

UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL



Distr.  
GENERAL

E/CN.4/1984/SR.60  
22 March 1984

Original: ENGLISH

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COMMISSION ON HUMAN RIGHTS

Fortieth session

SUMMARY RECORD OF THE 60th MEETING

Held at the Palais des Nations, Geneva,  
on Thursday, 15 March 1984, at 3 p.m.

Chairman: Mr. KOOLJMANS (Netherlands)

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The meeting was called to order at 3.35 p.m.

**FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION; ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS** (agenda item 11) (E/CN.4/1984/22 and Add.1 and 2, 23 and 56; E/CN.4/1984/L.3, L.23, L.89, L.90, L.92, L.102 and L.104; E/CN.4/1984/NGO/24, 28, 34 and 46; A/37/422).

1. Mr. NYAMEKYE (Deputy Director, Centre for Human Rights) said that by resolution 1983/51 the Commission had decided to continue its ongoing work on an over-all analysis with a view to the further promotion and encouragement of human rights and fundamental freedoms, including the question of programmes and methods of work of the Commission and alternative approaches within the United Nations system for improving the effective enjoyment of such rights. The Commission had further decided to establish a working group to continue the analysis and make recommendations, to consider at the fortieth session the amount of time to be allotted to the group, giving priority to those issues which offered the best prospects of early agreement, and to review the continuation of the group's work. The General Assembly had also requested the Commission to continue work on the analysis.
2. In 1983, the Commission had established a working group on the rationalization of its agenda and had taken certain decisions on the basis of the group's recommendations.
3. In resolution 1983/50, the Commission had requested the Secretary-General to submit to it a report on ways of developing public information activities in the field of human rights. The report (E/CN.4/1984/23) summarized activities carried out in 1983 and activities to be carried out by the Department of Public Information in the period 1984-1985. It also contained elements of a long-term publicity programme for the period 1985-1989. It would be useful if the Commission could comment on those proposals. Should the Commission request the Secretary-General to carry out any of the activities, it would be necessary to provide the requisite resources.
4. General Assembly resolution 37/171 had requested the Secretary-General to transmit the report of the Seminar on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asian Region to States members of ESCAP, and to invite their comments. The Commission had before it a report by the Secretary-General (E/CN.4/1984/22) transmitting those comments.
5. With respect to the proposal to create a post of United Nations High Commissioner for Human Rights, the Commission, in resolution 1983/49, had invited the Sub-Commission to resubmit its proposals on the matter, taking into account paragraph 1 of Commission resolution 1982/22, the comments made in the Commission, and resolution 1983/49 itself. The Commission had also decided to continue consideration of the question. The Commission's attention was drawn to Sub-Commission resolution 1983/36. Lastly, the Commission should note Sub-Commission draft resolution XIII, relating to a review of the work of the Sub-Commission.
6. Ms. PURI (India), Chairman-Rapporteur of the open-ended Working Group established under Commission resolution 1983/51, introducing the Working Group's report (E/CN.4/1984/L.3), said that the Working Group had considered the question of human rights and fundamental freedoms from the institutional, programme and conceptual standpoints. Many of its recommendations had been incorporated into

Economic and Social Council and General Assembly decisions, but it had been unable to reach agreement on some questions owing to the different approaches adopted by delegations. It seemed that the time had come to review the Group's aims and methods of work.

7. Part I of the Working Group's report dealt with matters discussed by the Group on which action had been taken, part II was concerned with ongoing programmes and issues with respect to which the Group had acted as a think-tank, and part III referred to matters on which no agreement had been reached and the problems which had arisen. The Group had not had sufficient time to consider those matters in detail. Some delegations had felt that the items listed in part III provided a sound basis for the Group's future work, but others had disagreed. There had been delegations which had seen no point in continuing the Working Group beyond the fortieth session in view of the differences of opinion which had emerged, although once again there had been no consensus. Accordingly, the draft resolution submitted to the Commission contained no proposal on the continuation of the Working Group's activities, concerning which a final decision would have to be taken at a subsequent session.

8. Mr. CALERO RODRIGUES (Brazil) said that the Commission had long been considering the possible creation of a post of United Nations High Commissioner for Human Rights. Some Governments were prepared to support the creation of such a post unconditionally, as though that would herald the dawning of a golden age of human rights, while others were totally opposed to such a step, believing that the creation of a new entity endowed with far-reaching powers would infringe on the sovereignty of Member States and be incompatible with the Charter. Brazil subscribed to neither view. The Commission had to determine whether the creation of the post was likely to bring about a real improvement in the ability of the United Nations to deal effectively with human rights problems. That required a clear definition of the functions to be entrusted to the High Commissioner, as well as the widest possible agreement on the creation of the post. It was in that spirit that his delegation had supported efforts to clarify the rather vague suggestions made concerning the High Commissioner's role in the United Nations system.

9. Sub-Commission resolution 1983/36 on the matter was very general. It stated that the work of the High Commissioner should be humanitarian in character, guided by an impartial concern for the promotion and protection of human rights and not directed towards obtaining political advantage for any State. It was proposed that the High Commissioner should be elected by the General Assembly for a five-year term, without the possibility of re-election. The Commission's bureau would act as an advisory committee for the High Commissioner, who would appoint his own staff. The office would be financed from the United Nations budget.

10. The administrative arrangements had been modelled on those of the Office of the United Nations High Commissioner for Refugees. The question arose, however, of whether those provisions were justified, since they involved the establishment of a fully-fledged separate organization, with its own administrative and financial services. Not only was it doubtful whether the expense would be merited, but there was also a need to consider the extent to which increases in the substantive staff of the High Commissioner, which would be likely to occur in a separate organization, could be detrimental to the proper functioning of the Centre for Human Rights.

11. A more important question, however, was that of the functions that could be entrusted to the High Commissioner. It had been proposed that he would carry out specific tasks assigned by the General Assembly, the Economic and Social Council and the Commission on Human Rights. Yet those functions were normally assigned to special rapporteurs, working groups or the Secretary-General, and it was not evident that it would be worthwhile to entrust all those responsibilities to a single person.

12. It had further been proposed that the High Commissioner would initiate direct contacts with Governments to safeguard human rights. The contacts would be prompt, confidential and exclusively humanitarian, the results being made public only with the consent of the Government concerned. Their aim would be to ascertain facts and offer assistance to the parties concerned, including offers of conciliation, technical advice on human rights provisions and information on assistance available from other United Nations organs. It had been proposed that contacts would be initiated when it appeared necessary or desirable, without it being made clear, however, who would decide that very sensitive question.

13. Another proposal was that the High Commissioner should play an independent role, following certain guidelines. He would, inter alia, accord priority to such massive violations as apartheid, and would consider as situations of special concern those resulting from aggression and threats against national sovereignty. The question of priorities posed particular difficulties in that connection, and it was extremely doubtful whether it would ever be possible to agree on any list of real value. Besides the political objections which might be raised, many questions arose. If, for example, the High Commissioner considered that a situation resulting from aggression was of special concern, what was he supposed to do? Since the international community had been concerned, in many instances for years, with those very situations, without having been able to resolve the problems they posed, what action could a High Commissioner effectively take?

14. While the general function given to the High Commissioner - to promote and protect the observation of human rights and fundamental freedoms for all - was, of course, an ideal everyone should strive for at various levels, it would require a continuing set of multifaceted actions, to deal with an array of problems. It could not be seriously believed that an effective contribution was being made simply by entrusting such responsibilities to one individual. The incumbent would have to try to correct every situation, to have legislation changed in one country, to modify a judicial system in another, and so on. Further, there was no guarantee that the High Commissioner's perception of the requirements for the protection of human rights in a particular country was correct, and it seemed that his actions would necessarily result in interference in internal affairs.

15. The basic problem was to decide whether the High Commissioner should act only in response to specific mandates from representative bodies, such as the Commission, or whether he should be authorized to act on his own initiative. The first choice would offer certain guarantees against unwarranted action, but raised the question of whether there was any justification for establishing a new post and the administrative apparatus which would accompany it. The second choice would require careful definition of the conditions under which the High Commissioner could act and the limits of his powers to take initiatives. A simple statement that the High Commissioner should promote and protect the observance of human rights and fundamental freedoms for all was quite unacceptable, and far more precise terms and conditions were needed. His delegation invited others to put forward specific suggestions, in an effort to determine whether a satisfactory solution could be found. Brazil was prepared to participate in efforts to solve the problem, but did not consider the existing proposals an acceptable basis for a decision on whether to establish a post of United Nations High Commissioner for Human Rights.

16. The draft resolution before the Commission on the matter (E/CN.4/1984/L.23) simply passed on the Sub-Commission's proposals to the Economic and Social Council and the General Assembly. The Commission would thus be washing its hands of the question, and proclaiming its own incapacity. That regrettable approach implied a lack of faith in the Commission and its dismissal as an adequate forum for serious negotiation. His delegation would have expected the Commission to have embarked on an effort to bridge the differences which had arisen, perhaps in a working group, but some delegations were apparently convinced that that would be a useless exercise. That view was very short-sighted. A resolution might be adopted, but without widespread support a High Commissioner would be very ineffective. All that would be achieved by adoption of the draft resolution would be to burden the administrative structure of the United Nations and its budget with an office quite unable to make any real contribution to the improvement of human rights in the world.

17. His delegation was prepared to co-operate in order to find a solution through meaningful negotiations, and to that end had submitted draft resolution E/CN.4/1984/L.89. If other delegations were so impatient for a paper victory that they found no merit in the proposal, his delegation might have to revise its position and express very strong opposition to the creation of a post of High Commissioner in the terms proposed.

18. Mr. HAYES (Ireland) said that over the years the United Nations system had devised a range of instruments which were, at least potentially, conducive to a higher level of enjoyment of human rights by peoples throughout the world. The best known were the International Covenants, Conventions and Declarations; less well known, but also valuable, were the advisory services in the field of human rights, provided under a programme which his delegation hoped would receive impetus from the resolution adopted on the subject a few days previously (E/CN.4/1984/L.61). In addition, there were now a number of different ways in which the Commission might turn its attention towards situations revealing a consistent pattern of violations of human rights. The contribution to the advancement of human rights made by each of those instruments depended on the sense of purpose with which they were deployed. His delegation was particularly attached to preserving the integrity of the procedure provided for under Economic and Social Council resolution 1503 (XLVIII); it also valued the practice of appointing Special Rapporteurs on situations and phenomena which warranted specific investigation.

19. Despite the undoubted value of those instruments, the system of protection and promotion of human rights and fundamental freedoms which they constituted remained partial and inadequate, and the episodic and necessarily untimely attention the Commission now paid to situations revealing a consistent pattern of human rights violations seriously vitiated the credibility of United Nations action in the field of human rights. His delegation therefore strongly supported draft resolution E/CN.4/1984/L.23, recommending the establishment of a post of United Nations High Commissioner for Human Rights, since it believed that its adoption would make a practical contribution towards correcting that defect.

20. A High Commissioner for Human Rights would not, of course, confine his attention to situations of violations of human rights. He would also foster public education and discussion of human rights issues, encourage ratification of international conventions in the human rights field and support the efforts of individual Governments to ensure the observance of human rights and fundamental freedoms in their own countries. The prestige of that high office would act as a powerful catalyst to the entire range of the General Assembly's promotional activities in the field of human rights and the results were bound to be beneficial.

21. The possible functions and responsibilities of the High Commissioner, as proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, were set out in the annex to draft resolution E/CN.4/1984/L.23. While the mandate was not that which his delegation and perhaps others would have proposed, it would enable the High Commissioner to play the role envisaged for the office. His delegation was opposed to any change in the draft resolution which would imply a significant modification of that role.

22. Ms. PURI (India) said that agenda item 11 was of wide scope and great significance, enabling the Commission to take a critical view of its programmes and methods of work and to see whether alternative and supplementary methods, approaches and ideas were required.

23. The conceptual foundation for the Commission's consideration of the issue had been laid down in General Assembly resolution 32/130. First and foremost, the Commission must continue to explore ways and means of enhancing the effectiveness of the present human rights system within the United Nations. Great importance had also been attached to the standard-setting role of the system. It had been necessary at the outset to build an adequate system of norms, guidelines and obligations covering the entire spectrum of States' activities involving a potential abridgement or restrictions of the enjoyment of human rights as well as calling for measures for the direct promotion of those rights. The progress made in that field during the past few years had been very impressive. Although much work remained to be done, the Commission had perhaps reached a stage where active consideration should be given to making a shift of priority from negotiations on further standards and norms to ensuring the widest possible accession to the conventions and other instruments already negotiated and their effective implementation.

24. General Assembly resolution 32/130 also attached great significance to international co-operation in the effort to establish a new international economic order, without which the full exercise of human rights by individuals was not possible. For example, it was necessary for a government to ensure that a poor farmer or landless worker was not deprived of his basic human rights and forced into bonded labour by money lenders, but legislation or action by governments alone would not suffice until the socio-economic structure of society was changed and the necessary external environment created to facilitate such changes.

25. It was also necessary to take up, on a priority basis, the cases of massive violations of human rights where such rights were denied to an entire race, community or nation. Despite the high priority attached to the elimination of such blatant and pervasive violations of human rights as apartheid and other forms of racism and racial discrimination, there was a tendency to underplay their significance on the grounds that they involved long-term objectives. That was both dangerous and erroneous, since those cases had both long-term and short-term aspects: the longer-term objectives had to be pursued relentlessly, while the short-term aspects brooked no delay. In that connection, her delegation called on those few but important countries, without whose co-operation it would not be possible to make any progress on those problems, to join the broad consensus that had emerged on the issue. If they continued to entertain reservations on important components of that consensus and did not join the international community in its efforts to remove those pernicious obstacles to the enjoyment of human rights, their suggestions for alternative approaches would carry very little conviction.

26. Any alternative approaches must stand the scrutiny of a set of tests. First of all, they must be backed by the widest possible agreement within the international community in order to be effective. Secondly, a decision on any alternative approaches must be well timed and preceded by adequate preparations for their effective application. Thirdly, the alternative approaches should not be divisive or tendentious.

27. One alternative approach which had been proposed was the establishment of a post of United Nations High Commissioner for Human Rights, which should be examined in the light of the criteria she had just mentioned. The questions that arose were whether the post was necessary, whether the existing institutions were not adequate to handle the task, and whether the establishment of the post would not result in overlapping and confusion with functions already being discharged by the existing institutions.

28. In her view, those supporting the creation of the post had not fully understood those basic questions. Nor had there been a frank and detailed assessment of the merits and demerits of the existing institutions. In fact, her delegation believed that the Secretary-General and those institutions could and did, individually and together, perform most of the functions envisaged for the High Commissioner. One of those functions was to act as the implementing arm of the General Assembly, the Economic and Social Council and the Commission on Human Rights on specific tasks. Her delegation believed that implementing mechanisms already existed within those institutions and, while there was scope for them to be strengthened, a separate implementing agency did not appear to be necessary. Another important function proposed was to co-ordinate and consult with other organs of the United Nations system on human rights matters. In view of the fact that Article 68 of the Charter of the United Nations and the relevant resolutions of the General Assembly and the Economic and Social Council, especially Council resolution 1979/36, affirmed the essential co-ordinating role of the Commission on Human Rights within the United Nations system, she wondered whether it was desirable to transfer that role to the proposed High Commissioner. The third important function was to establish direct contacts with Governments with a view to fact-finding, reacting to emergencies and offering good offices. All those functions were at present being performed by the Secretary-General through the appointment of special envoys and representatives, and by the Commission and the Sub-Commission through their Working Groups and Rapporteurs. While her delegation recognized that the ability of the existing machinery to react and respond to emergent situations involving massive and flagrant violations of human rights was not entirely satisfactory, the reasons for that lack of ability lay deep in the economic and social structure of nations: they involved political factors and strategic consideration, and would not disappear simply by the creation of a post of High Commissioner. Her delegation would favour the strengthening of the existing system rather than the creation of an additional institution.

29. It had been claimed that a High Commissioner would be able to act in an apolitical and confidential manner in order to deal with situations involving violations of human rights in various countries, whereas the existing institutions had to act in the public limelight, making it difficult to bring international concern to bear on the sensitive issues involved. However, given the existing global environment and the readiness with which nations sought to exercise pressure and to utilize institutions and mechanisms within the United Nations to serve the interests of their foreign policies, her delegation had serious doubts whether the

proposed High Commissioner would be able to remain immune to outside influences and pressures. Any quest for political impartiality away from the voting balance of the Commission was bound to be unsuccessful. There was a great deal to be said in favour of the checks and balances built into the structure of the Commission in terms of regions, socio-economic and political systems, ideologies and the personalities reflecting those various factors, and the Commission should think carefully before taking any action to replace those checks and balances by the judgement, prejudices and predilections of a single individual functioning under pressures from a variety of quarters.

30. Confidentiality of contacts with Governments could, of course, be very useful, but the Commission's own confidential procedure under Council resolution 1503 (XLVIII) ensured greater impact and efficacy than a High Commissioner could ever achieve. While very few Governments were in a position to take the extreme step of not co-operating with the Commission in respect of situations examined under the procedure provided for in Council resolution 1503 (XLVIII), a number of Governments could refuse to co-operate with the High Commissioner without any loss of face.

31. Her delegation had always opposed the mindless proliferation of institutions within the United Nations system, often at the cost of the existing institutions which were rendering extremely valuable services. It therefore found it difficult to agree to the creation of yet another organ when the existing institutions of fundamental importance to developing countries were in need of funds. She wondered how some of the countries which favoured the creation of the post reconciled their non-co-operative attitude towards the economic and trading institutions within the United Nations system, based on the so-called non-proliferation argument, with their obsessive interest in the establishment and funding of an institution which, as currently envisaged, was found to duplicate much of what was already being done by existing bodies.

32. Her delegation's comments should not be construed as uncompromising opposition to the proposal for the establishment of a post of High Commissioner. It had an open mind on the issue and was prepared to consider the proposal in all seriousness and even favourably if it met the tests she had outlined, the most important of which was the development of a genuine consensus on the issue. If a decision were taken on the matter against the opposition of a large section of the Commission, countries might be forced into a legal position of not accepting the jurisdiction of the High Commissioner if and when the post was established, thus making him a "lame duck" even before he took the oath of office.

33. Differences continued to prevail even with regard to the High Commissioner's terms of appointment and his relationship to the Commission on Human Rights. On both those points, there was a clear-cut difference of approach between Sub-Commission resolution 1983/36 and the draft resolution submitted by Costa Rica (E/CN.4/1984/L.23). Those differences reflected the divergent views of various groups in the Commission and should first be reconciled before action was taken to create the post. Her delegation believed that a consensus was possible and therefore supported the proposal by Brazil, contained in document E/CN.4/1984/L.89, to establish an open-ended working group on the question.

34. Mr. MASFERRER (Spain) said that establishment of a post of High Commissioner for Human Rights would be a positive step, since it would set up an international institution whose efficiency would be a function of its objectivity and independence. That institution would be parallel, in the international sphere, to the institution of Ombudsman. However, it was clear that it would not generally be accepted in all domestic legal systems.

35. There were various technical and legal problems involved in the establishment of the post, especially those concerning the relationship of the High Commissioner's functions with those of other bodies in the human rights system within the United Nations. In his delegation's view, the institution should complement those already existing and its role should not duplicate that of other bodies.

36. It was recognized that systematic violations of human rights could not come under Article 2, paragraph 7, of the Charter and, therefore, any intervention by the competent bodies of the United Nations in that area should not be regarded as interference in the internal affairs of a State. Consequently, his delegation had no difficulty in principle with the possible functions of the High Commissioner, so long as he acted within the competence of his mandate. It was therefore of the utmost importance that there should be a consensus on the content and scope of that mandate. Although some might believe that the establishment of the new institution was not particularly urgent, his delegation considered that the opportunity should be seized. The achievement of a consensus on the establishment of a post of High Commissioner would be evidence of the maturity of the international institutions and, in particular, of the United Nations.

37. His delegation took a positive view of the establishment of the post and was prepared to co-operate in any effort to improve the various international institutions and their working methods in order to promote the defence of human rights and fundamental freedoms.

38. Mr. Barakat (Jordan) took the Chair.

39. Mr. DICHEV (Bulgaria) said that one of the main purposes of the United Nations was to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. All the achievements of the United Nations in the field of human rights, including recognition of the right of colonial countries and peoples to self-determination, the implementation of the Declaration on the Granting of Independence to Colonial Countries and peoples, and the collapse of a world-wide oppressive colonial system, were due to international co-operation and had formed the basis for further effective action by the United Nations towards the promotion and encouragement of respect for human rights and fundamental freedoms. The progress made with regard to the codification of international humanitarian law had resulted in a legal basis that constituted both a guarantee and a promise for the improvement of United Nations activities in the field of human rights. That basis had to be broadened and consolidated through further universalization of the existing international human rights instruments and through the continuation of the codification process.

40. In considering the development of international co-operation in the field of human rights, it was essential not to overlook the contribution of a number of international human rights bodies which had been established either within the United Nations system or with its active help and support. In addition to the Commission on Human Rights, the Economic and Social Council, and the General Assembly, a number of other United Nations bodies and specialized agencies dealt with various questions closely linked with human rights. There were also the international bodies created under the respective international legal instruments and dealing with their implementation by States parties.

41. Thus, a solid institutional and normative basis had already been created to enhance activities aimed at the promotion of human rights and to increase their effectiveness. However, there were still serious problems in the field of human rights, and his delegation attached great importance to the search for ways and means of solving them at the earliest possible time. That search must be directed towards achieving the complete cessation of the gross, mass and flagrant human rights violations resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination and occupation, aggression and threats to national sovereignty, unity and territorial integrity, and the refusal to recognize the rights of peoples to self-determination and to full sovereignty over wealth and natural resources. The long persistence of such violations had made the world community aware of the need for an increased United Nations role in human rights. In several cases, however, it had proved politically expedient for some States to regard difficulties or ineffectiveness as inherent in the existing procedures rather than face the fact that the cause was their own attitude towards those procedures. Good will and co-operation were a prerequisite to the effectiveness of existing human rights mechanisms and legal remedies: whenever efforts for international co-operation were obstructed - for example, in cases of mass and flagrant human rights violations, such as those in South Africa and the occupied Arab territories, or of refusal to accede to or ratify the major human rights instruments - the human rights activities of the United Nations were bound to suffer. Such obstructions stemmed from a policy of hindering any moves towards genuine political or economic independence and defending an outmoded system of exploitation and oppression.

42. In his delegation's view, the existing system of institutions and bodies, together with the current legal framework, provided ample opportunities for improving the effectiveness of the human rights activities of the United Nations. They should be explored in full, encouraging the broadest co-operation among States, further ratification or of accession to international instruments, and increased codification of international humanitarian law. The democratic basis of such an approach was clear. One wondered, however, whether a delegation which could express misgivings about increasing the Commission's membership from 32 to 43 - as one delegation had done at the thirty-ninth session - had a genuine commitment to democracy.

43. Although the idea of establishing a post of United Nations High Commissioner for Human Rights was not the central issue of agenda item 11, his delegation nevertheless wished to state its views on the subject.

44. Firstly, that idea, like others based on the notion of some supranational structure or on the endowment of existing bodies with executive functions beyond their terms of reference, had raised doubts and disquiet among many delegations. Not all differing approaches were necessarily represented in the Commission; in that connection, it should be borne in mind that the General Assembly had rejected a proposal to establish such a post some years previously. Its establishment would not only be at variance with the Charter's provisions relating to international co-operation but would further undermine the prospects for such co-operation because of the wide divergence of views on the matter. The Commission, in pursuing the subject, would appear to be inviting yet another setback in its efforts to carry out its task. Secondly, no individual, no matter how impartial and competent, could cope with the diverse and complex range of human rights problems, and the political and legal problems involved would inevitably exacerbate rather than improve matters. Thirdly, the functions proposed for the High Commissioner for Human Rights were in fact already the prerogative of the Secretary-General and had hitherto been carried out by him, by designated officials and by the various bodies which monitored observance of existing international human rights instruments. Moreover, the recent upgrading of a former division into the Centre for Human Rights obviously conferred on it correspondingly greater responsibilities. Consequently, all the technical and co-ordinating tasks envisaged could be carried out within the existing framework. Lastly, the claim that there was an analogy between the proposed post and that of the United Nations High Commissioner for Refugees was groundless, because of the difference in substance between the two types of problem.

45. Instead of preparing the study requested in Commission resolution 1982/22, the Sub-Commission, seemingly ignoring its subsidiary status, had submitted resolution 1982/27 containing a draft mandate for the post in question. At the current session, it had again side-stepped at least part of the Commission's request in its resolution 1983/36 and sought to avoid debate in the Commission by having the topic referred to the Economic and Social Council. The text of that resolution also abounded in vague formulations, apparently to be interpreted by the High Commissioner himself. The same vagueness was evident in draft resolution E/CN.4/1984/L.23, an almost literal reproduction of the Sub-Commission's text which, moreover, added some undesirable inaccuracies. The fourth preambular paragraph, for example, wrongly interpreted one of the main provisions of the Charter, clearly stated in its Article 1, paragraph 3.

46. His delegation reiterated its readiness to contribute to any efforts undertaken by the Commission genuinely aimed at attaining the Charter's true objectives.

47. Mr. JAEGER (Federal Republic of Germany) said that the major international codifications of human rights, particularly the Universal Declaration of Human Rights and the International Covenants, were among the great achievements of the United Nations. The rights not only of States but also of individuals had now become recognized in international law. However, as the debate on agenda item 12 had shown the gap between legal norms and reality remained wide, and human rights violations were growing rather than decreasing. The Organization had the primary task, therefore of ensuring that existing human rights standards were upheld. As the Assistant Secretary-General for Human Rights had rightly said, following an era of codification the international community had now entered an era of implementation. The importance of agenda item 11 lay in the search for suitable measures to enforce existing international human rights instruments. Although individual States and their

Governments would remain primarily responsible for the protection of human rights, international codification was intended for cases where domestic law failed to do so. It was imperative, therefore, to strengthen machinery and procedures for that purpose.

48. One of the most important proposals concerned the creation of a post of High Commissioner for Human Rights. His delegation was pleased that, after years of deliberation, the Commission now had before it a draft resolution recommending that the Assembly should create such a post, since a High Commissioner, mandated to carry out exclusively humanitarian tasks independently and impartially, could make an important contribution to world-wide respect for human rights. International law required such independent institutions to enable its norms to be upheld through conciliation, mediation and good offices. Those were the functions set out in the annex to draft resolution E/CN.4/1984/L.23. His delegation hoped that those delegations which had questioned the idea of a High Commissioner in the past would not object to the proposals contained in that draft resolution, since anyone who supported international codification of human rights must also applaud measures for implementation.

49. The proposals contained in document E/CN.4/1984/L.90 could hardly be viewed as amendments to draft resolution E/CN.4/1984/L.23, since the two texts had little of substance in common. The proposal to take up the topic again at the Commission's forty-first session was unacceptable: after almost 20 years of deliberation, nothing would be gained by further postponement, and the time for decision had come.

50. Mr. KLENNER (German Democratic Republic) said that his delegation attached great importance to the agenda item under consideration because it was incumbent upon the Commission to promote more comprehensive and effective co-operation among States in the observance of human rights, concentrating on an over-all analysis of the alternative approaches and ways and means within the United Nations system, in response to General Assembly resolution 32/130. Progress hitherto had been inadequate. Merely to seek further institutional measures was unsatisfactory, since an extensive framework for intergovernmental co-operation already existed, and specialized agencies and committees were dealing with the matter under the relevant conventions.

51. To ensure enhanced enjoyment of human rights and fundamental freedoms, the foremost need was universal observance of the basic human rights instruments. No State could be sincerely committed to additional human rights bodies if it had not acceded to the International Covenants, the Convention on the Prevention and Punishment of the Crime of Genocide and similar instruments.

52. The purpose of an over-all analysis of alternative approaches and ways and means should be to clarify further the basic concepts of human rights, in accordance with General Assembly resolution 32/130. One step would be to define the right to live in peace - the most important human right, especially at a time when the policy of confrontation and armament pursued by the United States and its allies had created an acute danger of war. An over-all analysis must also consider States' obligations stemming from that right, including the obligation to co-operate in the interests of arms limitation and disarmament.

53. It was also important to define objective criteria to describe mass and systematic human rights violations which would come within the Organization's competence. The current practice of leaving decisions largely to the discretion of the Sub-Commission, a body of experts who were not State representatives, was unsatisfactory and did not allow the United Nations to focus on those human rights violations which, because of their gravity, threatened peace and friendly relations. General Assembly resolution 32/130 provided criteria, mentioning examples such as violations stemming from apartheid, all forms of racial discrimination, colonialism, foreign domination and occupation, aggression and threats to national sovereignty, unity and territorial integrity, and the refusal to recognize peoples' rights to self-determination and sovereignty over their wealth and natural resources. However, that fundamentally important resolution had nowhere been mentioned, nor had the criteria to which it referred been applied, by the Commission or the Sub-Commission.

54. The Commission had arrived at a cross-roads on the subject of establishing a post of High Commissioner for Human Rights: it had to decide whether to adopt a yardstick which, in effect, would permanently legalize interference in the internal affairs of States having differing and even incompatible social, legal and human rights systems, or to regard the standard-setting process as a matter for co-operation among States. A post of High Commissioner for Human Rights would represent institutionalized intervention. The idea had stemmed from the cold war era and had been repeatedly rejected by the General Assembly; it was not by chance that its resumption coincided with the major capitalist Power's departure from the path of détente and peaceful coexistence. The latest proposals contained in Sub-Commission resolution 1983/36 and draft resolution E/CN.4/1984/L.23, if given effect, would be interventionist, hostile to détente, inconsistent with international law and unsuitable for removing impediments to the enjoyment of human rights.

55. His delegation was opposed to the idea of a High Commissioner for Human Rights for a number of good reasons. To establish a function of human rights protection was to distort the Organization's purposes. Under Article 1, paragraph 3 and Articles 55 and 56 of the Charter, the United Nations should promote universal respect for, and observance of, human rights; but nowhere was the United Nations mandated to implement, defend or protect those rights. Such a mandate, concerning a matter within the domestic jurisdiction of States, would be at variance with the character of an organization composed of countries having differing social and economic systems. Moreover, the Charter made it clear that United Nations activities and co-operation among States must be based on the universally accepted principles of international law. The function proposed was one which the Member States had not even entrusted to the Organization as a whole; it would therefore be preposterous to give a mandate of that kind to one of the Organization's administrative bodies. The tasks envisaged could not be carried out effectively, since they would deal with matters deeply affecting the authority of States but would not be based on the consensus of all States.

56. In any event, it would be contrary to the law relating to international organizations to establish new bodies having new responsibilities without the consent of each member State. The Charter was an international agreement adopted by Member States which could be modified only in conformity with its own provisions or by the mutual consent of all members, and the establishment

of new bodies, functions and responsibilities would require such a modification. International action on a subject such as the promotion of human rights could be conducted only on the basis of co-operation among equal and sovereign States through an intergovernmental organization, not by means of an administrative body.

57. The United Nations could deal justifiably with human rights violations only when they had been committed on a mass scale and revealed a consistent pattern, and when they represented breaches of, or threats to, peace or peaceful international co-operation. Member States undertook wide-ranging activities at various levels to combat such mass violations; they could make an important contribution to eliminating them if they all became parties to and implemented the various international human rights instruments.

58. The United Nations had established a system of bodies dealing with human rights matters. It included the co-ordinating bodies - the General Assembly and the Economic and Social Council - their committees and subsidiary organs, such bodies as the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Committee on the Elimination of Discrimination against Women and autonomous specialized agencies such as ILO and UNESCO. No single person could be made responsible for co-ordinating the work of all those bodies, since that would be to give him fuller powers than the Secretary-General.

59. Experience had shown that mass and flagrant violations of human rights were related to the prevailing social and power structures. The most serious obstacles to the implementation of human rights - threats to peace, acts of aggression, apartheid, the arms race, the proliferation of nuclear and other weapons of mass destruction, the continued existence of an unjust international economic order, the neo-colonialist practices of transnational corporations, and mass unemployment - could not be removed by a High Commissioner for Human Rights. The Commission's true commitment should be to analyse the causes of violations, to exchange experience and to use the means provided by international law to promote, encourage and protect the fundamental freedoms of all peoples and individuals.

60. The purpose of his delegation's amendments (E/CN.4/1984/L.90) to draft resolution E/CN.4/1984/L.23 was to bring the text into line with current international law.

61. Mr. SY (Senegal) said that the question of the establishment of a post of United Nations High Commissioner for Human Rights was one of the most controversial issues before the Commission. For nearly 20 years, the Commission and the General Assembly had been prevented from taking a decision on the subject because of the climate of suspicion, apprehension and confrontation that had impeded any constructive discussion on ways and means of implementing the idea for the benefit of the many victims of human rights violations.

62. The period of apparent impasse had not, however, been entirely unproductive. In resolution 1982/22, the Commission had requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to prepare a preliminary study on the possible mandate of a High Commissioner, and following a further request in 1983 the Sub-Commission had submitted a full set of proposals on the various aspects of the issue, taking account of the comments of delegations. The Commission now had before it specific proposals on the mandate and functions

of the High Commissioner, which should assist it in adopting a decision. It was regrettable that discussion of the issue in the past had been based on suspicion and apprehension rather than on an objective analysis of the mandate and functions of the High Commissioner. His delegation hoped that, with the new proposals before it, the Commission could establish a constructive dialogue, and that delegations would consider the proposals carefully and, if necessary, improve upon them.

63. His delegation wished to emphasize certain points which it considered of particular importance. The seriousness of human rights violations throughout the world and the inadequacy of the existing machinery, institutions and procedures for confronting them strengthened its conviction that the establishment of a post of High Commissioner for Human Rights was more essential than ever. The periodicity of the Commission's sessions and of the procedures of the rapporteurs precluded timely action when needed. That was a major gap in the international machinery for the protection of human rights, which could be filled only by the establishment of a permanent institution that could not only take timely action in ensuring respect for human rights but could also take discreet preventive action before a situation became uncontrollable.

64. Such an institution was essential, considering the many freedom fighters in southern Africa who were victims of ill-treatment, torture and summary or arbitrary execution. Because it had been untimely, the Commission's action had so far been largely ineffective. Serious violations of human rights in southern Africa could be a priority field of action for the future High Commissioner.

65. The existence of many situations of violation of human rights throughout the world, in which the future High Commissioner could play a constructive role, was undeniable. However, attention had been drawn on a number of occasions to the danger that he might serve the interests of a particular political group to the detriment of others. In his delegation's view, there were ways and means of averting that danger. In order to enable the High Commissioner to perform his role for strictly humanitarian purposes, his independence of political groups must be guaranteed. To that end, all regional groups must be able to submit candidatures, but care must be taken to ensure that a candidate did not unduly serve the objectives of a particular geographical group. As in the case of the election of the Secretary-General, the candidate offering the highest qualities of integrity, prestige and independence, which were necessary for the discreet and impartial fulfilment of his functions, should be chosen.

66. The High Commissioner would have to work in close co-operation with the Commission. He should not seek to reveal embarrassing facts in a particular country, but rather to act discreetly in co-operation with the State concerned to ensure the cessation of human rights violations. He should also work in close co-operation with the regional institutions responsible for the protection of human rights. That would be a guarantee of effectiveness and a shield against interference in the internal affairs of a particular region. On his appointment, he should establish co-operation with regional organizations, providing them with the necessary assistance, and should take direct action only when they failed to do so.

67. The High Commissioner should help to promote and encourage universal and effective respect for all human rights and fundamental freedoms as set forth in the Universal Declaration of Human Rights. Since those rights and freedoms were interdependent and indivisible, he would have to pay attention to the enjoyment of all human rights and not favour one category above another. He should give priority in his activities to situations of mass violations of human rights, such as apartheid, colonial domination, racial discrimination and foreign occupation, bearing in mind that the apartheid regime continued daily to commit the most flagrant violations of human rights against which the international community was powerless. It was urgently necessary, therefore, for the international community to establish new procedures that could force the Pretoria regime to end its acts of arbitrary detention, ill-treatment of detainees and summary execution of freedom fighters.

68. In the sphere of economic, social and cultural rights and the right to development, the High Commissioner should play an active part in international efforts to ensure the enjoyment of the right to an adequate standard of living and adequate nutrition. His task should be interpreted broadly to include efforts to establish more just economic relations and to ensure the implementation of the right to development on an international scale. The protection of civil and political rights would be another important aspect of his work, which he must perform with tact and delicacy to avoid any interference in the internal affairs of States.

69. He reiterated his delegation's conviction that the necessary basis was available to enable the Commission to take a decision in favour of the establishment of a post of High Commissioner for Human Rights. Some delegations had requested more time to give detailed study to the proposals, but that should not be used as an excuse for delaying a decision indefinitely. He appealed to members to adopt an attitude that could lead to some progress on a matter that had been before the Commission for far too long.

70. Mr. BYKOV (Union of Soviet Socialist Republics) said that consideration of item 11 was evidence of a desire to enhance the effectiveness of United Nations efforts to fulfil one of the objectives of the Charter: "To achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". However, it could bring constructive results only if it took place in a businesslike atmosphere and was based on a sincere desire to seek mutually acceptable solutions in accordance with the principles of the Charter, article 1, paragraph 4, of which required the United Nations to be a centre for harmonizing the actions of nations in the attainment of the common ends set forth in that article.

71. The role of the United Nations in promoting and encouraging respect for human rights and fundamental freedoms had increased as the world had witnessed the struggle of many peoples to free themselves from the yoke of colonialism. Attention had been drawn to international co-operation in human rights, to the establishment of a broad base for such co-operation in other areas of United Nations activity, and to guidelines and concepts for further United Nations activities in the field of human rights. General Assembly resolution 32/130 stressed that all human rights and fundamental freedoms were indivisible and interdependent and that the international community should accord priority to the search for solutions to the mass and flagrant violations of human rights of peoples and persons affected by situations such as apartheid, all forms of racial discrimination, colonialism, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity, as well as the refusal to recognize the fundamental rights of peoples to self-determination and of every nation to the exercise of full sovereignty over its wealth and natural resources. International co-operation in

the promotion of human rights and fundamental freedoms should be based on consistent compliance with the Charter and, in particular, on the principles of the sovereign equality of States and non-interference in internal affairs.

72. At its thirty-eighth session, the General Assembly had stressed the importance of improving on the work of existing United Nations bodies rather than creating new bodies. The effectiveness and development of international co-operation could not be enhanced by the establishment of new machinery and procedures, but only by the strengthening of existing bodies and the consistent implementation of the concepts set forth in General Assembly resolution 32/130.

73. The Commission was carrying out useful work on a comprehensive analysis of alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms. Its open-ended sessional Working Group had considered the issue at the current session and had submitted a valuable report and draft resolutions. The responsible approach it was following deserved every support. Any attempt to bypass article 1, paragraph 4, of the Charter could only impede progress.

74. A number of doubts had been expressed about the proposed appointment of a United Nations High Commissioner for Human Rights. His delegation's opposition to the proposal was based on considerations of principle and on a desire for compliance with the principles of the Charter, with which the idea was incompatible. It had repeatedly drawn attention to the illegitimacy of the proposal and the harmful consequences it could have for the cause of international co-operation, which should continue to be strengthened in every possible way. Draft resolution E/CN.4/1984/L.23 on the subject was fraught with contradictions, and some of its provisions ran directly counter to the Charter. It would result in the establishment of a new international bureaucratic network under a high official with powers exceeding those of the Secretary-General. The functions and responsibilities set forth in the annex required the High Commissioner to have superhuman qualities, and there was no practical approach to the definition of such functions and responsibilities. Instead of a patient search for generally acceptable decisions, efforts continued to be made to force a decision on the proposed appointment. Apart from the well-founded objections of sovereign States, account must be taken of the fact that such an appointment would be counter-productive. However outstanding his qualities, the incumbent could be in an extremely difficult position with respect to States which considered that due account had not been taken of their positions and which thus felt justified in refusing to co-operate with him. States, particularly those that had achieved their independence with difficulty, could not be expected to yield any of their sovereignty.

75. His delegation had, on a number of occasions, demonstrated its readiness to co-operate constructively in the search for mutually-acceptable ways of promoting United Nations work in the field of human rights and improving its effectiveness. It would continue, together with others, to work for mutually acceptable decisions, basing itself on the Charter and on efforts to ensure the efficiency of United Nations bodies in compliance with General Assembly resolution 32/130 and other United Nations decisions.

The meeting rose at 6.10 p.m.