint in his place as a member of the Working Group Mr. van Dongen (Netherlands). The composition of the Working Group would therefore be: Mr. Foli (Ghana), Mr. Tosevski (Yugoslavia), Mr. Varela (Costa Rica), Mr. Hilaly (Pakistan) and Mr. van Dongen (Netherlands).

133. Mr. CALERO RODRIGUES (Brazil) said that the departure of Lord Colville of Culross from the Working Group would be unanimously regretted. All members of the Commission appreciated his dedication to the tasks of the Working Group. In that connection, he proposed the following draft resolution, which he hoped would be adopted by acclamation:

"Noting that Lord Colville of Culross is resigning from the chairmanship of the Working Group on Enforced or Involuntary Disappearances, which he has held since the Group's inception in 1980,

"The Commission on Human Rights expresses its appreciation to Lord Colville of Culross for the manner in which he has carried out his tasks and for the skill and dedication which he has brought to the work of the Group."

134. The draft resolution was adopted by acclamation.

135. Lord COLVILLE OF CULROSS (Chairman/Rapporteur of the Working Group on Enforced or Involuntary Disappearances) said he was greatly touched at the fact that the Commission should have taken that decision by acclamation. He bitterly regretted the necessity of having to give up a fascinating and, he believed, very worthwhile

task. He knew, however, that it would be continued in his colleagues' hands to the satisfaction of all members of the Commission. For the time being, however, he only wished to express his heartfelt thanks for the very generous gesture towards him.

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 (agenda item 12) (E/CN.4/1984/10, 18, 25 and Corr.1, 26-30, 32, 49, 50, 54, 57, 63 and 67; E/CN.4/1984/NGO/1, 3, 6, 7, 9, 16, 17, 25, 27, 29 and Add.1, 30 and 38; A/38/538), INCLUDING:

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS (E/CN.4/1984/31; E/CN.4/1984/NGO/10 and 42)

136. The CHAIRMAN said that, before opening the public debate on agenda item 12 as a whole, he wished to remind the Commission that it had taken action in private session under Economic and Social Council resolution 1503 (XLVIII) on the following States: Albania, Argentina, Benin, Haiti, Indonesia (in relation to East Timor), Malaysia, Pakistan, Paraguay, Philippines, Turkey and Uruguay. The Commission's consideration of one country - namely, Afghanistan - under the 1503 (XLVIII) procedure was still pending and would be resumed later at the present session. In conformity with paragraph 8 of resolution 1503 (XLVIII), members of the Commission should make no reference in the public debate to confidential decisions concerning the above-mentioned countries, nor to any confidential material relating thereto. Since, however, it was the Commission's practice to disclose the names of countries in respect of which situations had been considered under the 1503 (XLVIII) procedure, it would seem equitable to indicate that the human rights situations in Argentina, Malaysia and Pakistan were no longer under consideration by the Commission under that procedure.

137. Mr. HERNDL (Assistant Secretary-General for Human Rights), introducing agenda item 12 (including item 12 (a) on the question of human rights in Cyprus), said that most of the items on the Commission's agenda concerned its endeavours to study issues affecting the realization and promotion of human rights. With the item on violations of human rights, however, the Commission came face to face with problems affecting all aspects of its work. That item concerned the international community's reaction to the failure to respect human rights. It was imperative that violations should be dealt with promptly and adequately because the continuation of serious human rights violations not only entailed much human suffering but could also affect the Commission's authority as the main United Nations organ for the protection of human rights. Hence the General Assembly's insistence - notably in its resolutions 34/175 and 37/200 - on priority for the search for solutions to mass and flagrant violations of human rights.

138. In considering the item, the Commission dealt in practice with country situations as well as thematic categories. It had before it the following reports on country situations: on El Salvador, the report of the Special Representative (E/CN.4/1984/25); on Guatemala, the report of the Special Rapporteur (E/CN.4/1984/30); on the Islamic Republic of Iran, two reports of the Secretary-General pursuant to Commission resolution 1983/34 (E/CN.4/1984/28 and 32); and on Poland, the report

presented by Under-Secretary-General Patricio Ruedas (E/CN.4/1984/26). The Commission had also before it a report by the Secretary-General submitted pursuant to its decision 1983/107 on the question of human rights in Cyprus (E/CN.4/1984/31).

139. As to thematic categories, the Commission had before it the report of its Special Rapporteur on Summary or Arbitrary Executions (E/CN.4/1984/36). It had also under review the question of human rights and massive exoduses.

140. In his opening address at the present session, he had drawn attention to the need to improve the timeliness of the United Nations response to violations of human rights and had stressed the importance of governmental co-operation with the Commission in efforts to deal with those violations. Those general issues might be borne in mind during the consideration of agenda item 12.

141. Mr. PASTOR RIDRUEJO (Special Representative of the Commission), introducing his final report on the situation of human rights in El Salvador (E/CN.4/1984/25), said that the situation in El Salvador during 1983 had continued to cause him great concern. He would proceed to indicate five major categories of grave and massive violations of those rights.

142. The first category was that of political murders of members of the civil population. On that point, the information received from a great variety of different sources was very alarming. Two different reliable sources had reported 5,569 such murders for 1983 while a senior ecclesiastical authority had put the figure at 4,736. For its part, the Human Rights Commission of El Salvador (governmental) gave the figure of 1,585. He realized the need for caution when considering those figures because of the numerous difficulties involved (such as that of distinguishing between the corpses of civilians and those of combatants). Nor could he determine whether the total figure for such murders was similar to or smaller than that for 1982. According to a number of sources, including the United States Embassy, the figure appeared to have decreased. There could be no doubt, however, that the total number of political murders continued to be very high, and that fact remained the most alarming feature of the human rights situation in El Salvador. As to responsibility for those acts, he was convinced that most of them had been committed by members of the armed forces, security forces and extreme right-wing paramilitary groups (including death squads) connected with or tolerated by those forces. In recent months, the activities of death squads had increased in an alarming manner. For their part, the opposition guerrilla forces had been also responsible for certain murders, although in smaller numbers.

143. The second category was that of abductions, which were unfortunately continuing, according to his information. There again, the figures reported varied according to the source. Christian Legal Aid mentioned 710 cases for the first nine months of 1983; the Human Rights Commission of El Salvador (non-governmental) mentioned 345 cases between 1 January and 15 June, and the Archdiocesan Legal Protection Office reported that 813 persons had disappeared between 1 January and 31 October 1983. According to the State Department of the United States of America, the number of disappeared persons amounted to 39 per month, which corresponded to the average for the last six months of 1982.

Those figures should also be treated with caution, among other reasons because of the possibility of duplication with the reported cases of political murders. According to information which he had received, however, most cases of disappearances were attributable to members of the armed forces, security forces and death squads. It should also be noted that cases existed of abductions and disappearances attributable to the guerrilla forces.

144. The third grave problem to which he wished to draw attention was the incapacity of Salvadorian criminal justice to investigate and punish grave violations of human rights. There was an obvious disproportion between the large number of violations reported and the small number of cases judicially prosecuted. Proceedings were, moreover, extremely slow, as shown by the fact that the few cases prosecuted (in response to international pressure) had not got beyond the examination stage and that so far there had not been any conviction. He realized the difficulties impeding the normal operation of justice in El Salvador, including the pressures to which the judges were subjected, since many of them had been threatened and some even murdered. He had also noted some attempts made to improve the judicial system. As he saw it, the Salvadorian system of criminal justice stood in imperative need of thoroughgoing reform; the existing situation led to almost total impunity and was one of the causes of the prevailing violence.

145. The fourth major problem was that of the systematic attacks by the opposition guerrilla forces against the whole economic system of the country, including crops, roads, railways, bridges and power installations. He recalled in that connection the destruction on 1 January 1984 of the important Cuscatán bridge connecting the east and west portions of the country. Attacks of that kind were described as directed against military objectives but in his view, they led to deterioration of economic conditions and seriously jeopardized the Salvadorian people's future enjoyment of important economic, social and cultural rights.

146. The fifth major category was that of violations of the minimum standards of humanitarian law in the armed conflict between the regular army of El Salvador and the guerrilla forces. The information which had reached him showed that, although both belligerents had occasionally extended humane treatment to persons captured in the course of hostilities, on other occasions conduct manifestly contrary to the Geneva Conventions and Protocols had been reported. He referred specifically to attacks against the civilian population by governmental armed forces and to the murder of soldiers who had surrendered to the opposition guerrilla forces. Subsequent to his interim report to the General Assembly, he had been informed of the bombardment of the town of Tenancingo early in October 1983 by an aeroplane of the Salvadorian Air Force, with a large number of casualties.

147. In view of the foregoing facts he could not but be pessimistic in assessing the human rights situation in El Salvador. In all fairness, he added that he had detected a favourable attitude towards human rights on the part of certain authorities in El Salvador. He wished to refer in particular to the promulgation in May 1983 of the Amnesty and Rehabilitation of Citizens Act, to the setting-up of the Human Rights Commission of El Salvador (governmental) and to the initiation of a dialogue with the left-wing opposition forces, as well as the co-operation extended to him by the Government of El Salvador in the performance of his mandate. The Amnesty Act had made it possible to release over 500 political prisoners and over 550 guerrilla fighters. Some of the persons concerned had been enabled to proceed to foreign countries, including Australia, Canada and Belgium.

148. As for the role of the Human Rights Commission of El Salvador (governmental), he could say that it had made a contribution to the observance of human rights in a modest but real manner. Its activities had led to the release of 51 political prisoners and had made it possible to save a number of lives. The Commission had conducted courageous investigations into such outrages as the killing of civilians by members of the armed forces at Las Hojas in February 1983.

149. Another positive element was the dialogue initiated between the El Salvador Peace Commission and representatives of the FDR-FMLN. There were many difficulties but he urged both parties to continue that dialogue, which could lead to a negotiated peace. A military victory by either party would not constitute a satisfactory solution to the Salvadorian conflict, but could only prolong the suffering of the Salvadorian people. Moreover, any overwhelming military victory by either side would make it extremely difficult to institute a representative and pluralist democracy respectful of human rights. He wished to thank the Government of El Salvador for its continued co-operation with him.

150. With regard to the Presidential elections scheduled for 25 March 1984, in principle he could not but welcome the exercise by the Salvadorian citizens of their right to express their will through democratic elections. Nevertheless, he wished to reiterate the idea put forward in his first report, to the effect that the holding of elections presupposed the existence of certain specific conditions, particularly a climate of social peace permitting the free expression of the people's will. Elections did not constitute an end in themselves but rather a means of ensuring a peaceful and democratic coexistence, with due respect for human rights. If an election did not secure those results, its desirability would be open to question.

151. In conclusion, he wished to dwell on the great concern for the observance of human rights which had been expressed to him by the highest authorities of the Salvadorian Government during his visits to that country in 1982 and 1983. The feelings thus expressed were no doubt sincere, but the deplorable human rights situation in the country showed that there was a great gap between the intentions expressed by certain authorities and their ability to obtain results. The causes for that were very complex and possibly reflected the existence of different ideological trends within Salvadorian governing circles. In the performance of his mandate, it had been his basic intention to assist those trends and sectors most concerned with the observance of human rights and thereby help the Salvadorian people as a whole.

152. Lord COLVILLE OF CULROSS (Special Rapporteur of the Commission), introducing his report on the situation of human rights in Guatemala (E/CN.4/1984/30), said that it represented a very considerable revision and up-dating of the interim report (A/38/485) he had submitted to the Third Committee of the General Assembly in December 1983.

153. Since his appointment, he had twice visited Guatemala and had been to Mexico City and the border area of southern Mexico to investigate the situation of some of the refugees there. As for methodology, he had followed the technique of recording and commenting upon what he himself had heard and seen. He had concentrated upon first-hand material and had reproduced in his report the point of view of all his informants. In that regard, he wished to express his thanks to the Government of Guatemala and to all those who had assisted him in so many ways



in the preparation of the report. There would undoubtedly be some criticism during the debate concerning the contents of his report. He would welcome that criticism, provided it was constructive. The views expressed during the General Assembly debate, for example, had led him to review certain portions of his text.

154. The report contained a minimum of cross-references to other documents. He had of course read carefully all the sources of material available to him but had attempted to produce a comparatively short and self-contained document which could be read without much trouble.

155. A major problem had been that of checking the allegations of terrible human rights violations which had for years emanated from Guatemala. In his own analysis, he had only dealt with the two Governments in office during the term of his mandate. Some of the allegations appeared to be true, others false or distorted. He could not therefore endorse or recommend the automatic acceptance by the Commission without further investigation of the copious reports of human rights violations in Guatemala. It was equally obvious that no Special Rapporteur could undertake all the detective work himself. He welcomed the efforts of other investigators whose reports deserved to be judged on the same basis as his own. It would, however, be unhelpful to make broad generalizations or allegations which could not be checked because details were lacking.

156. Because of that difficulty in verifying allegations, he wished to underline his recommendation 6 (E/CN.4/1984/30, p.43) relating to an effective and reliable system of inquiry. He could not conceive of any more valuable single measure which the Government could take: it would clear up past allegations, almost certainly prevent future abuses and greatly enhance the reputation of the country.

157. Certain critics had circulated rumours that his translators and interpreters had been provided by the Government, and had claimed that, as a result, he had misunderstood many things. He had to refute that allegation since it reflected in an unjustified manner on many people other than himself. Since he himself read Spanish, only the spoken word was involved. In point of fact, his interpreters had at all times been respected members of the United Nations staff. If help had been needed with one of the indigenous languages, someone locally had always been found who had had no connection with the Government; the secretariat had fully anticipated that problem and had amply overcome it.

158. Since events in Guatemala continued to move fast, he wished to bring up to date some of the items of the report. In the first place, there appeared to be no cessation of internal violence. Murders and disappearances remained at the level experienced prior to the coup d'état in March 1982. Thus, between 2 and 8 February 1984, 33 people had been murdered, 25 had disappeared and 28 had been wounded in shootings. It was significant that many trade unionists had recently been victims of violence. Activity to arrest those responsible had apparently been stepped up. Two national policemen had been arrested for kidnapping and murder and four members of the security forces had been arrested for robbery. He welcomed those steps and the few trials of members of the security forces charged with violence against civilians. Until the records were available of the trials of those recently arrested, however, it would not be possible to determine how the

process of law was dealing with the resurgence of violence. He noted, however, that in severe cases the courts were refusing bail. He should add in fairness that members of the police themselves continued to be victims of disappearance and violence.

159. He also wished to draw attention to the civil patrols. On 25 January 1984, the Head of State had announced that members of those patrols would have normal civilian status in taking part in the elections and the preceding campaign. By contrast, military personnel were barred from participation either as candidates or as voters. He could not help observing the enormous power the patrols possessed in their own communities and hoped that it would not be used for undue influence.

160. A number of new events gave encouragement for the future. First, there appeared to be every reason to believe that the electoral process would remain on schedule and that a fairly broad spectrum of parties - ranging from the centre left to the right - would present themselves to the electorate. The United Nations and the OAS had been invited to send observers over the whole period of the election and the OAS had already accepted. New titles to land continued to be granted, as at San Marcos and Izabal. The new village of San Juan Acul, which was mentioned in his report (E/CN.4/1984/30, para. 7.3.6. (f)), was now finished. The Government of Honduras had announced new and detailed measures, taken in conjunction with UNHCR, to ameliorate the plight of Guatemalan refugees in that country. Lastly, it was proposed to establish an official body to devise means of pacifying the present opposing forces. Headed by the Rector of the independent University of San Carlos, it would include representatives of the Church, the press, political parties, employers and the work force.

161. He wished to finish with a particular plea, relating to the undoubtedly exceptional nature of the (now abolished) special courts called "Tribunales de Fuero Especial". During both his visits, there had been particular concern about those arrested and prosecuted on charges within the jurisdiction of those tribunals. For some of them the rule of the application of the most benign law had already had the effect of reducing their sentences. Some sentences, however, were very long and there was no sign of any legislation to allow a retrial. It was also necessary to clarify the inconsistency between the numbers officially said to have been arrested and the much smaller numbers tried and sentenced, or acquitted. Progress on that issue would mark an advance on civil and political rights which would begin to match the economic, social and cultural improvements already under way.

162. Mr. RUEDAS (Under-Secretary-General), introducing his report on the situation in Poland (E/CN.4/1984/26), drew attention to three errors to be corrected in the text. In paragraphs 21 and 22, the reference to the "Council of State" should be replaced by a reference to the "Sejm" (i.e. the Polish Parliament), which had approved the legislation mentioned in those two paragraphs. In paragraph 35, the words "on 18 October 1982, the Government of Poland had adopted a new law on trade unions" should be replaced by: "on 8 October 1982 the Sejm had adopted a new law on trade unions".

163. The introduction to the report (E/CN.4/1984/26, paras. 1-16), setting forth the historical background, drew attention to the exchange of correspondence between the Secretary-General (and his then representative Mr. Gobbi) and the Polish Government. The scope of the present report had been defined both by that exchange and by the information provided by the Polish Government or gathered in the course of two visits to Poland, the latest of which had taken place from 18 to 21 February 1984. Reference was made in the report (para. 12) to Mr. Gobbi's assumption of high office in the Government of Argentina and his consequential resignation from the duties he had held in the secretariat with regard to Poland.

164. The report went on to provide a brief summary (paras. 17-23) of legislative developments since the previous session of the Commission which were considered as having a bearing on the human rights situation in Poland. The next section of the report contained a summary of other developments in Poland under four implicit headings: first, the right to life; secondly, the prohibition of cruel, inhuman or degrading treatment; thirdly, arrest and detention; and fourthly, freedom of association, in which connection the report pointed out that ILO was currently conducting an inquiry (para. 36). With regard to the report's conclusions (paras. 38-41), he wished to stress the need for prudence: the situation in Poland was complex and did not lend itself to sweeping value judgements. At the same time, he wished to sound a note of hope, since there had been many encouraging developments in the past 12 months. It was in that dual spirit of prudence and hope that the report had been submitted, in the expectation that it could contribute towards the processes of reconciliation in Poland, towards understanding in the world community, and towards the cause of human rights.

165. Mr. WAKO (Special Rapporteur), introducing his report on summary or arbitrary executions (E/CN.4/1984/29), stated that it had been prepared in the light of the comments made in the Commission during the discussion of his first report (E/CN.4/1984/16 and Add.1 and Add.1/Corr.1) and taking into account all the information subsequently received. Sixty-three Governments - namely the 61 mentioned in paragraph 14 (a) of the report, plus Italy and the Philippines, 11 intergovernmental organizations and 18 non-governmental organizations had responded to his request for information and comments. He expressed appreciation for that co-operation, which was of the utmost importance in the discharge of his mandate, as well as his special thanks to the representatives of a number of Governments who had taken the trouble to see him personally and communicate information from their Governments. A constructive dialogue by all those concerned played an indispensable part in finding a solution to the problems involved.

166. During the tenure of his present mandate of one year he had received many allegations concerning a number of countries, and more particularly 10 countries where summary or arbitrary executions had allegedly taken place during 1983. In accordance with the established procedure, those allegations had been transmitted to the Governments concerned. Since most of them had come to his attention in November 1983, it was only after that date that the Governments concerned had been informed; they had explained to him that more time would be required to examine the allegations. He had accordingly refrained at the present stage from mentioning the countries concerned and the nature of the allegations made against them.

157. The problem was one which was likely to continue in the future because, when the Commission decided to renew a Special Rapporteur's mandate, it did so around March in any given year, so that the relevant decision by the Economic and Social Council could only be adopted towards the end of May. By the time the Special Rapporteur was in a position to communicate with Governments, it was already late in the year. As a result, the Governments concerned did not have time to reply before the Special Rapporteur had completed his report.

168. Turning to the contents of the report, he pointed out that chapter I set out a general analysis of international legislation as compared with the relevant international legal instruments. That analysis could not be considered as exhaustive since time did not allow him to conduct any research; he had therefore had to rely exclusively on information supplied by Governments. In chapter II he had endeavoured to elaborate on those situations in which summary or arbitrary executions took place and on the common factors which were likely to foment conditions for the occurrence of such executions. His purpose had been to illustrate the phenomenon and to identify its root causes.

169. In accordance with his mandate, he had also engaged in certain activities falling within the sphere of that mandate. Firstly, pursuant to paragraph 7 of Council resolution 1983/36, he had responded positively to the invitation extended by the Governments of Guatemala and Suriname. Unfortunately, his visits to those countries had not materialized. In the first case, as a result of the appointment of a Special Rapporteur on Guatemala who had visited that country in 1983, the Government had felt it was unnecessary for him also to visit Guatemala and he concurred with the Government's view (E/CN.4/1984/29, para. 24). With regard to the cancellation of his visit to Suriname, he referred more particularly to paragraph 28 of the report which gave the full texts of the telex received by him on the subject and of his reply thereto.

170. Secondly, on receiving appeals from various sources making allegations of imminent or threatened summary executions which appeared prima facie relevant to his mandate, he had addressed urgent messages by telex to the Governments concerned. The full text of those messages and of the replies (when received) were given in the report. He wished to extend special thanks to the representative of the Government of Sri Lanka who, in addition to the official written reply of his Government, had come to see him and give him a full briefing on the situation. Without in any way passing judgement on those allegations, he wished to state that the urgent action procedure in the matter was an invaluable part of the response of the international community in dealing with summary or arbitrary executions. That form of urgent action should be maintained and developed for as long as the problem of summary or arbitrary executions remained on the agenda. In his opening remarks, the Assistant Secretary-General had stressed the need to improve the timeliness of the response to human rights violations. For his part, he could see no greater need for such speedy response than a prompt reaction to a situation of threatened summary executions.

171. As mentioned in the conclusion to the present report, the practice of summary or arbitrary executions was unfortunately still widespread and respect for the right to life was far from universal. In some cases, such executions occurred despite safeguards meticulously stipulated in the national constitution and relevant legislation. In other cases, the national laws were in conflict with the international legal standards, a situation which arose particularly when a state of emergency was proclaimed. Situations in which summary or

arbitrary executions occurred were complex and involved multiple factors - economic, social and cultural as well as civil and political. In that connection, he referred to part B of chapter II of his report. Although the information before him indicated that in some instances non-respect for the right to life could be attributed to groups other than governmental or quasi-governmental agencies, he wished to emphasize again that primary responsibility for protecting the right to life rested with the Government.

172. It was self-evident that the international community, and the Commission in particular, must continue to focus attention on the problem and that, as a matter of priority, a mechanism must be found for acting in situations of immediate or threatened summary or arbitrary execution with a view to its prevention, and to monitoring practices or situations of summary or arbitrary executions. He looked forward to the discussion on the conclusions and recommendations of his report.

173. Lastly, he expressed his appreciation to Governments, intergovernmental organizations and non-governmental organizations for their co-operation, and to the staff of the Centre for Human Rights for the assistance and advice he had received in carrying out his mandate.

The meeting rose at 7.50 p.m.