



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/1988/SR.56
11 April 1988

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Forty-fourth session

SUMMARY RECORD OF THE FIRST PART* OF THE 56th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 10 March 1988, at 3 p.m.

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| <u>Chairman:</u> | Mr. SENE | (Senegal) |
| later: | Mr. MEZZALAMA | (Italy) |
| later: | Mr. DELGADO BARRETO | (Peru) |

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(continued)

* The summary record of the second part of the meeting appears as document E/CN.4/1988/SR.56/Add.1

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Question of a convention on the rights of the child (continued)

Measures to improve the situation and ensure the human rights and dignity of all migrant workers (continued)

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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;
- (b) Study of situations which appear to reveal a consistent pattern of gross violations of human rights as provided in Commission resolution 8 (XXIII) and Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII): report of the Working Group established by the Commission at its forty-third session (continued)

The meeting was called to order at 4.15 p.m.

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION; ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS; NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (agenda item 11) (continued) (E/CN.4/1988/L.16, L.43 and L.79)

1. The CHAIRMAN invited the Commission to reach decisions concerning a number of draft resolutions on agenda item 11.

Draft resolution E/CN.4/1988/L.16

2. The CHAIRMAN said that Finland and Togo had asked to be included among the sponsors of draft resolution E/CN.4/1988/L.16.

3. Draft resolution E/CN.4/1988/L.16 was adopted without a vote.

Draft resolution E/CN.4/1988/L.43

4. Draft resolution E/CN.4/1988/L.43 was adopted without a vote.

Draft resolution E/CN.4/1988/L.79

5. The CHAIRMAN said that Togo had asked to be included among the sponsors of draft resolution E/CN.4/1988/L.79.

6. Mr. HENNESSY (Ireland) said that operative paragraph 12 of the draft resolution, which had been revised by the sponsors, should read:

"12. Notes the proposed establishment of a new structure in the Centre for Human Rights designed to enhance awareness of the work of the United Nations in the field of human rights and urges this new structure to co-ordinate its activities closely with those of the Department of Public Information, having due regard to their respective competences."

7. Draft resolution E/CN.4/1988/L.79, as orally revised, was adopted without a vote.

QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD (agenda item 13)
(continued) (E/CN.4/1988/28, E/CN.4/1988/L.86, E/CN.4/1988/L.91)

8. Mr. TOWPIK (Observer for Poland), speaking on behalf of the sponsors of draft resolution E/CN.4/1988/L.86, who had been joined by Austria, China, Colombia, Cyprus, Cuba, Democratic Yemen, and Yemen, Ghana, Italy, Luxembourg, Netherlands, New Zealand, Portugal, Syrian Arab Republic, said that the draft resolution acknowledged the considerable progress made towards the completion of the work on a draft convention on the rights of the child, particularly at the last session of the open-ended working group, and took into account the growing interest in that work, as expressed, in particular, in General Assembly resolution 42/101, which requested the Commission to make every effort to complete the draft convention and submit it to the Assembly in 1989. The draft resolution also recognized the need to take due account of

the cultural values and needs of the children of all countries, including developing countries. He then proceeded to read the text of the operative part of the draft resolution.

9. Following the consultations that had taken place among a large number of delegations during the preparation of that text, and in the course of which a number of suggestions had been made, he stated that the last preambular paragraph had been revised to read:

"Bearing in mind the necessity to take due account in the convention of the cultural values and needs of the children of all countries, in particular developing countries, in order to achieve universal recognition of the rights contained therein".

10. His delegation hoped that the draft resolution, as thus revised, would be adopted by consensus.

11. Mr. LEBAKINE (Observer for the Ukrainian Soviet Socialist Republic) and Mr. ZORIGTBAATAR (Observer for Mongolia) stated that their delegations wished to become sponsors of draft resolution E/CN.4/1988/L.86.

12. Mr. TAYLHARDAT (Venezuela) said that his delegation, which endorsed the spirit and the objectives of draft resolution E/CN.4/1988/L.86, welcomed in particular the General Assembly's decision to request the Commission to give the highest priority to the draft convention on the rights of the child, so that the draft could be submitted to the Assembly in 1989 through the Economic and Social Council and be ready for adoption in time for the anniversary of the Declaration of the Rights of the Child (1959) and the International Year of the Child (1979). Venezuela, which wished to join the sponsors of the draft, had the greatest respect for the mission and activities of UNICEF. Indeed, it had been a member of the Executive Council of UNICEF virtually since its inception.

13. Nevertheless, in his delegation's view, priority should not amount to undue haste and the right of every State to reflect on the impact of the draft convention in question should not be ignored. His delegation was not satisfied with the manner in which the working group had endeavoured to complete its work at any price, and regretted the fact that a certain measure of disinformation should have spread the belief that one delegation was making reservations tantamount to obstruction with regard to certain elements of the draft convention. It was unbelievable that a subsidiary body of the Commission such as the working group should refuse to allow a delegation the necessary time to consider a draft of such importance. During the session of the working group, moreover, the suggestion by his delegation that certain elements of the text should be placed between square brackets had been rejected on the pretext that those square brackets did not form the subject of a consensus, thereby implying that there was consensus on the remainder of the text. There was no precedent for such a procedure. His delegation would of course continue to participate in the work of the working group, but it felt bound to make that clarification.

14. Mr. TOWPIK (Observer for Poland), speaking on behalf of the Chairman of the working group who had had to leave Geneva, recalled that the Commission had decided, by its resolution 1987/48, to continue, as a matter of the highest priority, its work on the elaboration of a draft convention on the

rights of the child. By its resolution 1987/58, the Economic and Social Council had authorized a meeting up of an open-ended working group for a period of one week prior to the forty-fourth session of the Commission. The General Assembly, by its resolution 42/101 had requested the Secretary-General to authorize, if necessary and within existing resources, the convening of an open-ended working group for an additional week at the 1988 session of the Commission in order to complete the draft convention and so as to facilitate its final adoption in 1989.

15. The working group, which had held 20 meetings from 25 January to 5 February 1988, had adopted its report unanimously and had completed, in principle, the elaboration of the text of a draft convention (see documents E/CN.4/1988/WG.1/CRP.1 and E/CN.4/1988/WG.1/WP.1/Rev.1 respectively). The working group had proposed to the Secretary-General that the text be distributed to all Member States so that their observations could be taken into consideration at the second reading and so that a technical review of the draft in its existing form, could be carried out in order to bring it into line with United Nations practices and standards with regard to multilateral treaties on human rights and treaties on international humanitarian law. That review, which should preferably be conducted by the United Nations Secretariat before the second reading, should be completed in time for the group to benefit from it. To sum up, the working group had obtained encouraging results and it would certainly be possible to complete, at the forty-fifth session of the Commission, work on the final text of the convention. The adoption of draft resolution E/CN.4/1988/L.86 would enable the working group to complete its task and would provide an opportunity for the General Assembly to adopt the convention in 1989, the year that would mark the thirtieth anniversary of the Declaration on the Rights of the Child and the tenth anniversary of the International Year of the Child.

16. The Chairman of the working group had made a point of stressing the spirit of co-operation and compromise which had prevailed in the group, whose decisions had, as usual, been taken by consensus. The work on the preparation of the convention had elicited a growing interest on the part of public opinion and of eminent persons such as a group of Nobel Prize winners, who had addressed a letter of support to the working group, and of Ms. Ullman, an actress of world renown who had attended the discussions of the Group. The Chairman would also have wished to have thanked personally the representatives of Governments, the observers and the representatives of UNICEF, the Red Cross, ILO and of the non-governmental organizations that had participated in the work of the group and given extensive publicity to the draft convention, for example at Linguano-Sabbiadoro (Italy) in September 1987 at a conference organized by the Italian Committee for UNICEF and the ad hoc group of non-governmental organizations, with the participation of Mrs. Mubarak, Vice-President of the Arab Council for Children and Development. Thanks were also due to the Secretary-General of the United Nations who had provided the group with all the necessary services and facilities, as well as to the officials of the Secretariat. The working group hoped that the Commission would adopt its report, (E/CN.4/1988/WG.1/CRP.1) without a vote.

17. Mr. KONATE (Senegal) expressed his appreciation to the Chairman of the working group, Mr. Lopatka, for the dedication and wisdom with which he had performed his duties.

18. In 1983, the Senegalese delegation had warned against the temptation to adopt a uniform pattern for the children of the whole world and had drawn the Commission's attention to the need for the future convention to take into account the cultural dimensions and realities of the developing countries. In his delegation's view, efforts to promote universality should take into consideration the economic, social, cultural and religious diversity of the various regions and various legal systems of the world. That aim could be achieved by adopting a flexible approach that would allow for all those dimensions in the search for a common denominator for the various concerns being manifested throughout the world. There was reason to fear that, if the future convention were effective, it would give pride of place to assimilation rather than to participation. Enactments which ignored reality, however, were destined to become a dead letter, sacrificed on the altar of legal monuments. The Commission had to take up that challenge.

19. The working group's report had proved difficult to adopt, because of the reservations and concerns of a number of delegations. Without wishing to complicate the Commission's work still further, his delegation proposed, on behalf of the delegations of Algeria, Angola, Bangladesh, Egypt, Ethiopia, Gambia, Iraq, Morocco, Mozambique, Nigeria, Peru, Rwanda, Sao Tome and Principe, Somalia, Senegal and Togo, that the last preambular paragraph of draft resolution E/CN.4/1988/L.86 be amended to read:

"Bearing in mind the necessity of taking due account of the cultural values and needs of developing countries in the second reading of the draft convention, in order to achieve the universal recognition of the rights contained in the future convention on the rights of the child."

20. The purpose of that amendment was to stress the importance of the universal acceptance of the convention at a time when the work of the Working Group was reaching a crucial stage. His delegation hoped that its proposal would benefit from the spirit of co-operation and understanding which had always prevailed when draft resolutions relating to the agenda item under consideration were being adopted.

21. Mr. LEPRETTE (France) said that his delegation had welcomed the plan, submitted by Poland in 1978 within the framework of the International Year of the Child, to prepare a convention on the rights of the child. That initiative had been designed to fill a gap in the international system of human-rights protection and to break a long chain of unjust causalities and to bring about a genuine change in the relations between adults and children.

22. For its part, France had, since the nineteenth century, progressively enacted legislative measures to protect children, particularly in the realm of civil and criminal law and in that of labour legislation. The task was, however, a long-term one for any State, since it required action by political leaders and by public and private associations. It was significant that, among the first recipients of the prize recently created by the French Secretary of State in charge of human rights there was the Association "La voix de l'enfant" ("The voice of the child") which campaigned for the rights of minors.

23. The existence of a United Nations convention in the area under consideration would undoubtedly make a decisive contribution to the mobilization and development of the law and the facts in a progressive way. His delegation, which had participated very actively from the outset in the activities of the working group, warmly welcomed the completion of the first reading of the text after 10 years of work. It hoped that the draft of the convention would be finally and rapidly settled before the Commission's forty-fifth session and had decided, as in the previous year, to co-sponsor the draft resolution submitted on the matter by Poland.

24. The comparative slowness of the process was due in the first place to the decision to opt for the more ambitious exercise, namely the elaboration of a full-fledged convention instead of an additional protocol to the Covenant; the latter approach might have been adopted, in particular to ward off the danger that the "categorization" of rights in that manner might detract from the security and universality of the rights recognized in an absolute and general manner by the two Covenants. That slowness was also attributable to the diversity of legal systems represented in the working group, a diversity which it had been possible to overcome in a spirit of compromise, and to the depth and thoroughness of the debates, which had been in keeping with the stakes involved. The high quality and constructive character of the contributions of the many non-governmental organizations which participated had also to be commended.

25. It could be asserted, in conclusion, that the first ambition of the draft convention was to enshrine at the international level the recognition of the interests of the child. That concern was also one of the priorities for his Government, at both the social and legal levels. On the proposal of the Secretariat of State for Human Rights, his Government had ensured the enactment in the previous year of legislation aimed at favouring the joint exercise of parental authority by divorced or unmarried parents. In the case of divorce, the aim had been to ensure for the child the continuity of the parental couple in such a way that both parents could jointly exercise authority over their children by continuing to take together all important decisions concerning them. In the case of children born out of wedlock, the aim had been to ensure the exercise of parental authority by enabling the father and the mother to shoulder their responsibilities jointly.

26. Lastly, mention should be made of the difficult question of the children of separated couples of different nationalities, who were sometimes taken illegally to the country of which one of the parents was a citizen. The solution of that problem, which arose from historical, legal, social and individual factors, should be sought in the resort to appropriate mechanisms, some of a temporary character but others of a more enduring kind, such as conventions for reciprocal assistance in the administration of justice. A convention of that kind required very lengthy negotiations, however, before it could be effectively applied in the two countries concerned. That was precisely the approach being adopted by his Government in its relations with other concerned Governments and, more particularly, at that stage, with the Government of Algeria. Two days previously, the Commission had agreed to receive a delegation of the Collective for Solidarity with Mothers of Abducted Children who had come to express their concerns and their hopes. His delegation, which had met those women, had informed them that it was proposed to establish, with the consent of the Algerian authorities, a mixed joint commission for the settlement of individual cases.

27. Mr. BOSSUYI (Belgium) said that his delegation wished to associate itself with the statements that had just been made on the problems pertaining to the fate of children divided between two parents who were separated by a national border. Such a separation could cause genuine tragedies for the parents but above all for the children, whose interests must take precedence over all other considerations. His delegation had been pleased to note the previous year that the States most concerned were in the process of working out solutions. Those efforts must be intensified so that appropriate humanitarian solutions could be found, perhaps through the establishment of joint standing commissions. His Government would support any productive initiative that might facilitate the settlement of such family disputes.

28. Mr. STEEL (United Kingdom) said that, like the delegations of France and Belgium, his own held that child abduction, for whatever motive and whatever the circumstances, was a tragedy, and everyone must sympathize with those, whether children or their parents, who were victims of such actions. His delegation had had some interesting talks, at the current session and the previous year, with members of the Collective for Solidarity with Mothers of Abducted Children. Although it was encouraging to note that many of the mothers who had come to Geneva in 1987 had been briefly reunited with their children during the summer and even in some cases at Christmas, other mothers had not been so fortunate. The event demonstrated that ad hoc private arrangements were of necessity fragile. It was for that reason that his Government attached so much importance to the establishment of arrangements that were backed up by the force of law, such as the Hague Convention on the Civil Aspects of International Child Abduction and the Council of Europe Convention on the recognition and enforcement of custody decisions. A number of countries had become parties to one or both of those conventions, like the United Kingdom, which had enacted legislation specifically to enable it to ratify and implement those instruments (the Child Abduction and Custody Act, 1985). He wished also to mention the Child Abduction Act of 1984, which had made child abduction a criminal offence in the United Kingdom.

29. His Government was convinced that the drafting of multilateral international agreements implemented by a network of effective national legislation offered the best hope both of deterring those who might be tempted to resort to child abduction, and of undoing the effects of such actions as quickly as possible. All States that were in a position to do so should become parties to the relevant conventions and should introduce the necessary domestic laws and machinery.

30. Mr. BEZABIH (Ethiopia) said that the rights of the child constituted an issue which deserved utmost priority in the Commission's efforts to uphold and promote the basic principles underlying respect for human rights throughout the world. Children were, after all, the most vulnerable members of society, especially in areas of the world which had been or still were subjected to colonialism, racism and foreign domination. In some countries, children were deprived even of the right to a name and a nationality and were subjected to forced labour, which constituted a threat to their health, their psychological development and their education. Sexual exploitation, prostitution and the sale and abduction of children were in some countries an undeniable reality which made the adoption of measures designed to ensure the protection of minors all the more necessary.

31. As early as 1924, the League of Nations had endorsed the Geneva Declaration of the Rights of the Child, the first attempt to codify in a single instrument the fundamental conditions to which all children in the world had a right. In 1948, that document, revised and amplified, had become the 10-point Declaration of the Rights of the Child, later adopted unanimously by the General Assembly of the United Nations on 20 November 1959, which stressed the fact that the rights of the child were an integral part of the human rights set forth in the Universal Declaration. The submission by Poland of a draft convention on the rights of the child in 1979, which had been proclaimed the International Year of the Child, had provided an opportunity to define more clearly, within the framework of a binding international instrument, the human-rights standards that should apply to children everywhere in the world.

32. Before the popular revolution in his country, most Ethiopian children had lived in extremely disadvantaged conditions. After the revolution, special measures had been introduced by the Government to improve the lot of the children, who accounted for nearly 45 per cent of the country's population. The establishment of nurseries, kindergartens, child care centres and children's recreation centres had become a priority programme for the Government and for the country's popular organizations. To cite but one example, in the 10 years which had elapsed since the pre-revolutionary period, the number of kindergartens had grown from 77 to 610. Furthermore, in order to encourage, co-ordinate and supervise the nation-wide efforts to improve the overall development of the child, a children's commission had been established in 1981. Despite the country's poverty, efforts were also being made to ensure that disabled children could realize their rights as Ethiopian citizens. The right of the child to citizenship was guaranteed in the newly adopted constitution, which provided that any person with at least one parent having Ethiopian citizenship was an Ethiopian.

33. The draft convention on the rights of the child prepared by the working group established by the Commission on Human Rights in 1979 would set universally agreed standards for the protection of the rights of children and provide an extremely useful framework for the elaboration of future programmes aimed at continuously improving the situation of children in the world. His delegation hoped that the final draft would be completed, as scheduled, in 1989 - a symbolic year for children everywhere, since it marked the tenth anniversary of the International Year of the Child and the thirtieth anniversary of the historic Declaration of the Rights of the Child.

34. Mr. MEZZALAMA (Italy) took the Chair.

35. Mr. FATHALLAH (Observer for Egypt) said that, in his country, the child was regarded as the nucleus of the family, itself the basic cell of society. For that reason if for no other, children must be given every guarantee of enjoying all their rights. The first right of the child was to have two natural and acknowledged parents, so that he could grow up in a psychological environment that was conducive to his all-round development. The Egyptian delegation viewed that right as being more important than the right to name and nationality, which formed the subject of article 2 of the draft convention and which was incompatible with the principles of the social, legal and religious systems in many countries. That was why his delegation was in favour of removing that provision from the draft convention and introducing the notion of the right to natural and acknowledged parents. If it was

desirable that the convention be universal in nature, it was precisely so that it might have a positive impact on co-operation and consultation among States and on international relations in general, especially in the political and economic spheres. After all, the fate of an entire generation was to be determined, and that was a heavy responsibility.

36. His delegation had contributed to the efforts of the working group and supported its recommendations. It welcomed the stress that had been placed on the need to transmit to Governments the results of the first reading of the draft convention, before 31 August 1988, in order to facilitate the second reading. The fact that the first reading had been completed did not, however, mean that no further amendments could be made to the text and, in that connection, his delegation endorsed the initiative of the Senegalese and other delegations which had submitted an amendment to the eighth preambular paragraph of draft resolution E/CN.4/1988/L.86.

37. While welcoming the efforts made by the working group, his delegation deplored the procedure by which the group's report had been prepared, for the reasons it had expounded during the adoption of the report. As for the draft convention itself, his delegation considered that the provisions of article 2, paragraph 2, were at variance with the legislation of the many countries which did not automatically grant nationality to children born in their territory. It also had reservations regarding article 12, the provisions of which were incompatible with Muslim law, and should be deleted. Finally, its support for the general agreement that had been reached on a particular portion of article 20 did not mean that it had gone back on its original position, which was that a distinction must be made between the compulsory enlistment of children in the armed forces and voluntary admission of children to military schools to follow a course of training additional to ordinary education. Under no circumstances, however, should children participate in military operations. In view of the extent of that phenomenon, his delegation had, in 1968, submitted a draft declaration on the protection of women and children in situations of armed conflict and thought that the international community should devote special attention to the matter.

38. His delegation supported the idea of establishing an ad hoc committee, to be financed out of the regular budget of the United Nations, with the mandate of monitoring the implementation of the convention. In view of the existence of regional conventions on the protection of the rights of the child, it was essential that regional machinery be set up to facilitate the task of the ad hoc committee. Regional and international activities in the area should be complementary and not mutually contradictory. In that connection, his delegation understood the expression "other competent bodies" in article 24 (b) to apply to regional institutions such as the Arab Council for Children and Development.

39. In conclusion, his delegation thanked UNESCO for having organized, in January 1988, the informal meetings which had facilitated the task of the working group.

40. Mrs. SELMANE-BOUAMRANE (Algeria) said that her delegation welcomed the spirit of co-operation that had prevailed within the working group responsible for preparing a draft convention on the rights of the child. The group had made good progress and had been able to complete the consideration in first reading of a large portion of the draft. Like other delegations, her own

endorsed the General Assembly's recommendation that the drafting of the convention should be completed in 1989. She hoped, however, that, during the second reading, a number of elements linked to cultures and civilizations and the particular needs of the developing countries would be taken into account so that the convention might be universally acceptable.

41. With regard to the issue of children of separated couples of different nationalities, it must be stressed that the traumatic situation of those innocent victims was not specific to a single country or region, and that there was a rich body of international case law on the subject. That delicate problem called for a solution to be found that would above all preserve the interests of the child and also respect the rights of the parents. Her Government had always tried to work towards such a solution, with the emphasis on dialogue and the seeking of compromise. Accordingly, it had been involved in the negotiation of a legally binding convention that would, through bilateral agreements, regulate mutual legal assistance on the basis of equality, reciprocity and respect for the fundamental values of every society. Pending the conclusion of that convention, the Algerian authorities gave careful consideration to each case submitted to them. It was essential to guarantee a cross-frontier visiting right, with the agreement of the two parents confirmed by a judicial decision, the State in whose territory of which the visit took place undertaking to ensure the child's actual return. The agreements between the Algerian and French authorities in that area had yielded some conclusive results, since a good many cross-frontier visits had recently taken place.

42. Her delegation reaffirmed its Government's desire to facilitate a settlement of the problem first and foremost in the interest of the child, on the understanding that its links with both parents must certainly be preserved, and the rights of both mother and father guaranteed.

43. Mr. CERDA (Argentina) said that his delegation welcomed the progress made by the working group at its most recent session: the first reading of the draft convention had been completed in accordance with the provisions of General Assembly resolution 42/101.

44. At the end of the meeting organized at UNICEF's initiative in late 1987, non-governmental organizations dealing with the rights of the child had made some recommendations concerning the draft convention being prepared, and he hoped those recommendations would be taken into account during the second reading of the draft.

45. Like the delegation of Senegal, he believed that only an instrument that emerged from broad-based consultations and in-depth negotiations would be effective in protecting the rights of the child. Finally, he wished to thank the Chairman of the working group for his personal contribution to the progress it had made.

46. Miss CHAHABI (Observer for the Syrian Arab Republic) said that, ever since its establishment, the United Nations had been devoting particular attention to the question of children and their rights. UNICEF efforts had culminated in the adoption of the 1959 Declaration of the Rights of the Child and yet, thirty years later, the mortality rate varied from 50 to 230 per 1,000 live births in the most underprivileged, or developing, countries, and a large proportion of children did not reach one year of age for lack of

care and malnutrition. In some countries, large numbers of children were exploited, ill-treated and sexually abused. In the wake of armed conflicts and natural disasters, millions of children found themselves in refugee camps, where their lives were constantly threatened by military attacks. Lastly, and more generally, children were the first victims of the armed conflicts that were raging in many countries for, even if they did not perish, they were often traumatized for life.

47. Thus, in the territories occupied by the Israelis, the Zionist entity was violating the rights of children by denying them food and medication when it did not go as far as committing more barbarous crimes. In early February 1988 alone, 30 children under 12 years of age had been abducted on the West Bank, and Israeli colonists had fired upon demonstrators in a village, killing a child. That was but one example, for innocent victims were falling every day under the bullets of the occupying force. That policy of oppression constituted a crime against humanity and a threat to international peace and security. It was high time that the United States stopped supporting the Zionist entity against the Palestinians and the Pretoria régime against the indigenous populations of South Africa.

48. Her delegation urged the Commission to do everything in its power to ensure the protection of the children suffering throughout the world and to give them hope of a better life. It thanked the working group for its efforts and hoped that it would complete its consideration of the draft convention on the rights of the child in the near future. Finally, it also wished to thank all the organizations, such as UNICEF, WHO, UNHCR and UNRWA, that provided assistance to children.

49. Mr. MARKHUS (Observer for the Libyan Arab Jamahiriya) said that, in terms of the protection of children from birth onwards, international instruments such as the Universal Declaration of Human Rights and the Declaration of the Rights of the Child had merely repeated age-old principles that had nevertheless been formulated more precisely in the nineteenth century.

50. The United Nations and UNICEF were to be thanked for their efforts to help children, particularly in the most underprivileged countries. The deterioration in the world economic system and the effect thereof on the developing world had worsened the sufferings of children. Moreover, in the developing countries, official child protection schemes were virtually non-existent, and were rendered all the more difficult to apply by the economic situation of those countries. His delegation thanked the working group for what it had done: its activities had enabled the States that were members of the Commission to submit new proposals aimed, inter alia, at ensuring that the projected convention was of a universal nature. All the members of the international community must work together at the regional, bilateral and international levels to improve the lot of all underprivileged children, whether they had been disabled, orphaned, made refugees or rendered homeless by an armed conflict, were victims of exploitation or racial discrimination, or were deprived of health care and proper nourishment. The international community must make it possible for the future generations to grow up under normal living conditions and in an atmosphere of peace and harmony.

51. The CHAIRMAN recalled, in connection with draft resolution E/CN.4/1988/L.86, the amendment to the last preambular paragraph read out by the representative of Senegal and said that, if he heard no objection, he would take it that the Commission wished to adopt the draft resolution E/CN.4/1988/L.86, as amended, without a vote.

52. Draft resolution E/CN.4/1988/L.86, as amended, was adopted.

53. Mr. KONATE (Senegal), Mr. FATHALLAH (Observer for Egypt), Mr. HACENE (Algeria), Mr. GOSHU (Ethiopia), Mr. SECKA (Gambia), Mr. CERDA (Argentina), Mr. OKONJI (Nigeria), Mrs. CASCO (Nicaragua) and Mr. OMAR (Observer for the Libyan Arab Jamahiriya) said that, as the Senegalese amendment had been adopted, their respective countries wished to become sponsors of draft resolution E/CN.4/1988/L.86, as amended, which the Commission had just adopted.

54. The CHAIRMAN read out a draft decision on prevention of the disappearance of children:

"The Commission on Human Rights,

Noting the expression of deep concern by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its decision 1987/107 of 3 September 1987 over reports concerning the critical situation of children who had disappeared in Argentina and who have recently been located in Paraguay,

Sharing the Sub-Commission's desire to facilitate family reunion and prevent any new risk of disappearance of those children and bearing in mind the lessons of the unfortunate cases which have occurred in the past in similar situations,

1. Approves the Sub-Commission's request to its Chairman to appoint one or several members to establish urgently and maintain contact with the competent authorities and institutions, including humanitarian organizations, which would report to him on the situation and ensure that there are no further risks of disappearance;

2. Requests the authorities concerned to facilitate the implementation of the present resolution;

3. Authorizes the Secretary-General to provide all the assistance necessary for the implementation of the present resolution."

55. If he heard no objection, he would take it that the Commission wished to adopt the draft decision without a vote.

56. The draft decision was adopted.

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS (agenda item 14) (continued) (A/C.3/42/1, A/C.3/42/6; E/CN.4/1988/L.71)

57. Mr. MARTENSON (Under-Secretary-General for Human Rights) recalled that by its resolution 34/172, the General Assembly had decided to create, at its thirty-fifth session, a working group open to all Member States to elaborate

an international convention on the protection of the rights of all migrant workers and their families. The mandate of the working group had been regularly renewed ever since. For its part, the Commission on Human Rights had frequently expressed its conviction that a convention on all aspects of the protection of the rights of all migrant workers and their families should be adopted as a matter of urgency. Accordingly, at its forty-third session, by its resolution 1987/43, it had once again welcomed the progress made by the Working Group, particularly in the second reading of the draft convention, and had invited all Member States to continue to co-operate with the Working Group in carrying out its task.

58. At its forty-second session, having examined the progress made by the Working Group in 1987, the General Assembly had taken note with satisfaction of the Group's reports and, by its resolution 42/140, had decided that the Group should again hold one meeting of two weeks' duration in New York, immediately after the Economic and Social Council's first regular session of 1988. The General Assembly had invited the Secretary-General to transmit to Governments the reports of the Working Group so as to enable the members of the Group to continue the drafting of the convention during the spring of 1988, and to transmit the results obtained at that spring meeting to the General Assembly for consideration at its forty-third session. The General Assembly had also invited the Secretary-General to transmit the documents in question to the competent organs of the United Nations and to the international organizations concerned, for their information, so as to enable them to continue their co-operation with the Working Group. Finally, the General Assembly had decided that the Working Group should meet during the forty-third session of the General Assembly, preferably at the beginning of the session, to continue the second reading of the draft convention.

59. Mrs. FUCHS (Mexico) said that the Working Group entrusted by the General Assembly with preparing a draft international convention on the protection of the rights of all migrant workers and their families had met regularly since 1984. In October 1984, it had completed its consideration in first reading of the draft convention. It was currently involved in the second reading of that text, and had already approved, in the second reading, the major chapters on such subjects as the fundamental rights of all migrant workers and their families, irrespective of their status as migrants, and a number of articles which guaranteed other rights to migrant workers and their families if they were not in an irregular situation.

60. Having listed the countries which were sponsors of draft resolution E/CN.4/1988/L.71 and summarized its text, she expressed the hope that the Commission would be able to adopt it, as usual, without a vote.

61. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt draft resolution E/CN.4/1988/L.71 without a vote.

62. Draft resolution E/CN.4/1988/L.71 was adopted.

63. Mr. Delgado Barreto (Peru) took the Chair.

64. Mr. REINBOTHE (Federal Republic of Germany) said that, although his delegation had joined the consensus on draft resolution E/CN.4/1988/L.71, its position on the matter had not changed: it had substantive reservations

concerning the need to adopt a convention on the protection of the rights of migrant workers and their families. The protection of the human rights of migrant workers was already amply guaranteed by other international instruments, particularly by the International Covenants on Human Rights and the Universal Declaration of Human Rights, which covered all human beings, whatever their social status, country of origin or nationality. To elaborate an international instrument stipulating the rights of each category of persons would be tantamount to regarding the human-rights instruments in force as inadequate and worthless. The International Covenants on Human Rights should not be devalued by the multiplication of texts on human rights: States should rather be urged to implement the rights defined in the Covenants and to ensure that they were protected. Moreover, his delegation had objections to a great many of the provisions adopted by the Working Group. The terms of the draft, as it currently stood, would make it impossible for his authorities to sign the convention, much less to ratify it.

65. Mr. JOHNSON (United States of America) said that, like the delegation of the Federal Republic of Germany, whose opinions it shared, his delegation had joined in the consensus but still had reservations concerning the drafting exercise under way. It deplored the financial implications of the process also, and, as it had said from the outset, it continued to believe that the International Labour Organisation was the appropriate forum for dealing with the rights of migrant workers.

QUESTION OF HUMAN RIGHTS IN CHILE (agenda item 5) (continued)
(E/CN.4/1988/L.47/Rev.1, E/CN.4/1988/L.57)

66. Mr. HELLER (Mexico), having listed the sponsors of draft resolution E/CN.4/1988/L.47/Rev.1, concerning the question of human rights in Chile, said that the draft resolution was the outcome of intensive consultations among the delegations that had participated in its formulation in order to arrive at a draft resolution that could be adopted without being put to the vote. The sponsors were convinced that the draft faithfully reflected the feelings of the members of the Commission. They had taken due account of the Special Rapporteur's report and of the many statements made on the subject of the human-rights situation in Chile. Accordingly, he hoped that the draft resolution would be approved by consensus.

67. Mr. CALDERON (Observer for Chile) recalled that, in its statement of 3 March, his delegation had said that it would refrain from taking part in the discussion of agenda item 5, since it had irrefutable proof that the draft resolution currently before the Commission had been prepared before any discussion had taken place and, even more significantly, before the Special Rapporteur's report had been submitted. Draft resolution E/CN.4/1988/L.47/Rev.1 - which had been tainted once again at source by the fact of being drafted by the delegation of a Government as uncommendable as that of Mexico - had, indeed, followed the expected course, in spite of some last-minute "cosmetics" intended to give it a more presentable appearance. His delegation had therefore refrained from taking part in the discussion, preferring to await the completion of the annual ritual of statements characterized by prejudice and political considerations.

68. As for the genuine human-rights situation in Chile, he intended to deal with institutional development, on the one hand, and with the procedure that

the Commission was continuing to apply to Chile, on the other. The Commission presented a truly sorry sight because many of the States sitting on it had not hesitated to repudiate, for second-rate political reasons, their long tradition of seriousness and respect for legality, and because those countries were aware that, having urged Chile to co-operate with the Special Rapporteur, they had once again ignored the latter's reports and placed him in an extremely uncomfortable position, as he had said himself. It was a sorry sight also because countries that were posing as champions of the rule of law had not hesitated to use Chile as a scapegoat in order to attack other States, and also because it had become evident, once again, that political considerations, rather than the cause of human rights, were the primary concern. It might be wondered what the purpose of all that was.

69. The purpose was very simple; it was to change the institutional process that was currently under way in Chile, as provided for in the political Constitution in force, which had been approved by an overwhelming majority of the Chilean people in September 1980. The Chilean Government had an obligation to apply the provisions of the Constitution from which it derived its legitimacy, since that was the wish of the majority of the population. What the majority wanted was to re-establish a democratic régime, in keeping with a long-standing tradition, but improved and free of the flaws and defects that had threatened it with extinction under the Marxist-Leninist Government of Popular Unity. It had therefore been necessary to adapt the institutions, redress the injustices and establish a solid economic base in the country, without which political ideals would be devoid of any foundation, as historical experience had so often shown.

70. For the successful conclusion of that indispensable phase, the Constitution made provision for a transitional period marked out with various deadlines and specific political, institutional and economic tasks. At a time when the transitional period was drawing to a close and the people was soon to vote, his Government could say with satisfaction that it was applying the provisions of the Constitution to the letter. Most of the constitutional enactments had been promulgated; they were aimed at the full restoration of representative democracy: establishment of the constitutional court, electoral system, procedure for inclusion in the electoral registers, electoral tribunals, act on political parties, act concerning the establishment of regional development boards, etc. All that had been achieved through the 1980 Constitution, in other words the mandate conferred by the Chileans, and not as a result of external pressure.

71. With regard to political and institutional developments in Chile, he invited the Commission to refer to the opinion expressed by Mr. Volio Jiménez, the Special Rapporteur himself, in the report that he had submitted to the General Assembly in December 1987 (A/42/556), namely:

"... the Special Rapporteur was aware of two conflicting currents of opinion concerning the democratization process in the country and hence the protection of human rights; the Government's plan to implement the relevant provisions of the Constitution was being hotly debated [...]. One opinion favoured the registration of both citizens and political parties, while the other was opposed to both [...]. For a third current of opinion which advocated and continues to advocate a violent solution to the political conflicts in the country, anything to do with elections was and is anathema" (loc. cit., para. 82).

72. In the same report (para. 83), the Special Rapporteur added the following:

"This debate was heightened by the fact that a controversy had arisen within the ranks of the political parties opposed to the régime concerning this same question of electoral registration and participation in the plebiscite. The Special Rapporteur was struck by this fact, as well as by the opinion of a moderate opposition political leader who, in connection with another related question, namely whether to press for general elections in order to change the Government or whether to participate in the plebiscite in order to obtain general elections at a later date, told the Special Rapporteur that, at that point in time, the second course of action was the viable one".

73. In his report to the General Assembly (para. 86), the Special Rapporteur further stated that:

"Taking into account the transitional system which is being instituted in Chile with a view to investigating complaints relating to the 1989 plebiscite, the purpose of which will be to confirm or otherwise the person proposed by the Government Junta as President of the Republic, both the constitutional provisions governing the composition of the Electoral Tribunal and the Constitutional Fundamental Act relating to this Tribunal do, as far as the Special Rapporteur can judge, reasonably guarantee a proper electoral system."

74. In his report to the Commission at its current session (E/CN.4/1988/7), the Special Rapporteur said that:

"... the fact is that there will be a plebiscite and that this consultation of the people will have to take place in strict accordance with the universal standards of respect for the will of the voter" (para. 84).

75. He also added (para. 85):

"During his December 1987 visit, the Special Rapporteur again paid close attention - as he did in March 1987 - to a number of important aspects of the plebiscite process since in his view, this consultation of the people (in other words, the fact that elections have been called), in itself constitutes progress in the sphere of respect for human rights. [...] The Special Rapporteur considers that this machinery is being prepared in a serious and responsible manner, in terms of the effort to register citizens with the right to vote, in order that the body of electors will be qualified to make, in the plebiscite, a response which signifies the will of the people."

76. He had quoted extensive extracts from the two reports of the Special Rapporteur in order to show clearly, yet again, that the sponsors of the draft resolution that was about to be adopted had not taken the trouble to read those documents, since that explained the discrepancy between the draft resolution and the reports. To further emphasize his point, he referred to the interview that the Commission's own Special Rapporteur had granted in December 1987 to the Chilean daily El Mercurio (edition of 13 December 1987), in which he had declared that Chile had been the first to accept a special rapporteur to whom, after initially refusing to receive him, it had offered

the full collaboration of the authorities. Nevertheless, the Commission had continued to consider the case of Chile as a separate agenda item. The Special Rapporteur regarded that as blatant discrimination, which was offensive to the country and did not promote the course of human rights. In his opinion, an international campaign was being conducted against Chile with the passive acquiescence of the Western democracies. Finally, the Special Rapporteur had agreed that the draft resolution adopted by the Commission against Chile had not changed in 12 years, the first country to support it being Mexico.

77. In conclusion, he questioned the usefulness of appointing a Special Rapporteur if the Commission subsequently disregarded his reports. However, it was undeniable that voting against Chile in no way endangered the members of the Commission. For its part, his Government would continue to apply its Constitution, which clearly indicated the course of action to be taken for the restoration of representative democracy in an improved and more up-to-date form. Resolutions of the type that the Commission was going to adopt would not prevent it from doing so. Chile would retain its freedom of action and would act solely in the light of its interests.

78. Mr. ZURITA (Spain) said that the Spanish-speaking delegations had noted some expressions in the Spanish text of draft resolution E/CN.4/1988/L.47/Rev.1 which required correction. They would be brought to the attention of the Secretariat.

79. The CHAIRMAN invited the members of the Commission to vote on draft resolution E/CN.4/1988/L.47/Rev.1, on the question of human rights in Chile. He pointed out that the administrative and programme budget implications of the draft resolution were to be found in document E/CN.4/1988/L.57. He then gave the floor to the delegations wishing to explain their vote in advance.

80. Mr. PIEDRA (United States of America) said that his delegation had decided to abstain on the draft resolution concerning human rights in Chile even though, in recent years, it had supported the resolutions drawing the attention of the international community to the serious violations of civil and human rights in that country. Regrettably, many of those same violations were still occurring. Accordingly, the abstention by the United States delegation did not mean that, in its view, significant progress had been made in guaranteeing greater respect for human and civil rights in Chile, or that the United States had less concern about that crucial problem. On the contrary, the statements and actions of the United States since the Commission's previous session had consistently demonstrated his Government's wholehearted support for a return to full and complete democracy and scrupulous respect for human rights in Chile.

81. His delegation's inability to support the draft resolution submitted at the current session stemmed from the nature of the resolution itself and the process by which it had been drafted. Many of the findings and conclusions in the latest report (E/CN.4/1988/7) by Mr. Volio Jiménez, the Special Rapporteur, had not been taken into account in the text, which gave very little credit to his careful and dedicated work. The resolution also failed to make explicit mention of the dreadful terrorist activities that were plaguing Chile and causing innocent victims, to which Mr. Jiménez had referred. That omission was particularly objectionable, since

the vast majority of Chileans themselves had condemned politically-inspired violence regardless of whether it was perpetrated by the extreme right or the far left.

82. Although the draft resolution illuminated the many grave and persisting violations of civil and human rights in Chile, it failed to make favourable reference to the positive developments outlined by the Special Rapporteur; the manner in which the text spoke of the significant reduction in the number of exiles was a good illustration of that point. That negative approach detracted from the value of the resolution. It was unfair to single out Chile for such treatment, while turning a blind eye to violations of human rights in other countries.

83. Consequently, in view of the lack of balance in the text, which failed to give sufficient credit to the Special Rapporteur's report, his delegation could not vote in favour of it. To facilitate full and timely consideration of such reports in the future, he urged the Commission to ensure that they were distributed to all delegations before the drafting and submission of resolutions concerning the countries in question. The practice of distributing resolutions prior to the receipt of the reports undermined the institution of special rapporteurs, and was particularly deplorable in the case of Mr. Volio Jiménez, who had gone to great lengths to discharge his mandate in a meticulous and objective manner.

84. In fact, the Special Rapporteur's latest report assumed particular significance in the current year, a key year in the history of Chile. It emphasized the need for a special effort on the part of the Chilean Government to establish the conditions necessary for the will of the people to be expressed in the forthcoming plebiscite. Chile needed to make rapid progress to restore respect for civil and human rights so that a climate conducive to a democratic process could be achieved before the ballot. In that respect, the people and Government of the United States shared the aspirations of the Chilean people for a prompt return to full and effective democracy and respect for human rights.

85. At the request of the representative of Mexico, a vote was taken by roll-call on draft resolution E/CN.4/1988/L.47/Rev.1.

86. India, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Algeria, Argentina, Belgium, Botswana, Bulgaria, Byelorussian Soviet Socialist Republic, Columbia, Costa Rica, Cyprus, Ethiopia, France, Gambia, German Democratic Republic, Germany, Federal Republic of, India, Ireland, Italy, Mexico, Nicaragua, Nigeria, Norway, Peru, Philippines, Portugal, Rwanda, Sao Tome and Principe, Senegal, Sri Lanka, Spain, Togo, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Venezuela, Yugoslavia.

Against: None

Abstaining: Bangladesh, Brazil, China, Japan, Pakistan, Somalia, United States of America.

87. Draft resolution E/CN.4/1988/L.47/Rev.1 was adopted by 34 votes to none, with 7 abstentions.

88. Mr. STEEL (United Kingdom), speaking in explanation of vote, said that his Government remained concerned at the violations of human rights that had been observed in Chile, to which his delegation had referred in detail in its statement on agenda item 12. The draft resolution that had been proposed initially in document E/CN.4/1988/L.47 lacked balance and was inconsistent with the report of the Special Rapporteur (E/CN.4/1988/7). His delegation had brought the fact to the attention of the sponsors of the draft resolution, who had revised their text. Those changes justified his delegation's vote in favour. However, the revised text still contained several weak points and its inadequate objectivity would certainly not promote the cause of human rights.

89. In particular, his delegation would have preferred the text to mention the encouraging aspects noted by the Special Rapporteur in his report, especially his view that the plebiscite process was being prepared "in a serious and responsible manner", and his reference to the measures taken to prevent the practice of torture, the agreements the ICRC had concluded with the Carabineros, the Police Department and the CNI, the positive attitude of the Carabineros and the transfer of 573 cases from the military to the civil courts (see paragraphs 85, 95, 96, 100 and 112 of the report issued as document E/CN.4/1988/7). As his delegation had already stated during the discussion of item 12, the Commission should avoid any selective attitude and the fact of continuing to consider the case of Chile under a separate agenda item constituted an anomaly that should be rectified. His Government welcomed the Chilean Government's willingness to co-operate with the Special Rapporteur.

90. Mr. SENE (Senegal), Chairman, resumed the Chair.

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;
- (b) STUDY OF SITUATIONS WHICH APPEAR TO REVEAL A CONSISTENT PATTERN OF GROSS VIOLATIONS OF HUMAN RIGHTS AS PROVIDED IN COMMISSION RESOLUTION 8 (XXIII) AND ECONOMIC AND SOCIAL COUNCIL RESOLUTIONS 1235 (XLII) AND 1503 (XLVIII): REPORT OF THE WORKING GROUP ESTABLISHED BY THE COMMISSION AT ITS FORTY-THIRD SESSION (agenda item 12) (E/CN.4/1988/L.26/Rev.1, L.35, L.103) (continued)

91. The CHAIRMAN informed the Commission that, in spite of intensive consultations, a consensus had not been reached on a text that would make it possible to solve the problem facing the Commission in connection with draft resolutions E/CN.4/1988/L.26 and L.35 and the proposal that had been reiterated, at the morning meeting, by the representative of Mexico on behalf of four Latin American countries (E/CN.4/1988/L.103). He deemed it essential to avoid a procedural debate that might lead to a deadlock. In fact, in view of past experience, there was every reason to welcome the gesture made by the Government of Cuba, which had invited the Chairman and five members of the

Commission, appointed after consultations among the regional groups, to visit Cuba to examine the human-rights situation there, in complete freedom of course, with a view to reporting to the Commission at its next session. That invitation by the Government of Cuba, although not without precedent, constituted an exceptional gesture that should be considered in a serious and responsible way. Accordingly, referring to the motion on the priority to be given to the Latin American proposal (E/CN.4/1988/L.103), which the representative of Columbia had submitted at the morning meeting with a request that it be put to a vote as a matter of priority, in accordance with rule 65, paragraph 1, of the rules of procedure, he appealed to the Commission, rather than voting on that motion, to make a last effort to adopt draft decision E/CN.4/1988/L.103 without putting it to a vote since, in his view, that was the most constructive and appropriate way to proceed in keeping with the Commission's principles and aims. He requested the Secretariat to inform the Commission of the financial implications of an acceptance of the Cuban Government's invitation and of the Commission's adoption of a decision to send its Chairman and five of its members to visit Cuba.

92. Mr. NYAMEKYE (Deputy Director, Centre for Human Rights), having read out the administrative and programme budget implications of the draft decision contained in document E/CN.4/1986/L.103, said they would be issued as document E/CN.4/1988/L.104.

93. The CHAIRMAN invited the members of the Commission to take a decision on draft resolution E/CN.4/1988/L.103 without putting it to a vote.

94. The draft decision submitted by Argentina, Colombia, Mexico and Peru (E/CN.4/1988/L.103) was adopted without a vote.

95. The CHAIRMAN thanked the members of the Commission for the unanimous confidence that they had placed in him by adopting the draft resolution without a vote. He assured them that, after consultation with the regional groups, he would endeavour to take with him five members whose competence, impartiality and professional integrity met the requirements needed to undertake missions within the framework of the Commission's legal procedures. He welcomed the scope for dialogue between Cuba and the Commission that had thus been offered, as well as the prospect for positive co-operation in the highly sensitive field of human rights.

96. He was convinced that every facility would be made available to the members of the mission to enable them to have free access to written or oral information from any relevant source and, at their discretion, to visit locations, contact individuals and organizations and meet the competent Cuban authorities. He was certain that the members of the mission would be able to submit a credible report to the Commission at its forty-fifth session and he hoped that the Secretariat would provide all the requisite logistic assistance to enable the mission to carry out its mandate in accordance with established practice.

97. Mr. VALLADARES (United States of America) said that he had taken note of what had been said, namely that the Commission would be dispatching a mission to Cuba within the framework of the Commission's legal procedures. That meant that the mission would have free access to any location and any person, whether official or private, and that the Government of Cuba would not be able to refuse to admit any member of the group, the members of which would be

chosen and led by the Chairman of the Commission. His delegation had also noted, with great satisfaction, the Chairman's remarks to the effect that the members of the group should enjoy full freedom of access to all types of information and all sources, whether oral or written, which was exactly what his delegation had requested in its draft resolution E/CN.4/1988/L.26/Rev.1, namely that a working group be set up to examine the human-rights situation in Cuba. Accordingly, his delegation would no longer insist that a decision be taken on its proposal.

98. The CHAIRMAN said he noted that votes were no longer required on draft resolutions E/CN.4/1988/L.26/Rev.1 and L.35. Consequently, the Commission had succeeded in attaining the constructive solution that it had been seeking.

99. Mrs. LOPEZ (Colombia), Mr. HELLER (Mexico), Mr. DESPOUY (Argentina) and Mr. RODRIGUEZ (Peru), having thanked the Chairman for the efforts that he had made to find a solution, said they also welcomed the invitation extended by the Government of Cuba and thanked the members of the Commission and the United States delegation for having appreciated the purpose of the Latin American delegations' initiative. They had proved that, through concerted action, they could win acceptance for a regional solution. The Commission was strengthened by such a decision, which belonged within the context of the procedures it had established to clarify such questions and promote co-operation in regard to human rights.

100. Mr. TAYLHARDAT (Venezuela) congratulated all the delegations that had participated in the quest for a solution that would preserve everyone's dignity.

101. Mr. ROA KHOURI (Observer for Cuba), having thanked the Chairman and the four Latin American delegations for making it possible to put to the Commission a draft decision corresponding to a Cuban proposal based on an agreement between Cuba and those countries, said that the purpose of his Government's initiative was to promote the trend towards unity that was developing in the region of Latin America, the peoples of which had realized that they shared a single destiny. Cuba could not reasonably be expected to respond to the accusations of a Government which, for the last 29 years, had been endeavouring to overthrow the Cuban Revolutionary Government and had made several attempts to have its leaders assassinated. On the other hand, the decision to invite the Chairman of the Commission, together with five of its members who would be chosen on a regional basis, to visit Cuba without any restriction had been taken by the Government of Cuba itself. In that respect, the united and resolute approach by the countries of Latin America had undoubtedly triumphed.

102. The CHAIRMAN concluded by saying that the decision that had just been taken had been adopted in the best interests of the cause of human rights.

The summary record of the second part of the meeting appears as document E/CN.4/1988/SR.56/Add.1.



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/1988/SR.56/Add.1
29 March 1988

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Forty-fourth session

SUMMARY RECORD OF THE SECOND PART* OF THE 56TH MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 10 March 1988, at 3 p.m.

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|------------------|-------------|-----------|
| <u>Chairman:</u> | Mr. SENE | (Senegal) |
| later: | Mr. DELGADO | (Peru) |

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Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission, alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms; national institutions for the promotion and protection of human rights
(continued)

Organization of the work of the session (continued)

* The summary record of the first part of the meeting appears as document E/CN.4/1988/SR.56.

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- (a) Question of human rights in Cyprus;
- (b) Study of situations which appear to reveal a consistent pattern of gross violations of human rights as provided in Commission resolution 8 (XXIII) and Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII): report of the Working Group established by the Commission at its forty-third session (continued)

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION, ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS; NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (E/CN.4/1988/WG.7/WP.1/Rev.2) (agenda item 11) (continued)

1. Mr. MEZZALAMA (Italy) said that it was due to the efforts of all the delegations which had participated in the work of the informal open-ended Working Group established under Commission decision 1987/108 to submit views and proposals to the Special Commission of the Economic and Social Council that it had been possible to draft a report (E/CN.4/1988/WG.7/WP.1/Rev.2). Some amendments, that would be read out by the representative of Ireland, had been made to that text.

2. In the first part of the draft report, the Working Group presented the background to that question and referred to the Commission's mandate, after which it described the methods of work of the Commission and the Sub-Commission, mentioned the role assigned to the Centre for Human Rights and, finally, recalled the measures already taken to reform and rationalize the functioning of the Commission and the Sub-Commission. In paragraphs 20 to 30, the Working Group drew some conclusions and formulated several proposals that could be usefully taken into consideration by the Special Commission when it came to consider the Commission's methods of work. Since all the regional groups had been represented in the Working Group, he hoped that the Commission would be able to adopt that draft report, even though it was not available in all the working languages.

3. Mr. BIGGAR (Ireland) presented the purely formal amendments that the delegations participating in the work of the Working Group had decided to make to the text of the English version of the draft report. Firstly, the subheading "Work of the Commission" should be inserted before paragraph 7. Secondly, in paragraph 26, the fourth sentence should be deleted and replaced by the following text: "The Sub-Commission, when examining items which are extensively discussed elsewhere in the United Nations system should concentrate its attention on those specific human rights issues on which it can make a distinctive contribution". The purpose of that amendment was to bring the text of the report into line with that of draft resolution E/CN.4/1988/L.52 (operative paragraph 12), which the Commission had adopted by consensus. Finally, in paragraph 29, the words "It is essential that" in the fourth line should be placed at the beginning of the paragraph. He also indicated that the secretariat should fill in the blanks left in paragraph 7 (b) and in footnote No. 1 at the end of the text.

4. The CHAIRMAN said that, if there was no objection, he would take it that the Commission wished to adopt the report of the Working Group (E/CN.4/1988/WG.7/WP.1/Rev.2), as amended, without putting it to a vote.

5. It was so decided.

6. Mr. PALACIOS (Spain) said that, although his delegation had not wished to oppose the adoption of the report, it felt that it must protest at the fact that the text of the report had not been distributed in the Commission's working languages.

7. Mr. LEPRETTE (France) supported the Spanish delegation and drew the secretariat's attention to the fact that that procedure was not in conformity with resolution 36/117, which had been adopted unanimously by the General Assembly in December 1981.

ORGANIZATION OF THE WORK OF THE SESSION (agenda item 3) (continued)
(E/CN.4/1988/L.78 and L.97)

8. The CHAIRMAN drew the attention of the members of the Commission to the draft resolution submitted by Norway in document E/CN.4/1988/L.78 and to the administrative and programme budget implications contained in document E/CN.4/1988/L.97.

9. Mr. KOLBY (Norway) said that, as in the past few years, the Commission had again been obliged to hold additional meetings at the present session in order to complete its work. The purpose of draft decision E/CN.4/1988/L.78 was to request the Economic and Social Council to authorize the Commission to hold 20 additional meetings at the following session. Since that draft decision was traditionally submitted by the co-ordinator of the Group of Western European and other States, during the present year that role would be assumed by the Norwegian delegation, which hoped that the text would be adopted by consensus, as in the past.

10. The CHAIRMAN said that, if there was no objection, he would take it that the Commission wished to adopt draft resolution E/CN.4/1988/L.78 without putting it to a vote.

11. It was so decided.

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;

(b) STUDY OF SITUATIONS WHICH APPEAR TO REVEAL A CONSISTENT PATTERN OF GROSS VIOLATIONS OF HUMAN RIGHTS AS PROVIDED IN COMMISSION RESOLUTION 8 (XXIII) AND ECONOMIC AND SOCIAL COUNCIL RESOLUTIONS 1235 (XLII) AND 1503 (XLVIII): REPORT OF THE WORKING GROUP ESTABLISHED BY THE COMMISSION AT ITS FORTY-THIRD SESSION (agenda item 12) (continued)

Right of Reply

12. Mr. OULD M. LEMINE (Observer for Mauritania), speaking in exercise of the right of reply following the serious accusations that had been made against Mauritania by the International Movement for Fraternal Union among Races and Peoples, reaffirmed, first of all, that respect for human rights and fundamental freedoms had been a kingpin of Mauritanian policy since 12 December 1984. The general amnesty that had been proclaimed on that date,

the abolition of the exit visa requirement for all Mauritians, the positive steps taken to promote female emancipation, the literacy campaign and the organization of free and democratic elections, with numerous candidates and without interference by the authorities, were all self-evident facts that could not be regarded as demagoguery.

13. The discussion on the eradication of vestiges of slavery in Mauritania was closed. The position of the Mauritanian Government in that regard was well known and the Commission had already conducted an on-site investigation into that question, as a result of which it had been able to ascertain the true situation, as opposed to the untruths which, at the time, had been propagated by another non-governmental organization. One further aspect should be noted: slavery had never assumed a racial character in Mauritania, as had been acknowledged in the report that had been prepared in the light of the investigation conducted by the mission sent by the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

14. The trial held in November 1987, which had lasted more than a month, concerned military personnel who had conspired to overthrow the authorities in power and expose the population to slaughter and devastation. On their own admission, those military personnel belonged to a small racist and terrorist group whose "programme" stipulated that: "The legitimate aspirations of the Mauritanian negroes can be satisfied only through armed violence ... A military cell shall be established which, at the appropriate time, shall gradually enter the active phase ...". To put into effect that incitement to violence that military personnel, acting on behalf of that group, had organized the conspiracy in question, which was directed not only against the person of the Head of State but against the Mauritanian people as a whole, who had regarded it as a catastrophe.

15. Nevertheless, the trial had been conducted in a spirit of strict respect for the laws and regulations in force and the accused had enjoyed full legal aid by members of the bar. As had been attested by the Mauritanian League for Human Rights, all the conspirators and, consequently, all the accused belonged to a black minority, the very minority which had been the most outspoken in its condemnation of that crime. Moreover, the conspirators could hardly be presented as the victims of racial segregation, as had been asserted by the International Movement for Fraternal Union among Races and Peoples, since they had included a former Minister of the Interior, the Economy and Finance, a former Director-General of National Security, the deputy to the principal private military secretary to the Chief of State, the officer commanding the Presidential Guard and the general staff liaison officer. Their conspiracy had been a crime against Mauritanian society as a whole since, in addition to instigating a mutiny within the armed forces, it would also have caused the death of innocent civilians.

16. Mauritania was a meeting point of cultures and civilizations and, for centuries, had set an example of a life of harmony in a total symbiosis of different races. That resolute desire for peaceful co-existence was reinforced by community of religion, Islam, which was synonymous with tolerance, solidarity, justice and equality, as could be attested by persons who were really familiar with Mauritania.

17. Could any State or democracy regard the propagation of racism, the dissemination of racial hatred, open incitement to civil war and conspiracy against State security and the peaceful life of its citizens as fundamental human rights? At all events, such practices would not be tolerated in Mauritania. Current events that were making front-page news showed that the oldest democracies did not act otherwise in the face of identical, and sometimes even less serious, phenomena. All the accusations made against Mauritania by the International Movement for Fraternal Union among Races and Peoples were unfounded, erroneous and attributable to ignorance of the history, the nature and the present situation of Mauritanian society and to a quest for the sensational, which detracted from all the statements made by that non-governmental organization. His delegation hoped that, in future, that organization would take the trouble to verify the objectivity of its sources before making such accusations. Its ill-considered attitude during the present debate did not serve the cause of human rights.

18. Mr. MAXIM (Observer for Romania) reaffirmed his Government's commitment to the cause of human rights and pointed out that, over the years, it had been able to solve numerous humanitarian problems, such as family reunification and marriages between Romanian citizens and foreigners, and was determined to continue that course of action. Accordingly, his delegation firmly rejected the allegations that had been made by some speakers when referring to the human rights situation in Romania, as well as the unacceptable language that they had used, which was inconsistent with their diplomatic status. Although some organs of the press might take the liberty of saying whatever they wished however they wished, it was inadmissible that heads of delegations should act in the same manner. When some speakers attacked States and denigrated the Government of a State Member of the Organization on the basis of individual cases on which, moreover, they had totally one-sided information, they were acting in a manner contrary to the norms governing relations among States.

19. Although it would be easy to find arguments with which to reply to the rhetoric of those speakers by referring to the human rights situation in their own countries, Romania did not intend to embark on that baneful and pointless course of action. While ignorance of the true situation in a country might be excusable, bad faith and a desire to discredit others and engage in polemics, regardless of the consequences, certainly were not. However, it was true that Romania did not share the opinion of those other countries concerning the significance of some human rights, particularly those that it regarded as the most important.

20. The current figure of 30 million unemployed in the Western countries testified to the flagrant violation of one of those fundamental rights, namely the right to work and to a decent and dignified life. If the representatives to whom he was replying were so meticulous in regard to respect for human rights, they should not be unaware of the calamities constituted by unemployment, drug addiction, prostitution and xenophobia, not to say racism, which continued to be rampant in their countries and affected the lives of hundreds of thousands, if not millions, of men and women in the so-called free world. If the situation of the developing countries had deteriorated dramatically in recent years, affecting the lives of hundreds of millions of people, that was due to the catastrophic policy that was being deliberately pursued by some Western countries and which constituted the most serious violation of the fundamental rights of peoples.

21. It was well known that, as a result of decisions taken by some Western Governments, without a state of war being declared, bombs had been dropped on the cities of other States and numerous acts of sabotage had been committed against foreign States causing the loss of countless human lives and various political personalities, heads of Government and State had been assassinated. Were those not the most flagrant and criminal violations of human rights? How could they be compared with the false accusations that had been made against Romania? Such remarks were reminiscent of the bygone cold war period and were hardly likely to stimulate a constructive dialogue, let alone strengthen co-operation for the promotion of human rights.

22. In his country's view, there was no problem that could not be discussed within the Commission, provided that it was done in a spirit of mutual respect and with due consideration for differing situations and policies. To use the rostrum of an organ of the United Nations to insult a Member State was not only unacceptable; it was an act that ran counter to the purposes of the Organization. His delegation could not agree to those representatives presenting themselves as the holders of a sort of monopoly in respect of the truth as far as human rights were concerned, since that was pretension bordering on hypocrisy. Romania would not allow itself to be drawn into the polemics sought by some delegations.

23. Mr. Delgado (Peru) took the Chair.

24. Mr. VILLAROEL (Philippines), speaking in exercise of the right of reply for the second time, said that the reported 70 killings of which Amnesty International had spoken in its statement on the previous Friday should be placed in proper perspective. According to Mr. Fidel Ramos, the Philippine Secretary of National Defence, there was an "undeclared war" situation in the Philippines and the communist insurgents currently controlled 20 per cent of the villages in the country. It was against that background that the Commission should view the deaths reported by Amnesty International, which had acknowledged that most of the victims had been members of left-wing organizations operating openly in the country. Amnesty International had concluded its statement on the Philippines by saying that, although the Government had initiated investigations into many of those cases, there had been very few prosecutions.

25. He gave an assurance that the Government of the Philippines would prosecute violators of human rights, if they were found guilty in the light of evidence against them, and it would ensure that they were punished. If Amnesty International had been referring to the incidents that had occurred at Lupao, it should be noted that the Philippine Commission on Human Rights, after studying the complaints, affidavits and other evidence, had found a prima facie case against 32 officers and men belong to the 14th Infantry Battalion for the murder of 17 persons, for the attempted murder of 6 others and for armed robbery. Accordingly, those persons would be charged with the violation of articles 93 and 94 of the Articles of War and of articles 348 and 250 of the Philippine Revised Penal Code. That matter had been referred to the Judge Advocate General's Office of the Armed Forces of the Philippines and the Philippine Commission on Human Rights had recommended that further proceedings be instituted in view of the new evidence that had come to light.

26. With regard to the incident at Mendiola, a civil action had been brought against the Philippine Government by the victims and their families, who were claiming 2.6 million pesos in actual damages, 650,000 pesos for moral damages and 198,575 pesos for burial expenses. Actual and moral damages amounting to a total of 3.1 million pesos had also been claimed by 62 persons who had been wounded in the incident. At the same time, the Committee on Human Rights of the House of Representatives of the Philippine Congress had adopted a resolution endorsing the compensation claims of the victims of the incidents at Lupao and Mendiola and recommending their immediate approval. It had also recommended the immediate application of the rehabilitation programmes promised to the victims and their families, mainly in the form of training assistance with a view to employment. Moreover, the House of Representatives was currently studying Bill No. 26 entitled "Act authorizing payment of compensation and providing other forms of assistance to the rehabilitation of the victims of human rights violations and their families".

27. His delegation took exception to the view expressed by the observer for Canada to the effect that the appointment of a special rapporteur by the Commission might have proved helpful in the restoration of human rights in the Philippines. He reminded the Commission that it was the entire Filipino people who, two years ago, had restored human rights and fundamental freedoms in the Philippines during the course of what was surely one of history's most remarkable revolutions. While his delegation had no intention of minimizing the useful role that special rapporteurs could and did play in the restoration of human rights in certain circumstances, the situation in the Philippines was different and could not justify the proposal to dispatch a special rapporteur to that country.

28. Mr. FAIRWEATHER (Observer for Canada), replying to the statement made by the Grand Council of the Cree of Quebec on 4 March, in which the situation of the indigenous peoples of Canada had been compared to that of the black majority in South Africa, said that such a comparison did disservice not only to the struggle against apartheid but also to the cause of indigenous peoples throughout the world. There were fundamental differences between the indigenous peoples of Canada and the black majority in South Africa: the former were full Canadian citizens, who enjoyed not only the same rights as all other Canadians, but also the Aboriginal and Treaty Rights recognized in the Constitution. The system established for the administration of Indian lands in Canada was designed to protect the landed base of the Indian communities while, at the same time, enabling them to participate in the management of their lands and resources. Although the Indians of Canada were not required to live on reserves, some had chosen to do so. Self-government could not be equated to South Africa's "separate development". In fact, greater self-government was being sought by aboriginal communities, not imposed by the Government.

29. Their consultative status with the Economic and Social Council afforded organizations such as the Grand Council of the Cree an excellent opportunity to draw international attention to the concerns of the indigenous peoples of the world. However, the statement made by that organization showed that a number points to which his delegation had referred under agenda item 19 required clarification, particularly in regard to the meaning of the word "treaty". The Government had treaty relationships with some, but not all, of

the indigenous peoples in Canada. His delegation did not want the proposed study to be restricted solely to those populations with treaty relationships. Although indigenous treaties in Canada were protected by the Constitution, a distinction should be drawn between treaties in domestic law and treaties in international law. The James Bay Agreement, for example, was a treaty in Canadian domestic law, but it could not be regarded as a treaty in international law, as had been suggested.

30. Mr. LOAIZA (Observer for Bolivia) drew attention to a written statement submitted by the World Federation of Trade Unions (E/CN.4/1988/NGO/6) which contained a section on Bolivia. Lacking information, that organization passed judgements that were as categorical as they were inaccurate on the human rights situation in Bolivia; on the basis of a few incidents related to measures which the authorities had been compelled to take in order to guarantee public security, and consequently to guarantee respect for human rights, it indulged in generalizations that were very far from the truth by stating, for instance, that there were no democratic freedoms in Bolivia. If that were so, how was it that popular elections organized on the basis of direct universal suffrage could be won by the opposition parties, as had recently occurred in the municipal general elections?

31. The same organization claimed that trade union activists and champions of civil rights had been kidnapped. However, the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1988/19) showed that the last case of disappearance in Bolivia had been reported to the Group in 1982. Since the restoration of the democratic régime in 1982, as the Latin American Federation of Associations of Relatives of Missing Detainees had testified at the forty-third session, and afterwards in a statement at the current session, there had been no cases of disappearances. There was full enjoyment of democratic freedoms in Bolivia, there were no political prisoners or gaoled trade unionists and there were no Bolivians in exile, assigned to forced residence or persecuted on account of their political or trade union activities.

32. There was unemployment in Bolivia, as the organization in question stated, as well as social problems due to the major economic crisis that affected the whole of Latin America and stemmed from the unequal terms of trade on the international market and the slump in the commodities market. It was true that miners had lost their jobs since tin prices had collapsed. Bolivia would like the World Federation of Trade Unions, instead of simply making statements, to indicate its willingness to work for the restoration and creation of jobs by participating concretely in the struggle for economic rights.

33. According to the Indigenous World Association, Bolivia was selling off its forests to absorb its foreign debt, a measure which was doing a disservice to the Bolivian forest populations. That interpretation was far from the truth. The measures taken were quite simply designed to prolong the status of a zone declared to be an environmental protection area. Far from harming the indigenous populations living in the area in question, they were helping them to preserve their habitat and to avoid the irrational use of natural resources, as well as to prevent incursions by strangers into those territories where the status quo guaranteed the activities of those populations.

34. In conclusion, his delegation wished to say that in Bolivia, the rule of law was fully respected, with a constitutional system of Government which guaranteed open, pluralist and free activities at the political and trade union levels, and that human rights were fully respected, under domestic law and the international covenants on human rights to which Bolivia had acceded.

35. Mr. VIGNY (Observer for Switzerland) said that his delegation was taking the floor in order to present its views on the problems which the organization Centre Europe-Tiers Monde (CETIM) had raised at the 54th meeting in respect of asylum. The policy with regard to refugees was one of the most sensitive of the Government's tasks, as far as public opinion was concerned. The Government did not claim to be infallible in that regard, and merely tried to do its best, aware that it often had to make do with the least bad solution. The criticism of Switzerland was directed against the legislation on asylum as well as its implementation. Individual cases had been cited; on one of them, that of Mr. Musey, documentation was annexed to the written text of his delegation's statement.

36. First of all, with regard to the criticism that Switzerland was infringing the principle of non-refoulement because of the legal prescriptions applicable to the presentation of an application for asylum at the frontier, his delegation wished to say that it was not possible to infer from any international instrument the existence of an obligation for a State to authorize or simplify the admission of an alien to its national territory in order to enable him to apply for asylum. In the case of an application for asylum made at the frontier, the principle of non-refoulement, set forth in article 33 of the Convention relating to the Status of Refugees, meant that a refugee should be authorized to enter the country of asylum when turning him back at the frontier would have the consequence of compelling him to return, either directly or indirectly, to the persecuting country. However, that claim to refuge in no way involved any right to obtain temporary or permanent asylum. The State of refuge could therefore refer the refugee forthwith to another country where he was not threatened with persecution.

37. On that assumption, the principle of non-refoulement conferred on the refugee only the right to continue his flight and to seek asylum in conformity with article 14, paragraph 1, of the Universal Declaration of Human Rights. Swiss legislation concerning the procedure for asylum at the frontier took into consideration the de facto situation currently prevailing at Swiss frontiers and in adjacent States; it also reflected the efforts of European countries of admission to restrain uncontrolled emigration flows and to avert the abuse of national legislation on asylum matters.

38. Consequently, Swiss legislation on asylum stated that applications might be submitted only at the frontier, at one of the border posts designated for that purpose. Nowadays, an admission was granted solely by the Delegate of the Federal Council for Refugee Affairs who authorized admission either when the applicant arrived directly from a country where he appeared to be in danger or when the alien was able to give credibility to his assertion that he would be compelled by that country, in violation of the principle of non-refoulement, to go to a country where he appeared to be in danger.

39. The situation was different in the case of an alien who, since his departure, had passed through one or more countries in which he was in no way exposed to a serious threat within the meaning of the law on asylum or contrary to human rights. Having regard to the fact that all the countries that bordered on Switzerland had undertaken to respect and effectively discharged the obligations stemming from the principle of non-refoulement, it was only reasonable to require that an asylum-seeker should comply with the regulations concerning admission to Switzerland. In such a case, the Delegate to the Federal Council for Refugee Affairs could authorize admission to Switzerland in the case of an asylum-seeker who had close relations with persons living in Switzerland or who argued convincingly that he had fled his country of origin, or the country of last residence, for reasons related to refugee status and who had arrived at the Swiss frontier without delay. If, in violation of those requirements and without being in a situation of need, an alien tried to enter Switzerland illegally, he was handed over to the competent authorities of the neighbouring country, under the agreements relating to the handing over of persons at the frontier. He then had the choice of submitting his application for asylum either at an appropriate border post or at a Swiss representation abroad. Consequently, the criticism that Switzerland had failed to respect the principle of non-refoulement in its procedure for asylum at border posts was unfounded. Swiss procedure was in conformity with the recommendations of the UNHCR Executive Committee and the Committee of Ministers of the Council of Europe.

40. The CETIM also accused the Swiss authorities of failing to apply to unsuccessful applicants article 33 of the Convention relating to the Status of Refugees. The Swiss delegation would merely draw attention to the fact that, from a practical viewpoint, the Swiss authorities responsible for asylum questions considered, in each individual case, whether it was reasonable to require the applicant to return to the country of origin. If such was not the case, alternative measures are taken and the period of stay of the alien is regulated in accordance with the provisions governing temporary admission and internment. In the Sahili case quoted by the CETIM, at the time when the decision concerning return had entered into force, there had been no objective indication that pointed to the existence of danger, within the meaning of the law on asylum, in the eventuality of a return to the country of origin. The very opposite could be asserted, in view of the many journeys made by the applicant to his country of origin. It was not therefore possible to speak of an infringement of the principle of non-refoulement.

41. As for the accusation that Swiss law on asylum did not respect the right to be heard, it was generally agreed, and it was the view of the UNHCR, that it was the responsibility of each signatory State to establish and comply with an appropriate procedure for conferring refugee status. In Swiss law, an applicant was heard by the cantonal authorities concerning his reasons for asylum, according to a system established by the Delegate to the Federal Council for Refugee Affairs, in the presence of an interpreter if necessary, in the presence of a representative of a Swiss mutual assistance organization and, if the person concerned so wished, a third party of his choice. A second hearing by the Federal authorities took place if the latter considered that a further investigation was needed. It was therefore true that the applicant was not necessarily heard personally by the decision-making authorities, but he had the possibility of stating his case at first instance during a hearing lasting several hours.

42. On the question of the detention of asylum-seekers pending their refoulement, the CETIM had cited the case of Mr. Maza, who had left Switzerland very recently. Mr. Maza had been held in detention because he had constituted a security risk for Switzerland and not because he was an asylum-seeker whom the authorities were preparing to return to his country of origin.

43. As to the complaint concerning the length of the procedure, it should be noted that the Swiss Federal Council had adopted a clear-cut policy, which was also the hallmark of the two revisions of the law on asylum, of guaranteeing henceforward the admission of persons who were genuinely persecuted, avoiding misuse of the right of asylum, expediting and rationalizing the procedure by granting all the guarantees in accordance with the rule of law and furnishing assistance to those required to leave Switzerland. In conclusion, in cases of unusual hardship, mainly arising from a protracted procedure Switzerland granted permission for a stay to be made for humanitarian reasons.

44. Mr. DOK HUN (Democratic People's Republic of Korea) rejected the unjustified attacks made against his country by the delegation of the United States. When it came to violating human rights, what was worse than contempt shown for a nation and its right to self-determination? The United States had occupied South Korea for over 40 years and had set up a veritable nuclear arsenal in that country. Two hundred thousand men equipped with deadly weapons aimed at the northern part of the Korean peninsula were currently taking part in military exercises. The population of the Democratic People's Republic of Korea lived in a state of permanent anxiety, aware that their national sovereignty was always at the mercy of violence.

45. If the Commission failed to denounce those acts, the United States would inevitably feel itself encouraged to persist in such violations. The Democratic People's Republic of Korea was a small country which would never pose a threat to it. Its people had only one wish, namely, to live in peace. The United States invoked the risk of a southward invasion, but such an eventuality was unthinkable as the Democratic People's Republic of Korea had less than one third of the population of South Korea and far fewer military forces. The population of the North had had the painful experience of barbarous atrocities committed by so-called "civilized Americans". They had been the first victims of chemical and bacteriological bombs after the Second World War. The United States Eighth Army Command had given the order to its men to spare no one. That was the true picture of the United States that was threatening the human rights not only of Koreans but of mankind as a whole. The Democratic People's Republic of Korea also addressed the same condemnation to the Japanese authorities who were slandering it and called upon both countries to cease forthwith their hostile acts against it.

46. Mr. TLILI (Observer for Tunisia) said that his delegation was compelled to exercise its right of reply following the statement made under item 12 by the Union of Arab Jurists affirming that Tunisia had introduced a state of emergency for a month with effect from 26 January 1987. That was an untruth and unjustified accusation, since Tunisia had not decreed a state of emergency in 1987, even for one day. Tunisia was a party to the International Covenant on Civil and Political Rights, article 4 of which, relating to the state of emergency, it scrupulously respected.

47. The error was all the more unforgiveable because developments in the human rights field in Tunisia during that period had been in marked contrast to what had been inferred by the Union of Arab Jurists. They had included an amnesty for political prisoners, the reappearance of publications that had been suspended, a strengthening of political multipartism, the establishment of a constitutional council and the consolidation of republican institutions. All observers of Tunisian political life had noted these developments with the sole exception, curiously enough, of the Union of Arab Jurists. Moreover, a daily newspaper with an international readership reporting the statements by the representative of that organization had corrected them on its own initiative, avoiding any mention of Tunisia among the countries cited as having promulgated a state of emergency in 1987.

48. Mr. WAKARABI (Observer for Indonesia) said that he wished to reply to a number of statements made under agenda item 12. His delegation had stated on various occasions in the Commission that the people of East Timor had exercised their right to self-determination by integration with Indonesia on 17 July 1976, in conformity with General Assembly resolutions 1514 (XV), 1541 (XV) and 2625 (XXV). Since then, East Timor had become an integral part of Indonesia, forming its twenty-seventh province. Consequently, it was the duty of the Indonesian Government to protect and maintain the fundamental rights of its citizens as well as to preserve the social, religious and cultural identity of all its people.

49. With regard to the concern expressed by one delegation over the restrictions placed on freedom of movement in East Timor, Indonesia had repeatedly informed the Commission that there were no restrictions for independent observers and humanitarian organizations such as the ICRC, UNHCR, UNICEF and the CRS which have been operating in East Timor for a number of years, as well as for various governmental delegations, many of which had published favourable reports.

50. With reference to the support expressed by several members of the Commission for the ongoing dialogue between Indonesia and Portugal under the auspices of the Secretary-General of the United Nations, his delegation wished to assure the Commission that the Indonesian Government would continue to co-operate with the Secretary-General in discharging that task. However, a dialogue could be successful only if the parties showed sincerity and consistency in their approach and avoided any duplicity.

51. In conclusion, one delegation had expressed concern about executions after prolonged incarceration. The long wait has been due to the lengthy testimonies and the fact that the sentences were handed down only after all legal remedies had been exhausted. That was the procedure followed by any law-abiding society, and the issue was therefore a legal one rather than a human rights issue. In response to the statement made by a non-governmental organization regarding the province of Irian Jaya, his delegation invited the members of the Commission to refer to the statement it had made under agenda item 9 as well as its statements at the preceding sessions.

52. Mr. OMAR (Observer for the Libyan Arab Jamahiriya) said that he wished to reply to the statement made by the racist Zionist organization calling itself the World Union for Progressive Judaism, which endlessly rehashed the same ideas and the same statements. That organization had expressed misgivings about the situation of Jews in certain regions of the world, particularly in the Arab countries, and it had mentioned Libya, recognizing that there were no Jews in that country. Then, as usual, it had had recourse to lies and deception to sow confusion and discord pretending to forget that what had happened to the Jews has stemmed from the premeditated activity of international Zionism to compel Arab Jews to leave their countries.

53. Various incidents attested to that, as did an article published by the newspaper Yediot Aharonot on 22 January 1988 under the following heading: "The role of the Mossad in the departure of North African Jews for Israel". The article had reviewed a work published in 1971, a chapter of which, censored at the time and published only recently, showed how international Zionism had made contact with the North African Jews and established the Mossad's first base for espionage in that region and how it had poisoned the life of North African Jews. However, Zionism had not been able to apply the methods it had used in the Arab world elsewhere. It had therefore resorted to other methods, such as pressure, slander, lies, noisy and reiterated interventions in all forums to mislead the great Powers, all without regard for the wrong thus inflicted on the Jews themselves and on the Palestinian people.

54. The representative of racist Zionism had spoken about the many Jews who were patiently awaiting a solution of their problems and had requested the Soviet delegation to make representations to his Government in order to allow Soviet nationals to emigrate. He was forgetting, however, or pretending to forget what international Zionism had done to the millions of Palestinians who had been waiting for 40 years to return to their country. He had dwelt compassionately on the reunification of a certain number of Jewish families, but he forgot, or pretended to forget, what Zionism had done to disperse Palestinian families, thousands of whom were waiting to be reunited. He would merely mention the case of a young Palestinian married to a Swedish woman and the father of a child, who had decided to return and live in Jerusalem. When his wife and son had joined him there, the Zionist authorities had forbidden them to move in with him. There was also the case of Dr. Awad Moubarak, the well-known pacifist who had had to leave his country. Zionist circles were familiar with that story, which was also the story of 70,000 Palestinians denied the right to return to the West Bank to live with their families.

55. The Libyan Arab Jamahiriya was not opposed to the defence of human rights, whether individual or collective. It was against lies, mystification and duplicity. It was against the contempt shown for the Commission, whose prestige and objectivity it wished to be maintained and which might be discredited by the demagogy and deceit of Zionist organizations. As the Libyan Arab Jamahiriya had already stated on 22 February, the Commission on Human Rights should recommend to the Economic and Social Council the establishment of standards and criteria with which organizations would have to comply in order to be allowed to sit as observers. It would thus be possible to ensure that they played their proper role, without misrepresenting it.

56. Mr. SANG OCK LEE (Observer for the Republic of Korea) recalled that his delegation had already reported the conclusions of the investigation conducted on the Korean Air flight 858 incident, which clearly established that two North Korean agents had planted a time-bomb in the aircraft, killing the 115 people aboard. However, on 7 March, the North Korean observer, had tried to present a false picture of the human rights situation in the Republic of Korea with a view to distracting attention from that incident, and had even claimed that the South Korean Government had fabricated the entire affair. The Republic of Korea had not wished to comment on such disgusting lies, but the audacity shown by the North Korean delegation proved that, far from regretting its criminal act, North Korea might intend to repeat it. It should clearly understand that the international community did not condone bomb attacks on civilian aircraft.

57. No one believed the allegation made by North Korea that the Government of the Republic of Korea had destroyed Korean Air flight 858. He was sure that the observer for North Korea did not believe it either. The North Korean authorities had already made a similar claim in 1983 after their agents had caused the deaths of 17 high ranking officials of the Republic of Korea, including 4 cabinet ministers, during a State visit by the President to Burma. The Burmese Government had severed diplomatic relations with North Korea and had withdrawn recognition of it, after the investigation conducted by the Burmese authorities had established that the perpetrators of the attack had been North Korean agents acting on the instructions of the North Korean authorities. Even today, North Korea denied those findings and accused the Government of the Republic of Korea of being behind the act.

58. If anyone continued to harbour any doubts about the facts, his Government was willing to provide access to the available evidence, including statements by the North Korean woman agent. The representatives of a number of Governments who had already interviewed her were totally convinced that her confession was truthful and had been given freely and willingly. Independent investigations conducted by other sovereign Governments had led to the same conclusion, namely, that there was no doubt about the culpability of the North Korean agents. More than 70 countries and a number of international organizations had already condemned that heinous act and it was to be hoped that the North Korean authorities would understand the message from the international community and renounce their policy of violence.

59. Mr. VILLARREAL (Observer for Panama) expressed surprise at the statements made by the representative of the United States of America, and protested against the Commission's deliberations being used to settle political differences between countries on issues that did not come within the Commission's competence. Panama had ratified all the international instruments aimed at guaranteeing the protection and promotion of human rights and the Panamanian Government considered that it had made a notable contribution to the standard-setting activity of the United Nations in that field. It wished to inform the Commission that there were no political prisoners in Panama, that no case of torture had occurred in that country, that there was no political persecution and that, despite the interference in the country's internal affairs, and the destabilization and economic blockade by the United States, democratic pluralist principles and institutions were still in force and in place in Panama.

60. Mr. BENHIMA (Observer for Morocco) said that the World Union for Progressive Judaism had engaged in a disgusting defamation of Morocco, describing as confused and incoherent the historically established facts concerning the situation of Jews in Morocco, where in effect the problem of the Jewish minority did not arise. The World Union for Progressive Judaism was surprised that the Jewish community in Morocco had declined from 300,000 members in 1948 to 10,000 today; the last figure was inaccurate, however, since 30,000 Jews were living in Morocco at the present time. In 1948, when the Jewish emigration had begun, Morocco had not been in command of its destiny, since it had been a French protectorate, and that outflow that been planned, encouraged and carried out by Zionist organizations anxious to change the demographic balance in Palestine. After Morocco had acceded to independence in 1956, Moroccan Jews, availing themselves of the same freedoms as other citizens, had decided to emigrate of their own free will. Some of them had gone to Israel, where everyone was aware of the treatment meted out to the Sephardim, and that had led hundreds of families to return to Morocco after losing their illusions in the "promised land".

61. Moreover, most of the Moroccan Jews who had left Morocco in 1956 had avoided going to Israel, and had chosen to live in Western Europe, the United States and Canada, without, however, relinquishing their Moroccan nationality. Their representatives had come to Marrakech the week before, on the occasion of the Festival of the Throne, to reaffirm their attachment to their country and their allegiance to the King. His delegation could make available to the World Union for Progressive Judaism a list of representatives of Moroccan Judaism throughout the world who, at the time when that organization had been exuding hatred in the Commission, had been taking part together with their Muslim fellow-countrymen in celebrating their national festival at Marrakech.

The meeting rose at 9.05 p.m.