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COMMISSION ON HUMAN RIGHTS

Forty-second session

SUMMARY RECORD OF THE SECOND PART (PUBLIC) */ OF THE 56th MEETING (continued)

Held at the Palais des Nations, Geneva,
on Thursday, 13 March 1986, at 3 p.m.

Chairman: Mr. CHARRY SAMPER (Colombia)

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MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS (agenda item 14) (continued)

Draft resolution E/CN.4/1986/L.78

1. Mrs. GARRIDO RUIZ (Mexico), introducing draft resolution E/CN.4/1986/L.78, said it was regrettable that the Commission had not had enough time to conduct a general debate on the question that formed the subject of that document. She recalled that the open-ended Working Group to elaborate an international convention on that question pursuant to General Assembly resolution 34/172 had held its first meeting in October/November 1980 and had been able to submit a draft convention that had already gone beyond the first-reading stage. The sponsors of the draft resolution, convinced as they were that the protection of the human rights of migrant workers should be guaranteed by an international instrument, hoped that the efforts of the Working Group would soon be rewarded by the adoption of its draft convention.
2. In their draft resolution (E/CN.4/1986/L.78) which they hoped would be adopted by consensus, the sponsors referred to the Group's work to date, congratulated its members on the headway achieved, invited Member States to continue co-operating with the Group, expressed the hope that the General Assembly would complete the elaboration of the convention as soon as possible, and requested the Secretary-General to inform the Commission, at its forty-third session, of the further progress made.
3. Mrs. KSENTINI (Algeria) also expressed regret that the Commission had not accorded greater importance to the question of measures to improve the situation and ensure the human rights of all migrant workers and their families, notwithstanding the fact that that question had been carefully considered by the General Assembly, which had established a special working group for the purpose in 1978. The Working Group was discharging its mandate in a satisfactory manner since it had made considerable progress in its study of a draft convention. It was to be hoped that the Group would be able to finalize that draft during the current year.
4. Her delegation noted with satisfaction that the Commission made a point of adopting a resolution to encourage the Working Group every year. During the current year, she thought it would be helpful for the Commission to take note of the progress made by the Group and to request that it be informed about relevant developments at its next session. In that way, the Commission would be giving moral support to the efforts made with a view to improving the situation and ensuring the human rights and dignity of a category of workers particularly deserving of protection.
5. The CHAIRMAN said that, if there was no objection, he would take it that the Commission wished to adopt the draft resolution by consensus.
6. Draft resolution E/CN.4/1986/L.78 was adopted without a vote.

QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD (agenda item 13)
(continued)

Draft resolution E/CN.4/1986/L.70

7. Mr. OGOURTSOV (Byelorussian Soviet Socialist Republic), introducing draft resolution E/CN.4/1986/L.70 on behalf of its numerous sponsors, which included all the members of the Commission, said that, notwithstanding the adoption of the Declaration of the Rights of the Child 26 years previously, the situation of children in some parts of the world was still far from satisfactory. The sponsors were convinced, therefore, that children needed help in order to fully enjoy their rights and to be able to develop and obtain education in conditions of peace and security. It should be possible to finalize the convention on the rights of the child at the next session of the Commission. The sponsors were confident that their draft resolution would be adopted by consensus.

8. Mr. LOPATKA, (Observer for Poland), Chairman of the Working Group on the question of a convention on the rights of the child, said that in that capacity he also wished to make some remarks in introduction of draft resolution E/CN.4/1986/L.70. He recalled that the Commission had decided, in its resolution 1985/50, to continue its work on the draft convention as a matter of high priority and that the Economic and Social Council, in its resolution 1985/42, had authorized a meeting of an informal open-ended working group for one week before the forty-second session of the Commission. That group had adopted its report (E/CN.4/1986/WG.1/WP.7) unanimously on 11 March 1986.

9. Although the Working Group had not been able to finalize the draft convention, it had nevertheless approved seven new articles concerning the right of the child to preserve his or her identity, the right of the child to a periodic review of all the circumstances relating to his or her treatment, protection of the child against economic exploitation, protection against the use of narcotic and psychotropic substances, treatment of the child that infringed the penal law, and the special protection of children in armed conflicts. The Group had also approved an article calling for the application of rules that were more advantageous to the child in cases where particular provisions of the text of the convention did not offer the same safeguards as other international or national instruments.

10. The preamble and the substantive operative part of the draft convention had already been approved by the Group and the proposals on which no agreement had yet been reached were of secondary importance and without a direct bearing on the specific needs of the child. The Working Group had yet to approve the operative provisions concerning the machinery for implementing the Convention, but it hoped to be able to complete its work during the course of the year. The Group believed, however, that consideration of the draft in second reading would be necessary. The adoption of draft resolution E/CN.4/1986/L.70 should further the Group's work before and during the forty-third session of the Commission.

11. He welcomed the spirit of co-operation and objectivity that had characterized the Group's debates and also its decisions, all of which had been adopted by consensus. He thanked the international organizations,

especially UNICEF and ILO, and the representatives of non-governmental organizations for their active participation in the work of the Group and for the extensive publicity given to the draft convention, particularly by UNICEF. For example, the draft had been considered at two meetings organized by UNICEF in 1985 and at the International Conference in Warsaw which had been organized in February 1986 by the Polish Committee for Children. He also thanked members of the secretariat and proposed that the Commission should adopt the draft resolution without a vote.

12. Mr. VITTACHI (Deputy Executive Director of UNICEF) said that the presence at his side of Mr. Thedin, a veteran member of the Executive Board of UNICEF and of the Swedish Save the Children organization (Rädda Barnen) which was the originator of the concept of children as a neutral zone of peace, together with Canon Moerman, Chairman of the UNICEF NGO Committee and the moving force behind the International Year of the Child, clearly showed UNICEF's determination to assist in every way it could in the drafting and implementation of the convention on the rights of the child. Being especially interested in the implementation of the practical provisions of that instrument and in the moral foundation of adult obligations, UNICEF seemed to possess the vigour and credibility needed to help countries to put the convention into practical effect by, inter alia, providing them with the technical and material assistance required at the national level. However, since experience had proved that, without dynamic social mobilization, even the worthiest bill of rights could not transcend the stage of good intentions, UNICEF would also be employing all its acquired expertise and energies to help create conditions favourable to the implementation of the convention.

13. Such social mobilization to protect the rights of the child would only be achieved by making it unconscionable for any country to let children die when their death could be prevented, allow them to be disabled and stunted when their bodies could be whole, leave them imprisoned in illiteracy when the means of education were available or allow them to be neglected, exploited, abused and threatened with annihilation before they had barely begun to live. Such mobilization was the key to many problems of preventable ill-health, ignorance and sociopathy and, in that way, the convention could become a living testimony to the progress of civilization.

14. Mr. CHOWDHURY (Bangladesh) congratulated the Working Group on its tenacity and its determination to establish principles that could help to improve the lot of countless children, particularly in the developing countries, who were suffering not only from lack of food, clothing and shelter but also, more generally, from a lack of opportunity to prepare themselves for life. Furthermore, from a very early age, many were exploited like virtual slaves and, under those circumstances, had no means of developing their personality and frequently died young.

15. The purpose of the draft convention was to formulate principles and standards of behaviour that would make it possible to alleviate the sufferings of children and protect them from exploitation. Bangladesh, which had played a modest but active role in the work of the Group, hoped that the convention on the rights of the child would be adopted as soon as possible and regretted that the Working Group did not have sufficient time to devote to the draft so that it could be finalized in the very near future.

16. Mrs. ULLOA DE DUQUE (Colombia) said that, in the opinion of her delegation, the effectiveness of international law depended more on the qualitative than on the quantitative aspect and, in general, the application of rules was more important than their promulgation. To be effective, international standards should be viewed in a universal perspective that took into account not only political pluralism but also the cultural diversity, particularities and traditions of peoples. Flexibility, respect for others, imagination and the rejection of all dogmatism were indispensable in that respect.

17. Those considerations were particularly important as far as the elaboration of a convention on the rights of the child was concerned, since that was not a question that could be dealt with in isolation. The safeguarding of those rights and the elimination of situations that constituted a violation thereof necessitated closely interrelated direct and indirect measures. The problem of children was linked to that of development and was indissociable from policies designed to remedy poverty, inequalities and underdevelopment by reforms in employment, agriculture, social security, education, vocational training, demography, wages and the family. It was important never to lose sight of the equilibrium that must be maintained between international standards and the role of national legislation in order to avoid a further increase in the exploitation and sufferings of children, by clandestine employment for example.

18. The democratically elected Colombian Government was taking a dynamic approach to the various aspects of the rights of the child. The protection of children against excessive work was a well-established practice in Colombia, where a ministerial department had special responsibility for the protection of children. The labour legislation made provision for maternity leave and breast feeding periods without loss of pay, prohibited the dismissal of pregnant women and regulated conditions of employment and social security schemes, granting working mothers special protection. The Ministry of Health, which was particularly concerned with child health, had organized vaccination campaigns, involving three quarters of the national population, with the help of the Colombian Red Cross, UNICEF, UNDP and WHO. That Ministry and the Family and Welfare Institute were making great efforts to organize nurseries. Legal penalties had also been prescribed for parents who abandoned their families. Particular attention was being given to primary education, and a large-scale campaign for the eradication of illiteracy had achieved highly encouraging results. Within the context of an integrated development strategy, progress was being maintained in the fields of employment policy, agrarian reform, internal migration and educational infrastructure, and every effort was being made to place man at the hub of development and to bear constantly in mind that the child of today was the adult of tomorrow.

19. Miss BOUAMRANE (Algeria) said that her delegation had noted with satisfaction that the Working Group had adopted new articles in the draft convention in first reading. She expressed the hope that States would manifest adequate political will for the early adoption of that convention, taking into consideration the special requirements of the developing countries, which were facing numerous problems, and stressing the need for international co-operation in that respect.

20. The National Charter recently adopted by the Algerian people acknowledged youth to be the nation's most important social force and since independence Algeria had assigned priority to the sectors of education and training. The Charter proclaimed that a coherent and harmonious policy for youth must be based on sectoral strategies in education, training, health and social protection, cultural and leisure activities, all of which formed part of the development plans implemented by Algeria.

21. The number of States that had sponsored the draft resolution - 64 in all - was indicative of the concern aroused by the problems of children and of the support that the draft convention had attracted. That should give fresh impetus to the Working Group's activities.

22. Mr. GRIEGER (German Democratic Republic) said that his delegation, which had played an active role in the meetings of the Working Group, was able to confirm the progress the Group had made by adopting seven important new articles, and he drew attention to the mounting interest sparked off by the elaboration of an international convention whose impact was undeniable. The representatives of States and NGOs working in a constructive manner towards that end had steadily increased in number.

23. To enable the requests contained in the draft resolution to be granted and the Working Group to complete the draft convention, all delegations should refrain from proposing further articles that were only distantly related to the main objective of the draft convention. The eminent Professor Lopatka, Minister of the Government of the Polish People's Republic, deserved credit in his capacity as Chairman of the Working Group, for the skill, circumspection and expertise with which he had supervised the elaboration of a complex instrument. His own delegation would work actively with a view to finalizing the text of the draft convention, and it recommended that draft resolution E/CN.4/1986/L.70 should be adopted by consensus.

24. Mr. FAIRWEATHER (Canada) said that his delegation welcomed the progress made on the draft convention and the adoption of seven new articles by the Working Group. It had noted that the Working Group's productivity had been greatly enhanced by the preparation of a revised version of the draft convention by the Polish delegation. In addition, the presentation of various proposals in document A/AC.3/40/3, distributed during the General Assembly's fortieth session in the autumn of 1985, had enabled delegations to be better prepared for the consideration of the text of the draft. Two compilations of related international instruments and of draft articles and amendments submitted by UNICEF and the United Nations Secretariat respectively had also greatly simplified the task of everyone. Finally, timely suggestions by the Chairman of the Group had made it possible to resolve the most difficult issues that had arisen in the Group.

25. If the Working Group could have equally helpful documents in the same time-frames and continued able chairmanship at its future meetings, it should be able to move a considerable distance towards completing a first reading of the draft convention, and begin consideration of the articles concerned with implementation of the convention. A number of Governments, together with UNICEF and several NGOs, had already circulated preliminary ideas, and it would be interesting to see how they would be elaborated.

26. Drafting a convention on the rights of the child was not an easy task, it posed difficult problems, such as the balance to be struck between a child's rights and its need for protection, the rights of children and those of parents, or the protection of children and undue interference by the State with the family, and so on. It was important that the Group should be able to begin a second reading of the draft convention in a session of that might last longer than had been envisaged hitherto, in order to be able to clarify certain issues and ensure consistency in terminology.

27. His delegation intended to take an active part in the Working Group's next session, and encouraged other delegations to do the same.

28. Mr. RAVENNA (Argentina) congratulated the Working Group and the Secretariat on their efficiency. He was particularly satisfied with the deliberations on article 9 bis of the draft convention which, inter alia, had repercussions on the identification of children (and consequently on the possibility of restitution to their family) by means of blood tests. His delegation was particularly concerned with the issues relating to cases of the kidnapping and disappearance of children raised in the Commission a few days earlier. It hoped that the Working Group would be able to complete its consideration of the draft convention at its next session. Needless to say, to enable them to be applied with effect, the rules to be formulated would have to take account of the individual needs of the various countries.

29. His delegation would spare no effort in support of the activities of the Working Group.

30. Sir Anthony WILLIAMS (United Kingdom) recalled that his delegation, which had been awaiting the opinion of its experts, had made certain reservations when the report of the Working Group had been adopted. Those reservations, which might have been mentioned in the final version of the report, not yet published, continued to stand, and the Chairman of the Working Group had been requested to note that fact.

31. He also drew the attention of the representative of the Byelorussian SSR to the fact that six members of the Commission, including the United Kingdom, were not sponsors of the draft resolution.

32. Mr. KOLBY (Norway) said that his delegation, like that of the United Kingdom and several other delegations, had found it necessary to make certain reservations on the report of the Working Group, since its experts had not been able to carry out an in-depth study of the document. Those reservations continued to stand, although his delegation generally endorsed the report. His delegation wished to express its gratitude to the Chairman and members of the Working Group, in which it had been happy to work.

33. The CHAIRMAN said that if there was no objection, he would take it that the Commission wished to adopt the draft resolution by consensus.

34. Draft resolution E/CN.4/1986/L.70 was adopted without a vote.

RIGHTS OF PERSONS BELONGING TO NATIONAL, ETHNIC, RELIGIOUS AND LINGUISTIC
MINORITIES (agenda item 20) (E/CN.4/1986/43; E/CN.4/1986/L.29)

35. Mrs. ILIĆ (Yugoslavia), Chairman-Rapporteur of the open-ended working group set up to consider a draft declaration on that question, stated that the working group had considered the main operative paragraphs of the draft resolution and had unanimously adopted its report (E/CN.4/1986/43).

36. The working group had achieved some progress notably by deciding to adopt provisionally in first reading the consolidated text of article 1 submitted by Mr. Toševski, the former Chairman-Rapporteur of the group and to postpone the definition of certain terms. It had also begun consideration of a draft text for article 2, for which a number of relevant proposals had been put forward, but it had been obliged to leave off, due to lack of time.

37. The progress achieved had been possible thanks to certain Member States which had put forward new and constructive ideas and to the efficient services provided by the secretariat of the Centre for Human Rights.

38. In draft resolution E/CN.4/1986/L.29, her delegation proposed that the item should be placed on the agenda of the Commission's forty-third session, that a working group should be established to continue consideration of the revised draft declaration submitted by Yugoslavia, and that the Secretary-General should be requested to provide that body with any assistance it might require. She proposed that the Commission should take a decision by consensus, first on the report of the working group, and afterwards on the draft resolution.

39. The CHAIRMAN said that if there was no objection, he would take it that the Commission wished to take note of the report of the working group (E/CN.4/1986/43) and to adopt draft resolution E/CN.4/1986/L.29.

40. It was so decided.

ORGANIZATION OF THE WORK OF THE SESSION (agenda item 3) (continued)
(E/CN.4/1986/L.9)

Draft decision E/CN.4/1986/L.9

41. Sir Anthony WILLIAMS (United Kingdom), introducing draft decision E/CN.4/1986/L.9, stated that its purpose was to request sufficient financial resources to enable the Commission to hold 20 fully serviced additional meetings at its forty-third session. He stressed that what was involved was not an invitation to hold 20 additional meetings but a realistic request, in the light of the experience accumulated at earlier sessions and at the current session. He hoped that the Commission would adopt the decision by consensus as it had done in earlier years.

42. Mr. BYKOV (Union of Soviet Socialist Republics) recalled that, at the opening of the current session participants had heard a strong appeal by the Secretary-General for all bodies, including the Commission on Human Rights, to be as sparing of financial resources as possible, in view of the Organization's current difficulties. The draft decision, however, appeared to disregard that issue.

43. His delegation considered that the Commission could not afford such a luxury in view of the situation. It should therefore study, at its next session, ways and means of organizing itself more rationally in order to remain within the time-frame established by the Economic and Social Council. His delegation was unable to support the draft decision.

44. Mr. CGOURTISOV (Byelorussian Soviet Socialist Republic) said, after being informed by the Chairman that the Commission had held 19 extra meetings during the current session, that one way of restricting the number of meetings would be to examine certain issues only every two years. That idea had prompted the sponsors of document E/CN.4/1986/L.42/Rev.1 in respect of agenda item 21. It would be a good idea to request a study from the secretariat on the number and length of statements made during meetings, as a basis for recommending certain rationalization measures. The Commission might perhaps postpone consideration of the draft resolution until the following day.

45. Sir Anthony WILLIAMS (United Kingdom) repeated that his draft decision most emphatically did not mean that the Commission was under any obligation to hold 20 additional meetings in the course of its next session or even that such a course was desirable. If, as the representative of the USSR appeared to wish, the Commission decided not to hold extra meetings, it would have to cut down its agenda by approximately 25 per cent compared with the current session, and one might justifiably wonder whether that would be an advantage. It would be possible to make certain savings and, as a beginning, undertake the study advocated by the representative of the Byelorussian SSR, but it was also necessary to allow for the possibility of new issues coming to light by the next session, and the margin envisaged in the draft decision would then be absolutely necessary.

46. Mr. HÖYNCK (Federal Republic of Germany) feared that it might not be possible to postpone adopting the decision since the end of the session was very close. Needless to say, all the members of the Commission were anxious to work as economically as possible, but it was also undeniable that thus far they had needed all of the additional time made available to them. No doubt the Commission ought to organize itself differently, so as to make meetings shorter, but by hurrying to change habits acquired over a number of years, the Commission might end up with nothing.

47. Mr. HAYES (Ireland) called attention to the fact that by adopting the draft decision, the Commission was not simultaneously deciding to hold 20 obligatory extra meetings. It would simply be requesting that the meeting time should be authorized if it needed it. At its thirty-eighth session, the Commission had not adopted a decision of the kind currently being proposed in document E/CN.4/1986/L.9, but during its following session, it had found it necessary to request the Economic and Social Council to make the necessary arrangements to organize additional meetings without which it would not have been able to proceed with its work. One might well deplore the fact that the Commission had not been able to organize its work in such a way as to be able to deal with all issues in the time strictly available, but if it did not adopt the draft decision under consideration, it might find itself in the situation which had arisen during its thirty-ninth session.

48. Mr. BYKOV (Union of Soviet Socialist Republics) proposed two amendments by way of compromise. First, the phrase starting with the words "and recalling" in the third line and ending with "forty-second session" in the sixth line would be deleted. The new financial situation reported for the first time that year by the Secretary-General would thus be taken into account. Second, the phrase "if possible within the existing financial resources, 20 fully serviced additional meetings" in the seventh and eighth lines would be replaced by the words "if, in consultation with the Secretary-General, it considers it possible, not more than 20 fully serviced additional meetings".

49. Mr. TROUVEROY (Belgium) recalled that in Geneva as at Headquarters, his delegation was known for its financial orthodoxy as far as the expenditures of the Organization were concerned. It considered, however, the text of the draft decision to be drafted with every proper precaution, and was surprised at the amendments proposed by the Soviet delegation which appeared to complicate matters rather than simplify them. As already recalled, there was no question of the Commission deciding to hold 20 additional meetings but of being able to work with, as it were, a safety net.

50. However, his delegation agreed with the delegation of the Byelorussian SSR that a study on the length and number of statements made in meetings would provide useful basic data with a view to recommending certain rationalization measures.

51. Unless the sponsor of the draft decision agreed to the amendments proposed by the Soviet delegation, his own delegation would prefer the original wording of the draft to be retained.

52. Sir Anthony WILLIAMS (United Kingdom) said that he had some doubts about the first amendment by the Soviet delegation since he saw no point in deleting a simple reference to past practice. The second amendment by the USSR also gave rise to mixed feelings on the part of his delegation which, however, was reluctant to open a debate at that late hour. His delegation's sole purpose was to enable the Commission to work in a normal manner, and if the draft decision was not adopted by consensus as other similar drafts had been at previous sessions, it might be advisable to put it to the vote.

53. Mr. BYKOV (Union of Soviet Socialist Republics) concluded that the United Kingdom delegation was very attached to the historical aspect of its draft, but he would not urge that his first amendment should be retained. He would like, however, to propose the insertion, after the words "and forty-second sessions" in the sixth line of the document, of the following clause: "and at the same time aware of the request addressed by the General Assembly to all United Nations bodies to ensure stringent savings of financial resources".

54. Mr. CALERO RODRIGUES (Brazil) expressed some surprise at the discussion, since all were aware that if the Commission did not have adequate resources, it would not be able to complete its consideration of all the items on its agenda. Further, if the Soviet Union was anxious for the amendment it had just proposed to be adopted, it would be better to include it in part (b) of the text. It might be appropriate to refer to the request formulated by the General Assembly, but the Commission should also be aware of the fact that,

within the existing resources, it would not be able to have the additional meeting time it needed. Consequently, it would be appropriate to discuss what the Commission would have to forgo, and to ascertain who would agree to the deletion of certain agenda items, and which ones.

55. Sir Anthony WILLIAMS (United Kingdom) thanked the Soviet delegation for agreeing to withdraw its first amendment. He would prefer the reference to the request by the General Assembly to appear in part (b) of the draft decision, as the Brazilian representative had proposed. He was unable to agree to the deletion of the phrase "if possible within the existing financial resources", since that might well complicate the task of the Chairman at the next session.

56. Mr. BYKOV (Union of Soviet Socialist Republics) pointed out that the United Kingdom representative did not appear to attach due importance to the financial difficulties of the United Nations or to the appeals made by the Assembly and by the Secretary-General. The Economic and Social Council would have to take a decision on the distribution of financial resources and consider with the General Assembly, in the light of the situation, the Commission's proposal. The additional meetings requested in the draft decision traditionally submitted by the United Kingdom had been justified when the financial resources authorized them, but greater flexibility was now needed to take account of the new situation.

57. Sir Anthony WILLIAMS (United Kingdom) repeated that he could agree to one of the amendments proposed by the Soviet delegation, and that he believed that it would be better to insert the other amendment in part (b) of the draft.

58. Mr. BYKOV (Union of Soviet Socialist Republics) said that in that case an agreement appeared possible, but that the Chairman of the next session should be prevented from finding himself caught between the need, on the one hand, to increase the meeting time and, on the other, to comply with the requests made by the General Assembly. He thought that it would also be more rational to insert the amendment concerning the reference to the request by the Assembly in part (a), and he had the impression that the United Kingdom delegation had no real objection to that course. It was not his intention to delete the phrase beginning "if possible", but simply to express it in some other way.

59. Mr. TAYLHARDAT (Venezuela) suggested that the representatives of United Kingdom and the USSR might confer in order to agree on a text and thereby allow the Commission to continue with the rest of its work.

60. The CHAIRMAN agreed with the proposal by the representative of Venezuela and suggested that consideration of draft decision E/CN.4/1986/L.9 should be resumed when the United Kingdom and Soviet delegations had reached an agreement.

MEASURES TO BE TAKEN AGAINST ALL TOTALITARIAN OR OTHER IDEOLOGIES AND PRACTICES, INCLUDING NAZI, FASCIST AND NEO-FASCIST, BASED ON RACIAL OR ETHNIC EXCLUSIVENESS OR INTOLERANCE, HATRED, TERROR, SYSTEMATIC DENIAL OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, OR WHICH HAVE SUCH CONSEQUENCES (agenda item 21) (continued)

Draft resolution E/CN.4/1986/L.42/Rev.1

61. Mr. OGOURTSON (Byelorussian Soviet Socialist Republic), introducing draft resolution E/CN.4/1986/L.42/Rev.1, said that the efforts of a large number of delegations had made it possible to draft a compromise text which was balanced and condemned all the ideologies and practices in question without exception while at the same time proposing measures to combat them. He did not think that it would be helpful to introduce the draft in detail; he would propose only that the words "and thereafter to consider this item on a biennial basis" should be added at the end of operative paragraph 7. He was confident that the draft resolution would be adopted by consensus.

62. Sir Anthony WILLIAMS (United Kingdom) welcomed the modifications made to the draft resolution, which effectively met the concerns expressed by the delegations of the Netherlands and the United Kingdom in the draft resolution on the same subject (E/CN.4/1986/L.75), which these delegations would willingly withdraw. He particularly agreed with the addition that had just been proposed to paragraph 7 since the Commission should endeavour to save the time at its disposal for consideration of an already overloaded agenda. He had also been struck by the small number of speakers who had addressed that issue during the current session and previous sessions. It could actually, be dealt with in a context other than that of the present agenda item 21. In any case, it would be desirable not to deal with events which had occurred 40 and more years previously, but to keep to current affairs. Since the main feature of totalitarian régimes was the total enslavement of individuals, it was possible to deal with those questions by reference to the provisions of the Universal Declaration, the International Covenants and other relevant instruments.

63. Miss BOZHKOVA (Bulgaria) requested that Bulgaria should be included among the sponsors of draft resolution E/CN.4/1986/L.42/Rev.1, as further revised during the meeting.

64. The CHAIRMAN said that if there was no objection he would take it that the Commission wished to adopt the draft resolution.

65. Draft resolution E/CN.4/1986/L.42/Rev.1, as further revised, was adopted without a vote.

66. Mr. HAYES (Ireland) said that his delegation had joined in the consensus although it still had some doubts about the contents of operative paragraph 5. In his opinion, the basic principle to be observed was that any accused person should be presumed innocent until his guilt was established in accordance with the law.

67. Mr. KOBAYASHI (Japan) said he wished to point out that the fourth preambular paragraph suggested that totalitarian entities and régimes were based solely on the notion of racial or ethnic superiority. He considered, on the contrary, that there were totalitarian entities and régimes based on other doctrines.

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) (continued)

Draft resolution E/CN.4/1986/L.17/Rev.1

68. Mr. TAYLHARDAT (Venezuela), introducing draft resolution E/CN.4/1986/L.17/Rev.1, concerning the situation of human rights in Guatemala, said that he had already explained in detail the reasons which had led the Venezuelan delegation to submit that document. Everyone knew the basis for that text. He wished to add that he welcomed the very important changes which had taken place in Guatemala following the elections of late 1985 and the establishment of a democratic Government. In only two months it had provided completely convincing evidence of its desire to strengthen democratic institutions and restore the role of law and respect for human rights and fundamental freedoms.

69. The sponsors of the draft resolution, aware of the need to encourage the Government of Guatemala in its efforts for change, called for the mandate of the Special Rapporteur appointed by the Commission to be terminated and for the Special Rapporteur to be replaced by a special representative who would be responsible for monitoring developments in the human rights situation in Guatemala and reporting to the Commission at its next session. The Commission could thus complete its consideration of that question while maintaining links with the country, and in particular it would receive a report from the special representative on the implementation of the steps recommended in the draft resolution.

70. The Latin American sponsors of the draft resolution had revised their text in a number of respects following their negotiations with the sponsors of the amendments in document E/CN.4/1986/L.43 - particularly the delegation of Norway - and thanked the latter for their spirit of co-operation and understanding. It was to be stressed that account had been taken of their main concerns in formulating draft resolution E/CN.4/1986/L.17/Rev.1. He therefore invited them to withdraw their amendments (E/CN.4/1986/L.43) and join the sponsors of the Latin American draft.

71. After drawing attention to some corrections which needed to be made in the English version, he expressed the hope that the draft resolution, would be adopted by consensus, thus demonstrating to the Government of Guatemala that the international community had confidence in its democratization process and in its ability to ensure respect for fundamental freedoms and giving it a kind of moral backing.

72. Mr. SKOGMO (Norway), speaking on behalf of the countries sponsors of document E/CN.4/1986/L.43, containing amendments to draft resolution E/CN.4/1986/L.17, said that those countries had also been among the sponsors of General Assembly resolution 40/140, adopted in December 1985. However, in view of the large-scale reforms introduced in Guatemala following the democratic election of a new President and a new Government and the adoption of a new Constitution embodying guarantees for the protection of human rights, the group of Western sponsors had been holding consultations with the Latin American countries on the draft resolution since the second week of the session.

73. The Latin American countries had proposed terminating the mandate of the Special Rapporteur and the study of the question, whereas the Western countries, while acknowledging that the situation in Guatemala was vastly improved, felt that it was not yet sufficiently stabilized to justify discontinuing the Commission's consideration of the question. The Western countries had recommended the extension of the Special Rapporteur's mandate for a further year, with the possibility of terminating it at the forty-third session of the Commission if the situation in Guatemala continued to improve. Otherwise, the two groups shared the desire to signal to the new Government, the new President and other champions of human rights in Guatemala that the Commission fully supported them in their efforts to consolidate democracy based on respect for fundamental rights. An agreement had finally been reached and, although it did not take into account all the concerns of the sponsors of document E/CN.4/1986/L.43, draft resolution E/CN.4/1986/L.17/Rev.1 nevertheless included the most important elements of their amendments. Consequently, the Western sponsors had agreed to withdraw their own proposals, and also to accept the oral amendments proposed by the representative of Venezuela.

74. The revised draft resolution provided for the appointment of a special representative who would report to the Commission at its forty-third session in order to give it full and detailed information on how the new legal order was operating and the efforts made by the Government to guarantee full and complete enjoyment of fundamental freedoms. As the sponsors of document E/CN.4/1986/L.43 understood it, the Special Representative would also furnish information on any hindrances which might prevent or delay the attainment of the Government's objectives and would have the task of actively seeking information on the promotion of human rights in Guatemala. The Western countries particularly welcomed the fact that the Special Representative would also gather relevant information from reliable sources in the preparation of his report (paragraph 8). For those countries, the draft meant that he would solicit and not merely receive information.

75. In conclusion, he conveyed his compliments to the representative of Venezuela for the courtesy and skill he had shown in conducting the sometimes difficult negotiations and in successfully uniting the Latin American countries on a sensitive issue. He was also grateful to the latter for the efforts they had made. He hoped that the draft resolution would be adopted without a vote.

76. Mr. SENE (Senegal) congratulated the sponsors of the two texts on having arrived at a generally acceptable solution. He was particularly pleased that the Government of Guatemala had begun a process of democratization by taking measures which would ensure greater respect for human rights both by civilian and military authorities. The possibility of recourse now available to all citizens was particularly to be welcomed, since that was an excellent guarantee for the protection of fundamental rights.

77. His delegation would like to know what were the distinctions and hierarchical relationship between the functions of special representative, special rapporteur and independent expert.

78. Mr. SAMANIEGO-SFLAZAR (Observer for Ecuador) said that his delegation shared the viewpoint expressed by the Latin American countries in their draft resolution and welcomed the reforms in Guatemala designed to restore democracy

and the efforts that country had made to ensure respect for human rights. The Government of Ecuador had always considered that all human rights situations should be treated in the same way, whatever the country concerned.

79. The CHAIRMAN, replying to the representative of Senegal, said that as far as Guatemala was concerned, the special representative's role was defined by the terms of the mandate set out in the draft resolution.

80. If there was no objection, he would take it that the Commission wished to adopt the draft resolution by consensus.

81. Draft resolution E/CN.4/1986/L.17/Rev.1 was adopted without a vote.

82. Mr. QUIÑONES-AMEZQUITA (Observer for Guatemala), said that, as Minister for Foreign Affairs of Guatemala, he wished to thank the Commission for the confidence and interest displayed by the Latin American countries in the Guatemalan people and Government and their encouragement and understanding with respect to a country which was rejoining the democratic fold. The Guatemalan Government reiterated its undertaking to ensure respect for human rights and to spare no effort to improve the living conditions of the population as well as to find the necessary solutions to the problem of disappearances in collaboration with the United Nations. Thanks to its efforts, Guatemala would prove worthy of the confidence placed in it.

83. Mr. HAYES (Ireland) said that his delegation had joined in the consensus on the draft resolution but that in its opinion a different resolution on the situation in Guatemala would have been appropriate. The basic idea should have been that continued vigilance by the Commission would have assisted the civilian Government in establishing its authority over the country's various agencies and thereby facilitate the full exercise of human rights. In that spirit, the resolution might have consisted of four main parts. In the first, the Commission would have taken general note of the steps taken towards a return to democracy and the rule of law. In the second, it would have exhorted the Government to take, or to continue to take, steps conducive to the enjoyment by all Guatemalans of their human rights and in that connection it might have reiterated various points from General Assembly resolution 40/140, adopted three months earlier, which retained their validity. In a third part, the Commission would have expressed concern regarding the victims of human rights violations, of which reports had continued after the accession of the new Government to power. Lastly, in a fourth part, the Commission would have extended the mandate of the Special Rapporteur for a further year, and requested him to submit an interim report to the General Assembly at its next session as well as a final report to the Commission at its forty-third session and expressed the hope that the human rights situation would have improved sufficiently by that time for the Special Rapporteur's mandate to be terminated.

84. The sponsors of the draft resolution had unfortunately not concurred with that approach. The negotiations had resulted in draft resolution E/CN.4/1986/L.17/Rev.1, and the sponsors of document E/CN.4/1986/L.43 had withdrawn their proposals. As a sponsor of those proposals, Ireland had decided to support the revised draft resolution in the expectation that the report which was to be submitted by the special representative to the forty-third session, pursuant to paragraph 8 of the draft resolution, would

allow the Commission to exercise the continuing vigilance which the Irish delegation deemed indispensable with respect to the human rights situation in Guatemala.

85. Mr. SENE (Senegal) said he hoped that the Legal Counsel would answer his question when he had had time to give it some thought.

86. Mr. ROBERTSON (Australia) said that in joining in the consensus, his delegation had wished to associate itself with the message of support to the Government of Guatemala. It had some reservations, however, with regard to the draft resolution in so far as the text failed to point out that human rights violations had continued to occur in Guatemala after the establishment of the new Government. His delegation would have preferred an interim report to have been submitted to the General Assembly.

87. Sir Anthony WILLIAMS (United Kingdom) said that his delegation had also joined in the consensus but regarded it as natural that the Commission should continue its consideration of the situation both in Guatemala and in El Salvador. The Governments of both countries had expressed their desire to improve their human rights situation and it would be abnormal to request a report on one country and not on the other, in view of the resolutions adopted at the most recent session of the General Assembly. It was regrettable that the resolution concerning El Salvador had not taken sufficient account of the efforts made by the Government to improve the situation, or of the fact that the Salvadorian guerrillas were increasingly resorting to terrorist practices.

ELECTION OF A MEMBER OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (agenda item 24) (E/CN.4/1986/49)

88. The CHAIRMAN noted that there was a vacancy to be filled in the Sub-Commission by the Group of Western European and other States. The Netherlands had proposed Mr. Theodoor Cornelis van Boven as member, with Mr. Cornelis Flinterman as alternate. He read out rule 66 of the rules of procedure of the Commission whereby, in the absence of any objection, the Commission could proceed without taking a ballot on an agreed candidate or slate. In view of the fact that only one post was to be filled and that a single candidacy had been presented, the candidate could be elected without any need for a vote, if it were so proposed and no objection were raised.

89. Mr. HÖYNCK (Federal Republic of Germany) proposed that no vote should be taken.

90. Mr. SENE (Senegal) seconded the proposal by the representative of the Federal Republic of Germany, particularly as Mr. van Boven was well known to everyone.

91. The CHAIRMAN said that, if there was no objection, he would take it that the Commission wished to elect Mr. Theodoor Cornelis van Boven as a member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and Mr. Cornelis Flinterman as alternate.

92. It was so decided.

ORGANIZATION OF THE WORK OF THE SESSION (agenda item 3) (continued)
(E/CN.4/1986/L.9)

93. The CHAIRMAN recalled that, earlier in the meeting, draft decision E/CN.4/1986/L.9 had been temporarily shelved to allow the delegations of the United Kingdom and the USSR to reach an agreement.

94. Sir Anthony WILLIAMS (United Kingdom) said that the consultations had unfortunately not been successful, but on the contrary had underlined the differences between the viewpoints of the two delegations. He therefore proposed that a vote should be taken on the draft decision, in the hope that the majority of delegations would consider it preferable to follow the usual procedure. The arguments put forward by the Soviet delegation would be more appropriate in the Economic and Social Council, which was more competent than the Commission in questions of financial control.

95. Mr. BYKOV (Union of Soviet Socialist Republics) said that the delegation of the United Kingdom had perhaps acted hastily in refusing to take more time to seek a compromise as though no form of conciliation were possible. He considered the amendments he had proposed to be indispensable and did not support the existing text of the draft, which ran counter to decisions of the General Assembly. He would therefore be obliged to vote against the text, leaving it for the Economic and Social Council to judge the Commission's decisions.

96. A vote was taken by show of hands.

97. Draft decision E/CN.4/1986/L.9 was adopted by 32 votes to 4, with 5 abstentions.

The meeting rose at 10.45 p.m.