

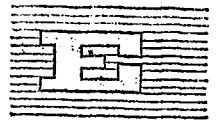
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COMMISSION ON HUMAN RIGHTS

Fortieth session

SUMMARY RECORD OF THE 31st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 28 February 1984, at 10 a.m.

Chairman: Mr. KOOIJMANS (Netherlands)

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GE.84-15607

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

CONSIDERATION OF DRAFT RESOLUTIONS ON THE FOLLOWING AGENDA ITEMS:

VIOLATIONS OF HUMAN RIGHTS IN SOUTHERN AFRICA: REPORT OF THE AD HOC WORKING GROUP OF EXPERTS (agenda item 6) (E/CN.4/1984/L.17 and L.20)

THE ADVERSE CONSEQUENCES FOR THE ENJOYMENT OF HUMAN RIGHTS OF POLITICAL, MILITARY, ECONOMIC AND OTHER FORMS OF ASSISTANCE GIVEN TO COLONIAL AND RACIST REGIMES IN SOUTHERN AFRICA (agenda item 7 (E/CN.4/1984/L.18)

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(a) STUDY IN COLLABORATION WITH THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES OF WAYS AND MEANS OF ENSURING THE IMPLEMENTATION OF UNITED NATIONS RESOLUTIONS BEARING ON APARTHEID, RACISM AND RACIAL DISCRIMINATION;

(b) IMPLEMENTATION OF THE PROGRAMME FOR THE DECADE FOR ACTION TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 17) (E/CN.4/1984/L.16; E/CN.4/1984/3-E/CN.4/Sub.2/1983/43, chap. I-A, draft resolution VIII)

1. The CHAIRMAN said he would give the floor to those delegations which wished to introduce the various draft resolutions.

2. Mr. JANI (Zimbabwe) introduced, on behalf of the sponsors, draft resolutions E/CN.4/1984/L.17 and L.20, on agenda item 6. He first of all read out and briefly explained draft resolution E/CN.4/1984/L.20 and dwelt on the following points: in operative paragraph 2, the Commission reiterated the position it had already adopted and reaffirmed that apartheid was a crime against humanity; paragraph 3 listed five aspects to which the Commission should pay attention; paragraph 4 repeated a call, already made by the Security Council in its resolution 473 (1980), for the release of political prisoners, particularly Nelson Mandela; paragraph 5 expressed a position already adopted by the General Assembly, to the effect that institutional arrangements such as the supposed constitutional reforms, based on racial segregation and discrimination, were unacceptable; paragraph 6 referred to South Africa's acts of aggression, particularly against Angola, Botswana, Mozambique, Zambia and Zimbabwe; in paragraph 9, South Africa was once again requested to allow the Ad Hoc Working Group of Experts on southern Africa to make on-the-spot investigations - a request which it had hitherto refused; while, finally, paragraphs 10 and 11 were procedural in nature. He pointed out that, in operative paragraph 5, the sponsors had replaced the word "proposed", in respect of reforms to the South African Constitution, by "so-called". He hoped that the draft resolution in question would be adopted by consensus.

3. He then read out and summarized draft resolution E/CN.4/1984/L.17, commenting in greater detail on the following points: operative paragraph 1 reaffirmed the principles of General Assembly resolution 1514 (XV); paragraph 2 reflected the world community's concern at the explosive situation which had been created in Namibia; paragraph 4 renewed a request already made at the previous session while, lastly, the request contained in paragraph 7 was procedural in nature. It would also be possible, he hoped, for that draft resolution to be adopted by consensus.

4. Mr. SERGIWA (Libyan Arab Jamahiriya), introducing draft resolution E/CN.4/1984/Add.18, on agenda item 7, read out and summarized the text stressing, in the preambular part, the reaffirmation that any form of assistance given to the racist regime of South Africa constituted a hostile act against the oppressed peoples of that country and of Namibia (first paragraph), and the deep concern felt about the ever-increasing investment of foreign capital in the exploitation of uranium in Namibia and South Africa and the continued collaboration of certain Western and other States in the nuclear field, with the resultant increased threat to peace and international security (ninth paragraph). The inalienable right of the oppressed people of South Africa and Namibia to self-determination, independence and the enjoyment of their natural resources, as reaffirmed in operative paragraph 2, had already been affirmed in many United Nations resolutions. The increased assistance - condemned in paragraph 3 - rendered by Western countries and Israel to South Africa encouraged that country's regime in its acts of aggression and human rights violations; assistance by Israel in particular had significantly grown in recent years. It should be noted that, in paragraph 5, foreign economic interests were urged to abstain from any new investment in Namibia. In paragraph 7, South Africa was condemned in particular for its acts of aggression against Angola which had caused widespread devastation in that country. In conclusion, he expressed the hope that draft resolution E/CN.4/1984/Add.18 would be adopted without a vote.

5. Mr. MONTEMAYOR (Mexico), introducing draft resolution E/CN.4/1984/L.19 on behalf of its sponsors, recalled that the Group of Three members of the Commission, appointed under the International Convention on the Suppression and Punishment of the Crime of Apartheid, had met for five days prior to the session. A member of his delegation had chaired the Group and had submitted its report (E/CN.4/1984/48). The Group had undertaken the examination of six country reports and had reached some conclusions and made some recommendations with which the members of the Commission were familiar.

6. He drew attention to a number of salient points in the text of the draft resolution: in operative paragraph 4, States which had not yet done so were urged to ratify or accede without delay to the International Convention on the Suppression and Punishment of the Crime of Apartheid; the Group of Three had expressed the opinion referred to in paragraph 7, that article III of the Convention could apply to the actions of transnational corporations operating in South Africa, an opinion that had emerged after a thorough discussion; operative paragraph 5 mentioned that all States parties should take account of the guidelines laid down by the Group of Three in 1978 for the submission of reports and paragraph 6 recommended that States parties should be represented when their reports were to be considered, in which connection it was satisfying to note that a number had been represented during the current year. The appeal to States parties to disseminate further information on the Convention was warranted by the instrument's importance. Having announced that Algeria, Kenya and Mozambique had been added to the list of sponsors of the draft resolution (E/CN.4/1984/L.19), he expressed the hope that it would be adopted by consensus.

7. Mr. SY (Senegal) said that draft resolution E/CN.4/1984/L.16, which he was introducing on behalf of its sponsors, was the first one to be submitted to the Commission on the implementation of the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination. Implementation of the Programme was all the more essential in that racism and racial discrimination were reviving in parts of the world from which, it was thought, they had been eradicated. A recrudescence of xenophobia and hostility towards foreign workers, for example,

was discernible in a number of countries. Moreover, the racist regime of South Africa and its policy of apartheid had not been eliminated either. The resolutions and decisions adopted by the United Nations with a view to isolating that regime in every possible way should thus be applied in full.

8. The draft resolution (E/CN.4/1984/L.16) contained the provision that the Commission welcomed the adoption of the Declaration and Programme of Action by the Second World Conference and also encouraged the Secretary-General to pursue his efforts to implement the Programme. His delegation hoped that the draft resolution, the aim of which was to promote all possible means of ensuring the success of the activities undertaken in connection with the Second Decade to Combat Racism and Racial Discrimination, would be adopted without a vote. To that end, its sponsors were willing to take into account any suggestions that might be put to them. Lastly, he announced that Pakistan and Uganda had become sponsors of the draft resolution.

9. The CHAIRMAN said that a number of countries had added their names as sponsors of one or other of the draft resolutions before the Commission. Afghanistan, Bangladesh, Egypt, Gambia, India, Pakistan, Tunisia, Viet Nam and Yugoslavia had become sponsors of draft resolution E/CN.4/1984/L.16. In the case of draft resolution E/CN.4/1984/L.17, the names of the following countries should be added to the list of sponsors: Afghanistan, China, Cuba, Gambia, India, Mauritania, Qatar, Tunisia and Viet Nam. The list of sponsors of draft resolution E/CN.4/1984/L.18 currently included also Afghanistan, Bangladesh, Congo, Cuba, India, Mauritania, Qatar, Tunisia, the Ukrainian Soviet Socialist Republic and Viet Nam. As for draft resolution E/CN.4/1984/L.19, the names of Bangladesh, Congo, Gambia, Mauritania, Rwanda and Viet Nam should be added to the list of sponsors. Lastly, in the case of draft resolution E/CN.4/1984/L.20, China, Cuba, Gambia, Mauritania, Qatar, Tunisia and Viet Nam had joined the sponsors.

10. Sir Anthony WILLIAMS (United Kingdom) recalled that the Declaration had been adopted by the Second World Conference to Combat Racism and Racial Discrimination despite a negative vote by a number of countries, including his own, whereas there had been no votes against the Programme of Action, but just abstentions. Moreover the General Assembly resolution proclaiming the Second Decade had been adopted without a vote as a result of concessions that had been made by all parties, not least the African Group.

11. In order that the draft resolution (E/CN.4/1984/L.16) could likewise benefit from consensus, he proposed that the second preambular paragraph and operative paragraph 2, which gave rise to some difficulties, should be amended. The word "Welcoming" at the beginning of the second preambular paragraph should be replaced by "Taking note of", while operative paragraph 2 should be amended to begin: "Takes note of the Declaration and welcomes the Programme of Action adopted by the Second World Conference and stresses ...".

12. Mr. SY (Senegal) said that, as far as the African Group countries were concerned, they would have no difficulty in accepting the United Kingdom amendments for the sake of maintaining a consensus on the draft resolution in question,

13. Mr. KHMEL (Ukrainian Soviet Socialist Republic) said that his country had always supported the international community's efforts to combat all forms of racism and racial discrimination. The essential and primary aim should be to eliminate the racist South African regime, to free the oppressed Namibian people and to enable the indigenous population of South Africa to determine its own destiny.

His delegation was thus able to support draft resolutions E/CN.4/1984/L.16, L.17, L.18, L.19 and L.20, as well as Sub-Commission draft resolution VIII (E/CN.4/1984/3), since it deemed the substance of all those draft resolutions to be satisfactory.

14. The wording of those texts was not, however, ideal. When adopting resolutions on South Africa, the international community should make some progress from year to year. It was desirable, therefore, that such resolutions should incorporate the essence of the most recent experience acquired by the peoples of the world in combating racism. Viewed in that light, several paragraphs of the draft resolutions before the Commission left something to be desired.

15. As was abundantly shown by the documents before the Commission at its current session and the statements made during the debate on the subject, it was not enough strongly to condemn the South African racist regime, which should not be just reformed but well and truly destroyed. The Commission should therefore encourage the struggle against that regime, including the armed struggle; it should simultaneously condemn the outside forces which, in various ways, were developing their co-operation with the apartheid regime - namely, the imperialist countries, chiefly the United States, and its transnational corporations. That was abundantly clear to all those who were trying to put an end to the apartheid regime. His delegation had therefore become a sponsor of draft resolution E/CN.4/1984/L.18 which, in its view, faithfully reflected that approach; it hoped that the shortcomings in the other draft resolutions before the Commission could be rectified, and it was ready to support those texts.

16. Mr. BEAULNE (Canada) said he welcomed the fact that draft resolution E/CN.4/1984/L.16 could be adopted without difficulty. As for draft resolution E/CN.4/1984/L.17, Canada was a member of the Contact Group which had been trying for several years to promote a peaceful settlement of the problems referred to in that text and his Government did not think it advisable to adopt a position for or against the provisions in question. His delegation would thus abstain from voting on the subject.

Draft resolution E/CN.4/1984/L.17

17. The CHAIRMAN invited the Commission to vote on draft resolution E/CN.4/1984/L.17.

18. Draft resolution E/CN.4/1984/L.17 was adopted by 39 votes to none, with 4 abstentions.

Draft resolution E/CN.4/1984/L.20

19. Mr. NYÁMEKYE (Deputy Director, Centre for Human Rights) gave an account of the administrative and programme budget implications of draft resolution E/CN.4/1984/L.20, and said that the details would be issued as an L series document.

20. The CHAIRMAN said that a separate vote had been requested on the preamble as a whole and operative paragraphs 1, 2, 3 (other than subparagraph (c)), 4, 7, 8, 9, 10 and 11 of the draft resolution (E/CN.4/1984/L.20).

21. The preamble and operative paragraphs 1, 2, 3 (other than subparagraph (c)), 4, 7, 8, 9, 10 and 11 of the draft resolution (E/CN.4/1984/L.20) were adopted by 43 votes to none.

22. Draft resolution E/CN.4/1984/L.20 as a whole was adopted by 42 votes to none, with 1 abstention.

Draft resolution E/CN.4/1984/L.18

23. The CHAIRMAN invited the Commission to vote on draft resolution E/CN.4/1984/L.18.

24. At the request of the representative of the Libyan Arab Jamahiriya, a vote was taken by roll-call.

25. Mauritania, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Brazil, Bulgaria, China, Colombia, Cuba, Cyprus, Gambia, German Democratic Republic, India, Jordan, Kenya, Libyan Arab Jamahiriya, Mauritania, Mexico, Mozambique, Nicaragua, Pakistan, Philippines, Republic of Cameroon, Rwanda, Senegal, Syrian Arab Republic, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania, Uruguay, Yugoslavia, Zimbabwe.

Against: Canada; France; Germany, Federal Republic of; Italy; Netherlands; United Kingdom of Great Britain and Northern Ireland; United States of America.

Abstaining: Costa Rica, Finland, Ireland, Japan, Spain.

26. Draft resolution E/CN.4/1984/L.18 was adopted by 31 votes to 7, with 5 abstentions.

Draft resolution E/CN.4/1984/L.19

27. The CHAIRMAN invited the Commission to vote on draft resolution E/CN.4/1984/L.19.

28. Draft resolution E/CN.4/1984/L.19 was adopted by 32 votes to 1, with 10 abstentions.

Draft resolution E/CN.4/1984/L.16

29. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt draft resolution E/CN.4/1984/L.16 without a vote.

30. Draft resolution E/CN.4/1984/L.16 was adopted without a vote.

Draft resolution VIII, recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/1984/3-E/CN.4/Sub.2/1983/43, chap. I-A, p.6)

31. Mr. NYAMEKYE (Deputy Director, Centre for Human Rights) said that the secretariat was currently updating the administrative and programme budget implications which had been prepared for the Sub-Commission at the time of its consideration of the text.

32. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt without a vote draft resolution VIII recommended to it by the Sub-Committee on Prevention of Discrimination and Protection of Minorities.

33. It was do decided.

34. Mr. CALERO RODRIGUES (Brazil), speaking in explanation of vote, said that his delegation had voted in favour of all the resolutions that had just been adopted. However, as in previous years, he wished to place on record the fact that that support should not be interpreted as meaning that his delegation unreservedly endorsed each of those texts, some of which contained elements it deemed unnecessary or objectionable. His delegation had wished to reaffirm, by its vote, its unequivocal repudiation of apartheid and its full solidarity with the peoples of southern Africa who were being denied their most elementary rights by the oppressive South African regime.

35. Mr. BEAULNE (Canada), speaking in explanation of his delegation's vote on draft resolution E/CN.4/1984/L.20, said that, contrary to what some would wish, the Commission was not a tribunal empowered to try and condemn Governments. Its role was to extend genuine assistance to the victims of repressive Governments. For that reason, his delegation deplored the intemperate language used in operative paragraph 6 of the text in question - and, indeed, in other draft resolutions submitted to the Commission. As for the term "freedom-fighters", his Government was committed to seeking a peaceful settlement of disputes, in accordance with the Charter of the United Nations, and thus could not support an armed struggle.

36. Sir Anthony WILLIAMS (United Kingdom) said that, despite certain reservations, his delegation had voted in favour of draft resolution E/CN.4/1984/L.20 in order to demonstrate its concern at the continuing human rights violations in South Africa. Its reservations centred mainly on operative paragraph 3; his delegation did not, in fact, think that judicial executions, of the sort referred to in subparagraph (a), constituted per se a violation of human rights. There was no evidence either of an "alarming increase in the number of sentences passed and executions which have taken place" - to use the terms of the same subparagraph - or of "the alarming increase in the number of prosecutions under the Bantu homelands policy laws" (subparagraph 3(e)). While his delegation had no difficulty with the sense of operative subparagraph 3(c), it regretted that the sponsors had not been ready to make it more generally acceptable by replacing the words "freedom-fighters" by a more neutral term. With regard to operative paragraph 6, he recalled that his Government had consistently condemned the use of violence, from any source, to solve the problems of southern Africa, including the violation of the sovereignty and territorial integrity of the States bordering upon South Africa.

37. With regard to draft resolution E/CN.4/1984/L.17, his delegation reaffirmed its Government's position on the question of Namibia; the United Kingdom, as a member of the Contact Group, was pursuing its efforts to secure an internationally acceptable settlement in Namibia, based on the plan endorsed by Security Council resolution 435(1978). His delegation had thus abstained from voting on the draft resolution, as it had done on the occasion of the votes on resolutions on Namibia adopted by the Commission at previous sessions.

38. His delegation had joined the consensus on draft resolution E/CN.4/1984/L.16 out of regard for the African Group, which had sought to meet the concerns of other groups and maintain the consensus on that important issue. That position in no way modified his delegation's views on certain elements in the documents adopted by the Second World Conference to Combat Racism and Racial Discrimination, which it had made clear at the Conference itself and at the most recent session of the General Assembly.

39. Mr. MONTAÑO (Mexico) said that his delegation supported the spirit of draft resolution E/CN.4/1984/L.18 that had just been adopted. However, it would have preferred a text based on General Assembly resolution 38/50, a feature of which was that, whilst containing a resolute condemnation, it did not go into specific details of the situation in the countries concerned.

40. Mr. BODDENS HOSANG (Netherlands) said he welcomed the fact that draft resolution E/CN.4/1984/L.16 had been adopted without a vote. The acceptance by its sponsors of the proposed amendments to the second preambular paragraph and operative paragraph 2 was in keeping with the spirit of co-operation which had made possible the proclamation of the Second Decade to Combat Racism and Racial Discrimination. His delegation hoped that it would also be possible in the future to avoid unnecessarily divisive issues in the implementation of the Second Decade.

41. His delegation had voted in favour of draft resolution E/CN.4/1984/L.17 because it attached great importance to measures aimed at putting a speedy end to the illegal occupation of Namibia by South Africa and to human rights violations in that territory. However, his Government felt that the text in question did not take sufficient account of recent initiatives in southern Africa aimed at ending armed conflict in the region. It would have preferred that some reference be made to those initiatives in operative paragraphs 2 and 3 of the resolution.

42. His delegation had, once again, voted against the draft resolution on the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist regimes in southern Africa (E/CN.4/1984/L.18). His Government did not subscribe to the view that the maintenance of various forms of relations with South Africa had, ipso facto, adverse effects on the human rights situation in that country; it saw no need, therefore, for a list of companies which, by their presence in South Africa, were supposed in some way to have a negative influence on the observance of human rights by the South African Government. As for operative paragraph 2, his Government did not consider the situation in South Africa to be a colonial one. With regard to paragraph 9, while his delegation attached great importance to the observance of the arms embargo imposed by the Security Council, it would have liked a clearer distinction to be made between nuclear co-operation with South Africa for peaceful purposes and nuclear co-operation in the military field. In connection with paragraph 12, his Government considered that the International Monetary Fund and the World Bank should be permitted to operate under their respective statutes and not under political guidelines issued by the United Nations and its organs.

43. His delegation had abstained from voting on draft resolution E/CN.4/1984/L.19; while his Government unequivocally condemned the system of apartheid, it had no intention of acceding to the International Convention on the Suppression and Punishment of the Crime of Apartheid, to which it had fundamental objections of a legal nature. Moreover, his Government could not agree with any efforts to extend the applicability of the Convention to the actions of transnational corporations operating in South Africa. It saw no need for an examination of the question whether transnational corporations bore any responsibility for the continued existence of the apartheid system in the country concerned.

44. His delegation had voted in favour of draft resolution E/CN.4/1984/L.20, but that did not mean the text met with its approval in all its details. His Government was not aware of any alarming increase, in the past year, in the number of sentences passed and executions which had taken place in South Africa - as stated in operative subparagraph 3 (a). Since the same terms occurred in operative paragraph 5 of resolution 1983/9, adopted by the Commission at its previous session, his delegation was inclined to think that paragraph 3 of the text just adopted was the result of some rather careless drafting. As it had pointed out in connection with draft resolution E/CN.4/1984/L.17, his delegation would have liked to have seen some mention, in operative paragraph 6, of the recent initiatives in southern Africa aimed at ending the armed conflict in the region. Finally, his delegation was not in favour of the establishment of an international penal tribunal, as called for in operative paragraph 11.

45. Mr. HEWITT (United States of America) said that his delegation had abstained on draft resolution E/CN.4/1984/L.17 because of his Government's role as a member of the Contact Group, which was endeavouring to bring about a peaceful transition to independence in Namibia, in accordance with Security Council resolution 435 (1978). The efforts in question were currently in a particularly important and delicate stage.

46. His delegation had abstained on draft resolution E/CN.4/1984/L.20 since, although it was able to accept most of it, there were certain elements which it could not support. It took the view that the use of the expression "freedom-fighters" prejudged the role of the persons concerned - although the United States had vehemently opposed the ill-treatment of combatants and detainees anywhere and by anyone. In his delegation's view, the proposed South African constitutional reforms, mentioned in operative paragraph 5, were not so much unacceptable as deficient and incomplete. Indeed, if the word "incomplete" had been used instead of the word "unacceptable", his delegation would have been able to join the consensus on the resolution. Finally, his delegation found paragraph 6 unbalanced in that it ignored military attacks and acts by some parties.

47. His delegation had voted against draft resolution E/CN.4/1984/L.19 because it had basic objections to the International Convention on the Suppression and Punishment of the Crime of Apartheid and could not, therefore, join in urging States to ratify that Convention or to accede to it "without delay".

48. His country had not participated in the activities of the first Decade for Action to Combat Racism and Racial Discrimination, as a result of the adoption in 1975 of resolution 3379 (XXX), by which the General Assembly had equated zionism with racism and racial discrimination. His delegation had not participated either in the

Second World Conference to Combat Racism and Racial Discrimination in 1983. Consequently, his delegation had not participated in the consensus on draft resolution E/CN.4/1984/L.16 and draft resolution VIII, recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which were largely concerned with reviewing the first Decade for Action to Combat Racism and Racial Discrimination and the outcome of the Second World Conference to Combat Racism and Racial Discrimination.

49. Mr. GIAMBRUNO (Uruguay) said that his delegation had voted in favour of all the draft resolutions in the conviction that it was important to increase international pressure on South Africa to put an end to its odious system of apartheid. His delegation had, however, certain reservations, particularly with regard to the seventh and eighth preambular paragraphs and operative paragraphs 3 and 4 of draft resolution E/CN.4/1984/L.18. It thought it injudicious, in fact, to issue condemnations which could not be adequately underpinned. It hoped that, in the future, the texts of draft resolutions on such topics would be drafted with meticulous care so as to obtain the unanimous support of the international community which was essential if the pressure exerted on South Africa was to be effective.

50. Mr. GIESDER (Federal Republic of Germany) said he welcomed the fact that it had been possible to adopt draft resolution E/CN.4/1984/L.16 without a vote, as a result of the goodwill shown by its sponsors, particularly the African Group, which had readily accepted the amendments proposed.

51. His delegation had abstained from voting on draft resolution E/CN.4/1984/L.17. His Government was a member of the Contact Group, and his delegation would not dwell on its well-known position with regard to the question of Namibia.

52. His delegation had abstained from voting on draft resolution E/CN.4/1984/L.19, since it regarded the International Convention on the Suppression and Punishment of the Crime of Apartheid as having many legal defects.

53. His delegation had voted in favour of draft resolution E/CN.4/1984/L.20, despite some reservations about operative subparagraph 3 (c) and operative paragraphs 5 and 6, since it supported the underlying ideas, particularly the renewal of the mandate of the Ad Hoc Working Group of Experts.

54. The CHAIRMAN said that the Commission had thus concluded its consideration of agenda items 6, 7, 16 and 17.

55. The composition of the Group of Three to be appointed under article IX of the International Convention on the Suppression and Punishment of the Crime of Apartheid would be announced later.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS THIRTY-SIXTH SESSION (agenda item 19) (continued) (E/CN.4/1984/3-E/CN.4/Sub.2/1983/43 and Corr.1 and 2, and 40; E/CN.4/Sub.2/1983/17 and Add.1, 18, 30 and 44)

56. Mr. PANT (India) said that his delegation sought to further the dialogue between the Commission and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. He concurred with the description by the Chairman of the Sub-Commission of the relationship between the two organs as that between parent and child and hoped that there was, in fact, no "generation gap".

57. The Sub-Commission would not benefit from any change of title; it had been established mainly to focus on the prevention of discrimination and the protection of minorities, and its role would be diluted if it were made more generalist in its nature. It combined expertise and independence with the political will necessary to make it effective, in that it embodied the political will of the United Nations Member States, not only because of its relationship with the Commission but also because its members were nominated by Governments and elected by the Commission. It was true that the Sub-Commission's terms of reference, as defined in Commission resolutions 8 (XXIII), 17 (XXXVII) and 1982/23, were indicative and not limitative but it should exercise self-restraint in any expansion of its sphere of activity.

58. In performing its central function - the preparation of studies - the Sub-Commission should give priority to those matters which the Commission had identified as being urgent or of high priority, taking care to select its subjects in such a way as to avoid any duplication of the work already carried out by the Sub-Commission itself, the Commission or other United Nations agencies. The Sub-Commission studies should not be mere academic exercises but should serve a clear "human rights" purpose, and not be entirely dependent on its individual members' preferences. His delegation noted that the Sub-Commission had been uncritically passing on, as "Sub-Commission studies", reports prepared by its individual members; it therefore supported the suggestion made in the Sub-Commission itself that each study should be thoroughly examined by a group of five members representing the various geographical regions. In that way, the studies would truly reflect the views of the Sub-Commission as a whole and could legitimately be called "Sub-Commission studies"; the Sub-Commission would also make more productive use of its resources, expertise and time.

59. The Sub-Commission and its working groups received inputs from non-governmental organizations and from the Secretary-General, but they could have meaningful relevance only if co-operation was received from the Governments. Such mutual dependence and interaction called for the utmost restraint, objectivity and comprehension and ruled out any attempt to sensationalize human rights problems or violations.

60. The Sub-Commission's balanced geographical distribution ensured that a wide range of historical tradition, social ethos and legal systems were represented, thus making it possible to deal with human rights questions in the various parts of the world not in any spirit of moral superiority but, on the contrary, with understanding and insight. The Sub-Commission should eschew subjective approaches and reflect a collective conscience and wisdom.

61. The Sub-Commission's deliberations on human rights situations and its thematic consideration of human rights issues, as well as its standard-setting activities on matters as diverse as the human rights of persons subjected to detention and those of the mentally ill, had indeed enhanced the quality of the Commission's work; but all those activities needed some rationalization and overhauling. By its resolution 1983/21, the Sub-Commission had requested the Secretary-General to submit to it a background note providing an analytical review of the positions taken and views expressed in the Sub-Commission and the Commission on the question of reviewing the Sub-Commission's work, and had decided to establish, at its thirty-seventh session, a sessional working group composed of five of its members representing the various regions of the world, to study the note in question and other material and to present suggestions for the adoption, by the Sub-Commission, of recommendations to the Commission, including a programme of work for future years. His delegation welcomed the establishment of such a working group and hoped that it would take fully into account the views expressed on the subject in the Commission. The Sub-Commission had also recommended that

the Commission should authorize the working group to hold an intersessional meeting of five working days during the Commission's forty-first session, in order to have an exchange of views with the Commission based on the Sub-Commission's recommendations and the Commission's response; the Sub-Commission could then have before it, at its thirty-eighth session, a report which it could use for the final consideration of its methods and programme of work. While such direct contact with the Commission should be encouraged it should not, in his delegation's view, be allowed to displace the consideration of high-priority items on the Commission's agenda, to be examined at the beginning of the session. It would prefer such exchanges of views between the Commission and the working group to take place, in whatever form, in mid-session.

62. His delegation noted with interest the designation of one of the Sub-Commission's members to undertake an analysis of ways and means of improving the preparation of the Sub-Commission reports to the Commission on its sessions. That was a welcome initiative - as had been noted by the representative of Brazil, who had pointed out that it did not emerge clearly from the Sub-Commission reports which were the topics on which action was to be taken by the Sub-Commission itself and which were being referred to the Commission and/or the Economic and Social Council, or what type of resolutions or decisions the respective bodies were required to adopt.

63. His delegation was not entirely convinced either that resolutions were the best way for an expert body such as the Sub-Commission to draw the Commission's attention to certain matters or situations; other ways should be found in keeping with the Sub-Commission's mandate to prepare a body of facts to serve as a basis for Commission decisions.

64. The suggestion by the representative of Brazil that a working group of the Commission be established to examine the Sub-Commission's reports before they were taken up in plenary session deserved consideration, and his delegation was ready to discuss it with the delegation of Brazil. It felt, however, that the fact that the Chairman of the Sub-Commission introduced its report to the Commission during the latter's session already provided some means of identifying the issues dealt with in that report. The Brazilian suggestion would be fully relevant only when the new format for the report, currently being considered in the Sub-Commission, brought out the lacunae in the existing system and thereby made it possible to clarify what exactly that working group's task would be vis-à-vis the Sub-Commission's report, its transmission and its interpretation.

65. His delegation would comment on the Sub-Commission's draft resolutions or specific proposals when the Commission came to consider the respective agenda items. It had already had occasion to comment separately on some of the studies prepared by members of the Sub-Commission, and it would continue to take an interest in those studies.

66. The Commission was preparing to renew the Sub-Commission's composition. In his delegation's view, the decision adopted by the Economic and Social Council on the simultaneous election of alternates would contribute to the establishment of an expert, independent and purposeful body.

67. His delegation took the opportunity to pay tribute to the outgoing members of the Sub-Commission for their dedication to the cause of human rights. It was sure that the new members to be elected by the Commission would uphold the traditions that had been established. It hoped that the talks being held in the Commission and Sub-Commission would result in new ideas, new methods of work and a new relationship.

68. Mr. LEBAKINE (Ukrainian Soviet Socialist Republic) said he noted, from the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, that it was dealing with many topics of pressing concern and had adopted decisions and specific measures on a number of questions. His delegation supported a number of the resolutions adopted by the Sub-Commission at its thirty-sixth session, including resolution 1983/9 entitled: "Question of the violation of human rights and fundamental freedoms: the situation in the Arab territories occupied by Israel", resolution 1983/6 on the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the racist and colonialist regime of South Africa, and resolution 1983/8 on the effects of gross violations of human rights on international peace and security. Nevertheless, the Sub-Commission's work was far from irreproachable - as had already been mentioned at the Commission's previous session; for one thing, it was all too prone to exceed its mandate and seek to reinterpret both its status and the nature of its relationship with the other subsidiary bodies of the Economic and Social Council. Despite admonishments by the Commission which, in its resolution 1983/22 adopted by consensus, had invited it not to take decisions at variance with its status, role and competence, some members of the Sub-Commission had, at its thirty-sixth session, sought to introduce certain amendments that were political in scope. In addition, the Commission had drawn the Sub-Commission's attention to the fact that it had not carried out a number of tasks entrusted to it, particularly certain studies; it was particularly regrettable that the study on the use of the achievements of scientific and technological progress to ensure the right to work and development, which the Commission had once again requested in its resolution 1983/42 (para. 3), had not yet been prepared and did not even appear in the list, submitted by the Sub-Commission, of reports in the course of preparation; the same was true of the study on the negative consequences of the arms race, particularly the nuclear arms race in all its aspects, for the implementation of economic, social, cultural as well as civil and political rights; the establishment of the new international economic order; and, above all, of the inherent right to life - a study requested by the Commission in its resolution 1982/7. It would seem that the Sub-Commission was evading some of its responsibilities, while - even more seriously - undertaking a number of studies on secondary topics to the detriment of major issues, a curious choice which could be explained only by political motivation.

69. His delegation was also disturbed at the proliferation of special rapporteurs; there were currently 15 of them, since many of the rapporteurs appointed in previous years had not respected the time-limits laid down for submission of their reports. In its resolution 1983/22 (para. 5 (c)), the Commission had invited the Sub-Commission to place due emphasis "on the preparation of studies requested of it by the Commission and by the Economic and Social Council ... and to ensure that such studies are as far as possible completed on time" - to which the Sub-Commission had paid no attention. The proliferation of special rapporteurs was, in fact, adding unduly to the Commission's already heavy work-load, to say nothing of its budgetary implications. The Sub-Commission, it must also be said, often abused the republication and circulation of its studies; as the representative of Brazil had said, it should show self-restraint in such matters.

70. His delegation was opposed to resolution XIII (E/CN.4/1984/3, p. 10) which the Sub-Commission recommended to the Commission for adoption; it saw no need at all to establish a Working Group to study the working methods and the programme of work of the Sub-Commission, including its relationship with the Commission and the secretariat (operative para. 1 of the said resolution). His delegation

reserved the right to speak on other draft resolutions recommended to the Commission for adoption and wished to emphasize that the Sub-Commission, as a subsidiary body of the Commission, should adhere strictly to resolution 1983/22 and above all - as had been requested of it - should seek the widest possible measure of agreement when adopting decisions (resolution 1983/22, para. 5 (d)).

71. Mr. SOLEY SOLER (Costa Rica) said that he appreciated the seriousness and the expertise of the members of the Sub-Commission, two qualities to which the report (E/CN.4/1984/3) bore witness. That document also revealed the unquestionable importance of the Sub-Commission's role in the defence of human rights. During the debate, many criticisms had been levelled at the Sub-Commission, touching in particular on the fact that it sometimes went beyond its terms of reference - a view which his delegation endorsed. Unless something was done to put an end to its tendency to deal with matters entrusted to other United Nations bodies, the Sub-Commission's credibility was liable to suffer; moreover, it might clash with the mandate of other bodies, and its decisions would thus be disputed - with adverse consequences for the international community's action in defence of human rights.

72. Among the extravagant resolutions which the Sub-Commission recommended for adoption by the Commission, his delegation felt bound to mention at least resolution VI (E/CN.4/1984/3, p. 5) entitled: "The effects of gross violations of human rights on international peace and security", a resolution whose wording could not fail to aggravate further the tension in Central America. The Sub-Commission was, by that text, meddling indeed in matters beyond its competence. It paid no attention to the background of delicate negotiation being conducted by the countries of the region and the even more delicate approaches of the Contadora Group. In view of the advanced stage the negotiations had reached, the question of Nicaragua should on no account be brought up in another forum; a proposal to do so ran counter to the undertaking given by the countries of Central America to abstain from making "declarations" or taking unilateral "initiatives" which might hamper efforts to reach a solution. His delegation reserved the right to expound its serious objections to that resolution, whose adoption would pose a grave threat to Central America.

73. On the other hand, his delegation welcomed resolution 1983/21, which recommended to the Commission the adoption of draft resolution XIII (loc. cit., p. 10) on the review of the work of the Sub-Commission. The activities of the Working Group whose establishment was proposed should make it possible to define more precisely the Sub-Commission's functions, methods and work programme. His delegation, representing a country which could pride itself on having abolished its army, welcomed with deep satisfaction resolution 1983/22 on conscientious objection to military service and felt that the Commission should study the recommendations set forth in paragraphs 154 to 186 of the report on conscientious objection (E/CN.4/Sub.2/1983/30). Finally, it should be recalled that the question of establishing a post of High Commissioner for Human Rights had already been under consideration for 19 years; his delegation, which was well aware of the value of such a post, hoped that the Commission would at long last approve the resolution on the subject, namely, resolution XVI (E/CN.4/1984/3, pp. 11 et seq.).

74. Mr. FERNANDEZ BALLESTEROS (Uruguay) said that his delegation had always closely followed the Sub-Commission's work. It had also sought, whilst striving to keep its criticisms constructive and objective, to ensure that its work remained closely linked to that of the Commission on Human Rights. Believing as it did that the Sub-Commission should observe certain rules, his delegation had criticized whatever it had felt was a departure from them, and it had always called for a better choice of topics for study and a better use of reports. It recognized that the thirty-sixth session had been marked by a clear improvement in the Sub-Commission's methods of work, although certain procedures regarding which the Commission on Human Rights had expressed reservations had not been dropped - for example, the choice of communications transmitted to the Commission under the procedure established by Economic and Social Council resolution 1503 (XLVIII). That positive development, which was undoubtedly due in large measure to the skill of Mrs. Warzazi, the Sub-Commission's Chairman at its thirty-sixth session, gave grounds for hope that the Sub-Commission would shortly become finally established as an active but objective body, non-political and impartial, devoted to the cause of human rights. To that end, a number of difficulties would have to be overcome, stemming from a certain imbalance in dealing with some situations and from the fact that situations of similar gravity had not evoked the same response - a matter which the Assistant Secretary-General for Human Rights had touched upon in connection with the Commission itself. It was astonishing, therefore, that independent experts who, on the one hand, had devoted a number of meetings to examining telegrams of a humanitarian nature about clearly defined cases, should have declined, on purely formal grounds, to dispatch the telegram of sympathy which should have been sent to the next of kin of the 269 persons who had perished in a tragic accident that had shocked the whole world.

75. The Commission would shortly be nominating new members of the Sub-Commission, and the moment had come to wish them success in their work, to which his delegation would not fail to give its full support.

76. Mr. UTHEIM (Observer for Norway) said that his Government had expressed its concern, in various international forums, at the fate of the indigenous populations throughout the world, which were often unable to enjoy their inalienable rights and fundamental freedoms and whose very survival was sometimes at stake. The most essential right of any indigenous population was self-evidently the right to life; and Norway strongly condemned any attempt, wherever it might occur, at the physical extinction of indigenous groups.

77. Land rights, education, religion, legal assistance, the right of association and respect for culture, language and traditional way of life were central issues. The basic requirements in those areas were set forth in article 27 of the International Covenant on Civil and Political Rights, which all States on whose territory indigenous peoples lived should respect and implement. Experience showed, however, that indigenous peoples had special problems which could not be solved by means of the international rules currently in force; consequently, Norway supported the efforts to develop a new set of rules in that area.

78. His delegation was among those which felt that the excellent study of the problem of discrimination against indigenous populations (E/CN.4/Sub.2/1983/21 and addenda) should be given wide publicity. It also commended the Working Group on Indigenous Populations, in whose activities his Government had participated

through an observer. It particularly welcomed the Plan of Action for future work, drawn up by the Group at its previous session and endorsed by the Sub-Commission (resolution 1983/37). The Working Group would undoubtedly make an important contribution to the development of norms to guarantee the rights of indigenous populations.

79. At its previous session, the Working Group had studied the possible establishment of a voluntary fund to facilitate participation by representatives of indigenous populations in its work, a step which, in his delegation's view, would be most useful.

80. His delegation would be a sponsor of a draft resolution on the rights of indigenous populations, to be introduced under item 19 of the Commission's agenda, which it hoped the Commission would be able to adopt unanimously.

The meeting rose at 1.10 p.m.