

SUMMARY RECORD OF THE ONE THOUSAND ONE HUNDRED AND  
EIGHTY-FIRST MEETING

Held on Wednesday, 5 April 1972, at 3.25 p.m.

Chairman:

Mr. KULAGA

Poland

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) (continued):

- (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.4/1021/Rev.1, E/CN.4/1071 and Add.1-4, E/CN.4/1086; E/CN.4/NGO/163 and 167)

Mr. AL-SHAWI (Iraq) said that the Iranian representative's persistent distortion of facts and groundless allegations forced him to take up the subject of the Middle East once again.

Iraq had always been known for its hospitality to all those who sought refuge in its territory in accordance with its legislation. Moreover, there were close ties between the peoples of Iraq and Iran. Thousands of Iranians visited Iraq each year and Iranian students studied in Iraq. Nevertheless, Iraq could not, for obvious legal, economic and social reasons, condone an illegal influx of immigrants. Like any other country, it had the right to regulate the entry and stay of aliens in its territory. Yet the frontier between Iraq and Iran was over a thousand miles long and provided ample opportunity for infiltration. Under normal circumstances, and in a spirit of good neighbourliness, the Iranian authorities were supposed to co-operate with their Iraqi colleagues in order to halt such infiltration. By refusing to do so and by forcing its own nationals to emigrate for one reason or another, the Iranian Government bore the responsibility for the complications which had arisen.

Seeing its sovereign rights and its security threatened, Iraq had quite naturally applied the relevant laws.

Deportation was not an infringement of the personal freedom of the deportee, so long as his presence in the territory of a State threatened its public order and security and endangered its stability and national interests. Deportation was a purely administrative measure implying no punishment. That was why the deportee was free to see his family and wind up his affairs before leaving. The deporting State, exercising its sovereign rights, was under no legal obligation

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to give reasons for its decision. It could out of courtesy give reasons to the other State concerned but that did not mean that it was legally bound to heed the view of that other State. Lastly, the deportee should be given the right to choose his destination and the State of which he was a national should be informed.

Bearing in mind all those principles, the Iraqi Government had applied the existing laws in the most humane manner. It had not, although it could have done so, applied any of the provisions of its legislation concerning the confiscation of deportees' property and the imposition of severe penalties in cases of illegal entry or residence in the country. The Iranian nationals who had entered Iraq illegally had been asked to leave the country in small consecutive groups. They had been given enough time to prepare for their departure, had been able to choose their destination and had returned to Iran by bus at the expense of the Iraqi Government. No punishment had been inflicted, no movable or immovable property had been confiscated and the deportees had been allowed to take with them all their belongings. Members of the deportees' families to whom the law had not applied had been given the choice of staying in Iraq or leaving with their relatives. Those who had chosen to leave had enjoyed the same humane treatment as the others. The Iranian authorities had been informed in advance and the convoys had been properly escorted to the frontiers. Iraq had thus simply exercised its rights as a sovereign State and the "inhuman treatment" so often referred to by the Iranian representative had been categorically denied by the deportees themselves. If the Government of Iran was so displeased, it was only because Iraq had refused to sacrifice its interests or to discriminate against non-Iranian aliens. The position of Iraq was well known: there was no discrimination there, the Iraqi laws applied to all and no distinction was made between Iranian nationals and other aliens residing in Iraq.

The real tragedy had started when the Iranian nationals had crossed the frontier into their own country. To welcome them back to the "prosperous land of the great white revolution", they had been put in the hands of the Savak, the infamous Iranian security forces, and had been denied entry permits to their own country. The Iranian authorities had herded them into concentration camps along the frontiers. Hundreds of them had been interrogated, beaten and tortured, on

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the preposterous pretext that they were Iraqi agents. It was on the Iranian side of the frontier that there was an urgent humanitarian problem. The Iranian deportees, like the oppressed Iranian people, were the victims of the autocratic whims and obsessions of the Iranian authorities. Iran had refused admission to a few thousand of its own nationals on the pretext that it had been unable to resettle them, while it was squandering millions of dollars to celebrate a vain imperial glory which had been swept away long ago.

Mr. HOVEYDA (Iran) noted that the Iraqi representative was making discourteous remarks about Iran and speaking completely off the point. He himself had made no attack on Iraq in his earlier statement, which had consisted exclusively of remarks of a humanitarian character on the subject of agenda item 10.

Mr. AL-SHAWI (Iraq) said that the Iranian authorities were trying deliberately but unsuccessfully to build up a case against Iraq in order to divert attention from their repressive internal policies and their armed aggression along the frontiers and in the Arabian Gulf. He wished to draw some facts to the notice of the Government of Iran and of its representative in the Commission on Human Rights, those champions of the Universal Declaration of Human Rights.

Executions, secret trials, torture and inhuman treatment had become the fashion in Iran. There was abundant proof of that fact, including the testimony of two French lawyers who had been to Teheran and of Mr. Rezai, an Iranian who had escaped from prison and described the shocking torture inflicted on prisoners. The list of tortures was a long one and included electric burning, cardiozol injections and pulling out of finger nails. In one week, 23 persons had been brought to trial before the military courts and six of them had been sentenced to death. No defence was possible and the trials were not public.

Similar facts were reported in a number of newspapers. In addition, 27 French intellectuals had written to the Secretary-General of the United Nations, asking him to intervene immediately to put an end to the gross violations of human rights in Iran. In March 1972, Reuters had reported another wave of mass executions by the Iranian army, which had taken place during the current session of the Commission on Human Rights and at a time when the Iranian authorities had been unjustly accusing Iraq.

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The Iranian Students Association in the United States had published a long list of Iranian patriots who had been sentenced to death. He would be glad to supply the Iranian representative with a set of documents and reports confirming those facts.

It was understandable why the Iranian authorities were claiming that there were Iraqi spies among the deportees. That was a convenient way of diverting attention from the incessant Iranian infiltrations into Iraq and from the domestic troubles posed by the mounting opposition to the present régime. The campaign of slander against Iraq also had other aims: for example, in 1969 the Iranian Government had declared null and void the 1937 boundary treaty between Iraq and Iran. That illegal act had been followed by various instances of interference in the affairs of Iraq. Iranian forces had been massed along the frontiers and in January 1972 had attempted an incursion into Iraqi territory. The Iranian Ministry of Foreign Affairs had even gone so far as to threaten Iraq with war. For its part, Iraq had reacted with great patience, reaffirming the validity of the 1937 treaty. It had repeatedly called upon the Iranian Government to respect that treaty. Unfortunately, Iran had adopted a negative attitude which demonstrated its disregard for the principles of all international humanitarian covenants.

Obsessed by the dreams of an empire, the Iranian rulers were not interested in human rights. The Iranian authorities had expansionist designs worthy of a Mussolini, which they were trying to cover up by slanderous campaigns against Iraq.

Quoting from an article in The New York Times of 25 July 1971, he stated that Iran was building up its military power at great expense with a view to controlling the strategic area of the Persian Gulf. In November 1971, Iranian armed forces had invaded and occupied three Arab islands situated in the Persian Gulf, Iraq's only outlet to the sea. The Security Council was still seized of the complaint lodged by Iraq and four other Arab States at the time of that flagrant act of aggression.

In conclusion, he firmly rejected the unfounded allegations of the Iranian authorities, reaffirmed the numerous ties which bound the Iraqi and Iranian peoples, and reminded the Iranian Government that it was only through respect for

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the sovereign rights of States and international law that good neighbourly relations would be possible. He hoped that the questions between the two countries would be settled in a spirit of law and peace.

Mr. HOVEYDA (Iran) thanked the members of the Commission and in particular the Chairman for their patience since at least three quarters of the statement by the representative of Iraq had been off the subject. It was a tissue of unfounded assertions and subjective considerations regarding Iran's internal policy which were easily explained by the fact that since the representative of Iraq was short of valid arguments he had been reduced to denying the evidence. He had used the photographs circulated by the Iranian delegation in a tendentious manner. There were, however, many documents and a great deal of irrefutable testimony proving that Iraq had carried out mass expulsions of Iranian nationals.

The replies to the arguments with which Iraq had countered Iran's legal analysis were to be found in the text of his previous statement which had been circulated to members of the Commission.

The representative of Iraq had acknowledged that the laws of his country permitted the confiscation of the property of expelled persons, but he had added that in the case under consideration the expelled persons had left with their property, movable and even immovable. It was, however, hard to see how refugees could have left with their houses or shops. The Iraqi authorities claimed that the expelled Iranians had entered Iraq illegally. In fact, the majority of the refugees had held legal Iraqi documents. Many had been established in Iraq for many years. Furthermore, Iraq asserted that the refugees had been sent to Iran in small groups and that the Iranian authorities had been warned in good time. That was a lie since if that had been the case Iran would obviously have taken all the necessary steps.

He denied the allegations by Iraq that a real tragedy was taking place on the Iranian side of the frontier, and referred to the UNICEF report which praised the relief services organized in the camps which had been hastily set up near the frontier. It was obvious that when 60,000 refugees (including 2,000 Iraqis who were, moreover, quite free to remain in Iran if they wished to do so) poured across the frontier at the same time, it was impossible not to make them pass through transit camps.

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Replying to the unwarranted comments of the Iraqi representative on the Government and policy of Iran, he said that Iraq was resentful of Iran's rapid economic development. He considered the Iraqi representative's allegations regarding the celebration of the 2,500th anniversary of the Iranian monarchy completely ridiculous. The representative of Iraq had insinuated that Iran wished to divert the attention of public opinion from its policy of repression and had quoted a few articles in support of his statements. He pointed out, however, that the same newspapers contained other articles completely invalidating those quoted by the representative of Iraq.

As for the alleged mass executions, he could do no better, in order to place the facts in their true context, than to refer the representative of Iraq to an article in Le Monde of 24 November 1971, which established that in Iran the gross national product had increased by 10 per cent. When the masses saw their standard of living improve, small reactionary groups had no chance to take power by democratic processes. It was for that reason that hostile Powers, while launching campaigns of lies against Iran, sent them subsidies and arms in order to enable them to commit murder, armed robbery, sabotage and other attacks against the security of the State. The Head of State had pardoned those who had made an attack on his life, but he could not leave unpunished those who had been found guilty of sabotage against the people by impartial courts. That was a crime which was punished in every country in the world and Iran would not allow a handful of saboteurs to impede its development, which benefited the whole people. It was, to say the least, curious that Iraq accused others of repression when nobody had forgotten the public hangings which had taken place there.

In support of his statements, the representative of Iraq had also cited the press releases of groups of students abroad: those students were not, however, familiar with the internal situation in their country, from which they were far removed, and their assessments were of no value. He had also said that Iran sought to divert world public opinion from the acts which it was committing in violation of international law, and the 1937 treaty had been mentioned for polemical reasons: in fact, Iraq had never respected the most important clauses of that treaty, despite Iran's repeated appeals, and was itself, therefore, solely

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responsible for the fact that the treaty had lapsed. In his letter of 2 November 1967 addressed to the Security Council, the representative of Iran had declared that his country would accept any decisions which the International Court of Justice might hand down, but not on the basis of the supposed validity of the bilateral treaty of 1937.

Iran was said to be threatening its Iraqi neighbour with war: that was journalists' gossip and devoid of any foundation. The alleged incursion into Iraqi territory by the Iranian army on the night of 15 January had consisted only of skirmishes, which had taken place at the frontier, in order to check the attempts of Iraqi nationals who intended to use armed force to pasture their flocks in Iran. The facts had, moreover, been brought to the notice of the Ambassador of Afghanistan who represented Iraqi interests in Iran. Iran was not accustomed to interfere in the internal affairs of other States and it was surprising that it should be accused of sending agents abroad to foment trouble. It was all the more surprising that it should be Iraq which was behind those accusations when Radio Baghdad had affirmed that Iraq would uphold the struggling progressive masses in Iran (Agence France Presse dispatch of 17 January 1972), when the Egyptian Government had been compelled to imprison 29 Iraqi citizens sent to Egypt to attack Iraqi refugees who were living there and the prisoners had confessed that after having carried out the mission with which they had been entrusted in Egypt they were to go to Iran (Reuters dispatch of 29 February 1972 from Cairo), when an Iraqi citizen had been arrested in Cairo for having made an attempt on the lives of Iraqi persons, when the newspaper El Ahram had mentioned that a plot aimed at the assassination of several important persons, including General Noumeiry, had been discovered at Khartoum and that those responsible had been Iraqis claiming to belong to the Palestinian commandos, and, lastly, when an Iraqi diplomat had recently been stopped at the customs at Bahrein carrying suitcases full of various arms.

When the representative of Iraq said that Iran was not interested in human rights and still dreamed of an empire what had died with Alexander, he was simply proving that he did not know history. And when he compared the Iranian leaders with those of fascist Italy, he was using the same language as Radio Baghdad, which was accustomed to insulting Iran and other fraternal countries.

The incident of the islands in the Persian Gulf, which had never ceased to belong to Iran, was an internal affair of the Iranian State and was not within



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the competence of the Commission on Human Rights. Iran nurtured no territorial ambitions and its "expansionism" was only a fantasy in Iraqi minds. Iran's actions in the case of Bahrein proved its adherence to the principle of the peaceful settlement of disputes. Lastly, Iraq, which was waging a veritable war against a minority in that country, was ill-qualified to criticize the so-called policy of repression applied by others.

He had made those few remarks solely to reply to insulting and completely unfounded allegations. It had never been his intention to engage in polemics, but to consider the general aspect of the new problems raised in the modern world by the rapid development of transport, and expulsions and the status of aliens. His delegation was naturally concerned over what was happening in Iran but other countries were experiencing similar difficulties. His delegation had been guided by the principles of international law on the matter in submitting draft resolution E/CN.4/L.1216, which it hoped would be adopted unanimously. That draft resolution formulated two specific requests: first, in operative paragraph 1, it requested that seminars should be organized to study the status of foreign nationals from the viewpoint of human rights, and, secondly, in operative paragraph 2, it requested the Secretary-General to submit a report which, he wished to make clear, he did not envisage as a study in which proposals would be formulated but as a collection of texts of relevant national laws, bilateral treaties and international instruments which would enable the Commission to define, at a subsequent session, the status of aliens from the viewpoint of human rights. In operative paragraph 3, Member States were requested to furnish to the Secretary-General such information as might be helpful for the preparation of the study.

His delegation was ready to welcome any suggestions relating to the draft resolution.

Mr. AL-SHAWI (Iraq), speaking in exercise of the right of reply, said that he had no intention of using such ungracious language as the representative of Iran had used towards him, the representative of Iraq. After saying that all the information coming from the information media was worthless, the Iranian representative had quoted from an impressive number of newspapers: in reply, the delegation of Iraq also felt obliged to quote from a number of newspaper articles,

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but it would confine itself to well-known and reputable organs of information. Le Monde of 3 March 1972 reported an intensification of repressive measures in Iran, where the military tribunals were imposing heavy sentences on members of the opposition, including 10 death penalties, and a dispatch from the Agence France Presse gave the names of four of the people that had been executed. The authorities had instructed the tribunals to act with extreme severity so that they could decimate the opposition and scare those who might be tempted to join it. The Times of London of 14 March 1972 also reported executions, totalling 19 since the month of January, and mentioned that the trials which had led up to the verdicts had been closed to the public. A Reuters dispatch of 2 March from Teheran announced the execution of nine guerrilla fighters by the army. Lastly, Le Monde of 9 March quoted the Shah as saying that he did not intend to show clemency; the paper said that the police had been called in to disperse students at the University of Teheran who were demonstrating against the sentences handed down by the military tribunals, and many arrests had been made.

The Iranian representative had accused him of interfering in the internal affairs of Iran: he had had no intention of doing anything of the kind, but some explanation had to be given for the campaign against Iraq carried on in a neighbouring country. It was true that the Iraqi Government had expelled some Iranian nationals, but it had always given the reasons for its action, which were in conformity with the rules of international law. The persons concerned were immigrants who had entered Iraq illegally. They had not been robbed, as the Iranian representative had suggested: although expropriations could be made in the public interest under both international law and the Constitution of Iraq, there had been no expropriation order against the persons concerned at that time. Some Iraqi nationals had allegedly entered Iran under cover of those expulsions and the Iranian representative had stated that they would be returned to their country or placed in the hands of an international organization: such clemency was not in harmony with statements made by the Shah as quoted by Le Monde. There were glaring contradictions in the accounts of those alleged mass expulsions. Why should the Iranian Government, which was so proud of the "white revolution" being carried out in Iran, be so reluctant to allow its own nationals to enter such a prosperous

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country when they had been living in poverty in Iraq? The numbers given for the persons expelled at various times varied so greatly that it was impossible to give them any credence. According to the Iranian authorities, 60,000 people had been expelled in three months. According to The New York Times of 31 January, the number was 48,000. According to the Iranian note of 6 January 1972 (E/CN.5/1092), more than 60,000 Iranians had been ousted from Iraq, over 30,000 of them in a single night, which was hard to believe. On 4 January, the Permanent Representative of Iran had told The New York Times that 36,000 people had been expelled (The New York Times of 5 January 1972). The Iranian authorities had also mentioned the figure of 32,000, and later 30,000, for the expellees.

Iraq had always wanted to live in amity with its neighbours, but in January 1970 Iran had plotted against the progressive régime in Iraq and provided the rebels with arms, money and radio stations, which had been seized. And now the Iranian representative was accusing Iraq of interfering in the internal affairs of Iran! What was the Iranian representative doing when he gave a biased account of the execution of spies arrested in Iraq in circumstances which the Iraqi Government had often described: in January 1969, some Iraqi citizens had been convicted of sabotage and spying for Israel? After a trial, during which they had enjoyed every right of the defence, they had been found guilty and condemned to death for high treason: eleven of them had been Moslems, two Christians and nine Jews; not a single one had been an Iranian national. The other accused, seven of whom were Jews, had been acquitted. By continually bringing up those events in his polemics, the Iranian representative was revealing the complicity of his Government with a country that was an enemy of Iraq and of all the Arab countries. The Iranian representative had also mentioned a war which Iraq was supposed to have made on the Kurdish minority, but that was certainly wishful thinking. He did not seem to have heard of the declaration of 11 March 1969 granting the Kurds complete independence and an associative status. But what was happening to the Kurdish minority in Iran? It would be interesting to know....

According to the Iranian representative, the opposition in Iran was only a journalists' fiction. Did he include among journalists such a personality as Bertrand Russell, who on 12 November 1968 had telegraphed to the Shah of Iran protesting against the fact that 14 Iranian writers had been tortured and brought

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before a military tribunal and were in danger of being condemned to death, or an organization like the International League for the Rights of Man, which had written to the Secretary-General on 4 June 1964 drawing attention to grave violations of human rights in Iran, the United Kingdom House of Commons, several members of which had introduced a motion appealing to the Iranian Government for mercy for the members of the opposition for whom the death penalty was being demanded? The House of Commons had already protested energetically against the expulsion of the representative of Amnesty International and had asked for observers to be allowed to be present at the trial in accordance with the Declaration of Human Rights, and to investigate the conditions of the prisoners in the prisons.

He would say no more, for he felt it would be useless to go back over other and equally questionable statements made by the Iranian representative.

The CHAIRMAN, taking up the Iranian representative's tribute to his patience, said that patience was a necessary concomitant of his functions. He was ready to sit for as long as was necessary for the necessarily brief examination of the questions which the Commission had agreed to discuss. His rule of conduct was to allow interested delegations to express their views in as much detail as they deemed necessary within the limits of the agenda items. Nevertheless, he felt obliged to draw attention to the lateness of the hour and to the fact that it was the last meeting the Commission had available to complete its consideration of the agenda. He appealed to members to bear that fact in mind, quite apart from the reasons he had already mentioned twice that day.

Mr. DIAZ-CASANUEVA (Chile) supported the Chairman. The Chilean and many other delegations very much regretted the situation in which the representatives of two great nations found themselves. He appealed to them not to continue their battle of arguments, which could go on for ever in a kind of vicious circle. The Chilean delegation had the greatest respect for the principle of freedom of speech and for the two countries concerned, but it wished to remind both representatives that the Commission had very little time available and that world public opinion was awaiting positive solutions for many tragic problems throughout the world.

Mr. HOVEYDA (Iran) said he was willing to bow to that appeal. However, he could not allow false accusations to pass without protest, and he thought it was unjust that no notice had been taken of the fact the statement he had made at the morning meeting had been in general terms: it was the representative of Iraq who had started to talk politics and who had begun to quote the information agencies; all he himself had done was to follow that example. He asked for permission to make a brief reply.

First, if the representative of Iraq had known French, he would have been aware that the Iranian representative had never used any ungracious language about him. Secondly, the Iranian delegation denied all the pernicious allegations in the Iraqi representative's reply. Thirdly, he did not think it worth while to reopen the question of the genocide of the Kurds in Iraq, but he wished to state for the record that two thirds of the statements made by the Iraqi representative had been a passionate defence of the groups of saboteurs that were active in Iran which said much about the conduct of the Iraqi Government. Lastly, all the answers that were necessary to the questions asked by the representative of Iraq could be found in the statements he, the representative of Iran, had made at the present and the previous meeting.

Mr. AL-SHAWI (Iraq), speaking on a point of order, also asked to be allowed to make a brief reply to the representative of Iran. The Iranian representative had accused him of being ignorant of history. There would seem to be little foundation for such an accusation, since he had taught history for 14 years at the university, where he had been Dean of the Faculty of Law and Political Science. The Iranian representative had also mentioned the miserable conditions in which the expellees had been living: but innumerable photographs taken in Iran showed that they were obviously better off in Iraq than they had been in Iran, which they had left to enter Iraq illegally.

Mr. DIAZ-CASANUEVA (Chile), speaking on agenda item 10 (b), introduced the report of the Working Group established under resolution 14 (XXVII) of the Commission on Human Rights and draft resolution E/CN.4/L.1218 on model rules of procedure for United Nations bodies dealing with violations of human rights. The Working Group, composed of five members of the Commission, had examined the rules of procedure adopted by the Secretariat in the light of comments from several Governments. The problem was to establish effective rules of procedure while

(Mr. Diaz-Casanueva, Chile)

maintaining respect for State sovereignty. Various proposals had been advanced within the Working Group, which had made every effort to reach agreement and reconcile divergent points of view. The Group had succeeded in adopting a number of articles, which constituted genuine progress. Unfortunately, it had been unable to resolve some of the difficulties relating to section VIII of the rules of procedure, particularly article 17, and had not had sufficient time to study section IX (articles 18 to 23). Section VIII had been the most controversial, since it dealt with the assistance which the States directly concerned by the subject of the study or investigation undertaken by the ad hoc body might be invited to give it and the right of that body to receive statements, communications and such documents as it deemed appropriate. Any decision in the matter was difficult, since it must transcend individual opinions. The study of the rules of procedure must therefore be continued without slackening. In addition, as indicated in draft resolution E/CN.4/L.1218, it was essential that States should submit their comments, which would form the basis for the Working Group's studies. Under the terms of that draft resolution, the Commission on Human Rights requested the Secretary-General to transmit the report of the Working Group to Member States and to invite them to submit their comments and requested the Working Group to meet again immediately before the twenty-ninth session of the Commission with a view to continuing and finishing the examination of the draft model rules of procedure.

Mr. SCHAUFLE (United States of America) said that his Government attached particular importance to the 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 dependent countries and Territories. It was important for the Commission to consider all the complaints it received, since that was the way to detect a consistent pattern of gross violations of human rights wherever it existed.

His delegation was encouraged by the Economic and Social Council's recent work in the matter and welcomed, in particular, the adoption of resolution 1503 (XLVIII), which provided procedures for dealing with communications

(Mr. Schaufele, United States)

relating to violations of human rights and fundamental freedoms and authorized the Sub-Commission to appoint a working group of five members to consider all communications received. He congratulated the Sub-Commission on the excellent work it had done and hoped that the procedures agreed upon would be applied in practice.

His delegation deplored the fact that violations of fundamental freedoms still occurred very often in the world and that in many countries efforts were still being made to deny some people the exercise of elementary rights, such as freedom of expression. The policies of apartheid constituted a particularly deplorable example of repression directed against both white and blacks, since everyone who opposed apartheid was deprived of fundamental freedoms. The Commission should not, however, ignore violations occurring elsewhere in the world, particularly in countries in which freedom of expression was regarded as a threat to the State.

His Government welcomed the growing attention given by the Commission on Human Rights and other United Nations bodies to the question of respect for human rights in armed conflicts. It was encouraged by the excellent studies undertaken by the Secretary-General and the International Committee of the Red Cross with a view to additional protection for civilians and combatants during periods of armed conflict. The United States was co-operating fully in those efforts and hoped that it would be possible to convene a plenipotentiary conference to consider the possibility of drafting instruments to supplement the Geneva Conventions of 1949.

In spite of the importance it attached to the work currently in progress in the United Nations and the activities of the ICRC, his Government wished to stress again its fundamental concern for the implementation of existing conventions. It considered that question particularly crucial in the light of the problem of United States prisoners of war in Indo-China. Despite the specific requirements of the Geneva Conventions of 1949 relative to the treatment of prisoners of war, North Viet-Nam and the other communist authorities in South-East Asia had refused to identify all prisoners of war or to allow all prisoners to communicate with their families and had not allowed a humanitarian organization such as the ICRC to visit the detention camps. Moreover, they had refused to repatriate sick and

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seriously wounded prisoners. As a result, the families of many prisoners had no word of their loved ones and did not even know whether they were alive. Since no one had been able to make an impartial inspection of the detention camps, the deepest concern continued to exist about the treatment of the prisoners. It had been reported that many had been subjected to long periods of solitary confinement, badly fed and mistreated. The ICRC had repeatedly sought permission to visit the prisoners, but its efforts, like those of other organizations and neutral Governments, had remained fruitless. The situation gave cause for justified concern in the world community. In a resolution adopted unanimously in 1969, the International Conference of the Red Cross called upon all parties to abide by the obligations set forth in the Geneva Convention relative to the treatment of prisoners of war, and, in particular to allow a protecting Power or the ICRC to visit the prisoners. The purpose of the Geneva Convention was simply to provide the maximum possible protection for prisoners of war. North Viet-Nam's lack of goodwill, its refusal to implement the provisions of the Convention and its consistent refusal to let the ICRC visit the prisoner-of-war camps could not but confirm suspicions that conditions in those camps did not meet the standards of the Convention.

In 1970 the General Assembly had adopted resolution 2676 (XXV), which reaffirmed the concern of the international community for compliance with the Geneva Convention, including the repatriation of seriously wounded and seriously sick prisoners of war, and called for agreements with a view to the direct repatriation or internment in a neutral country of able-bodied prisoners of war who had undergone a long period of captivity. His delegation was pleased to note that a number of Governments had already made known their readiness to offer such internment, subject to the agreement of both sides. It was regrettable that the communist authorities in Indo-China had invariably ignored those offers. In order to underline the deep concern of the people of the United States on that issue, President Nixon had proclaimed a national week of concern for Americans who were prisoners of war or missing in action.



(Mr. Schaufele, United States)

He hoped that the world community would continue to exert moral pressure on all parties to the Geneva Convention to abide by their commitments.

Mr. TARASOV (Union of Soviet Socialist Republics) said that his delegation attached great importance to the question under consideration, in view of its many humanitarian aspects. He recalled that, according to Article 1 of the Charter, the purposes of the United Nations included the development of friendly relations among nations based on respect for the principle of equal rights of peoples and the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

It was gratifying to note that the efforts of the United Nations had brought some progress in the matter of respect for fundamental freedoms. Unfortunately, certain States were trying to use the question of violation of human rights for political purposes, in order to slander other countries in which those rights were, in fact, fully respected. An attempt was once more being made to distract the Commission's attention from the incessant violations of human rights by the imperialists, Zionists and reactionary forces. One need look no further for an example than to the violations of fundamental freedoms in the United States, particularly racial discrimination, which was growing at an alarming rate. Everyone knew that most of the unemployed - that is to say, those who were denied the exercise of their economic and social rights - were black. The black population of the United States was denied access to many important branches of the economy. Dr. Ralph Bunche had considered racism the number one problem of the United States; like many black leaders, he had come to doubt the sincerity of the authorities in combating racism. According to all indications, after trying to end racial segregation in the schools, the Government was now reversing itself under pressure from white racists. Recently the United States press had itself revealed that racial discrimination was practised in the recruitment of personnel in the information media. Racism also existed in the sphere of justice, where black lawyers had to wage a constant struggle against racial discrimination and injustice. Black political organizations, such as the Black Panthers, were systematically hounded, harassed and persecuted. Their leaders were shot down

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by the police or thrown in prison. In addition, the authorities had no qualms about paying informers to infiltrate the black movements and act as agents provocateurs. He recalled in that connexion that Father Berrigan and his friends had been arrested on the basis of evidence given by a paid government informer whose links with the FBI were common knowledge. As a result of the theft of FBI files in 1971, it had been learned that that agency was attempting to infiltrate agents provocateurs into African-American circles in order to destroy the black movements and left-wing organizations. Moreover, all the trials of the leaders of groups opposed to the Government had been held behind closed doors, with the public and the press prevented from attending, which was also a violation of human rights. It should also be noted that the attitude of the judicial authorities followed a definite pattern in that they invariably sentenced black leaders to death or prison while acquitting members of the Ku Klux Klan accused of murdering blacks.

The United States delegation constantly sang the praises of a free society, and it had just stressed once again the need to guarantee freedom of expression and opinion for all. However, the movements which opposed the war in Viet-Nam were subjected to systematic persecution in the United States. In 1971, at the time of the demonstrations in Washington, 13,000 persons had been arrested and confined in hastily constructed concentration camps. Moreover, the authorities did not scruple to employ other means to prevent the dissemination of opposing views. The FBI had recently discharged two employees who had expressed opposition to the war in Viet-Nam. It was also interesting to note, in connexion with the increasing number of war crimes committed by United States soldiers in Viet-Nam, that the guilty persons were acquitted or the charges against them dropped. If an honest soldier tried to tell the truth, he was simply silenced precisely like those who had expressed views differing from those of the Government, such as the Reverend Martin Luther King and a number of trade-union leaders.

However, discrimination was not directed only against blacks in the United States; it was also directed against women. Although women represented 40 per cent of the labour force, they accounted for only 10 per cent of scientific personnel

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and a little more than 7 per cent of the country's doctors. No woman had ever sat on the Supreme Court. The results of studies conducted in a number of States indicated that discrimination against women was universal, and the situation seemed to be growing worse, since the difference between the pay received by men and women for equal work was continuing to increase.

He could cite many other violations of human rights in the United States, particularly the fact that the FBI kept files on all those who did not support government policy and investigated the activities of Senators, judges and even Presidential candidates.

He quoted statements by Senator Fulbright to show that the activities and staff of United States radio stations were financed by the CIA in their hostile propaganda against the Soviet Union and the other socialist countries, which pitted the people of the United States against those of the socialist countries and represented interference in the latter's internal affairs.

The United States delegation had spoken of freedom of movement and had attacked the Soviet Union on that point, but it had failed to mention that the State Department officially prohibited the granting of passports for travel to North Korea, North Viet-Nam and Cuba. Violations of human rights went so far in that regard that the United States authorities had even refused to return to its mother in Czechoslovakia a child which had remained in the United States by accident. The reasons for those restrictions on freedom of movement were purely political.

Conditions of that kind had an effect on the morale of United States citizens, who could not accept the society in which they lived and tried to escape either through drugs - a social evil in the United States which affected even children - or through suicide; according to The New York Times, more than 25,000 Americans committed suicide each year. In addition, the Gallup agency reported that 16 million Americans wished to emigrate in order to escape the social conditions existing in the country. Another consequence of those conditions was the revival of nazism, particularly the crusade against blacks and the support for the Ian Smith régime preached by the Nazi movement.

It was also clear from the American press that the American people and American public opinion trusted their Government less and less. There must be a deep-seated cause for the existence of poverty, the racial problem, increasing drug

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abuse and rising crime. That cause was in fact monopoly capitalism as it existed in the United States - a system which was the worst enemy of human rights and freedoms. Living conditions in the United States and the testimony of the American press exploded the myth being propagated about a free society.

There was another part of the world in which human rights were being consistently violated, namely the United Kingdom. The British Army had for more than two years been ravaging Northern Ireland, where it made use of poison gas and acted under emergency laws. Hundreds of Irish patriots had been imprisoned without trial. According to The New York Times, 286 persons had already died, and the situation had become worse in recent months. British soldiers were razing houses in order to establish safety zones and set up police posts. In the Catholic areas, they searched houses, used gas and mistreated civilians. Again according to The New York Times, the number of internees had totalled 1,500 in November 1971. Concentration camps had been set up, and torture - by the use of electric currents and drugs - was practised there regularly. Using the words of Senator Kennedy, The Times, a conservative newspaper, had stated that Northern Ireland had become the United Kingdom's Viet-Nam. The intensification of repression and of the severity of the occupation was giving new strength to the freedom-fighters. Attempts had been made to depict the conflict as a religious one, but in fact it was social and economic in nature.

In conclusion, he expressed the view that the Commission should study the problem and take action against the United Kingdom.

Mr. ERMACORA (Austria) said that the statements made on items 9 and 10 painted a very dark picture of the situation with regard to human rights. The Commission was required to confine itself, in its consideration of those items, to "gross violations of human rights" such as racial discrimination and the policy of apartheid. Referring to document E/CN.4/923/Add.5, which was a compilation of decisions taken by the United Nations in 1971 with regard to such violations, he said that the Commission should re-examine the question of what was meant by a "consistent pattern of gross and reliably attested violations". The Soviet representative had cited paragraph 32 of the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/1070), but the

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paragraph in question was too vague. The Commission might be able to form a clearer idea of the question of violations when the first report of the Sub-Committee on Petitions was submitted to it.

The Commission had heard statements by the International Commission of Jurists and the International Association for Religious Freedom. It had also heard references to violations committed during armed conflicts and to the need to strengthen the system of protection. It should be noted in that connexion that the question of strengthening that system was not dealt with in the preparatory documents for the International Conference of the Red Cross to be held in May 1972.

His delegation had studied with interest documents E/CN.4/1092 and E/CN.4/1094, which dealt with the dispute between Iraq and Iran, and it had listened carefully to the exchanges of views between the two delegations concerned. It wished to emphasize in that connexion that the problems dealt with in the letters contained in the two documents must not be confused with those referred to in draft resolution E/CN.4/L.1216. The latter draft, which was extremely useful, was far-reaching in its scope and raised, inter alia, the problem of the right of asylum, which was, he noted, linked with that of extradition. His delegation wished to take up that problem, since in 1971 the High Commissioner for Refugees, speaking in the Third Committee, had emphasized the importance of the problem of political asylum. The Commission should consider that question again with a view to taking action, through a convention on the right of asylum, to cope with the problems faced by refugees.

A new problem was emerging, namely that of conscientious objectors and their right to political asylum, and to that problem was added the problem relating to the expulsion of such persons from the country in which they sought asylum. His delegation felt that it would be useful to prepare a study of those problems and that draft resolution E/CN.4/L.1216 could provide a good basis for such a study. The United Nations must not overlook problems of that kind, and it was only by keeping fully informed about the various types of violations of human rights that it would be able to find means of preventing them.

His delegation regarded the report of the Working Group (E/CN.4/1086) as very constructive. It had joined the sponsors of the preliminary draft contained in the

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report; it endorsed the rules drafted by the Working Group and hoped that in its future work the latter would take account of the statement submitted by the International League for the Rights of Man (E/CN.4/NGO/163), including the paragraphs dealing with the cross-examination of witnesses. He also endorsed the first paragraph of document E/CN.4/NGO/167, which dealt with the question of the impartiality and objectivity of the members of an ad hoc investigative body and the establishment of model rules of procedure.

Mr. AGHA SHAHI (Pakistan) noted with bitter regret that the distressing events which had afflicted Pakistan during the past year, and which had been marked by numerous violations of human rights, had resulted in the dismemberment of a sovereign State by the use of force, in violation of all the precepts of international law and the Charter of the United Nations. Nevertheless, the present Government of Pakistan, which had inherited some most difficult problems, had shown political realism and a feeling for humanity, and had repeatedly expressed its desire for conciliation by offering to negotiate, without pre-conditions, on all the political issues between India and Pakistan. It had in particular stated that, while it did not accept the situation brought about by aggression and the use of force, it was willing to establish relations between West and East Pakistan through negotiations, undertaken without pre-conditions, between the leaders of the two units. In its desire to efface the prejudices and the painful memories of the past and put an end to the bloodshed and injustices perpetrated by any of the parties to the conflict, the Government of Pakistan had welcomed Security Council resolution 307 (1971), which called upon "all those concerned to take all measures necessary to preserve human life and for the observance of the Geneva Conventions of 1949 and to apply in full their provisions as regards the protection of the wounded and sick, prisoners of war and civilian population". In accordance with that provision, Pakistan had made the utmost effort to fulfil scrupulously its obligations under the Geneva Conventions of 1949. On the other hand, the Government of India continued to evade the obligations incumbent on it as a party to the Conventions. As the Government of Pakistan had noted on several occasions in letters to the Secretary-General, India had violated the provisions of the fourth Geneva Convention by not protecting the civilian

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population of the territory under its occupation from reprisals and acts of violence. It had also violated the third Geneva Convention, relative to the treatment of prisoners of war, by submitting Pakistan prisoners to the serious maltreatment and humiliation denounced by the Government of Pakistan on 10 March 1972 in a letter addressed to the Secretary-General (S/10560) and confirmed in various reports by the ICRC. Nor had India fulfilled its obligations under article 109 of the third Geneva Convention, which required the repatriation of sick and wounded prisoners of war. Whereas Pakistan had discharged its obligations in that respect, India was introducing new conditions for repatriation of the last sick and wounded prisoners of war, claiming that the concurrence of the Dacca authorities was necessary. Moreover, India continued to defy the injunction in article 118 of the third Geneva Convention, which required that prisoners of war should be released and repatriated without delay after the cessation of active hostilities. According to the eighth preambular paragraph of Security Council resolution 307 (1971), a cease-fire and a cessation of hostilities prevailed. The provisions of article 118 of the third Geneva Convention had thus become operative, and it was incumbent on both India and Pakistan to arrange for the repatriation without delay of all prisoners of war held by them. Both the text of the Convention and the commentaries of the ICRC on article 118 left no room for doubt as to the obligation of a Detaining Power to repatriate prisoners of war without awaiting the conclusion of a treaty or armistice. The ICRC stated that no exceptions might be made to that rule, and recalled that the Diplomatic Conference which had drafted the Convention had felt that the requirement should be made unilateral so that its implementation would not be hampered by the difficulty of obtaining the consent of both parties. Nevertheless, over 90,000 Pakistan prisoners of war continued to languish in Indian camps, three months after the cease-fire and the cessation of active hostilities. India contended that the Pakistan forces in East Pakistan had surrendered to the "joint command" of the Indian and "Bangladesh" forces, and that their repatriation therefore required the acquiescence of Bangladesh. At the same time, it had been made clear that such acquiescence would not be forthcoming until Pakistan recognized Bangladesh, which meant that the Pakistan prisoners of

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war were being held as hostages to gain political ends. India's plea did not bear scrutiny, since article 118 explicitly required that repatriation should take place without delay after the cessation of active hostilities and, according to the commentary, that was a unilateral obligation which did not require the consent of either India or Bangladesh. The first paragraph of article 12 of the third Geneva Convention stated inter alia that prisoners of war were in the hands of the enemy Power, but not of the individuals or military units who had captured them. It was beyond doubt that in the present case the enemy Power was India. That interpretation had moreover been confirmed by the commander-in-chief of the Indian forces, who had given Pakistan a solemn assurance that he would respect the provisions of the Geneva Conventions, as well as by the Minister for Foreign Affairs of India, Mr. Singh, who had stated categorically before the Security Council on 21 December, after the adoption of resolution 307 (1971), that Pakistan prisoners of war were under the protection of India, which had undertaken to treat them in accordance with the Geneva Conventions. India's argument of a "joint command" was a mere legal fiction, for it should not be forgotten that, at the time when India's armed forces had entered East Pakistan, India itself had not recognized the existence of any second party to the conflict. Even if the existence of a "joint command" was accepted, India's obligation to repatriate the prisoners of war without delay would remain undiminished. Moreover, the commentary by the ICRC on the first and second paragraphs of article 12 left no room for doubt on the question in the case of a "unified command" of more than one State, specifying that the States Parties to the Convention must remain responsible for the prisoners captured by their armed forces and that a unified command which had authority over the armed forces of several countries could not in that case take over the responsibility incumbent upon States. Thus the existence of a so-called "joint command" of India and Bangladesh did not free India from its obligation to repatriate the prisoners of war without delay, in accordance with the provisions of the Convention to which it alone was a party. In invoking the need to obtain the prior agreement of a State which was not a party to the Convention, India was opposing the very spirit of the Convention.



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Finally, the Indian Government, in breach of its obligations under the Geneva Conventions and its own previous assurances, had now declared that it intended to hand over several hundred Pakistan prisoners of war for trial by the Bangladesh authorities for alleged "war crimes". Two questions arose in that regard. First, was the transfer of prisoners of war to Bangladesh compatible with India's obligations under the third Geneva Convention? Secondly, for what acts could prisoners of war be considered liable for punishment in accordance with the Geneva Conventions and international law?

The answer to the first question was provided unambiguously in the third Geneva Convention, article 12, second paragraph, which provided that prisoners of war might only be transferred by the Detaining Power to a Power which was a party to the Convention. Since Bangladesh was not a party to the Convention, India was not entitled to hand over to it for any purpose whatsoever the prisoners of war currently under its protection. The argument of the so-called "joint command" was again used to justify such a transfer. However, apart from the fact that the existence of such a command did not diminish India's obligations under the Convention, the ICRC stated in its commentary on article 12 that there must be no possibility for a group of States which were fighting together to agree to hand over to one of their members not a party to the Convention all or some of the prisoners whom they had captured jointly, and added that such a solution would be a flagrant violation of the spirit and the letter of the Convention. Yet the Government of India had agreed that over 1,000 prisoners of war under its protection were to be handed over to Bangladesh, which was not a party to the Convention, to be tried as war criminals. Obviously, the question whether the Bangladesh authorities were empowered to try Pakistan prisoners of war for war crimes did not even arise. The right of India itself to institute penal and judicial proceedings against prisoners of war for certain offences was strictly circumscribed by the provisions of the Geneva Conventions and of international law. Articles 82 to 108 of the third Geneva Convention showed clearly that as a general rule the offences for which a prisoner could be punished were offences committed against the laws, regulations and orders in force in the armed forces of the Detaining Power. However the offences of which certain Pakistan prisoners were accused, even if their guilt was established,

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had been committed prior to their capture, and prior even to the international conflict between India and Pakistan. The only exception to that rule was found in article 85, which stipulated that prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture should retain, even if convicted, the benefits of the Convention. As for the nature of those acts, the ICRC divided them, in its commentary, into two categories: acts not connected with the state of war, and acts connected with the state of war. It was clear that the acts of which some Pakistan prisoners of war were accused were not connected with the state of war with India, i.e. with the war which had led to their capture. They might have been violations of common law committed outside the national territory of the Detaining Power. In that case, as the ICRC stated in its commentary, there could be a prosecution only if the penal legislation of the Detaining Power provided for the punishment of offences committed outside the national frontiers, and that was extremely rare. As for acts connected with the war, article 6 of the Nuremberg Charter defined them as being of three kinds: crimes against peace, war crimes and crimes against humanity. The crimes which certain Pakistan prisoners of war were alleged to have committed did not fall within any of those three categories. It was, therefore, clear that the Pakistan prisoners of war at present held by India could neither be transferred to another Power which was not a party to the Convention, nor tried by India itself for the acts they were alleged to have committed.

In seeking the strict implementation of the Geneva Conventions, his country had no desire to shirk its responsibility to punish those of its citizens who might have been guilty of criminal acts during the civil war. Indeed, the President of Pakistan had recently declared that the Pakistan Government would investigate any excesses which might have been committed and would punish the guilty persons. The Pakistan Government had already demonstrated its goodwill by unconditionally releasing Sheikh Mujibur Rahman in an effort to create a climate conducive to reconciliation. Although his country maintained its position of principle, which was that the result of aggression could not be

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legitimate, it had expressed readiness to establish relations between West and East Pakistan through unconditional negotiations between the leaders of the respective units. There could, however, be no doubt that the attempt by India to use the Pakistan prisoners of war to coerce Pakistan into accepting the fait accompli represented a serious setback to the sincere efforts made by Pakistan to obtain a lasting peace on the subcontinent.

The meeting rose at 7.45 p.m.