

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL
E/CN.4/1983/SR.27
23 February 1983
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Thirty-ninth session

SUMMARY RECORD OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 18 February 1983, at 10 a.m.

Chairman: Mr. OTUNNU (Uganda)
later: Mr. GONZALEZ DE LEON (Mexico)

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The meeting was called to order at 10.10 a.m.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS THIRTY-FIFTH SESSION (Agenda item 20) (continued)
(E/CN.4/1983/4; E/CN.4/Sub.2/1982/20 and Add.1; E/CN.4/Sub.2/1982/29)

1. Mrs. PURI (India) said that, as an independent body of experts, the Sub-Commission on Prevention of Discrimination and Protection of Minorities should continue to make a specialist's contribution to the activities of the Commission and ultimately the United Nations system as a whole. The Sub-Commission had by and large fulfilled expectations but in recent years there had been disconcerting trends and developments in its activities. There was an increasing tendency for alternates, sometimes government officials, to participate in the work of the Sub-Commission on a regular basis. While acceptable on a temporary basis in exceptional circumstances, such a practice was not in keeping with the independent role and non-political functioning of the Sub-Commission. The Commission should take action to eliminate the possibility for Governments to replace at will experts originally nominated by them and elected by the Commission. It should also impress on States nominating persons for membership of the Sub-Commission that they should act with sincerity of purpose and refrain from tampering with the Sub-Commission's character.
2. Her delegation had been alarmed by the views expressed by some members of the Sub-Commission on the possibility of the latter's renaming itself, acquiring wider jurisdiction and independent status, and reporting directly to the Economic and Social Council. There seemed to be a desire to alter the existing relationship between the Commission and the Sub-Commission. That was something which the Commission could not brook and it should unequivocally convey its views on the matter to the Sub-Commission.
3. In recent years, some members had attempted to induce the Sub-Commission to arrogate to itself functions which were quite outside its terms of reference as laid down in various resolutions of the Commission. Under those resolutions, the Sub-Commission's central function was to prepare studies and make recommendations on human rights matters with specific reference to prevention of discrimination and protection of minorities. If the Sub-Commission ventured into fresh pastures, it would lose its unique character and thus destroy itself. Accordingly, for its own long-term good, the Sub-Commission should refrain from assuming responsibilities which were not part of its mandate. By the same token, it should perform its assigned tasks without discussing its status and relationship with the Commission and other United Nations bodies.
4. Duplication of work between the Sub-Commission and the Commission, as well as between the Sub-Commission and its working groups, would lead to redundancy. The Sub-Commission should therefore confine itself to the specialized areas of work assigned to it and seek to streamline its agenda.
5. Her delegation welcomed the establishment of a Working Group on Indigenous Populations but warned against any attempt to raise issues which did not fall strictly within its purview or to politicize its work. A number of members of the Sub-Commission had highlighted the importance of avoiding a selective approach when listing examples from different countries. The Special Rapporteur's report on slavery (E/CN.4/Sub.2/1982/20 and Add.1) suffered from that very defect in that it contained references to debt bondage, which the Chairman of the Working Group on Slavery had referred to as a legacy of colonial rule in the Indian subcontinent.

In India, bonded labour was prohibited under the Constitution, and legislation had been enacted to abolish the practice, declare it a cognizable offence and establish penalties for offenders. The Anti-Slavery Society for the Protection of Human Rights had itself admitted that the Prime Minister of India was taking a personal interest in combating the practice and that efforts to that end featured prominently in the Government's programme. As a result of the measures taken by the Government, some 133,550 bonded labourers had been freed and of that total 119,062 had been rehabilitated. However, the battle was by no means over and formed part of the much wider battle against poverty which was being vigorously pursued by her Government. The Sub-Commission had noted that institutional arrangements for the enforcement of rights were important in dealing with the problem, especially democratic institutions such as a parliament, an independent judiciary and a free press. Her delegation considered the political and social will to deal with the problem to be likewise important. In all those respects, India passed the severest test.

6. The Sub-Commission's record in preparing studies on various aspects of human rights was excellent, and the considerable financial outlay involved was fully justified. There was a tendency, however, to undertake studies without reference to work done on a subject in the past and to spin out over several years a study which should have been completed in one or two. The Sub-Commission must have a sharp focus if it was not to degenerate into an empty academic body divorced from realities. It must also show greater self-restraint in recommending actions involving financial expenditure, including the publication of studies.

7. The Sub-Commission had hastily drawn up terms of reference for a United Nations High Commissioner for Human Rights but there was no evidence that it had made a study of the matter. The Sub-Commission should be asked in future to comply with the specific directions of the Commission. Unless the important question of a High Commissioner for Human Rights was discussed on the basis of a study carried out by the Sub-Commission, there would be no point in the Commission taking up the draft terms of reference which had been prepared.

8. Mr. POUYCUCROS (Cyprus) said that the report of the Sub-Commission (E/CN.4/1983/4) reflected the great amount of work it had done during the period under review. The reports and studies prepared by several members of the Sub-Commission were proof of the sincere desire of all members to make a constructive contribution in the field of human rights. To cite but one example, the Sub-Commission had played an important role in implementing the Programme for the Decade for Action to Combat Racism and Racial Discrimination. His delegation fully agreed that racial discrimination was a persistent evil and that concerted and sustained efforts by the international community were required in order to eradicate it. It also fully supported the Sub-Commission's efforts to define specific criteria for determining gross violations of human rights and to have crimes already identified by the United Nations as constituting a threat to peace and security declared crimes against humanity.

9. His delegation endorsed the view expressed by the delegation of Australia regarding the problem of alternates.

10. He commended the Special Rapporteur for his excellent work on the question of slavery and hoped that the study he had prepared would help to ensure that the abhorrent slavery-like practices which still existed would be banished from the earth.

11. The suggestion that the International Law Commission should be asked to study the phenomenon of missing and disappeared persons with a view to determining whether enforced disappearances could be regarded as a crime against humanity was also very welcome.
12. The guidelines, principles and guarantees for the protection of persons suffering from mental disorder represented useful work. It was to be hoped that, through good will and co-operation, final agreement could be reached on that subject.
13. The importance attached to the principle of the indivisibility and interdependence of all human rights was to be commended, as was the attention given to the concept of the right to development. The right to freedom from hunger and its relevance in the context of the new international economic order should also be studied.
14. The attempt to identify the basic legal, political, social and economic obstacles impeding recognition of the individual in international law was another important contribution of the Sub-Commission.
15. Mr. MACCOTTA (Italy) observed that, in recent years, the Commission had had mixed feelings about the reports of the Sub-Commission. On the one hand, the Commission had recognized the value of the work carried out by the Sub-Commission but, on the other, it had noted that the Sub-Commission should be more mindful of its terms of reference and focus on the tasks assigned to it by the Commission and the Economic and Social Council. The Commission had not, however, specified which of the Sub-Commission's activities it considered to fall outside the latter's terms of reference or to duplicate its own.
16. In connection with the list of studies contained in annex III to the Sub-Commission's report, his delegation felt that perhaps too many studies had been undertaken in a limited period of time. It nevertheless considered all of them to be useful, with the exception of the annual update of the list of banks, transnational corporations and other organizations assisting the colonial racist regime in South Africa. With regard to that list, his delegation disagreed with the view that the mere fact of having trade relations with South Africa implied support for its policy of apartheid. It attached special importance to the analysis of current trends and developments in respect of the right of everyone to leave any country, including his own, and to return to his country, and to have the possibility to enter other countries. Freedom of movement was a growing phenomenon in contemporary life, and the study of that right, which dated back to 1963, needed to be updated in the light of subsequent developments.
17. With regard to the Sub-Commission's consideration of violations of human rights, violations of the rights of individuals subjected to any form of detention or imprisonment, and the relationship between the new international economic order and human rights, his delegation felt that the first two subjects were within the purview of the Sub-Commission, either explicitly or implicitly. As to the third, the importance which the developing countries attached to the new international economic order and human rights justified the work which the Sub-Commission was doing to assist the Commission, whose agenda did not regularly include that item.
18. Without a doubt, the work of the Sub-Commission often duplicated that of the Commission and the General Assembly but such duplication was not the result of any overweening ambition on the part of the Sub-Commission or any deliberate attempt to exceed its terms of reference. Duplication seemed to be characteristic of all

institutions concerned with respect for human rights and fundamental freedoms and resulted from factors which included the unsatisfactory human rights situation in the world and the absence of a unified interpretation of the meaning of "international co-operation" in the field of human rights. In that connection, he wondered whether a State which refused to receive a special rapporteur or working group of the Commission or a special representative of the Secretary-General, or which agreed to receive a special rapporteur only in his personal capacity, could be said to meet the requirements of international co-operation. The chief factor, however, was the rigid application of the principle of non-interference in the domestic affairs of States to cases of mass violations of human rights. All United Nations bodies dealing with human rights, including the Sub-Commission, must therefore redouble their efforts to strengthen the existing mechanisms for the promotion and protection of human rights and to establish new mechanisms.

19. The Sub-Commission had given high priority to a study of the possibility of establishing the post of United Nations High Commissioner for Human Rights and had requested the secretariat to prepare a synopsis of formal proposals and amendments presented to the twenty-third session of the Commission and the thirty-second session of the General Assembly. That synopsis could provide a sound basis for an unhurried study of the question so that, on the basis of the Sub-Commission's proposals, the Commission could take a decision on the desirability or necessity of trying the proposed new arrangement, which would probably enable the United Nations to act more speedily and effectively in the human rights field.

20. His delegation shared the concern of other members about the Sub-Commission's consideration of the question of its status, activities and relationship with the Commission and other United Nations bodies. It nevertheless regarded the initiative taken by the Sub-Commission as a sign of its legitimate aspiration to have a clearly-defined status and its desire to contribute to the study of all questions within the purview of the Economic and Social Council on which the Commission was empowered to make recommendations. The issues involved were so important that the Sub-Commission had wisely deferred consideration of the formal proposals made by its members until its next session. However, the question of alternates required a decision by the Commission at the current session. The use of advisers who were government officials or members of the Commission was not in keeping with the independent character of the Sub-Commission, and his delegation was prepared to support any formal proposal aimed at remedying the current situation.

21. Mr. CALERO RODRIGUES (Brazil) welcomed the fact that the Commission had in recent years allocated more time for its consideration of the reports of the Sub-Commission. Since those reports covered a great many questions, however, it was still impossible to give all of them the attention they deserved. The Commission might, therefore, wish to consider the possibility of establishing a working group to examine the reports of the Sub-Commission.

22. The question of the relationship between the Commission and the Sub-Commission should not be over-emphasized. He was confident that the two bodies could come to a reasonable understanding of their respective roles. There should be no question of rivalry between the two, and if individual reactions in the Sub-Commission had at times been excessive, the Sub-Commission as a whole had never taken a position against the Commission. As one of the members of the Sub-Commission had recently observed, only the enemies of human rights stood to gain from a situation in which the Sub-Commission and the Commission were at odds with each other.

23. The question of the Sub-Commission's title was not of fundamental importance, and his delegation could agree to some other title which would be more in keeping with its current mandate.

24. He endorsed the suggestions made by the representative of the United Kingdom concerning the use of alternates in the Sub-Commission.

25. There was a need for the Sub-Commission to be kept informed of the views expressed in the Commission concerning its work. In the case of the International Law Commission, the secretariat regularly prepared summaries of the debates in the Sixth Committee of the General Assembly for use by members of that Commission. A similar procedure might be adopted with respect to the Sub-Commission. The most important consideration was the working relationship between the Commission on Human Rights and the Sub-Commission, and he suggested that the Commission should include in its resolution on the item an invitation to the Chairman of the Sub-Commission to attend the Commission's sessions on a regular basis or to designate another member of the Sub-Commission to attend in his place.

26. Of the 10 draft resolutions recommended to the Commission for adoption, 6 concerned studies undertaken by the Sub-Commission. His delegation could support draft resolution III, recommending that the report prepared by Mr. Whitaker should be given the widest possible distribution, even though not all the conclusions contained in the report were endorsed by all delegations. Under draft resolution I, the Commission would recommend that the Sub-Commission should be authorized to appoint one of its members as a Special Rapporteur to revise and update the study on the question of the prevention and punishment of the crime of genocide. When the study had been prepared in 1978, it had been useful, but he wondered whether there was enough material to justify its revision and updating and what would be gained by that course, especially since genocide had been covered in an international instrument and universally condemned.

27. Draft resolution II, containing a recommendation for the preparation of a study on the right to adequate food as a human right was not well worded and the fifth preambular paragraph was especially awkward. It was hardly necessary to prepare a study to conclude that food was essential to man. The recommendation in paragraph 1 that the Special Rapporteur should give special attention to the normative content of the right to food and its significance in relation to the establishment of the new international economic order was somewhat far-fetched. Giving special attention to that subject was unlikely to improve the real food situation of the millions of starving people in the world.

28. Draft resolution VIII contained a recommendation that the Economic and Social Council should authorize the Sub-Commission to appoint one of its members to undertake a closer study of the advisability of strengthening or extending the inalienability of the rights enumerated in article 4, paragraph 2, of the International Covenant on Civil and Political Rights. In his opinion, that exercise should be undertaken by the human rights bodies established in pursuance of that Covenant, rather than by the Sub-Commission.

29. His delegation had no objection to draft resolutions IX and X relating to two studies prepared by Mrs. Daes, but it found them somewhat theoretical, especially the study on the status of the individual and contemporary international law, and as such unlikely to contribute directly to the improvement of the human rights situation.

30. His delegation had serious difficulties with draft resolution VI, under which the Sub-Commission would be authorized to make arrangements for one or more of its members to visit, with the approval of the Government concerned, any country regarding which the Commission had received allegations of gross and consistent violations of human rights. The Commission had already established a mechanism for investigating massive violations of human rights, and he saw no point in authorizing the Sub-Commission to duplicate that mechanism.

31. His delegation also had serious doubts about draft resolution IV concerning the effects of gross violations of human rights on international peace and security. No one doubted that there was a close relationship between human rights violations and international peace and security, but it was not for the Commission to make recommendations to the Security Council about how it should deal with human rights violations. In paragraph 2 of the draft resolution, the General Assembly was requested to invite the International Law Commission to take mass and flagrant violations of human rights and the comments on such violations made by the members of the Sub-Commission into account when elaborating the draft code of offences against the peace and security of mankind. As a member of the International Law Commission, he did not believe that that would be useful.

32. In draft resolution V, the General Assembly was requested to invite the International Law Commission to take into account, when elaborating the draft code of offences against the peace and security of mankind, the opinions expressed by the members of the Sub-Commission on the question of missing and disappeared persons. If the draft code of offences was to deal with serious violations of human rights of an international nature, it should not go into excessive detail about missing and disappeared persons. His delegation would therefore not vote in favour of draft resolution V.

33. In its resolution 1982/10, the Sub-Commission made wide-ranging and precise recommendations concerning the human rights of persons subjected to any form of detention or imprisonment, but since that matter was currently being considered by the General Assembly and a draft body of principles on the subject was being drawn up, the Sub-Commission should not make any recommendations to the General Assembly on that subject. Referring to paragraph 17, in which the Working Group on Detention was urged to give special attention to hearing and receiving information on torture or cruel, inhuman or degrading treatment, he said that such a practice would constitute a deviation from normal procedures and he saw no reason to approve it.

34. In conclusion, one general point he wished to make was that the Sub-Commission sometimes took decisions too hastily.

35. Mr. SOFINSKY (Union of Soviet Socialist Republics) said that the Sub-Commission had been established as a subsidiary expert body of the Commission, and its status, functions, duties, mandate and scope had been clearly defined. It was required to undertake studies and make recommendations to the Commission on the prevention of all forms of infringement of human rights and on the protection of racial, national, religious and linguistic minorities, and to carry out any other tasks entrusted to it by the Economic and Social Council or the Commission. The Sub-Commission sometimes did precisely that. It considered such current human rights problems as: racism and apartheid; assistance to the racist regime in South Africa from certain countries,

their banks, insurance companies and transnational corporations; Israel's violation of human rights in the occupied Arab territories and its aggression against neighbouring Arab States, which had been crowned by its invasion of Lebanon and its genocide against the Palestinian people; gross and massive violations of human rights by countries with dictatorial regimes, primarily Chile, El Salvador and Guatemala; discrimination against indigenous populations; child labour; the inequality of women; slavery; and the problems connected with the establishment of the new international economic order.

36. However, some of the trends which had emerged in the Sub-Commission's work, especially at its past three sessions, should be watched carefully. They included the arrogation to itself of functions which were not within its mandate, as a result of which it had focused not on truly relevant questions but on inflating its role in the human rights system. In a series of resolutions, it had made recommendations directly to States, the Economic and Social Council, and the Commission. Such action did not promote efficiency in its work and greatly reduced the time which could be devoted to the truly important questions which it was required to consider.

37. In addition, it had failed to comply with the specific mandates contained in General Assembly resolution 34/24 and Commission resolution 14 D (XXXVI) concerning the preparation of a study on means of ensuring the implementation of the United Nations resolutions on apartheid, racism and racial discrimination and in Commission resolution 38 (XXXVII) concerning a study of the use of the results of scientific and technological progress for the realization of the rights to work and to development. The millions of unemployed and their families who were being denied those rights in many developed countries were counting on the Sub-Commission to make progress towards the solution of that problem.

38. At its thirty-seventh and thirty-eighth sessions, the Commission had adopted without a vote a number of resolutions reminding the Sub-Commission of its mandate. The Sub-Commission had ignored all of the Commission's criticisms and proposals, however, and had continued to rebel against it. At its latest session, the Sub-Commission had devoted six meetings to the discussion, as a matter of priority, of its status and activities and its relationship with the Commission and other United Nations bodies. That matter had long before been resolved by the United Nations bodies which were responsible for doing so, but the specific tasks which the Sub-Commission was called upon to perform remained unfulfilled.

39. The Commission should once again remind the Sub-Commission of its mandate, call upon it to carry out the tasks entrusted to it in the Commission's resolutions, and urge it to use its time more rationally and not waste time on fruitless discussions of its status and relationship with the Commission. There was no need to change the Sub-Commission's status, functions or mandate.

40. At its latest session, the Sub-Commission had adopted resolutions containing inappropriate recommendations, such as resolution 1982/27, which it had adopted not by consensus, as the Commission had recommended but by a majority vote, which had in fact represented a minority. Sixteen members, or fully 75 per cent of the membership, had either voted against it, had abstained or had not participated in the vote. That sort of resolution had very little force and could only lead to disorganization and confrontation in the activities of the human rights system.

41. It was unfortunate that, even though the Sub-Commission's sessions had been extended, their effectiveness had not improved. The discussion of items on its agenda had not become more substantive. The agenda was overburdened, yet it continued to grow from session to session. At the most recent session, many new questions had been disguised as subitems, whereas a number of unresolved questions which the Sub-Commission had long had before it had been combined into one item. Such actions were merely attempts, in some cases politically motivated, to avoid carrying out the tasks with which it had been entrusted.

42. Most of the Sub-Commission's decisions and resolutions were adopted during the final few hours of its session, practically without discussion and without due consideration of various viewpoints based on different traditions, practices, legal systems and public institutions. The resolutions often covered questions which had not been discussed or even mentioned during the session. All of that was endorsed by a majority, but it had long been apparent that when a position was not just, a majority vote was called for. Human rights did not stand to gain from that approach; in fact, the very practice was a violation of human rights - those of the minority.

43. The Commission should draw attention to the Sub-Commission's shortcomings. As the representative of the United Kingdom had put it, the Sub-Commission should not search for new parents while its real parents were still living; and in any case the Economic and Social Council had not expressed any interest in adopting such a capricious and strong-willed child.

44. His delegation had several doubts about the resolutions recommended to the Commission for adoption and would express them at a later stage.

45. Mr. González de León (Mexico) took the Chair.

46. Mrs. OGATA (Japan) observed that her delegation had for many years looked on the Sub-Commission as a unique body, consisting of independent experts and persons of distinction engaged in in-depth studies relating to the protection and promotion of human rights. It was impressed by the range of issues taken up by the Sub-Commission and hoped that the latter would concentrate increasingly on those areas where it could exercise its professionalism and independence. The studies contained in documents E/CN.4/Sub.2/1982/7, 15 and 17 were examples of the kind of work that provided invaluable help to the Commission.

47. She noted that the Sub-Commission was reviewing its status and activities. While it was up to the Sub-Commission to determine how best to proceed with its work, her delegation wished to make some comments on the matter as a member of the Commission, the Sub-Commission's parent body.

48. With regard to the Sub-Commission's relationship with the Commission, her delegation believed that the roles of the two bodies must be essentially complementary. They must support each other in discharging their respective mandates and also strive to avoid duplication of work. Her delegation did not agree that members of the Sub-Commission should be elected by the Economic and Social Council or report directly to it. Such an arrangement would create undue difficulties for the Council, which was already overburdened in its efforts to co-ordinate the work of its subsidiary bodies.

49. With regard to the proposed redesignation of the Sub-Commission to account for the expansion of its work and mandate, her delegation endorsed the need to consider an appropriate redesignation but believed that the title "Sub-Commission" should be retained.

50. As to the use of alternates in the Sub-Commission, her delegation fully concurred with the view that alternates should have the same qualities of independence and expertise as the experts that they replaced. It therefore supported the proposal that alternates should be nominated at the same time as members of the Sub-Commission.

51. On the question of the right of observer delegations to speak in the Sub-Commission, her delegation endorsed the view expressed by the Australian delegation. Although the Sub-Commission was a body of independent experts, observers representing their respective Governments had a legitimate interest in making their position known when issues affecting them directly were considered. In such cases, the Sub-Commission should give observers adequate opportunities to participate in its deliberations, in accordance with rule 69 of the Commission's rules of procedure.

52. Her delegation would comment on the resolutions contained in the Sub-Commission's report at a latter stage but wished to state that it had serious reservations regarding draft resolutions IV and VI.

53. Mr. BOBINGER (Federal Republic of Germany) said his delegation welcomed the fact that, at the current session, the report of the Sub-Commission had been placed in the first half of the Commission's agenda. It took that as an indication of the Commission's willingness to give more consideration to the Sub-Commission and its report than in the past.

54. As the representative of the United Kingdom had noted, the Commission's consideration of the Sub-Commission's reports had in recent years been marked by a division between supporters and critics of that body. His delegation fully agreed that such a division was unfortunate, and it was pleased to note that the representative of the Soviet Union held the same view. Surely all members of the Commission would agree that, whatever criticisms they might have of the Sub-Commission, the latter had made significant contributions to the Commission's endeavours to advance the cause of human rights?

55. The Sub-Commission was unique in that it was made up of independent experts. It should do everything, and the Commission should help it, to retain that characteristic. Unfortunately, participation by its elected members had slackened in recent years and the habit of appointing alternates, most of them members of local permanent missions, had increased. That was a most regrettable development and his delegation appealed to the elected members to exercise their privilege to contribute to the work of the Sub-Commission. The Commission should pay attention to that problem and help the Sub-Commission by regulating the representation of its members by alternates. A satisfactory solution might be to elect alternates and members simultaneously.

56. With regard to the possible redesignation of the Sub-Commission, some guidance was clearly necessary from the Commission. The Sub-Commission was and must remain a subsidiary body of the Commission, and that fact must be clearly indicated in any future name. It would also be preferable to make the independent expert status of its members clear in any new designation.

57. The desire of some members of the Sub-Commission to cut the latter's ties with the Commission and establish direct relations with the Economic and Social Council was another matter that called for guidance from the Commission, which should ask itself whether it had always taken the activities of the Sub-Commission seriously enough. The Commission was sometimes very quick to ask the Sub-Commission to make a

study but hardly took the time to examine that study when it was eventually submitted. It was therefore up to the Commission to take the first step towards clarifying its relations with the Sub-Commission. That could best be achieved by limiting the number of studies which it asked the Sub-Commission to undertake. The Sub-Commission, for its part, could try not to duplicate the work of the Commission, for instance by curtailing its resolutions on specific countries. By concentrating its activities on a few essential questions, the Sub-Commission might also be able to prepare the annual report on violations of human rights and fundamental freedoms which the Commission had requested in its resolution 8 (XXIII) but never received.

58. With regard to the Sub-Commission's report, his delegation was grateful to the Sub-Commission for having responded to suggestions made at the Commission's thirty-eighth session, for instance by including in its latest report a list of all studies under preparation. In that connection, his delegation considered the guidelines drawn up by the sessional working group on the human rights of persons subjected to any form of detention or imprisonment to be a very important step towards strengthening human rights in that field. It also welcomed the completion of the report on discriminatory treatment of racial and other groups in the administration of criminal justice and the study on the implications for human rights of recent developments concerning situations known as states of siege or emergency. Lastly, the drafting of terms of reference for a High Commissioner for Human Rights constituted a major achievement.

59. For his delegation, the unique importance of the Sub-Commission lay in contributions such as those he had mentioned. The Sub-Commission was at its best in activities which helped to strengthen the protection of individual human rights, and the Commission should do everything possible to help the Sub-Commission concentrate on those activities.

60. Mr. BALLESTEROS (Uruguay) recalled that his delegation had already commented on Sub-Commission resolutions 1982/10 and 32 in its statement on agenda item 10 (a). On that occasion, it had also stated that it could not support draft resolution VIII unless its objections to the study by Mrs. Questiaux were taken into consideration.

61. The Commission should pay tribute to the Sub-Commission for its dedicated and extensive work. His delegation welcomed the presence of certain members of the Sub-Commission at the Commission's current session and hoped that that would enable observations made in the Commission to be transmitted direct to the Sub-Commission and borne in mind so as to promote the necessary co-ordination between the two bodies. His delegation reiterated its willingness to co-operate constructively with the Sub-Commission so that the latter might achieve positive and viable results. Like the delegation of the Soviet Union, his delegation stood between those that criticized and those that supported the Sub-Commission: it supported the Sub-Commission's work but reserved the right to make constructive criticism.

62. With regard to the membership of the Sub-Commission, his delegation had repeatedly drawn attention to the anomalous way in which alternates were appointed to the Sub-Commission. From a strictly legal standpoint, it wished respectfully to dissent from the opinion given by the United Nations Office of Legal Affairs which had enabled that anomaly to persist. His delegation agreed with the interpretation put forward by the representative of Brazil, namely that rule 13 (2) of the rules of procedure was not applicable in the present case. Thanks to the interpretation given by the Office of Legal Affairs, however, that rule was being applied and alternates were being appointed without their qualifications and independence being properly

scutinized. Many alternates had done valuable work, but that was not true of all of them and the opinion given should therefore be reviewed. His delegation supported the United Kingdom proposal on that question.

63. The agenda of the Sub-Commission had become extremely heavy as its tasks multiplied and its members were appointed Special Rapporteurs, sometimes for more than one topic. That undermined the effectiveness of its work by preventing due co-ordination with the Commission, which was forced to consider superficially a proliferation of reports, resolutions, decisions and initiatives that really required detailed analysis because of their political and legal implications.

64. With regard to relations between the Sub-Commission and the Commission, his delegation noted that, at its thirty-fifth session, the Sub-Commission's approach to its relationship with the Commission had improved, although there were still some exceptions which his delegation hoped would be corrected in the future. In that connection, he regretted that the Chairman/Rapporteur of the Working Group on Detention or Imprisonment had not been present when the Uruguayan delegation had commented on that Working Group under item 10. Glaring examples of the exceptions to which he had referred were draft resolution VI and paragraph 17 of Sub-Commission resolution 1982/10. Both provisions exceeded the power of the Sub-Commission and duplicated procedures provided for elsewhere in the United Nations. His delegation was also concerned about expressions such as that used in paragraph 4 of resolution 1982/13. The Sub-Commission must refrain from appearing to monitor the work of the Commission when its relationship with the Commission was precisely the opposite. It was the Sub-Commission's task to suggest and recommend steps to the Commission, but it must not exceed its functions and set itself up as an independent body or as a watchdog for the Commission's work, still less take decisions that could be adopted only by higher bodies such as the Commission or the Economic and Social Council.

65. As an observer at the Sub-Commission's meetings, his delegation had noted with concern that in the consideration of situations in specific countries, there was a certain lack of co-ordination with regard to the information which the secretariat provided to the Sub-Commission and that which was provided on the same countries when they were dealt with in the Commission. Although the Sub-Commission dealt with the same cases as the Commission in private session, and moreover made recommendations concerning communications to be transmitted to the Commission, his delegation had found that the members of the Sub-Commission were not aware of action being taken in the Commission with regard to specific countries. His delegation therefore suggested that, for the Sub-Commission's next session, the secretariat should ensure that, when they dealt with specific countries, members of the Sub-Commission received all the information available on those countries, including information on what the Commission was doing, inter alia under the procedure provided for in Economic and Social Council resolution 1503 (XLVIII). That would enable the Sub-Commission to be fully informed of the situations it was considering and thus to form a more complete and fairer judgement. It would also prevent the experts from making serious errors, as had happened when they had requested a certain country to allow a United Nations mission to visit it when such visits had been going on for several years under the auspices of the Commission.

66. The Sub-Commission should also ensure that, when considering the item on the violations of human rights and fundamental freedoms in all countries, experts were fully aware of what situations the Commission was dealing with under the resolution 1503 procedure, in order to preserve the confidentiality of that procedure and avoid public debate of matters that were being dealt with under a special system. To that end, it would be preferable to consider the item on communications concerning human rights before the item on the violation of human rights and fundamental freedoms in all countries.

67. His delegation had serious reservations about the resolution 1503 procedure, which appeared to be somewhat erratic. Many communications were received, but communications concerning some countries were often not considered while those concerning others were considered at some length.

68. With regard to the Sub-Commission's relations with observers, particularly government representatives, the representatives of France and Australia had commented that observers should speak "in moderation" in the Sub-Commission. His delegation had welcomed their reference to the need for a certain balance between the work of the Sub-Commission and observers. Any imbalance worked to the disadvantage of observers, however, particularly observers representing Governments who were often forced to attend meetings without any opportunity of replying when distorted and subjective versions of the situation in their country were being given. Members of the Sub-Commission took such versions in good faith; but they should also be able to consult government representatives for their views on the subject. His delegation had spoken five times in five years of attending the Sub-Commission's sessions, had been interrupted on every occasion and had been given little opportunity to put its case. His delegation therefore urged members of the Sub-Commission to be more receptive to the comments made by State representatives on the rare occasions when they were allowed to speak.

69. In general, it was States members of the Commission that sent representatives to meetings of the Sub-Commission and that must be seen as a sign of co-operation, not obstruction. Thus it was that his delegation had commented on the Questiaux study in a constructive spirit. However, not only had none of its observations been taken into account in the Sub-Commission's report, but the latter had not even mentioned that his delegation had made comments. In a spirit of conciliation and friendship, his delegation urged greater understanding on the part of members of the Sub-Commission towards government representatives. It therefore endorsed the appeal made by the Australian and French delegations, so that there might be a certain balance between the consideration shown to experts and that shown to States and their representatives. The appeal for moderation on the part of observers must be matched by an effort by the members of the Sub-Commission to prevent the latter from becoming a tribunal where countries were roundly accused and to help it remain a forum where human rights situations and the conduct of countries or Governments in particular were judged firmly, if necessary, but also with equity and justice.

70. Mr. MARTINEZ (Argentina) said that the relationship between the Commission's work and that of the Sub-Commission must be based on harmonization and observance of their respective mandates. The Sub-Commission must act as a subsidiary body of experts; and the two bodies' programmes must be co-ordinated so as to avoid duplication or omissions.

71. The Japanese delegation had proposed that the Sub-Commission's sessions should be followed by sessions of the Commission itself and then by sessions of the Economic and Social Council, so as to ensure a smooth flow of action. Perhaps too, the Commission's officers could meet prior to the Sub-Commission's sessions and study the latter's provisional agenda, in order to ensure that the two bodies' agendas were complementary.

72. It was inappropriate for the Sub-Commission, a body of individual experts, to adopt decisions by vote. It should act solely on the basis of consensus, failing which it should refer the matters in question to the Commission. There was also inconsistency in the Sub-Commission's actions; it made recommendations not only

to the Commission itself but, at times, to the Council, the General Assembly and the Secretary-General, and even to other international organizations and individual Governments. Such actions were frequently at variance with the Sub-Commission's terms of reference. And it was hard to understand why the Commission was asked to endorse some studies - e.g. the report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1982/33) - but not others before they were submitted to the Council.

73. Firm guidelines were therefore required in order to ensure the best possible co-ordination and rationalization of work, and to avoid wasting the resources of the Centre for Human Rights. Another matter to be clarified was the appointment of alternates to participate in the Sub-Commission's work. Hitherto the appointment of alternates had been in the hands of members themselves, and vacancies had not been brought to the Commission's attention for the purpose of new appointments.

74. It therefore seemed that a formal proposal to the Economic and Social Council should be made, with a view to putting the relationship between the Commission and the Sub-Commission on an appropriate basis. Perhaps a working group of the Commission should study the matter in detail, as suggested by the delegation of Brazil. His delegation fully endorsed the latter's comments on the Sub-Commission's report, especially with regard to draft resolutions IV and V; it also endorsed the Uruguayan delegation's remarks regarding the co-operation of government representatives with the Sub-Commission. Governments, after all, were entitled to at least as much consideration as non-governmental organizations.

75. Mr. Otunnu (Uganda) resumed the Chair.

76. Mr. SCHIFTER (United States of America) said that his delegation appreciated the analysis of the Sub-Commission's work made by the representative of Brazil. That work was indeed most valuable; examples included the development of guidelines, principles and guarantees to protect persons detained on grounds of mental ill-health, the preparation of a draft body of principles on the rights and responsibilities of individuals and groups to promote and protect human rights, and the renewed attention given to the question of the right to leave any country and to return to one's own country. His delegation warmly endorsed those efforts and looked forward to receiving the relevant reports and recommendations.

77. His delegation had supported the establishment of a new Sub-Commission working group to study the human rights and fundamental freedoms of indigenous populations, with particular attention to the evolution of standards concerning those rights. The working group's discussions had been satisfying, and that body was a promising forum in which to pursue the topic. His delegation looked forward to the final sections of the Special Rapporteur's study on indigenous populations, which was nearing completion; his Government had been pleased to contribute on that topic.

78. In recent years the Sub-Commission had devoted growing attention to specific cases of human rights abuse - naturally so, since it met when no other United Nations human rights body was in session. It was to be hoped that the Sub-Commission would always strive to act even-handedly in examining situations. It was a matter for concern that, while many Sub-Commission members were truly independent experts, others were under direct government instruction; that problem must be borne constantly in mind. There must be provision for an alternate to participate if an elected expert was unable to attend the Sub-Commission; an alternate should be essentially as competent and independent as the expert for whom he was substituting.

The Commission had expressed its view on that point in resolutions at its two previous sessions. The suggestion that the Commission should recommend to the Council the election of alternates together with the experts was worthy of consideration as a means of ensuring that the Sub-Commission's independent character was maintained.

79. The current Chairman of the Sub-Commission was an outstanding legal scholar, Mr. Chowdhury, for whose important contribution the United States delegation was grateful.

80. Mr. HAYES (Ireland) said that the Sub-Commission's report reflected the considerable range of topics it dealt with; many of them, fortunately, could be examined by the Commission under items of its own agenda -- for example, the question of establishing the post of High Commissioner for Human Rights.

81. The Sub-Commission had the unique and vital role of assisting the Commission and complementing the latter's work by performing tasks for which the Commission itself was not really suited. The Sub-Commission's essential qualities were expertise and independence, which must be safeguarded. It had been sensible, therefore, to provide for the participation of alternates; unfortunately, there had been appointments of persons lacking the same degree of expertise and independence as the members. The matter must be remedied, bearing in mind the Sub-Commission's unique role; the suggestion that alternates should be elected together with members and meet the same requirements seemed sound.

82. Although the Sub-Commission, because of its complementary role, often dealt with subjects also considered by the Commission, it should act in a way which brought its distinct qualities to bear. In keeping with its complementary and unique role, it should always report to the Commission alone; reporting to the Council would detract from its role and might even encroach on the role of the Commission.

83. A comparison of agendas would benefit the Commission and Sub-Commission alike. The latter's agenda contained items which the Commission was not required to consider every year and might usefully appear on the Commission's agenda only in alternate years; any matters that assumed sudden urgency could always be introduced when the Sub-Commission's reports were being considered. Likewise, certain items currently on both agendas should appear only on that of the Commission, since the Sub-Commission's qualities of expertise and independence were irrelevant to them.

84. Mr. KALINOWSKI (Poland) noted with satisfaction that, for the third time, the report of the Sub-Commission had received great attention in the Commission's deliberations. It was important that the two bodies complemented each other's efforts to promote and protect human rights; and it was essential that each respected the other's terms of reference.

85. With regard to chapter III of the report, the Sub-Commission's status and activities had been established by the Commission in resolution 8 (XXIII) and 17 (XXXVII) and in corresponding Council and General Assembly resolutions, as well as Commission resolution 1982/23. The Sub-Commission, therefore, had had no reason to review its status and activities, which were clearly defined. To submit recommendations direct to the Economic and Social Council instead of to the Commission could lead to a loss of coherence. His delegation hoped that appropriate measures would be taken to strengthen relations between the Sub-Commission, the Commission and the Council, as well as with other organizations active in the field of human rights. In particular, the Commission and Sub-Commission, whose purposes were the same, should co-ordinate their activities and co-operate to the fullest possible extent.

86. At its thirty-fifth session, the Sub-Commission had undertaken a number of studies which had important and practical implications for the protection of human rights. His delegation attached great importance to the study on the adverse effects of assistance to the regime in South Africa; also important was the work on questions of slavery, discrimination against indigenous populations, measures to combat racism and racial discrimination, the consequences of political, military, economic and other forms of assistance to colonial and racist regimes in southern Africa, the exploitation of child labour and problems in the occupied Arab territories. But the report under consideration, like its two predecessors, contained a number of negative features, despite criticisms made by the Commission. The Sub-Commission had frequently exceeded its mandate, while failing to face up to its true tasks. For example, it should have proceeded immediately to address itself to the question of implementing measures against apartheid, pursuant to General Assembly resolution 34/24, and undertaken an investigation, pursuant to Commission resolution 1982/7, of the negative effects of the arms race, particularly on human rights and the establishment of a new international economic order.

87. There were other instances in which the Sub-Commission had failed to take timely action on the tasks entrusted to it. Moreover, the Sub-Commission had taken a number of decisions by vote - a procedure which scarcely enhanced its authority; decisions taken by such a body of experts should be arrived at by consensus. For example, the Commission, in resolution 1982/22, had requested the Sub-Commission to prepare a first study on possible terms of reference for the mandate of a High Commissioner for Human Rights. The Sub-Commission had subsequently adopted resolution 1982/27, but only half of its members had supported it - a poor reflection on that body's standing.

88. His delegation agreed that it was appropriate for government representatives to take part in the Sub-Commission's deliberations; failure to take full account of Governments' views could lead to misunderstandings and impede objective discussion. There seemed no reason why alternates should be elected together with members; the great majority of members participated regularly in the Sub-Commission's work, and members unable to attend, in designating alternates themselves, acknowledged their continued responsibility. To elect alternates together with members might set a dangerous precedent and complicate the Sub-Commission's work.

The meeting rose at 1.10 p.m.