SUMMARY RECORD OF THE ONE THOUSAND ONE HUNDRED AND EIGHTIETH MEETING

Held on Wednesday, 5 April 1972, at 10.55 a.m.

Chairman:	Mr. MAHMASSANI	Lebanon
later,	Mr. KULAGA	Poland

REPORT AND STUDIES OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (continued)

(a) DRAFT PRINCIPLES RELATING TO EQUALITY IN THE ADMINISTRATION OF JUSTICE (ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1594 (L) AND GENERAL ASSEMBLY RESOLUTION 2858 (XXVI)) (E/CN.4/1077; E/CN.4/L.1214)

(b) STUDY OF DISCRIMINATION IN THE MATTER OF POLITICAL RIGHTS AND DRAFT GENERAL PRINCIPLES OF FREEDOM AND NON-DISCRIMINATION IN THE MATTER OF POLITICAL RIGHTS (COMMISSION DECISION OF 25 MARCH 1971) (E/CN.4/1013 and Add.1-4)

(c) STUDY OF DISCRIMINATION IN RESPECT OF THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY, AND DRAFT PRINCIPLES ON FREEDOM AND NON-DISCRIMINATION IN RESPECT OF THAT RIGHT (COMMISSION DECISION OF 25 MARCH 1971) (E/CN.4/1042 and Add.1-3)

(d) STUDY OF DISCRIMINATION AGAINST PERSONS BORN OUT OF WEDLOCK AND DRAFT GENERAL PRINCIPLES ON EQUALITY AND NON-DISCRIMINATION IN RESPECT OF SUCH PERSONS (COMMISSION RESOLUTION 19 (XXV)) (E/CN.4/1078 and Add.1-2)

(e) REPORT OF THE TWENTY-FOURTH SESSION OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (E/CN.4/1070 and Corr.1; E/CN.4/L.1217 and L.1220)

Mr. SALZBERG (International Commission of Jurists), speaking at the invitation of the Chairman, said, with special reference to chapter II of the report of the Sub-Commission (E/CN.4/1070), that the Commission on Human Rights could not fully consider its capability to deal with human rights violations without taking into account the United Nations response to the violations of human rights committed between March and December 1971 in what had been East Pakistan. It was estimated that at least several hundred thousand people had been killed, many, including women and children, solely on the basis of their religious belief or ethnic origin. The International Commission of Jurists was preparing a report on the events in that country and their international implications and it believed that in view of the case of East Pakistan the Commission on Human Rights should reconsider the adequacy of the United Nations machinery for the prevention of violations of human rights. It should consider how the existing procedures and organs could be utilized more effectively, whether new procedures or organs should be created to deal with such situations in the future and whether the Commission, at the current session, could take action concerning the East Pakistan case and its consequences.

(Mr. Salzberg, International Commission of Jurists)

The United Nations had decided on several occasions that situations involving gross violations of human rights were not essentially within the domestic jurisdiction of any State and that, accordingly, Article 2 (7) of the Charter did not apply in such cases. The United Nations had declared that those situations threatened international peace and security and were therefore not the exclusive concern of the individual State involved. At the invitation of the General Assembly, the Economic and Social Council had authorized the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities to consider and make recommendations concerning situations which revealed a consistent pattern of violations of human rights. The United Nations therefore had the authority and the duty to act responsibly to prevent any situation which revealed such a pattern. The question was whether the United Nations had exercised its authority with respect to the situation in former East Pakistan.

The Security Council had not been seized of the question until December 1971, at which point it had been too late to reverse the course of events. Although in August of that year 22 international non-governmental organizations had appealed to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities to consider the situation and a representative of the International Commission of Jurists had spoken before the Sub-Commission, drawing attention to various reports of the violations, the members of the Sub-Commission had not been willing even to discuss the situation. The Committee on the Elimination of Racial Discrimination had met in April and September 1971, but, although Pakistan was a State Party to the Convention under which that Committee had been set up, the Committee had not questioned the Pakistan Government's treatment of the Bengali people, nor had any State Party submitted a complaint against Pakistan or called for a special session of the Committee, as provided for in its rules of procedure. Again, the Economic and Social Council had dealt only with the humanitarian aspects of the situation, and the General Assembly had followed the same course until the situation had been brought before it as a threat to international peace and security in December 1971.

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(Mr. Salzberg, International Commission of Jurists)

There were a number of existing procedures and organs for dealing with situations involving an imminent threat or the wilful destruction of human lives on a massive scale and Member States must utilize them in an objective and consistent manner. The special procedures provided for under Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII) would involve lengthy investigations and would therefore have little, if any, effectiveness in preventing the destruction of lives in situations similar to the East Pakistan case.

His organization suggested that the Commission on Human Rights might consider requesting the Economic and Social Council to allow the Commission to hold emergency sessions to deal with urgent situations involving an imminent threat or wilful destruction to human life on a massive scale. Such sessions might be convened at the request of the Security Council, the General Assembly, the Economic and Social Council, the officers of the Commission, a majority of the Commission members or the Secretary-General. The Commission in emergency session might utilize a variety of techniques to prevent human rights violations in the State concerned, such as the appointment of an ad hoc working group of experts to visit the State, with its consent, and investigate the situation.

As to what the Commission could do at the current session with respect to human rights violations in former East Pakistan and their consequences, he suggested that it might establish a working group composed of independent experts to visit Bangladesh and Pakistan and investigate and report on the extent and causes of the violations. The Government of Bangladesh had invited the United Nations to establish such a working group. Such action should be useful in preventing the development of similar situations in the future and would, moreover, demonstrate that the United Nations was not indifferent to the crimes committed against the Bengali people. The working group might also consult with the Bangladesh Government on the arrangements for establishing an international war crimes tribunal which the latter was reportedly intending to set up. The Government of Bangladesh had declared its intention to protect its minorities and to try in accordance with the rule of law those who had committed war crimes and crimes against humanity, and the working group might consult the Bangladesh Government on measures being taken to protect the non-Bengalis.

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Mr. AKRAM (Pakistan), speaking in exercise of the right of reply, said that he felt it necessary to refute the charges and misrepresentations contained in the statement of the representative of the International Commission of Jurists. While Pakistan had the greatest respect for that organization and its humanitarian objectives, it would have hoped that ICJ might have found it possible to adopt a more balanced view of the situation in East Pakistan, on the basis not only of humanitarian considerations but also of international law. The expression "crimes against the Bengali people" had become a fashionable phrase. It was true that certain excesses had taken place, but they had been exaggerated out of all proportion by the mass media. It was not the task of the Commission on Human Rights to establish special investigatory working groups such as that proposed by the representative of ICJ. The Pakistan Government was prepared to examine the evidence against persons accused of crimes or offences in East Pakistan. He stressed that the territory where the incidences had occurred had at the time been under the jurisdiction of the Pakistan Government and that, accordingly, the authorities in Dacca had no right, from the juridical viewpoint, to bring to trial personnel of the Pakistan Government. Such action would be a reprisal and not a trial.

The present situation was extremely delicate and of great importance for the future of the peoples involved. His delegation therefore considered it totally unacceptable to have it disturbed by such statements as that made by the representative of ICJ. The latter, while making much of the alleged violations of human rights and atrocities, had failed to make any reference to the violations of the Charter provisions involved by the dismemberment of a sovereign State or to the question of the non-repatriation of war prisoners. He urged that attention should be given also to the Pakistan side of the picture, which had been largely ignored by the representative of ICJ.

Mrs. ACHARYA (All-India Women's Conference), speaking at the invitation of the Chairman, said that the organization she represented was dedicated to working for a society based on principles of social justice, equal rights and individual dignity, supporting the claim of every citizen to enjoy basic civil liberties, and

(Mrs. Acharya, All-Indian Women's Conference)

co-operating with the peoples and organizations of the world for the implementation of those principles which alone could assure permanent international amity and world peace. It had a membership of 76,000, with 58 main branches and 403 sub-branches in India.

The Conference welcomed the Commission's adoption of resolution E/CN.4/L.1197/Rev.1. In observation of the International Year for Action to Combat Racism and Racial Discrimination, the Conference had asked its branches to hold seminars and meetings in their respective areas in 1971, organized a seminar on the eradication of racial discrimination and issued articles, in its official publication, on the evils of all types of discrimination. The Conference had passed a resolution urging its members to engage in a membership campaign to bring minority groups within its fold and to arrange festivals to bring various religious and ethnic groups together.

While appreciating the steps taken by the Commission to eradicate all types of discrimination, the All-India Women's Conference noted with concern that there was still great discrimination against women in matters of political and civil rights. In many parts of the world women did not enjoy full political rights, even though they were accorded them by the Constitutions of their countries.

In India many women held high posts in the administrative and judicial services and in both the central and State Governments. The Prime Minister was a woman, and India had a woman High Court judge and a woman Chief Engineer. In engineering and medicine, women had won great distinction. Nevertheless, experience had shown that a woman had to be twice as good as a man to occupy such high posts, formerly available only to men. The Indian Government had appointed a committee to study the status of women in India.

The Conference welcomed the United Nations decision to appoint a woman Assistant Secretary-General. It suggested that a seminar should be held to discuss the question of political and civil rights for women, in order to highlight the problems existing in that regard in the contemporary world.

Mr. Kulaga (Poland), took the Chair.

Mr. JACK (International Association for Religious Freedom), speaking at the invitation of the Chairman, said that IARF was an association of religious denominations in various regions of the world, including Buddhist, Christian, Hindu, Moslem and Shinto groups.

On behalf of IARF and also on behalf of the World Conference of Religion for Peace, he expressed the deep concern about the continuance of mass murder and massacre in the modern world. Two world wars had occurred since 1900, and, quite apart from those wars, there had been many instances of massacres of human beings. Such tragedies were bound to recur unless men developed new habit patterns and established new laws to prevent them. Since the time of Hitler's atrocities, more persons had been killed by massacre than by traditional war. The representative of the International Commission of Jurists had made some very practical suggestions for steps which the United Nations, and the Commission on Human Rights in particular, might take to prevent such massacres from taking place.

The Commission on Human Rights could not only suggest, or even effect, changes in its own operations but could also recommend procedures for the United Nations as a whole to protect the elemental human right to be free from massacre, if the Commission felt that it was itself unable to work successfully on that issue. He suggested that the Commission might authorize a sub-committee or rapporteur to make a full study of human massacres since the end of the Second World War. On the basis of that study, the Commission could make comprehensive suggestions to all United Nations organs and other relevant organizations, including non-governmental ones, and new patterns of action against massacres could be suggested, utilizing existing United Nations machinery or setting up new machinery if needed.

Any new approach to the problem of preventing massacres must include a consideration of new deterrents. That question must be explored in depth by psychologists as well as lawyers. The international machinery envisaged must be able to act quickly and, therefore, with relatively few political restraints. Experience had shown how political deadlocks could work against human rights and even favour those who committed massacre. At least the initial investigation of an alleged massacre should be free from political restraint. The Secretary-General could perhaps avail himself to a greater extent of his powers under Article 99 of

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(Mr. Jack, International Association for Religious Freedom)

the Charter. Article 2 (7) of the Charter should in no event be used to prevent the investigation of or action against human massacre. There should be some United Nations organ - perhaps the Commission meeting in special session, as proposed by the representative of the International Commission of Jurists and others - that would be free at least to investigate allegations of massacres.

He stressed that his remarks concerning possible new machinery for the prevention of massacre were not directed against any particular State, group or continent.

A means must also be found to stop massacre once it had begun. Could not the modern tools of science and technology be utilized for that purpose? Helicopters, for example, might be used to save minorities in danger of massacre. A United Nations fleet of helicopters should be made available, if only on loan from Governments; by that means many thousands of human beings could be saved from massacre if action was taken with the requisite promptness.

Mr. STILLMAN (United States of America), explaining his delegation's vote on resolution E/CN.4/L.1214, said that it had voted in the affirmative. The study of equality in the administration of justice referred to in the resolution was of a very high quality and provided an excellent basis for the elaboration of general principles on that subject. He hoped that the Commission would express its appreciation to the Special Rapporteur for his valuable work.

His Government attached great importance to the implementation of articles 6 to 12 of the Universal Declaration of Human Rights and hoped that the principles to which they related could be further elaborated. The United States system of justice was based on equality before the law, and every effort was made to observe that principle in practice as well as in legislation.

His delegation shared the concern expressed by the French, Netherlands and other delegations which felt that the Commission had not given sufficient consideration to agenda item 9 and it joined those delegations in urging that the Commission should give high priority to consideration of the report and studies of the Sub-Commission at its next session.

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Sir Keith UNWIN (United Kingdom) drew attention to the fact that the draft resolution in document E/CN.4/L.1217, of which his delegation was a sponsor, was presented in the form of an amendment. If it was inserted before the text of the draft resolution on page 54 of document E/CN.4/1070 which the Sub-Commission wished the Commission to recommend for adoption by the Economic and Social Council, the two texts would constitute a complete resolution.

Concerning the proposal in Sub-Commission resolution 9 (XXIV) that the Sub-Commission should be authorized to study the question of self-determination, his delegation felt that the Commission could not properly consider the question until the following year, after it had received further elucidation from the Sub-Commission. It was not clear from the Sub-Commission's report what new ground would be covered by the Sub-Commission or what new factors the Sub-Commission was to study. The question of self-determination was already on the agenda of at least six United Nations bodies, including the Special Committee on Apartheid and the Special Committee of Twenty-Four. The item was also included on the Commission's own agenda. The Commission had not had sufficient time to give due consideration to the report and studies of the Sub-Commission already submitted, and he wondered whether the Sub-Commission intended the product of its work on the question of self-determination to be submitted to the Commission or to some other United Nations body.

His delegation was happy to learn that the Sub-Commission had now completed its initial work on the procedure for dealing with communications relating to violations of human rights and fundamental freedoms in accordance with Economic and Social Council resolution 1503 (XLVIII) and had appointed a working group. The procedures for determining the admissibility of communications as set forth in Sub-Commission resolution 1 (XXIV) were not entirely satisfactory to his delegation, but it was prepared, in a spirit of compromise, to accept them as provisional procedures, since they were so described. It was to be hoped that the many communications concerning violations of human rights received by the Secretary-General would soon be given consideration, since that would undoubtedly strengthen public confidence in the United Nations. The effective implementation of the provisional procedures would further enhance the prestige of the Sub-Commission

(Sir Keith Unwin, United Kingdom)

and enable the Members of the United Nations to make good their pledges under Articles 55 and 56 of the Charter to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. It should be noted that no new powers were involved since the Sub-Commission had already been authorized to investigate consistent patterns of gross and reliably attested violations of human rights. One worth-while effect of the machinery would be to disprove untrue allegations which were now sometimes given currency because they were not investigated. Since provision had been made for Governments to comment before an investigation of the complaints was undertaken, there need be no fears about possible encroachment on the sovereignty of States. His delegation looked forward to considering the report of the working group of the Sub-Commission regarding the communications received with a view to establishing whether such communications formed a pattern or were purely random complaints.

It was highly regrettable that the session was drawing to a close without the Commission's having found time to consider the Sub-Commission's study of discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country. Since there was evidence to suggest that certain groups of people still encountered discrimination in that regard, he appealed to all Governments to examine their policies relating to the movements of their subjects and to ensure that they were in accordance with article 13 of the Universal Declaration of Human Rights. It was only realistic to recognize that exceptional measures were necessary in exceptional circumstances. However, exceptions should be recognized as such and should not become the rule or a basis of policy. Above all, if restrictive regulations were to be applied they should be evenly applied without discrimination or distinction, and particularly without distinction based on race or religion.

With regard to the Commission's work programme for the twenty-ninth session, if all the items in which delegations expressed an interest were to be included, the reports and studies of the Sub-Commission would once more be neglected. He therefore agreed with the French representative that the Commission should consider seriously the possibility of holding a special session at which the Sub-Commission's reports might be discussed. Alternatively, the Commission could request the Economic and Social Council to arrange for the week preceding the Commission's

(Sir Keith Unwin, United Kingdom)

regular session to be set aside for that purpose. That could be a temporary arrangement to clear up the back-log of work in respect of the Sub-Commission's reports rather than a regular occurrence.

Mrs. MENON (India), referring to subitem 9 (c), observed that her Government's rules governing the issue of travel documents to persons wishing to go abroad applied uniformly to all nationals without any discrimination as to race, religion or language. There was no restriction of the kind referred to in draft principle I (b). Every Indian national abroad enjoyed the unrestricted right of entry into his own country whenever he chose to return. However, it was for the Parliament to regulate the admission to or expulsion from India of any person provided that any restrictions entailed by such regulation were reasonable.

Despite the fact that her Government's policy was liberal with regard to the issuing of passports to Indian nationals and the granting of permission to foreigners to enter and leave India, the draft principles did not fully accord with the legal position in her country. The question whether an Indian citizen had a right to go abroad and, therefore, to receive a passport had been considered by several high courts in India in 1965 and by the Supreme Court of India in 1967. In the case Satwan Singh Sawhney vs. D. Ramarathnam, the Supreme Court had held that no person could be deprived of his right to travel except under a procedure established by law. Subsequent to that decision, the Parliament had enacted the Passport Act of 1967 which provided for the issuance of passports and travel documents and regulated the departure from India of Indian nationals and other persons. The Act contained provisions designed to prevent arbitrary executive action.

Moreover, the Passport Act established several conditions for the issuance of a valid passport and any person who contravened or assisted in the contravention of those provisions was liable to imprisonment or a fine, or both. Hence, her delegation could not accept draft principle VI in its present form.

Nor was draft principle III satisfactory, since it appeared to afford greater possibilities for a foreigner to leave the country of his sojourn than for a national to leave his own country. Her delegation therefore suggested that clause (b) of the principle should be redrafted to read:

(Mrs. Menon, India)

"Every foreigner legally within the territory of a country shall, subject to such limitations as are determined by law for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the requirements of public interest or national security, have the right to leave the country."

As to the forms which the draft principles might take - an international convention on the one hand or a recommendation or declaration along the lines of the Universal Declaration of Human Rights on the other, her delegation preferred the latter because it would not entail the enactment and implementation of domestic legislation.

Mr. VERENIKIN (Union of Soviet Socialist Republics) observed that his delegation's position on the question of procedures for dealing with communications relating to violations of human rights was well known. It had repeatedly stressed that Council resolution 1503 (XLVIII) could not be considered in isolation from its antecedent resolutions, i.e. 728 F (XXVIII), 1102 (XL), 1164 (XLI) and 1235 (XLII), as well as General Assembly resolution 2144 (XXI). An examination of the background of Council resolution 1503 (XLVIII) showed that the impetus which had led to its adoption had been the will to reinforce the United Nations struggle against the gross violations of human rights and fundamental freedoms which arose from policies of racial discrimination, segregation and apartheid. Not one of the resolutions which had preceded Council resolution 1503 (XLVIII) had provided for the Commission or the Sub-Commission to investigate complaints from individuals. Against that background, that resolution could not be justified legally unless its provisions were interpreted in conformity with the provisions of the other resolutions he had mentioned. There had, as a rule, been general agreement in the Sub-Commission that the Working Group should consider only communications which might reveal a consistent pattern of gross and reliably attested violations of human rights. It was therefore most important that pragraph 1 of Sub-Commission resolution 1 (XXIV) should be very strictly applied and that the provisions of the Charter regarding non-interference in the domestic affairs of States should be carefully observed. Another matter to which scrupulous attention should be given was the provision in paragraph 2 of the

(Mr. Verenikin, USSR)

resolution which stated that communications might originate only from non-governmental organizations which were acting in good faith in accordance with recognized principles of human rights and were not resorting to politically motivated stands contrary to the provisions of the United Nations Charter. That stipulation was well justified, in his delegation's opinion, because of the possibility that partisans of cold war tactics might be tempted to poison the atmosphere of international co-operation by submitting a continuous flow of slanderous attacks on the political or economic institutions of some countries. The organ entrusted with the task of investigating the communications would be viable only if it was guided by the principles he had outlined, and especially the realization that the prime concern of the United Nations must be to detect violations of human rights arising from policies of racial discrimination, segregation and apartheid. If the Working Group was to depart from the spirit of the United Nations Charter, it could not be expected to survive. His delegation believed that the test of the entire undertaking depended entirely upon that Group's approach to the task of protecting human rights.

Mrs. MENON (India), invoking rule 45 of the rules of procedure, moved that further consideration of item 9 should be postponed until the twenty-ninth session and that the debate on that item should accordingly be adjourned.

The CHAIRMAN said that under the rule cited by the representative of India, one member might speak in favour of and one against the motion, after which the motion would be immediately put to the vote.

Mr. JINADU (Nigeria) said his delegation supported the motion because it considered that all the subitems under agenda item 9 warranted far more thorough consideration than they had received at the current session. Subitem 9 (b) was of great importance, in his delegation's view, since the draft general principles affected a number of the provisions in the Nigerian Constitution. It also considered that subitem 9 (d) could give rise to a most interesting discussion in which the virtues of the African way of life could be contrasted and compared with customs in countries of other continents.

His delegation intended to become a sponsor of draft resolution E/CN.4/L.1214 under subitem 9 (a).

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Mr. ERMACORA (Austria) said that the Commission had been confronted with the problem of insufficient time to consider the reports of the Sub-Commission ever since 1960. He could not, however, support the Indian motion unless the representative of the Secretary-General was able to give an assurance that the Commission would be allotted some extra time in which to deal with the item, as had been suggested by the representatives of France and the United Kingdom.

The CHAIRMAN, replying to a question by the United Kingdom representative, said that, under rule 45 of the rules of procedure, discussion on the draft resolutions would be adjourned as well as consideration of the item itself if the Indian motion was adopted.

Mr. SCHREIBER (Director, Division of Human Rights) said that the possibility of extending the Commission's session by one week would depend in the first place on the Council, which established the time-table of meetings, and in the second place on the General Assembly, which took the relevant budgetary decisions. However, it would be proper for the Commission to make a proposal to that effect to the Council.

The CHAIRMAN invited members to vote on the Indian motion to adjourn the debate on the item under discussion.

The Indian proposal was adopted by 12 votes to 4, with 12 abstentions.

Mr. van BOVEN (Netherlands), speaking in explanation of his vote, said that he had voted against the motion to adjourn the debate on item 9 because the Commission had before it various proposals made by the Sub-Commission, a resolution on slavery and amendments to it, which all reflected many years' work by the Sub-Commission. Now that the motion had been passed, no decision could be taken on those proposals, and the unsatisfactory way in which the Commission had terminated discussion of the item was a disservice to the Sub-Commission.

Sir Keith UNWIN (United Kingdom), speaking in explanation of his vote, said that his delegation shared the concern of the delegation of the Netherlands. The action which had been taken was not helpful to the Sub-Commission, which had

(Sir Keith Unwin, United Kingdom)

been given no decision regarding its work, and no recommendation concerning its future meetings. The resolution regarding the International Year for Action to Combat Racism and Racial Discrimination had been ignored, and a very important resolution on slavery, on which a great deal of work had been done, had also been dismissed.

ELECTION OF MEMBERS OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (E/CN.4/1088 and Corr.1 and Add.1-5) (concluded)

Mr. SCHREIBER (Director, Division of Human Rights) announced that certain financial implications arose from the results of the election of members of the Sub-Commission held at the 1179th meeting.

Mr. Ruhashyankiko had been appointed by the Sub-Commission as its Special Rapporteur to carry out the study on the question of the prevention of the crime of genocide but had not been nominated for re-election to the Sub-Commission in 1972. He would nevertheless be required to present his progress reports and final report to the Sub-Commission, possibly in 1972, 1973 and 1974 or 1975. The costs involved for trips to Headquarters for that purpose had been estimated at approximately $2,200 for each year, or a total cost of $8,800. Funds were available for the 1972 trip, but additional funds would have to be requested for the other years as appropriate.

Mr. Humphrey, who had been appointed a member of the working group on communications referred to in paragraph 1 of Council resolution 1503 (XLVIII), had also not been re-elected to the Sub-Commission in 1972. Under the terms of that resolution, it was not completely clear whether he would remain a member of the working group and the Chairman of the Sub-Commission would be seized of the question in the light of the records of the Sub-Commission. If he was not to be replaced, the cost involved for his participation would be approximately $500 in 1972.

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Mr. TARASOV (Union of Soviet Socialist Republics), referring to the remarks of the representative of the Secretary-General, said that a detailed outline of the financial implications should have been submitted to the Commission before any decision was taken. Why, in particular, did the Special Rapporteur have to submit a report every year from 1972 to 1975, which was a complicated and costly procedure?

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(Mr. Tarasov, USSR)

Turning to the question of the composition of the working group, he said that it had been established that the members of the group must be elected from among the members of the Sub-Commission. Therefore, any person who ceased to be a member of the Sub-Commission automatically ceased to be a member of the working group. Since no members of the working group should be non-members of the Sub-Commission, there was no question of any financial implications.

Mr. MARTINEZ COBO (Ecuador) said that the procedure had been established whereby members of the working group were to be elected from a particular regional group, which in the present case was the Western European group. A new member could be appointed in accordance with well-established procedure.

Mr. SCHREIBER (Director, Division of Human Rights), replying to the representatives of the Soviet Union and Ecuador, said that it might not necessarily be essential for the Special Rapporteur to visit Headquarters so many times; the estimates were based on the past practice of the Sub-Commission.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES (E/CN.4/923/Add.5, E/CN.4/1092 and Corr.1, E/CN.4/1094; E/CN.4/L.1216):

(a) STUDY OF SITUATIONS WHICH REVEAL A CONSISTENT PATTERN OF VIOLATIONS OF HUMAN RIGHTS AS PROVIDED IN COMMISSION RESOLUTION 8 (XXIII) AND ECONOMIC AND SOCIAL COUNCIL RESOLUTIONS 1235 (XLII) AND 1503 (XLVIII) (E/CN.4/1070 and Corr.1)

(b) MODEL RULES OF PROCEDURE FOR UNITED NATIONS BODIES DEALING WITH VIOLATIONS OF HUMAN RIGHTS (COMMISSION RESOLUTION 14 (XXVII)) (E/CN.4/NGO/163 and 167; E/CN.4/L.1218)

Mr. HOVEYDA (Iran) recalled that his delegation, after requesting the inclusion in the Commission's agenda of an item on the mass expulsion of Iranian nationals from Iraq, had agreed that the matter should be raised under item 10 of the agenda as adopted. In accepting that compromise, his delegation had taken into account the fact that the problem had a more general aspect, namely the multiple violations of human rights to which illegal expulsions gave rise. The problem of mass expulsion should be considered by the Commission and other bodies dealing with human rights because such cases offered one of the principal examples of violations of the fundamental human rights set out in the Charter, the Universal Declaration

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(Mr. Hoveyda, Iran)

of Human Rights and many other international instruments. The attention of the Commission should therefore be drawn both to the general problem of mass expulsion and, in particular, to the plight of tens of thousands of Iranian victims of the action of the Iraqi authorities.

Mr. AL-SHAWI (Iraq), speaking on a point of order, asserted that the matter was not within the competence of the Commission. It had both political and legal aspects, but a humanitarian issue was not involved. In addition, it fell within the domestic jurisdiction of a Member State, and all States, under several provisions in the Charter, were prohibited from interfering in such internal affairs.

The claim of the representative of Iran that his statement was based on a decision of the Commission at the second meeting of its current session was unacceptable. During the debate on the Iranian delegation's request for the inclusion of the proposed item, the delegation of Iraq had categorically opposed discussion of the question. He considered that neither his delegation, nor the Commission as a whole, was committed by that decision, which he had refrained from challenging only because he had not wanted to delay the work of the Commission. His delegation reserved the right to reply fully to the statements of the representative of Iran.

The CHAIRMAN urged members of the Commission to restrict themselves to matters relevant to item 10 of the agenda, and also to respect the decision taken by the Commission at its 1140th meeting.

Mr. HOVEYDA (Iran) said that the fact that the representative of Iraq at the 1140th meeting had reserved his right of reply showed that he had accepted the decision of the Commission. In addition, he stressed that it was not his delegation which was introducing other considerations into the discussion, but the delegation of Iraq, which had distributed a document in reply to the note from the delegation of Iran requesting inclusion of the matter in the agenda.

Mr. AL-SHAWI (Iraq) said that at the Commission's 1140th meeting the Chairman had made a statement that the representative of Iran had agreed not to insist on the inclusion of the item in question but would raise the matter during

(Mr. Al-Shawi, Iraq)

the discussion of item 10. That did not mean that there was any decision or consensus of the Commission.

The CHAIRMAN said that when he had mentioned the decision of the Commission, he had been referring to the text which he had read out after the consultations, which had not been questioned by any member, and the statement made subsequently by the representative of Iraq.

Mr. HOVEYDA (Iran), continuing his statement, said that as he had dealt with the subject in notes addressed to permanent missions and to the Secretary-General and in his statement at the 1140th meeting, he had not intended to refer again to the lamentable events affecting Iranians in Iraq. However, the Iraqi representative in his reply to those charges, and particularly in document E/CN.4/1094, had simply rejected the facts and launched into a polemic. Consequently, his own delegation was obliged to set out the facts once again to make them clear to the Commission.

In his remarks made at the 1140th meeting the representative of Iraq had claimed that his Government had violated no provisions of any international instruments on human rights, and that therefore no humanitarian problem was posed. The delegation of Iran, however, had a full dossier containing thousands of letters received from Iranian citizens expelled from Iraq, which he was prepared to make available to members of the Commission. Those letters included reports from Iranian citizens previously resident in Iraq who had been separated from their families, deprived of their property, and expelled from Iraq without any notification and, sometimes, in the middle of the night. In addition to such letters, newspaper articles, reports from international observers and photographs all bore witness to the inhuman treatment and multiple violations of human rights for which Iraq was responsible.

At the 1140th meeting the representative of Iraq had claimed that there had been no expulsion of Iranian nationals from Iraq, and that a small number of illegal entrants had been assisted in leaving the country. The delegation of Iran was in possession of films which conclusively proved the contrary, and which could be shown to any member of the Commission who had doubts on the subject. The claim

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of the Iraqi representative that no expulsions had taken place accorded ill with the facts and with the legal definition of the term "expulsion" in international law. The Iraqi claim that those Iranians expelled from Iraq had entered the country illegally raised the question of how the Iraqi authorities had suddenly decided that tens of thousands of Iranians, who had long been living in Iraq, were living there illegally. It was conceivable that some individuals might have entered Iraq illegally, but how could that be claimed in respect of tens of thousands? His delegation possessed photocopies of Iraqi documents which proved that most of the expelled Iranians had had valid residence or work permits which had been issued by the Iraqi authorities. A file of them was also available to members of the Commission who might wish to consult it. While the representative of Iraq had claimed that only a few persons had been expelled, the Commission should be made aware of the fact that more than 60,000 Iranians had so far been affected by such measures. Those expulsions had taken place not only in flagrant violation of the most basic human rights, but also in opposition to universally accepted and long recognized international norms on the subject. More than half a century previously, de Boeck had stated that the concept of expulsion as a discretionary power of States was being abandoned and that the freedom to expel persons was not absolute. In 1925, Politis, one of the great figures in international law, had said it was an incredible paradox that an alien might enter a country, settle and work there without having any guarantee against arbitrary expulsion which could lead to his ruin. Elementary standards and international practice demanded that an alien should have the right to protection of his person and his property. Expulsion could be justified only if the activities of the person expelled seriously endangered State security. At all events, as Oppenheim had written, an alien who had been residing within the expelling State for some length of time and was established there would be fully justified in asking for reasons for the expulsion. Thus the expelling State must have adequate reasons for carrying out the expulsion. Indeed, international jurisprudence showed that in a number of cases the expelling State had been obliged to pay compensation for unjustified expulsion. It was true that the note submitted by the representative of Iraq suggested that the Iranians who had been expelled constituted a threat to Iraqi security and to the country's economy.

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However, the Iraqi Government had never provided the slightest proof of those allegations. Indeed, it would be difficult to do so, since many of the Iranians in question had long been living peacefully in Iraq, largely because the religious sanctuaries most important to the Shi'ite sect were in that country, and it was most unlikely that they would suddenly become a threat to Iraq's security. The truth was that the expulsions constituted collective vengeance against a specific ethnic group.

Furthermore, persons affected by acts of expulsion were covered not only by basic principles of human rights but also by international norms relating to aliens. A minimum international standard had already been established for the treatment of aliens, and States failing to comply with it could be held accountable to the international community. Many well-known cases in international law had established that considerations of national sovereignty could not be invoked with regard to acts which ran counter to international standards. Since, in addition, the expelling State was restricted by the undertaking it had made towards the State whose nationals it was expelling, Iraq was responsible under the International Convention on the Elimination of All Forms of Racial Discrimination, the 1937 Treaty for the Pacific Settlement of Disputes between Iran and Iraq, and the Solemn Declaration of 1932 in which Iraq had undertaken to guarantee the rights of minorities and aliens in its territory.

However, Iraq had incurred international liability not simply through the fact of expulsion, but by the manner in which it had been carried out. Large numbers of people had been expelled who belonged to a single ethnic group.

In his letter of 18 February 1972, the representative of Iraq had stated that his Government categorically rejected the allegation concerning the presence of Iraqi nationals among those deported. Nevertheless, inquiries carried out by Iranian and international authorities had established that more than 2,000 persons amongst those expelled were in fact Iraqis. Such infiltrations of Iraqis into Iranian territory were, moreover, not calculated to improve relations between the two countries. His country had sought good relations with all countries, and had succeeded, except in the case of Iraq. Iraq must show a minimum of good faith, without which the problems between the countries could not be solved. At the

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1140th meeting the representative of Iraq had said that thousands of Iranian families were still happily living in Iraq. It was to be hoped that that would continue to be the case. Relations between the two countries could be improved only if the mass expulsions were ended and if the Iraqi Government gave serious consideration to reparations to those who had suffered unjustly. Firmness on the part of the Commission on Human Rights, on the basis of international law and generally accepted principles of human rights, would encourage Iraq to take the appropriate action.

He was aware that it was not only nationals of his country who suffered from such acts. The Commission should study the general question of the status of aliens in other countries. In a spirit of concern at the general problem, as well as the individual case under consideration, his delegation hoped shortly to submit a draft resolution on the subject.

The meeting rose at 1.25 p.m.