

**Economic and Social Council**

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Provisional summary record of the 38th meeting

Held at Headquarters, New York, on Wednesday, 24 July 2002, at 3 p.m.

President: Mr. Rosenthal (Vice-President) (Guatemala)
later: Mr. Kumalo (Vice-President) (South Africa)
later: Mr. Rosenthal (Vice-President) (Guatemala)

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In the absence of the President, Mr. Rosenthal (Guatemala), Vice-President, took the Chair.

The meeting was called to order at 3.30 p.m.

Social and human rights questions *(continued)*

(a) Advancement of women *(continued)* (E/2002/27)

(b) Social development *(continued)* (E/2002/26)

Action on reports of the functional commissions (continued)

1. **The President** recalled that, at the 37th meeting, the delegation of the United States of America had requested a recorded vote on the draft resolution entitled “The situation of and assistance to Palestinian women”, contained in the report of the Commission on the Status of Women (E/2002/27, chap. I).

2. *A recorded vote was taken on the draft resolution.*

In favour:

Andorra, Angola, Argentina, Austria, Bahrain, Benin, Bhutan, Brazil, Burkina Faso, Burundi, Cameroon, Chile, China, Costa Rica, Croatia, Cuba, Egypt, Ethiopia, Finland, France, Germany, Ghana, Hungary, India, Islamic Republic of Iran, Italy, Japan, Libyan Arab Jamahiriya, Malta, Mexico, Netherlands, Pakistan, Peru, Qatar, Republic of Korea, Romania, Russian Federation, South Africa, Spain, Sudan, Suriname, Sweden, Uganda, Ukraine, United Kingdom, Zimbabwe.

Against:

United States of America.

Abstaining:

Australia.

3. *The draft resolution was adopted by 46 votes to 1, with 1 abstention.**

4. **Mr. Rabby** (United States of America), speaking in explanation of vote, said that his Government was deeply concerned at the suffering of both Palestinians and Israelis, including women and children. It was working intensively to try to stop the violence and encourage the parties to resume political dialogue. His

delegation had voted against the draft resolution, however, because it addressed a number of issues, including refugees and Jerusalem, that the two parties had agreed to resolve between themselves in negotiations. It therefore did not wish to prejudge the outcome of those negotiations.

5. **Mr. Stuart** (Australia), speaking in explanation of vote, said that his Government remained concerned at the humanitarian situation in the Palestinian territories, including the situation of women, and had provided financial assistance to help alleviate the situation. However, his delegation had abstained from the vote on the draft resolution because it contained some unbalanced language and politicized humanitarian concerns in a way that was unhelpful.

6. **The President** invited the Council to take action on the draft resolution entitled “Further promotion of equalization of opportunities by, for and with persons with disabilities and protection of their human rights”, contained in the report of the Commission for Social Development (E/2002/26, chap. I).

7. **Mr. Al-Sulaiti** (Qatar), speaking in explanation of position, said that Qatar had made progress in establishing democracy and the protection of human rights and had amended its Constitution to allow for free elections. The new Constitution gave full political rights to women, and the Government was stressing the advancement of women. With reference to the first preambular paragraph of the draft resolution, the legal group reviewing the Convention on the Elimination of All Forms of Discrimination against Women had not yet completed its work, and therefore his delegation could not endorse the reference to that Convention.

8. **Mr. Dennis** (United States of America), speaking in explanation of position, said that his delegation believed that, in the first preambular paragraph, the words “contained in” should have been replaced by “assumed under”, thereby making it clear that States which had ratified international human rights instruments assumed only those obligations which they had accepted in those instruments. Without that amendment, the text could be read to imply that a country’s reservations to a treaty were irrelevant.

9. *The draft resolution was adopted.*

* The delegation of Nepal subsequently informed the Council that had it been present it would have voted in favour of the draft resolution.

- (e) **United Nations High Commissioner for Refugees** (E/2002/7, 8, 14 and Corr.1, and 75)
- (f) **Implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination** (A/57/83-E/2002/72)
- (g) **Human rights** (E/2002/22, E/2002/23, Parts I and II, E/2002/43, Parts I and II and Add.1, and E/2002/68 and Add.1; E/2002/L.24; E/2002/NGO/1; E/2002/CRP.4)
- (h) **Permanent Forum on Indigenous Issues** (E/2002/43, Parts I and II, and Part I/Add.1)

10. **Mr. Morris** (Director, New York Liaison Office, Office of the United Nations High Commissioner for Refugees (UNHCR)) introduced the report on activities in 2001 as contained in document E/2002/14. The global consultation process had drawn to a close after nearly two years of intensive multilateral dialogue in pursuit of solutions to an increasingly complex set of international challenges. The process had resulted in a comprehensive Agenda for Protection, which consisted of six global goals: strengthening implementation of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; protecting refugees within broader migration movements; sharing of burdens and responsibilities more equitably and building capacities to receive and protect refugees; redoubling the search for durable solutions; meeting the protection needs of refugee women and children; and addressing security concerns more effectively.

11. The number of people of concern to the Office had dropped by 2 million in 2001 to a total of 19.8 million, which offered encouragement about its efforts to achieve durable solutions. Considerable numbers of internally displaced persons had returned to their homes, and there had been a significant decrease in the number of stateless persons and forced migrants, mainly in the countries of the Commonwealth of Independent States. The number of refugees reflected in that total figure remained virtually unchanged, but by the end of 2002, it was expected that another 2 million people would have returned home, due in large part to the massive repatriation of Afghans.

12. In reviewing new developments and key areas of focus and concern, he said that the African continent had been receiving focus as the New Partnership for Africa's Development (NEPAD) took place. In terms of

the work of UNHCR, several areas had demanded attention. In West Africa, the situation in Liberia continued to deteriorate, putting enormous strain on humanitarian staff, resources and infrastructure in neighbouring countries, particularly Sierra Leone. Many hundreds of thousands of internally displaced persons remained inaccessible to humanitarian agencies, as well. In Sierra Leone, some 173,000 refugees had returned voluntarily, and the current challenge was to provide adequate reintegration assistance.

13. The disturbing allegations of widespread sexual exploitation in West Africa had led to an investigation by the Office of Internal Oversight Services (OIOS), which was ongoing. UNHCR had developed a plan of action for both remedial and preventive measures and was in the process of finalizing a code of conduct, which would be disseminated to all its staff members.

14. In the east of Africa and the Horn of Africa, voluntary repatriation to north-west Somalia had continued; however, conflict continued in the south, causing Somalis to flee into Kenya. In Eritrea, 50,000 people had been helped to return home, with many more soon to follow. In the Great Lakes region, eight months after the installation of the transitional Government in Burundi, the promise of peace and reconciliation of the Arusha accords had not yet materialized. Some 350,000 Burundian refugees remained in exile in Tanzania. In Southern Africa, following the cease-fire agreement in April, Angola had made rapid progress towards ending thirty years of conflict. The humanitarian challenges were still considerable, as one third of its 13 million people was internally displaced and another 435,000 had fled the country as refugees during the war. Given the serious logistical and assistance challenges in the areas of return and in order to prepare better for sustainable reintegration, UNHCR intended to start facilitating voluntary repatriation at the beginning of 2003.

15. In the Americas, the situation in Colombia remained a cause of concern. Since the breakdown of the peace process in February 2002, the conflict had further deteriorated, resulting in a situation of generalized violence. In 2001, internal displacement had risen by 48 per cent over the previous year. UNHCR called on the new Government to put internal displacement on its agenda and in its four-year development plan. Elsewhere on the continent, the commitment of Brazil and Chile to refugees had been

reaffirmed with the establishment of a resettlement programme in those countries and the arrival of the first groups of Afghan refugees.

16. In the Asia-Pacific region, one of the most positive events of the year had been the peaceful celebration of East Timor's independence. The deaths of three UNHCR colleagues in West Timor two years earlier were still on the minds of staff; nevertheless, they had continued their work in bringing home some 213,000 East Timorese refugees to date. Recent developments in Sri Lanka had led to the spontaneous return of internally displaced persons. In other parts of the region, UNHCR was concerned about the situation of persons from the Democratic People's Republic of Korea in China, and the lack of progress and indefinite postponement of bilateral talks between the Governments of Bhutan and Nepal.

17. The numbers of asylum-seekers arriving in Western and Central Europe had become an increasingly controversial item on the political agenda of many Governments, highlighting the need for more harmonized and effective measures to stabilize irregular movements of asylum-seekers. UNHCR continued to face the seemingly impossible task of reversing the results of ethnic cleansing in the former Yugoslavia, by helping people to go back and live among their former adversaries. In 2001, the Office had helped to avert another round of violence in the region. Significant minority returns to Kosovo were still to be realized, however.

18. The dramatic changes to the situation in Afghanistan had demanded the mobilization of enormous human, material and financial resources throughout the international humanitarian community. At one point there had been over 6 million Afghan refugees, mainly in Iran and Pakistan, making them the largest refugee population in the world. Many Afghans, unable to find adequate protection and assistance in the region, had gone elsewhere. In 2001, Afghans had accounted for 11 per cent of asylum applications in Europe. The tide had turned, however, and people were returning so rapidly that projections for refugee returns for 2002 had been increased to 2 million. There were new possibilities for facilitating voluntary return, which should go hand in hand with increased funding for rehabilitation and reintegration efforts in the countries of origin.

19. Although there had been encouraging signs in the efforts to find durable solutions, enormous numbers of refugees remained in protracted situations. The High Commissioner had worked to build partnerships with other bodies in an attempt to create an effective transition between emergency relief and longer-term development and was cooperating with the World Bank and the United Nations Development Programme (UNDP) to find innovative approaches that were neither strictly humanitarian nor development. An example was the approach to ex-combatants: demilitarization, demobilization, reintegration and rehabilitation. A similar concept was proposed for the return of refugees: repatriation, reintegration, rehabilitation and reconstruction, with Afghanistan an example of that approach.

20. The Global Consultations on International Protection, which had resulted in the Agenda for Protection, offered encouraging opportunities for the revitalization of international refugee protection regimes in the years to come. The international community must build on that framework, drawing on lessons learned and best practices, while ensuring that solutions were durable and that the responsibilities and burdens were distributed equitably.

21. **Mr. Stuart** (Australia) said that the complexity of the global issues the United Nations must address required close contact and cooperation among the relevant bodies to ensure that they developed and implemented consistent and coherent strategies. That was particularly the case for movements of and trafficking in persons, which were creating significant political, economic, social and security challenges for countries around the world.

22. Movements of people were growing in scale and complexity, often fuelled by poverty, economic disparity, a shifting labour market and conflict. In addition to combating the criminal elements involved in trafficking, countries must come together to protect the rights of migrant workers. Such issues were beyond the ability of any country or organization to solve alone. His delegation supported efforts by the United Nations system to address those issues and the UNHCR initiatives relevant to its mandate, especially its focus on secondary movement of refugees and asylum-seekers from countries of first asylum. For its part, his Government had implemented a series of bilateral and regional initiatives in that area. The Council of the European Union had recently addressed the issue at a

meeting in Seville. However, those efforts must be supplemented by broader multilateral action. Otherwise, there was a risk that the problem would simply be displaced from one region to another rather than solved.

23. **Ms. Whyte** (Costa Rica) said that, although the fifteenth anniversary of the entry into force of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had recently been celebrated by its 130 States parties, torture had yet to be totally eradicated. Regrettably, detainees still suffered cruel treatment and conditions in the majority of prisons, even in developed countries, included overcrowding, substandard hygiene and medical care, violence and physical and psychological abuse.

24. The resolution before the Council concerning the draft Optional Protocol to the Convention would provide the means to remedy that situation by establishing an active verification mechanism for detention centres, composed of a subcommittee of the Committee against Torture and national inspection bodies that would conduct regular and scheduled visits to the detention centres of States parties to the Protocol.

25. The Protocol belonged to a new generation of human rights instruments that sought cooperation rather than confrontation, and, rather than denunciation or censure, the mechanism would seek constructive dialogue on ways to meet the standards set in the Convention. Some delegations had expressed their dismay that the Commission on Human Rights had not adopted the Protocol by consensus, and although her delegation also would have preferred consensus, it believed that, after 10 years of difficult negotiations, the text represented the best possible agreement. The time had come to listen to the majority of the international community and establish an effective mechanism for the prevention of torture.

26. **Mr. Jakubowski** (Poland), speaking in his capacity as chairperson of the fifty-eighth session of the Commission on Human Rights, introduced the report of the Commission (E/2002/23 (Parts I and II)). The Commission had had to face a number of challenges: the worsening human rights situation in the Middle East and the serious reduction in its meeting time. The expanded Bureau had managed to rearrange the Commission's programme of work and conclude its agenda at the cost of severely reducing speaking time

for all participants. A number of agenda items had been clustered together, which had likewise drastically reduced the time available for substantive debate. Such measures should not constitute a precedent for the future.

27. In that context, he noted the effectiveness of the expanded Bureau, made up of the five Bureau members together with the five regional coordinators, in implementing emergency time-saving and other measures. As a result of its recent experience, the Commission had requested an additional 14 extended meetings for its fifty-ninth session, a significant reduction over the 35 additional meetings granted the year before. That was considered a minimum number of meetings and would, *inter alia*, allow the representatives of special mechanisms speaking time commensurate with the crucial role the latter played and also allow the Commission to maintain its privileged relationship with civil society. In order to address those and other challenges, the Commission would embark on a formal review of its working methods, and the expanded Bureau of the fifty-eighth session would transmit to the incoming Bureau its reflections on the fifty-eighth session.

28. Despite difficulties, the fifty-eighth session had taken a number of important and far-reaching steps. It had decided to recommend the appointment of a special rapporteur on the highest standard of physical and mental health and had requested the Council's endorsement of two new working groups in follow-up to the World Conference against Racism: an intergovernmental working group to make recommendations on effective implementation of the Durban Declaration and Programme of Action and prepare international standards to strengthen international instruments against racism; and a working group of five independent experts to study the problems of racial discrimination faced by people of African descent. The Commission had also recommended establishment of a voluntary fund to provide additional resources for activities relating to effective implementation of the Durban Programme of Action.

29. The work of the Commission continued to expand, and it had adopted a total of 110 resolutions and decisions and been addressed by a record number of dignitaries. It also continued to improve its working methods, notably by agreeing to elect the incoming Bureau two months prior to the following session in

order to allow for more effective preparation and by clarifying further the beginning and expiration times of mandates held under special procedures. In another development, the Commission had decided by vote to discontinue sharing of information between its 1503 procedure and the Division for the Advancement of Women.

30. **Mr. Helg** (Observer for Switzerland) stressed his Government's attachment to human rights, democracy and the rule of law, which were central for the security and peace of the peoples of the world and were violated by torture. Although banned by various international instruments, torture continued to be used in a number of countries. Prevention of torture was not simply a matter of awareness or education. It required a legislative framework which clearly condemned torture, guaranteed victims access to justice and the prompt investigation of allegations, and provided for appropriate penalties.

31. The draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of which Switzerland was a sponsor, would not impose regional standards on the rest of the world but instead combined an international mechanism for visits with national mechanisms with a view to ensuring they were complementary. That should satisfy both those who wished for a purely national approach and the States which, like Switzerland, believed that some international mechanism was also necessary. Provision had in any case been made for States in disagreement to opt out of that provision once the Protocol entered into force.

32. Some Governments were opposed to the draft optional protocol for financial reasons, but prevention was surely less costly than detention and reparations. In any case, his delegation believed that the proposed Subcommittee on Prevention should be financed through the United Nations regular budget, which would allow all countries to participate.

33. The draft optional protocol was the result of long and difficult negotiations, during which it had become clear that there would be no consensus since the position of certain countries had not changed for 10 years. The compromise text was, however, satisfactory to a large majority of States, and any further negotiations would run the risk of destroying the fragile balance which had been struck. He therefore called on the Council to follow the example of the

Commission on Human Rights and continue the adoption process for that important instrument.

34. **Mr. Begg** (New Zealand) expressed strong support for the proposed optional protocol to the Convention against Torture. The establishment of an effective and independent international system of visits would be an important means of preventing torture and cruel treatment in places of detention around the world. The proposed Subcommittee on Prevention would work hand in hand with national institutions in a constructive manner, promoting dialogue between the national and international mechanisms and State authorities. It would allow for visits to places of detention and recommendations on improvement in conditions or with regard to possible abuses. Regular visits would guarantee support and protection of their rights for vulnerable individuals, deter the use of degrading punishments and contribute to the prevention of torture. In short, the optional protocol would significantly enhance implementation of the Convention against Torture, and his delegation hoped that others would not stand in its way.

35. **Mr. Zhang Yishan** (China) said the fifty-eighth session of the Commission on Human Rights, the first following the World Conference against Racism and the events of 11 September, had been of great significance. The resolutions adopted reflected the desire of the majority of countries for dialogue and cooperation instead of confrontation in the area of human rights. Continued cooperation would be necessary to face remaining challenges in promoting human rights and basic freedoms.

36. Exchanges of views and cooperation in the field of human rights promoted mutual understanding and better relations between States and must therefore be strengthened. Different historical conditions, social systems, values and levels of development had naturally led to different views on human rights. In the context of the principle of the universality of human rights, countries should be allowed and encouraged to take effective measures to promote human rights, taking into account their own national conditions. It was not practical or feasible to expect all countries to adopt the same development model. Understanding and communication must be reinforced in order to make cooperation in the human rights field a positive factor for safeguarding those rights and promoting the development of relations between States.

37. Exchanges of views and cooperation enhanced the fairness and efficiency of the Commission on Human Rights, which provided an important forum for countries to make concrete contributions to the worldwide development of human rights. Regrettably, some countries had in the past few years politicized the human rights issue by adopting double standards and sponsoring resolutions on individual developing countries, turning the Commission into an arena for ideological struggles. That had seriously undermined the Commission's fairness and efficiency, failed to solve problems and wasted resources. It was therefore important that countries, should work through their divergent views on human rights in order to make the Commission a forum which truly protected and promoted human rights.

38. Exchanges of views and cooperation in the field of human rights were also effective tools in the fight against terrorism, which violated democracy and human rights, threatened lives and jeopardized peace, prosperity and development. Many countries, including China, had been victims of terrorism. The international community must resolutely combat all forms of terrorism, addressing both the symptoms and the root causes of that phenomenon. In the long term, that implied solving the increasingly serious problem of development, narrowing the gap between North and South and between rich and poor, and increasing mutual understanding and dialogue among different countries and civilizations. The Council and the Commission on Human Rights had clear mandates to work actively to that end.

39. **Mr. Aardal** (Observer for Norway) welcomed the report of the Permanent Forum on Indigenous Issues (E/2002/43, Parts I and II). Its first session had been a success and the Forum should achieve tangible results. He looked forward to the views of the experts on sustainable solutions to the challenges faced by indigenous peoples and Governments in the field of indigenous rights. It was, however, essential to ensure adequate financial and secretariat support for the activities of the Forum, which it should be financed from the regular budget of the United Nations, supplemented by voluntary contributions. His Government also supported the establishment of a secretariat unit within the Department of Economic and Social Affairs at Headquarters, as soon as possible.

40. **Ms. Tobing-Klein** (Suriname) said that human rights affected Governments, civil society, individuals,

regional and interregional bodies and the international community as a whole. They affected all areas of life and were essential for sustainable development. International human rights instruments must be implemented to ensure life with dignity for every human being. It was in that spirit that her delegation had supported resolutions on human rights education and on the situation of older women in society. She recalled Governments' obligation to ensure human rights education and the United Nations obligation to ensure a system-wide approach to human rights education in the context of the United Nations Decade for Human Rights Education, 1995-2004, as well as the valuable contributions of non-governmental organizations in that regard. Furthermore, in keeping with her delegation's commitment to human rights and dignity, she expressed full support for the proposed optional protocol to the Convention against Torture.

41. **Mrs. Boiko** (Ukraine) welcomed the progress made in mainstreaming a gender perspective into all policies and programmes in the United Nations system. Her Government was committed to protecting women's rights and, recalling the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1), said that her Government had adopted a comprehensive programme against human trafficking for the years 2002-2005 aimed at preventing women and girls from being taken out of the country for the purpose of sexual or other exploitation. National measures would not suffice, however, and cooperation was needed at the international level, in particular between the countries involved in the different stages of the trafficking cycle. Her delegation stood ready to enhance such cooperation and also called upon the relevant United Nations structures to consider appropriate ways of providing assistance.

42. It was gratifying that increasing numbers of States had become parties to the core human rights instruments and were fulfilling their reporting obligations, since the monitoring system had become barely viable, with reports considered long after being submitted. She welcomed efforts by the treaty bodies to rationalize their work and make reporting procedures more transparent.

43. In June 2002 her Government had presented its combined fourth and fifth periodic report to the Committee on the Elimination of Discrimination against Women (CEDAW) and would carefully examine the conclusions and recommendations made

by its experts. The Committee had made great progress in improving its working methods; consideration of periodic reports had become an active dialogue and it was important that the Committee should continue to seek new ways to increase awareness of its work. In that regard, she recalled the informal meeting of States parties to the Convention on the Elimination of All Forms of Discrimination against Women during the previous session of CEDAW, which had provided an opportunity to exchange views on the Committee's methods of work. She expressed concern that for a number of years there had been no representation from Eastern Europe on CEDAW and called for equitable geographical representation in all treaty bodies.

44. After welcoming the appointment of Mr. Vieira de Mello as United Nations High Commissioner for Human Rights, she said that Ukraine would be a member of the Commission on Human Rights the following year and would uphold the Commission's responsibility to provide leadership in the human rights field in a new environment of terrorism and other challenges. Her delegation would cooperate in efforts to rationalize the Commission's working methods. It fully shared the view that the true strength of the Commission was determined by the values of its members as much as by the efficiency of its procedures.

45. **Mr. Reyes Rodríguez** (Cuba) expressed concern at the politicization of the work of the Commission on Human Rights, in particular allegations that countries or regional groupings were using their voting power to negatively affect the work of the Commission. In his opinion, it was the Group of Western European and other States which tended to dominate the work of the Commission and prevent the adoption of resolutions against individual countries in which occurrences of electoral fraud, business corruption, bad government and discrimination against immigrants, minorities and indigenous peoples abounded. It had never been possible to adopt a resolution on a developed country; however, the Commission continued to be a forum which singled out countries of the South for examination and criticism. The laudable example of the African Group, which frankly reviewed the situation in its member States, deserved to be followed by the other groups.

46. He expressed concern at attempts to develop so-called indicators for the evaluation of human rights situations on the part of, for example, UNDP,

especially in its human development reports. The method adopted to arrive at the evaluations in such reports was not impartial and the indicators chosen did not truly reflect the situation of civil and political rights in the countries concerned. Furthermore, the reports used as sources of information questionable non-governmental organizations such as Freedom House which had eventually been granted consultative status in 1995, but only after much controversy.

47. **Mr. Pradhan** (Bhutan), referring to sub-item (e), said that the report of the United Nations High Commissioner for Refugees (E/2002/14), paragraph 72, gave a misleading picture of the refugee situation in Nepal. The problem was not the result of any deliberate policy of the Government of Bhutan, but rather the work of terrorist elements seeking to compromise Bhutan's sovereignty. Nor was it correct to term all the inhabitants of the camps "Bhutanese" and "refugees". Many were illegal immigrants or migrant workers returning to their countries. With a view to identifying the origin of such persons, the Governments of Nepal and Bhutan had established a joint field verification team. The information provided in the report merely served to prejudice the outcome of the verification process and to undermine concerted bilateral efforts to achieve a durable solution to the refugee problem in Nepal.

48. **Mr. Yaqup** (Libyan Arab Jamahiriya) said that the report of the United Nations High Commissioner for Human Rights (E/2002/68) rightly focused on persons with AIDS, and disabilities and on other vulnerable groups in society, but it failed to urge the developed countries to increase their financial aid to the developing countries, particularly in Africa where the largest numbers of people with AIDS were to be found. Unless the necessary assistance was provided, an entire generation in Africa might be destroyed by the AIDS pandemic.

49. The report dealt with the rights of individuals rights and of certain groups in society but failed to cover the rights of people under foreign occupation, although the High Commissioner had referred to them in her oral statement to the Council. Nor did the report mention those peoples that were suffering from economic sanctions and coercive measures, to the detriment of their human rights, particularly the right to development.

50. Despite the progress that had been made, violations of human rights, even amounting to genocide, continued to occur in full view of the international community. Palestinians were daily being killed and oppressed by the Israeli occupying forces. The terrible crime that those forces had committed recently using military aircraft against defenceless civilians was perhaps the worst violation of human rights in modern times. In spite of that, the international community had remained impassive and had taken no action against the perpetrators of the crime.

51. The human rights situation had not improved in recent years: there had been acts of terrorism and religious and ethnic conflicts, all of which had given rise to large numbers of refugees and displaced persons, and there were other phenomena, such as racism, religious fanaticism and xenophobia. In that connection, his delegation considered the Durban Declaration promulgated by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to be a very important step in the context of efforts to combat such manifestations.

52. In conclusion, he said that his delegation hoped that the work of the Council would serve to strengthen the efforts of the international community to implement international instruments in the field of human rights in a spirit of cooperation, impartiality and neutrality, and that such efforts would remain purely humanitarian and would not be used to promote any political agenda.

53. **Mr. Nguzzi-Duran** (Observer for Venezuela), referring to sub-item (h), on the Permanent Forum on Indigenous Issues, said that Venezuela was a multi-ethnic and multicultural people proud of being an admixture of indigenous, European and African stock united in one nation. He recalled that in 2002, his Government had ratified the agreement establishing a Fund for the development of indigenous peoples in Latin America and the Caribbean; and had also ratified the International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples. Long a proponent of the establishment of the Permanent Forum on Indigenous Issues, it had participated enthusiastically in its first session in May 2002, and it now welcomed the proposal in the report of the Forum on its first session (E/2002/43 (Part I, chap. I.A)) to establish a secretariat to assist the Forum in fulfilling its mandate and to promote the integration

and coordination of activities relating to indigenous issues within the United Nations system.

54. **Mr. Sharma** (Nepal) said that Nepal appreciated the assistance provided by UNHCR, donor Governments and non-governmental organizations to enable it to host its sizeable refugee population. A landlocked and least developed country already contending with other social and economic problems, Nepal was particularly concerned to achieve a durable solution to the refugee problem. Indeed, the Government had been engaged in concerted bilateral efforts to that end for almost a decade. The verification process in one camp was now complete, and Nepal was thus urging Bhutan to commit to another round of bilateral talks without delay.

55. Referring to the section on Nepal in document E/2002/22, he explained that his Government's delay in submitting its first report to the Committee on Economic, Social and Cultural Rights had been due, not to a lack of commitment to human rights, but rather to a lack of reporting capacity. Nepal welcomed many of the Committee's recommendations, although it did have difficulty with some of the sweeping observations. It could hardly be said of a country engaged in a carefully planned development process that there were no economic and social targets were identified. Nepal was moving forward, in the face of an insurgency, to the best of its ability. It was fully determined to safeguard human rights but would need the support of the United Nations and the entire international community to do so.

56. **The President** recalled that the Council had approved a request from Human Rights Watch, a non-governmental organization (NGO) in special consultative status, to address the Council under the current agenda item.

57. **Ms. Long** (Human Rights Watch), speaking on behalf of Amnesty International, the Association for the Prevention of Torture, the International Commission of Jurists, the International Federation of Action by Christians for the Abolition of Torture, the International Federation for Human Rights, the International League for Human Rights, the International Service for Human Rights, the International Rehabilitation Council for Torture Victims, and the World Organization against Torture, said that all those non-governmental organizations were working to eradicate torture.

58. The historic adoption by the Commission on Human Rights at its fifty-eighth session of a draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been a significant step, demonstrating real international commitment to eradicate that heinous human rights violation.

59. The text represented the best achievable compromise and had received wide support from all regions. It offered a balanced and pragmatic “two-pillar approach” by establishing a system of regular preventive visits to places of detention by independent national and international monitoring mechanisms working constructively with States parties to prevent torture worldwide. Such visits had already proved an effective means to prevent torture. The instrument would facilitate the implementation by States parties of their existing obligations under the Convention. Moreover, the fact that the international mechanism would be funded from the regular budget would facilitate ratification by less developed States. The flexible approach to establishing such bodies also took into account different political structures. On the fifteenth anniversary of the entry into force of the Convention, torture and other ill-treatment remained widespread. She thus urged the Council to endorse the draft resolution for eventual adoption by the General Assembly.

Draft decision E/2002/L.11 (sub-item (e))

60. **Mr. Hadjiargyrou** (Observer for Cyprus) introduced the draft decision on enlargement of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, which recommended that the membership should be increased from 61 to 64 States. The work of the Programme was very important in alleviating the difficulties refugees faced, and the greatest possible participation by Member States would be beneficial. He urged the adoption of the draft decision by consensus.

Draft resolution E/2002/L.16 and draft decisions E/2002/L.19 and L.20 (sub-item (h))

61. **Ms. Martholm** (Sweden) introduced draft resolution E/2002/L.16 and draft decisions E/2002/L.19 and 20 on the Permanent Forum on Indigenous Issues, and also a new draft decision on the question that had just been circulated. The sponsors of draft resolution E/2002/L.16 had been joined by Brazil,

Croatia, Greece, Luxembourg, the Philippines, the Russian Federation and South Africa.

62. The establishment of the Permanent Forum had been a landmark in the international recognition of indigenous peoples. Comprised of both indigenous and governmental expert members, with a mandate allowing it to address all indigenous issues, and maintaining a continuous dialogue with indigenous peoples, Governments and United Nations bodies, it had the capacity to achieve tangible results. The unusually positive interaction during its first session inspired great confidence for the future.

63. However, the Forum had to have adequate financial and secretariat support. The main purpose of draft resolution E/2002/L.19 was the establishment of a secretariat unit within the Department of Economic and Social Affairs (para. 1 (a)) and a voluntary fund that could finance Forum recommendations (para. 1 (b)). An exceptional three-day pre-session meeting of the Forum would be authorized in 2003 (para. 6), the understanding being that it would be financed within existing resources. Paragraph 2 had been redrafted to read: “*Encourages* applications of indigenous persons to the United Nations Secretariat and invites the Secretary-General to give broad publicity to vacancies, when available;”.

64. She read out draft decisions E/2002/L.19 and L.20 and introduced the following new draft decision:

“The Economic and Social Council,

“Requests the Secretary-General to submit proposals to the General Assembly at its fifty-seventh session for provision of adequate resources to support the secretariat unit of the Permanent Forum on Indigenous Issues”

The effect would be exceptionally to defer the elaboration of the programme budget implications of the appointment of secretariat staff until the General Assembly.

65. Her delegation hoped that the draft resolution as revised and the three draft decisions, to be considered as a package with the draft resolution, would be adopted by consensus.

Amendment E/2002/L.21 to draft decision 28 in document E/2002/23 (Part I) (sub-item (g))

66. **Mr. Montwedi** (South Africa), speaking on behalf of the Group of African States, said that document E/2002/L.21 contained a technical amendment to draft decision 28, on racism, racial discrimination, xenophobia and related intolerance, in the report of the Commission on Human Rights (E/2002/23, Part I, chap. I.B). If the amendment was adopted, the chapeau of paragraph (f) would read: "(f) To request the Secretary-General to establish and administer, in accordance with the Financial Regulations and Rules of the United Nations, a voluntary fund to provide additional resources for:". He hoped that the amendment would receive support.

Amendment E/2002/L.23 to the draft resolution in chapter I.A. of document E/2002/23 (Part I) (sub-item (g))

67. **The President** drew attention to the draft resolution on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, in the report of the Commission on Human Rights (E/2002/23 (Part I, Chap. I.A)) and invited the representative of the United States to introduce the amendment in document E/2002/L.23.

68. **Mr. Rabby** (United States of America) said that the United States, as a party to the Convention against Torture and the largest contributor to the United Nations Voluntary Fund for Victims of Torture, condemned the abhorrent practice of torture unequivocally. However, his Government had both procedural and substantive concerns about the draft optional protocol. From a procedural standpoint, it was important that human rights instruments should be adopted by consensus to ensure the principle of universality. The vote in the Commission on Human Rights on the draft was proof that there had been no consensus. Even if the protocol was adopted, too few countries would become parties to it.

69. From a substantive standpoint, the visiting mechanism proposed was incompatible with the United States Constitution and with the position of many Governments on the need for checks and balances on any grant of power. The United States was also concerned because the creation of a new and separate treaty body, formally independent from the Committee

against Torture, would be detrimental to that Committee.

70. Amendment E/2002/L.23 replaced paragraphs 1 to 3 of the draft resolution with a sole paragraph recommending that the General Assembly should convene a working group to continue to consider the text of the draft optional protocol. The proposal was designed to produce a text that would truly enhance international protection against torture and attract widespread ratification.

71. He wished to revise the text of the amendment by adding the word "regular" before the words "fifty-seventh session", and the phrase "on an as-available basis," after those words.

72. **Ms. Starr-Newell** (Secretary of the Council) informed the Council that the amendment just introduced by the United States delegation was to be accompanied by a statement by the Secretariat, reading: "It is to be understood that the proposal contained in document E/2002/L.23 would require the approval of the Assembly itself and was an exception to the provision of General Assembly resolution 40/243, section I, paragraph 7, that no subsidiary body should meet during the main part of the General Assembly sessions."

73. **Mr. Díaz Paniagua** (Costa Rica) said that the United States amendment was unacceptable. The draft optional protocol was the fruit of 10 years of work in an open-ended working group of the Commission on Human Rights, and all concerns raised during the negotiations had been considered until agreement had been reached. The text was the best possible that could be drafted. The United States was trying to change the sense and objective of that text and to derail its adoption. There was no guarantee that one further session of negotiations would reach broader consensus. Rather than an amendment, the United States proposal was an alternative and contradictory proposal and a death sentence for the optional protocol. No delegation convinced of the importance of human rights and opposed to torture could support it. He urged all to reject the United States proposal and requested a recorded vote on it.

74. **The President** invited the Council to vote on the United States amendment (E/2002/L.21) before taking action on the draft resolution on the draft optional protocol to the Convention against Torture. He invited

any delegation wishing to speak in explanation of vote before the vote to do so.

75. **Mr. Hahn** (Observer for Denmark), speaking on behalf of the European Union, said that the Union strongly believed that the amendment had no purpose other than to delay the final adoption of the optional protocol. The Union could not agree to any proposal which would prolong negotiations, nor was it prepared to entertain any amendment to the draft resolution. The text struck a balance between the different positions expressed by participating delegations over 10 years of intensive negotiations. Questioning the text was tantamount to questioning the competence of the Commission on Human Rights to deal with substantive human rights issues. The European Union supported the request for a vote on the amendment and urged delegations to vote against it.

76. **Mr. Tomoshige** (Japan) said that his delegation attached great importance to the optional protocol and shared the view that torture must never be allowed to occur anywhere. The instrument would contribute significantly to the prevention of such a grave violation of human rights. It was regrettable, however, that consensus had yet to be achieved on certain key elements of the text and that delegations had not been given the opportunity to fully examine its content and substance before the fifty-eighth session of the Commission on Human Rights. The text would benefit from further consideration on a paragraph-by-paragraph basis.

77. As a matter of principle, any expenditure incurred by the implementation of an international convention should be borne by the States parties. Accordingly, there was no justification for the idea that the expenditure should be borne by the United Nations. Moreover, for the instrument to be truly universal, it was vital that it should be acceptable to both developing and developed countries. Adoption of the draft resolution would only prevent further discussion of elements which raised concerns for a number of countries. He therefore supported the United States amendment.

78. **Mr. Zhang Yishan** (China) said that the purpose of the optional protocol was to safeguard human rights, and it should therefore be the product of consensus. During the 2003 session of the Commission on Human Rights the concerns of some had been ignored and a controversial vote on the optional protocol had been

forced through. Delegations should be more patient and, in a spirit of consultation, continue the negotiations in a common quest for an optional protocol that would be acceptable to all. China would vote in favour of the United States amendment.

79. **Mr. Montwedi** (South Africa) observed that 10 years of negotiations in an open-ended working group in which all States had participated was time enough for any substantive issues to be aired. The questions of funding and consensus were not sufficiently weighty to warrant delaying a vote. The text produced was the best that could be achieved under any circumstances. The United States proposal was one that could not, moreover, be implemented. His delegation would vote against it.

80. **Ms. Tomar** (India), expressing her Government's unambiguous condemnation of the practice of torture, said that the importance of the Convention against Torture could not be overemphasized. Negotiations on the draft optional protocol had been protracted and often contentious. On an issue of such significance, an instrument which did not command universality clearly left room for ambiguity and risked leading to a confusion of mandates. More time should have been allowed for negotiations, and a consensual approach should have been adopted, in order that the text finally adopted might command the broadest acceptance.

81. **Ms. Khalil** (Egypt) said that an instrument with such significant legal implications should only be adopted by consensus. The optional protocol introduced the important new concept of prevention, which should be achieved in a spirit of cooperation and not be imposed on States. Her delegation was also concerned that other equally important principles, such as sovereignty, should not be undermined. Moreover, given that the views of some States had not been accommodated in the text, those States should not be burdened with its financial implications. Her own delegation had substantive concerns with regard to the text and would thus support the proposed amendment.

82. **Mr. De Alba** (Mexico) concurred with Costa Rica, the European Union and South Africa that the so-called amendment would mean the irreparable loss of 10 years' work. Consensus was valuable; but in the course of those 10 years there had been no evidence of a true will to negotiate or grounds for a realistic hope that the draft optional protocol could eventually

achieve universality. His delegation would vote against the United States proposal.

83. **Mr. Alabi** (Nigeria) said it was important that the optional protocol should have universal support, in the interests especially of the victims of torture. There was therefore wisdom in addressing all contentious issues before its adoption and achieving a broader consensus. He would vote in favour of the United States amendment.

84. **Mr. Reyes** (Cuba) said that he recognized the enormous effort made by the Costa Rican delegation. Despite the many proposals considered, however, there had not been enough debate about national sovereignty. The current text draft of the optional protocol was unacceptable in that it took account of the interests of only one group of States. He therefore could not support its adoption.

85. A recorded vote was taken on amendment E/2002/L.23, as orally revised.

In favour:

Australia, China, Cuba, Egypt, Ethiopia, India, Iran (Islamic Republic of), Japan, Libyan Arab Jamahiriya, Nigeria, Pakistan, Russian Federation, Sudan, Uganda, United States of America.

Against:

Andorra, Angola, Argentina, Austria, Benin, Brazil, Burkina Faso, Burundi, Chile, Costa Rica, Croatia, El Salvador, Fiji, Finland, France, Germany, Ghana, Guatemala, Hungary, Italy, Malta, Mexico, Netherlands, Peru, South Africa, Spain, Suriname, Sweden, United Kingdom of Great Britain and Northern Ireland.

Abstaining:

Bahrain, Bhutan, Georgia, Nepal, Qatar, Republic of Korea, Romania, Ukraine.

86. The amendment, as orally revised, was rejected by 29 votes to 15, with 8 abstentions.

87. **Mr. Dennis** (United States of America) said that the United States of America — the largest contributor to the United Nations Voluntary Fund for the Victims of Torture — unequivocally condemned the practice of torture. Federal and state laws prohibited conduct constituting torture and imposed heavy penalties on violators. The current text, however, contained serious flaws. Its overall approach and certain specific

provisions conflicted in part with the United States Constitution, particularly with regard to matters of search and seizure. Furthermore, in view of the country's federal system of government, the regime established by the draft would be considered overly intrusive.

88. The draft was before the Council as a result of a premature vote by the Commission on Human Rights that represented a departure from its long-standing preference for consensus in formulating new human rights instruments. The credibility of a draft instrument which purported to be universal was also undermined by the fact that a vote had been taken in the Commission and that the result of the vote had shown almost as many negative votes and abstentions as votes in favour (29-10-14). The financial implications were, moreover, considerable. His delegation had thus repeatedly requested a full-cost analysis.

89. *At the request of the representative of the United States of America, a recorded vote was taken on the draft resolution on the draft optional protocol to the Convention against Torture (E/2002/23, Part I, chap. I.A).*

In favour:

Andorra, Angola, Argentina, Austria, Bahrain, Benin, Brazil, Burkina Faso, Burundi, Chile, Costa Rica, Croatia, El Salvador, Fiji, Finland, France, Georgia, Germany, Ghana, Guatemala, Hungary, Italy, Malta, Mexico, Netherlands, Peru, Republic of Korea, Romania, South Africa, Spain, Suriname, Sweden, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland.

Against:

Australia, China, Cuba, Egypt, Japan, Libyan Arab Jamahiriya, Nigeria, Sudan.

Abstaining:

Bhutan, Cameroon, Ethiopia, India, Nepal, Pakistan, Qatar, Russian Federation, United States of America, Zimbabwe.

90. The draft resolution was adopted by 35 votes to 8, with 10 abstentions.

91. **The President** invited delegations to speak in explanation of vote after the vote.

92. **Mr. Stuart** (Australia) said that, although Australia strongly supported international action

against torture, it could not endorse adoption of the optional protocol. His delegation had serious concerns over its substance as well as the process that had resulted in the Council's consideration of the text. Human rights treaties should be adopted by consensus by the Commission. Yet, the working group established to prepare the instrument had not considered the text drafted by its chairman in sufficient detail, nor had it reached consensus. His delegation had thus supported the United States amendment, which would have sent the text back to the working group for further consideration.

93. Some articles of the draft optional protocol required further negotiation. In particular, the text established a Subcommittee on Prevention with an unrestricted right to visit any place of detention. Australia's position was to agree to such visits only as required. The lack of consensus on such issues demonstrated that the text was not yet ripe for consideration by the Council. His delegation had thus voted against the draft resolution.

94. **Mr. Son Se-joo** (Republic of Korea) said that in the Commission on Human Rights his delegation had voted against the draft resolution adopting the draft optional protocol, in the belief that consensus was always the best foundation for human rights instruments. Since then, it had revised its position. In the light of Korea's commitment as a State party to the Convention against Torture, his Government's basic policy to promote human rights at home and abroad, its agreement with the basic spirit and purposes of the draft optional protocol and the strong wish of many like-minded Governments for its early adoption, his delegation had just voted in favour of the draft resolution.

95. **Mr. Yakup** (Libyan Arab Jamahiriya), observing that torture was prohibited under the Shariah, said that he had voted against adoption of the draft optional protocol because any such instrument should be based on the treaty to which it was attached and should complement rather than weaken it. The Convention against Torture must be the matrix for all efforts to develop it, and consequently no obligations should be imposed on States parties without their specific agreement. His Government also upheld the rule of consensus in adopting international instruments, given their importance.

96. **Mr. Sharma** (Nepal) said his country, as a party to the Convention against Torture, stood solidly in opposition to torture and had taken many legislative and institutional steps to prohibit it. The text of the draft optional protocol was still under active consideration by his Government and consequently he had had to abstain in the vote. Such an important instrument should have been adopted without a vote in order to ensure that it would be universally implemented.

97. **Mr. Khalil** (Egypt) said that his delegation regretted that it had not been able to vote in favour of the draft optional protocol, because of the way in which it had been adopted without consensus and because certain paragraphs in it required further consideration, particularly those setting up a broadly-based committee that was more extensive than the Committee against Torture.

98. **Ms. Ahmed** (Sudan), supporting the statements made by China, Cuba, Egypt, India, Nigeria, among others, said that, although her country's Constitution prohibited all torture, her delegation had been unable to vote for the draft resolution because more time should have been taken to achieve consensus.

The meeting rose at 6.35 p.m.