



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



NOV 8 1982

Distr.
GENERAL

E/CN.4/Sub.2/1982/SR.22
2 September 1982

ENGLISH
Original: FRENCH

UN/SA COLLECTION
COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Thirty-fifth session

SUMMARY RECORD OF THE 22ND MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 31 August 1982, at 10 a.m.

Chairman:

Mr. CHOWDHURY

CONTENTS

Review of further developments in fields with which the Sub-Commission has been
concerned (continued)

Question of the human rights of persons subjected to any form of detention or
imprisonment

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be
set forth in a memorandum and also incorporated in a copy of the record. They should
be sent within one week of the date of this document to the Official Records Editing
Section, room E.6108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission
at this session will be consolidated in a single corrigendum, to be issued shortly
after the end of the session.

The meeting was called to order at 10.30 a.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1982/4; E/CN.4/Sub.2/1982/5; E/CN.4/Sub.2/1982/6; E/CN.4/Sub.2/1982/26; E/CN.4/Sub.2/1982/36; E/CN.4/Sub.2/1982/NGO/2)

1. Mrs. DAES said she welcomed the fact that the Secretary-General had included in his review of further developments in fields with which the Sub-Commission had been concerned (E/CN.4/Sub.2/1982/4) the important question of human rights in Cyprus. She proposed that that item should remain on the Sub-Commission's agenda so long as the tragic problem of refugees and of missing persons in Cyprus had not been settled. She would make her comments on the issue of missing persons in Cyprus when the Sub-Commission came to examine the matter as a whole.
2. With regard to the question of the establishment of a post of United Nations High Commissioner for Human Rights she would take the floor when a draft resolution on the subject was submitted to the Sub-Commission.
3. Mr. BERWA (Minority Rights Group), speaking on behalf of Vision, the Ambedkar Mission of Canada, Sri Guru Ravidass Sabha and the Ambedkar-Buddhist Council of the United Kingdom, said he wished to provide the Sub-Commission with some information on the tragic fate of the millions of untouchables in India. For 2,000 years, the untouchables, who represented about one-seventh of the population of India had been forced to perform the lowest types of jobs, been shunned by the higher castes and been refused access to social services or education. They were not allowed to drink water in the villages where they performed slave labour. They were unable to revolt, for fear of being massacred. There had been 15,000 attacks on untouchables the previous year. If they achieved somewhat better living conditions, they became a cause of serious concern among high caste Hindus. Since the media were entirely controlled by the latter, it could be assumed that only some 5 per cent of what really took place was made public. Moreover, the police and the judiciary were 98 per cent under the control of the other castes. Prior to independence, the responsibility for their situation had been blamed on the British but, since independence, the situation of the untouchables had become even worse. Some particularly horrifying massacres had recently been committed in the Agra region, in the State of Bihar, and near Madras. Buddhist as well as untouchables had been slaughtered in Bombay province.
4. Although the concept of untouchability had been abolished 30 years previously by the Constitution of India, the Government had done nothing to implement the relevant provisions or to safeguard the some 100 million untouchables, Buddhists and other minorities in India.
5. According to the Washington Post of 3 January 1982, untouchables continued to be persecuted in India despite efforts at reform. In his most recent report (1980), the Commissioner for Scheduled Castes and Scheduled Tribes had said that the problem appeared to be a deep-rooted one and that it was essential to ensure the protection of the weaker segments of the society, particularly the untouchables. Lastly, the Anti-Slavery Society had stated, in early August, that measures should be taken to free and help to rehabilitate millions of slaves around the world, including India. It had noted that there were 2.6 million bonded labourers in India, some 86 per cent of them being untouchables. However, that was only a part of the story.

6. For its part, Vision had recently expressed its concern on the subject to the Prime Minister of India, who had paid little attention to its comments. The free world thus had a duty to help the untouchables like all other oppressed peoples. Indeed, it was not an internal problem but a tragedy of concern to every individual in the world. He wondered what had become of the ideals of Mahatma Gandhi and Pandit Nehru when a Government was no longer able to protect its most disadvantaged citizens.
7. The Indian Government took little practical action upon the annual report prepared by the Commissioner for Scheduled Castes and Scheduled Tribes, because its main concern was to preserve its electoral support. Crocodile tears were shed over the fate of the victims of such aggressions and new security measures were promised, that meant nothing in a society where even the police was infected by the same virus as the members of the higher castes and where most of the judiciary and members of the civil service were in favour of maintaining the caste system. It was hard to say, therefore, whether the Government was even in control of the situation. He hoped that the Sub-Commission would include the question on the agenda for its forthcoming session.
8. Mrs. ODIO BENITO recalled that the Commission had requested the Sub-Commission to submit a first study on the establishment of a post of United Nations High Commissioner for Human Rights. As several members had stressed the previous day, it was no longer a question of the Sub-Commission engaging in an ideological discussion on whether or not it was appropriate to establish such a post but of a task entrusted to the Sub-Commission by the Commission which it was bound to carry out.
9. The proposal which she had made on the subject in February 1982, at the time when the question was being considered by the Commission on Human Rights, might serve as a basis for the study requested. In short, that proposal sought primarily to ensure that the United Nations High Commissioner for Human Rights was elected by the General Assembly on the recommendation of the Economic and Social Council (Mr. Bossuyt had rightly suggested, however, that the Secretary-General might himself make such a recommendation). The proposal also stressed the humanitarian nature of the High Commissioner's functions and the impartiality which he should demonstrate in promoting and protecting human rights. The proposal had also made it clear that no State should be able to obtain any political advantage from the work of the High Commissioner.
10. The functions of the High Commissioner would be, first of all, to ensure that the human rights and fundamental freedoms set forth in the Universal Declaration of Human Rights were respected in practice. In urgent situations involving human rights violations, he would consult with other bodies or organizations of the United Nations system, including the Centre for Human Rights and appropriate specialized agencies, in order to exchange information and to facilitate the adoption of the necessary measures.
11. The High Commissioner would also be responsible for establishing contacts with governments on a confidential basis, if that proved necessary. Such contacts should be made for exclusively humanitarian purposes and solely in urgent situations that might involve threats to life, bodily and mental integrity, physical liberty, the right to impartial administration of justice, freedom of religion and freedom to leave one's own country, whether individuals or groups of persons were concerned. The previous day, Mr. Folli had stressed, that the success of the missions entrusted to him had been due precisely to their confidential nature. It was clear that governments hesitated to reveal certain

situations in public and, incidentally, several members of the Sub-Commission had expressed their misgivings in that regard. The action of the High Commissioner would be much more effective, therefore, if he dealt with Governments on a confidential basis.

12. According to her proposal, the High Commissioner would be appointed for a period of five years. In view of the comments made by Mr. Whitaker in that regard, however, consideration might indeed be given to appointing him initially for a period of three years. Lastly, the High Commissioner might, with the agreement of the Governments concerned and provided that the necessary financial resources were available, establish regional offices which would help him to carry out his mission.

13. In conclusion, she hoped that the Sub-Commission would submit to the Commission a draft resolution based on her proposal.

14. Mr. FERRERO said that, on the whole, he approved all the main ideas that had been put forward concerning the establishment of a post of United Nations High Commissioner, which would constitute a decisive step in an extremely difficult field. He supported Mrs. Odio Benito's proposal and reserved the right to speak on the subject at a later stage.

15. Mr. EIDE said that the Sub-Commission had had an extremely interesting exchange of views on the advantages and disadvantages of establishing a post of United Nations High Commissioner for Human Rights. The time had come to examine the possible terms of reference of the High Commissioner, on the basis of the proposal by Mrs. Odio Benito, which took account of a number of the misgivings expressed, particularly by Mr. Akram, who had expressed concern lest the post in question might be used for political propaganda. Mrs. Odio Benito's proposal specifically provided that the work of the High Commissioner should not enable any State to obtain a political advantage. It therefore entirely met that important concern.

16. With regard to the functions of the High Commissioner, Mr. Akram had also raised the question of the impartiality of the sources of information which the High Commissioner would use as a basis for action. However, Mrs. Odio Benito's proposal provided specifically that, in urgent situations, the High Commissioner would consult with the other bodies or organizations of the United Nations system and make contact, where appropriate, with the Governments involved in certain particularly serious situations. Even if the sources of information were not entirely impartial, therefore, the High Commissioner would be able to establish the facts through the additional data that would be communicated to him. The proposal by Mrs. Odio Benito was thus satisfactory in that it took account of the concerns which had been expressed the previous day by several members of the Sub-Commission.

17. Mr. MUBANGA-CHIPOYA said that the Sub-Commission had undertaken not only to propose to the Commission on Human Rights terms of reference for the mandate of a High Commissioner but also to study the positive or negative aspects of the establishment of such a post. The lengthy discussions held the previous day on the advantages or disadvantages of the proposal had not been useless, inasmuch as they had enabled the full importance of the proposal to be brought out. Mrs. Odio Benito's proposal seemed to constitute a satisfactory basis for the submission to the Commission. It might be supplemented, but it was already appropriately focused.

18. With regard to the importance of establishing a post of United Nations High Commissioner for Human Rights, he observed that there was indeed a gap to be filled in that area. The Centre for Human Rights was a purely administrative unit which could take no decision, particularly with regard to serious questions, without referring to the Commission on Human Rights. A High Commissioner for Human Rights would play a very useful role, since he would be able to take action in urgent cases of human rights violations. He hoped therefore that Mrs. Odio Benito's proposal would be unanimously approved.

19. Mr. MASUD said that it was a regrettable fact that sometimes, because of its democratic spirit, the Sub-Commission allowed so-called representatives of non-governmental organizations to take the floor for purposes that were purely political.

20. With regard to the accusations made by Mr. Berva, he pointed out that the current President and Vice-President of India, several judges and one third of the Members of Parliament belonged to a religious or other minority group. The party in power had been placed in office largely by the votes of those minorities.

21. Articles 14, 15, 16, 17, 23 and 29 of the Constitution, as well as certain directives, provided for the abolition of any discrimination on grounds of race, caste or religion in all spheres. It could be seen from employment offers appearing in the daily press that preference was often given to those minorities, in whose favour even the age limits were increased.

22. The Supreme Court of Madras and other courts currently had before them complaints brought by members of higher castes against the favourable treatment given to members of the minorities in respect of admission to schools and universities.

23. It was inevitable that, in a country of 700 million inhabitants, there should be incidents, as in the case of all other countries, but those which had occurred in India were not serious; moreover, they had sometimes involved clashes between members of the same community or persons belonging to the same religion. There was nothing in all that to indicate that the Indian Government closed its eyes to discrimination. On the contrary, the abolition of the caste system had been advocated in all political speeches since Mahatma Ghandi, the founder of India, had first set the example in that regard. It was obvious that the complete abolition of certain practices required time, that in no way justified generalizations made on the basis of a few carefully selected cases which, in any event, were usually brought promptly before the courts in the form of an action.

24. He thought that Governments should be given prior notice of cases in which they might be attacked by an organization which abused its privilege in order to engage in criticism of a political nature, so that the Governments concerned could defend themselves with regard to the incidents in question.

25. Mr. CAREY said that the proposal submitted by Mrs. Odio Benito provided for the role of the High Commissioner for Human Rights to be humanitarian in nature. The word "humanitarian" turned up very frequently in United Nations documents, particularly in those relating to the High Commissioner for Refugees; in General Assembly resolutions 34/60 and 34/62, which he had mentioned the previous day; and in a recommendation contained in a study by Prince Sadruddin Aga Khan on human rights and mass exoduses (E/CN.4/1503). Incidentally, it should be noted that the description given in the latter document of the task envisaged for a "Special Representative for Humanitarian Questions" was similar in many ways to that given of the functions of a possible High Commissioner for Human Rights in Mrs. Odio Benito's proposal.

26. Mr. SOFINSKY said he endorsed the comments made by Mr. Masud. He would not dwell on the matter any further, since the arguments put forward by the representative of the non-governmental organization in question were not supported by the facts.

27. It was difficult to understand the reason for the turn which the discussion seemed to be taking. Some members of the Sub-Commission were acting as if the question of the establishment of a post of High Commissioner for Human Rights had already been settled in principle and all that remained to be done was to define his terms of reference. However, diametrically proposed views had been expressed the previous day on that question and no unanimity had emerged from the discussion. Some countries made human rights the cornerstone of their policy. Others, however, were entitled to protect themselves from the intervention of certain States whose foreign policy based on human rights constituted interference in their internal affairs.

28. There was also the matter of the financial difficulties that would be caused by the establishment of a post of High Commissioner, since many States would certainly refuse to co-operate, and that would give rise to further disputes.

29. Some objected that there was already a Director of the Centre for Human Rights, who carried out tasks similar to those to be entrusted to the High Commissioner, while others referred to the existence of a High Commissioner for Refugees. In that connection, he wished to point out that the problems connected with refugees were international in nature inasmuch as they involved at least two States, the State from which the refugees originated and that in which they found asylum, whilst human rights remained a domestic problem unless they came under Article 1 of the Charter.

30. For all those reasons, he was surprised that some members of the Sub-Commission should be lauding a document whose provenance was unknown to him and which he could not examine, since it was in a language with which he was unfamiliar. In any event, he recalled that, in its resolution 1982/22, the Commission on Human Rights had recognized the desirability that major decisions concerning the organization and operation of the United Nations system for the promotion and protection of human rights - and such was indeed the case where the establishment of a post of High Commissioner was concerned - be adopted on the basis of a consensus which took account of different views expressed, in order to ensure their effectiveness. In the case in question, since there was no consensus, any decisions taken would thus be ineffective. Furthermore, in the same resolution, the Commission requested the Sub-Commission to formulate a first study on the question, not to take a decision on a subject which was, after all, quite new. The Sub-Commission should therefore confine itself to that first study, reflecting all points of view, and transmit the study to the Commission, which would then examine it and might, perhaps, request the Sub-Commission to take up the question again at a later stage.

31. Mrs. WARZAZI said that, in the first place, the Third Committee of the General Assembly had been unable to take a decision by consensus on questions relating to human rights. She also recalled that the proposal that a post of High Commissioner for Human Rights be established had been under study by the General Assembly since 1961 and that the Commission on Human Rights had had the proposal before it only since 1977 because the opponents of the idea had found

ways of delaying a decision on the subject. In any event, the final decision would rest with the General Assembly, which would in no way be obliged to take account of the Commission's decision. The Sub-Commission's role was thus not a very important one; the well-defined task entrusted to it by the Commission was to submit a first study on possible terms of reference and not to justify or confirm the arguments previously put forward in favour of the establishment of a post of High Commissioner.

32. The draft submitted by Mrs. Odio Benito was a satisfactory one, except that it should relate exclusively to the draft terms of reference of a High Commissioner and not to the question of the establishment of the post. For her own part, she thought that the Sub-Commission's draft should deal in particular with the ways in which the High Commissioner would take action in urgent situations. Such a proposal would make it possible for the Sub-Commission to meet the requirements of the Commission while, at the same time, recording the negative vote of those of its members who were opposed to the draft providing for the establishment of the post.

33. Mr. WHITAKER said that he had not been convinced by Mr. Sofinsky's arguments. In any event, the Sub-Commission was not required to discuss whether or not a post of High Commissioner should be established and the Chairman should rule out of order any comments made on that subject. Moreover, all the arguments for or against the establishment of the post had been expressed at length in recent years. The previous year, the Sub-Commission had taken a positive decision by 15 votes to 2, with 5 abstentions. For the current year, it had a specific and detailed task to perform. The draft resolution submitted by Mrs. Odio Benito was an excellent document; the Commission would certainly be pleased with the Sub-Commission's proposal on the subject, and it was to be hoped that the post of High Commissioner would be established the following year.

34. In his opinion, the question of the "untouchables" was a particularly important one, since those 105 million persons constituted the largest minority in the world. Constructive measures had been adopted in favour of the untouchables in the Indian Constitution and by the Government. It was regrettable that the Sub-Commission was passing over such an important question so rapidly, since there was no group which should be of such concern to it. It should arrange for an appropriate discussion to be held the following year, based on a careful study of the facts. Such a discussion would be all the more useful, in that constructive lessons could be drawn from the Indian experience. In many ways, India was superior to the United Kingdom, in particular because important offices were held by untouchables whereas, for example, the minorities in the United Kingdom had no seat in the House of Commons.

35. Mrs. de SOUSA said that, on the basis of Mrs. Odio Benito's text, there were a few questions that she wished to ask, namely, whether the Sub-Commission would have to contact the High Commissioner directly or through the Commission on Human Rights; whether the High Commissioner would be able to act directly, having become cognizant of human rights violations; and whether non-governmental organizations would be able to contact him directly. Since the High Commissioner would be called upon to co-operate with political bodies, she wondered how the contradictions that that might cause could be avoided. Moreover, it would be necessary to specify, and make a list of, the human rights violations that warranted immediate action by the High Commissioner.

36. The CHAIRMAN, noting that no other member of the Sub-Commission wished to take the floor on agenda item 4, declared the discussion on the subject closed.

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT (agenda item 10) (E/CN.4/Sub.2/1982/13 and Add.1; E/CN.4/Sub.2/1982/14; E/CN.4/Sub.2/1982/15; E/CN.4/Sub.2/1982/34; E/CN.4/Sub.2/490 and Corr.1)

37. Mr. NYAMEKYE (Deputy Director, United Nations Centre for Human Rights), introducing item 10, said that, since its establishment, the Sub-Commission had played a prominent role in defending the human rights of detained persons, particularly with regard to their protection against torture and other forms of cruel, inhuman or degrading treatment or punishment. Its efforts had led to significant achievements on many levels.

38. At the standard-setting level, the Sub-Commission had prepared in 1979 the draft body of principles for the protection of all persons under any form of detention or imprisonment, which was currently being considered by the Sixth Committee of the General Assembly. Those draft principles were intended to complement the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and other major draft instruments such as the draft convention against torture and other cruel, inhuman or degrading treatment or punishment, which was under consideration in the Commission on Human Rights, and the draft code of medical ethics in relation to torture, which was being examined by the Third Committee of the General Assembly.

39. In the area of international monitoring of respect for human rights, the Sub-Commission had, by a decision taken in 1973, followed by its resolution 7 (XXVII) of 20 August 1974, initiated a procedure whereby it reviewed annually developments concerning the human rights of persons subjected to any form of detention or imprisonment, taking into account any reliably attested information from Governments, the specialized agencies, the regional intergovernmental organizations and the non-governmental organizations in consultative status with the Economic and Social Council, provided that such non-governmental organizations acted in good faith and that their information was not politically motivated, contrary to the principles of the Charter of the United Nations. That procedure, confirmed in Sub-Commission resolution 4 (XXVIII), had been noted by the General Assembly in its resolution 3059 (XXVIII). The Sub-Commission had decided to undertake the annual review in question because it considered that, when the confidential report of the Working Group on Communications was being examined, special attention should be paid to the question of political prisoners. The idea was that such special scrutiny should be distinct from the confidential procedure established under Economic and Social Council resolutions 728 F (XXVIII) and 1503 (XLVIII), and presumably more effective. The annual review had, in fact, helped to highlight various critical issues, including the action of secret security police forces and the deterioration of guarantees in states of emergency, mentioned in Sub-Commission resolutions 4 (XXVIII) and 3 A (XXIX), and had led to the undertaking of certain studies, such as the study on the independence of the judiciary, prepared by Mr. Singhvi, and the study on the impact of states of emergency upon human rights, prepared by Mrs. Questiaux; the annual review had also given rise to various resolutions on disappeared persons and summary executions and to the establishment of new procedures in those fields.

40. Nevertheless, the Sub-Commission had always felt that the potential of the annual review procedure could best be developed through the establishment of a working group on detention, which would examine the comprehensive documentation provided by the Secretariat, including the synopsis of material from non-governmental organizations and

on the basis of that examination, submit to the Sub-Commission proposals for further action. However, the Sub-Commission's recommendations that a pre-sessional group be convened for that purpose had not been approved by the Commission or the Economic and Social Council, because of their financial implications. The previous year, the Sub-Commission had for the first time instituted a sessional working group on detention, which had explored several issues but had not presented formal proposals. At its current session, the Sub-Commission had again established a sessional working group, which had had before it the annual review of developments prepared by the Secretariat (E/CN.4/Sub.2/1982/13 and Add.1) and a synopsis of material received from non-governmental organizations (E/CN.4/Sub.2/1982/14). The Group had held a number of meetings and produced some findings and conclusions that would be presented by its Chairman/Rapporteur.

41. The study of the implications for human rights of recent developments concerning situations known as states of siege or emergency (E/CN.4/Sub.2/1982/15) would be introduced, on 1 September 1982, by Mrs. Questiaux, the Special Rapporteur.

42. Mr. WHITTAKER, Chairman/Rapporteur of the Working Group on Detention, introduced the Group's report (E/CN.4/Sub.2/1982/34). He thanked Mr. Ceausu, Mr. Masud, Mr. Mudawi and Mrs. de Sousa, who had participated assiduously and constructively in the work. It had thus been possible to study many important questions within a brief period of time. The Working Group had accepted a suggestion, mentioned in paragraph 14 of the report, that a telegram should be sent through the Chairman of the Commission on Human Rights; there had been some hesitation in that regard, but after consulting some African colleagues, the Working Group had felt that the telegram might save the life of an eminent African lawyer. Despite a reservation entered by Mr. Ceausu, therefore, the Working Group had therefore considered it appropriate to submit to the Sub-Commission the text appearing in the foot-note concerning paragraph 14, so that it could be communicated to the Chairman of the Commission on Human Rights.

43. He then read out the Working Group's recommendations as contained in paragraph 34 of the report, with his comments upon them. The first two were completely self-explanatory and required no special comments. In formulating recommendation 3, account had been taken of a Scottish law under which a person who was arrested had to be tried within the following 90 days or released; Mr. Masud had also advocated anticipatory bail. No national legislation was perfect in that regard, but the example of some countries was certainly beneficial. Recommendation 4, concerning incommunicado detention, was based in terms of substance on the synopsis of material (E/CN.4/Sub.2/1982/14). Recommendation 5 was prompted by the desire to discourage by all means the likelihood of torture. Recommendation 6 stipulated that confessions must be made before a magistrate; that guarantee did not yet exist, for example, in the United Kingdom, but was shortly to be introduced.

44. As for recommendation 7, he wished to stress the fact that, to be effective, inspections of places of detention should be unannounced. There was the case of a prison in a Latin American country where, after the announcement of an inspection, soldiers had taken the places of the prisoners, putting on their uniforms, and beds taken from a hospital had been placed in the cells. Only unannounced inspections could have a beneficial effect, including a preventive one, on prisons and places of interrogation. They would, for example, certainly help to improve the conditions that had led to several suicides in the Johannesburg Police Headquarters.

45. According to recommendation 8, trials should not be held in camera, apart from a few exceptions which were mentioned. In connection with those exceptions, he stressed that the fear of testifying existed in many places, particularly in Northern Ireland. In some cases, plaintiffs should be protected by refraining from publishing their names in the newspapers, particularly in cases of rape, but the press should not, however, be prevented from attending the trials.

46. Extra-territorial abduction, the subject of recommendation 9, was a form of violation that seemed to be spreading, in Africa, Latin America and elsewhere. Attention was drawn in paragraph 14 of the Working Group's report to a violation of precisely that kind. Political opponents and refugees were, for example, abducted by military personnel in civilian clothing, were taken across the frontier and were thrown into prison. To put an end to such practices, an international habeas corpus based on national habeas corpus provisions might be envisaged.

47. With regard to recommendation 10, he stressed that it was also necessary to prevent the execution of a convicted person immediately after sentence was passed; there were in fact cases in which the period was only 24 hours.

48. He suggested that the following sentence should be added to the text of recommendation 11: "In particular, the Commission on Human Rights and its Special Rapporteur on Summary or Arbitrary Executions should pay special attention to undertaking concrete measures to acts to prevent cases and alleviate situations of summary or arbitrary executions."

49. He next drew attention to the list of questions concerning detention with which the Sub-Commission should be particularly concerned (recommendation 12); consideration of those questions would necessarily require the availability of more detailed international data.

50. According to recommendation 13, if - as was to be hoped - a working group was once again established at the following session, it should give special attention to the problem of torture or cruel, inhuman or degrading treatment or punishment. The working group should have more detailed information at its disposal to enable it to evaluate the extent to which torture was used. It was difficult to obtain information on the subject, since very few Governments were prepared to acknowledge that torture was used in their countries. Nevertheless, the Sub-Commission should endeavour to secure the greatest possible amount of information. All nations condemned torture and no one defended it; yet it was utilized in all parts of the world, including Europe.

51. In recommendation 14, the Working Group requested that a greater number of meetings should be allocated to the group to be set up at the following session, since although it had worked with all possible concentration and speed, it had been unable during the current session to make an in-depth study of certain very important questions. Priority had not been given to the problem of disappeared persons because a very active group of the Commission on Human Rights was dealing with that already; it should be noted, however, that it was a problem that could not be divorced from other questions before the Sub-Commission.

52. The following recommendation required no comment.

53. In recommendation 16, its last recommendation, the Working Group expressed its concern at the extent of military jurisdiction which, in certain countries, was used as a pretext to justify inadmissible methods and behaviour in courts and prisons.

54. Mr. CEAUSU said that when the Working Group, of which he was a member, had prepared the recommendations contained in the report just presented, they had been ten in number. In the final version which had just been read out however, and which he had not seen previously, there were 16 recommendations and the wording of some of those that had appeared in the original text, e.g. recommendations 2, 10 and 11, had been amended. He did not approve of that method of working and was thus unable to associate himself with the recommendations that had just been presented.
55. Mr. MASUD said that he endorsed the introductory comments made by Mr. Whitaker on the Working Group's report. In connection with anticipatory bail, he had just received the text of the relevant provision of the Indian Code of Criminal Procedure, had given a copy of it to the Secretariat and had so informed the Chairman of the Working Group. He proposed the addition to the text of recommendation 13 (E/CN.4/Sub.2/1982/34, para. 34, subparagraph 13) of the following sentence: "A procedure of anticipatory bail should be introduced in national legislation of Member States to prevent arbitrary arrest and consequential torture and harassment". Anticipatory bail was a new concept which could be of great assistance in certain difficult cases and it would thus be extremely useful if it were included in the recommendations appearing in paragraph 34. If the Chairman of the Working Group felt that that was not possible at the current stage, the report should simply state that "a greater study should be made on the introduction of anticipatory bail".
56. The CHAIRMAN said that anticipatory bail constituted a useful recourse against arrest without good grounds. It was for the court to decide, having examined the application, whether to grant or refuse such bail. That provision existed already in a number of countries.
57. Mr. KHALIFA said that, first of all, he hoped that the problem raised by Mr. Ceausu concerning the texts of the recommendations would be resolved, since the members of the Sub-Commission were entitled to be able to take it that the report faithfully reflected the discussions that had been held in the Working Group, including any views or differences of views that might have been expressed.
58. While he welcomed the Working Group's report (E/CN.4/Sub.2/1982/34), he noted that the question of human rights of detained persons was still being examined from an idealistic and theoretical standpoint and that priority was still being given to the making of studies and assessments, which served only to produce new conventions and declarations. However, the goal of the Sub-Commission was not to produce texts but to provide assistance to the victims of violations.
59. He would like some clarification on what the Working Group meant, in recommendation 13 (paragraph 34), by the words "hearing and receiving information". He wondered whether it was a question of legislative texts, assessments and further studies or of information on specific cases involving violation of the rights of detainees.
60. The item had been included in the Sub-Commission's agenda because it had noticed that most of the communications it had to examine concerned persons subjected to some form of detention or imprisonment. The intention of the Sub-Commission, in deciding to deal with the matter, had been to go beyond a mere study of the problem and to try to help detainees whose rights were being violated. It had therefore requested the Commission on Human Rights to authorize it to establish a working group that would meet prior to each session to study the question. Unfortunately, the Commission had not acted on the resolution by the Sub-Commission, which had thus been constrained to establish a sessional working group. Paragraph 34, subparagraph 13 was not, he thought, clear and it was

essential to specify what the rules and practices were that the Working Group should follow in carrying out its task. There were, in fact, several sets of rules, laid down in resolutions of the Commission on Human Rights and the Economic and Social Council, which applied, according to the particular case, to the various activities of the Sub-Commission.

61. He thought that the Working Group had been quite right to decide not to consider the question of disappeared persons, since that question was already being dealt with by other organs of the Commission on Human Rights.

62. Recommendations 10 and 12 dealt with the most disturbing aspect of the problem of detainees, namely that of summary executions and disappeared persons. The previous year, in its resolution 1 (XXXIV), the Sub-Commission had expressed serious concern over information relating to the summary execution of persons who were subsequently reported to have "disappeared". In that connection, it was surprising that the annotations to the agenda for the current session made no mention, under item 10, of General Assembly resolution 36/22 on arbitrary and summary executions. That was a very important resolution, since the General Assembly, after of course condemning the practice, requested the Committee on Crime Prevention and Control to examine the problem at its seventh session with a view to making recommendations. That Committee's terms of reference had an obvious link with the work of the Sub-Commission and the annotations to the agenda should have officially informed the Sub-Commission of the task entrusted to the Committee and of its work in that area. There seemed to be a certain lack of communication between the various United Nations organs concerned with the question, and he hoped that steps would be taken to remedy the situation.

The meeting rose at 1 p.m.