



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



UN LIBRARY

Distr.
GENERAL

E/CN.4/Sub.2/1982/SR.21
3 September 1982

Original: ENGLISH

OCT 5 1982

COMMISSION ON HUMAN RIGHTS
~~UN/SA~~

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Thirty-fifth session

SUMMARY RECORD OF THE 21st MEETING

held at the Palais des Nations, Geneva,
on Monday, 30 August 1982, at 3.00 p.m.

Chairman: Mr. CHOWDHURY

CONTENTS

The new international economic order and the promotion of human rights (continued)

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

This record is subject to correction.

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

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

The meeting was called to order at 3.10 p.m.

THE NEW INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS
(agenda item 13) (continued) (E/CN.4/Sub.2/1982/19/Rev.1 and Add.1; E/CN.4/Sub.2/477
and Corr. 1; E/CN.4/1334, 1421 and 1488)

1. Mr. EIDE said that the Special Rapporteur had laid the groundwork in his report (E/CN.4/Sub.2/1982/19/Rev.1 and Add.1) for a new dynamism in human rights, since the report went to the core of the value aspects of development. The debate in the United Nations on development had revealed three levels of concern, the first being with development as growth, the second with development as a question of basic needs, and the third, which was receiving increasing attention, with development as a question of the realization of human rights throughout the world. The third level also involved consideration of the barriers to human development throughout the world, which was the real subject of the report. In the debate on development two propositions were advanced which were both very reasonable but were unfortunately in opposition and therefore gave rise to profound ideological conflict, though not within the Sub-Commission. As both had merit, the Sub-Commission would do well to examine them with a view to arriving at a constructive policy of harmonization.

2. The first proposition was that the development of material wealth was the result of the hard work, ingenuity and creativity of many individuals in an atmosphere that allowed such creativity to develop. In support of that contention, it had been argued that there was often mismanagement of resources and a reluctance to engage in the hard work required to create the necessary wealth. The Special Rapporteur had pointed out that the existence of an unjust international economic order could not be used as a pretext for repression of individual human rights in any country. That was quite correct but there was also considerable truth in the opposite proposition, namely, that development in large parts of the world was blocked by the existing unjust national or international economic orders. There were structures of power in the world and they were often in the hands of those who had created their own wealth and deliberately endeavoured to prevent others from using their own creativity and ingenuity to develop their own resources for their own purposes.

3. A number of members had alluded to the complexity of the relationship between human rights and development. It had been noted that repression was used to exclude social justice and social movements that sought, through democratic means, to achieve social change and political equality. South Africa was the extreme example but there were many others. There were, however, also repressive regimes which aimed at promoting social justice, but if the purpose was in fact to improve conditions for the majority, then it should be possible to convince that majority that the regime was to their benefit, in which case repressive measures should be unnecessary. The problem was that, even when that was the purpose, the consequences could be disastrous in terms of the ensuing conflicts which were often exacerbated by international intervention. Such conflicts could block well-intentioned efforts to bring about by peaceful means more equitable relations both internally and internationally. It was in the context of those complex issues and that ideological struggle that the relationship between the new international economic order and the promotion of human rights must be discussed, for what was at stake was a question not merely of that order but of a global humane order. That was why the report before the Sub-Commission brought a new dimension to the debate on human rights.

4. Mr. ALVAREZ VITA (Observer for Peru) said that the possibility of an emergency plan to deal with the serious international economic situation had been discussed in a number of international bodies and he agreed with the Special Rapporteur that, while the adoption of such a plan was not incompatible with the struggle for a new world economic order, it was not the solution. In that connection he noted that the present crisis as analysed in many United Nations documents, took the form of virtually zero economic growth, the stagnation of world trade and the paralysis of international co-operation.
5. Global negotiations had yet to be launched, since everything depended on the will of States. What was needed was international agreement on the basis of a truly democratic international order, which meant active and equitable participation by all States with a view to the improvement of the world economic situation. As the Special Rapporteur had rightly noted, the solution of national problems was inextricably linked to the solution of international problems.
6. The developing countries had adopted the programme for economic co-operation between developing countries, which laid down objectives in various sectors, including the monetary, financial, commercial, food, commodities, energy and technological sectors. Peru, which considered that such co-operation was a partial palliative, also supported United Nations global negotiations, which it regarded as the best way of restructuring the existing unjust international economic order.
7. The developing countries continued to absorb, without adequate compensation, one third or more of the exports of industrialized countries. They contributed 4 per cent or more of the return which the industrialized countries obtained on their investments. They had difficulty in obtaining fair terms of trade at a time when statistics showed that, in the 1980s, they would contribute almost 30 per cent of the increase in world production.
8. The appalling violations of human rights reported daily in the mass media were merely symptoms of the injustice caused by the existing international economic order. That was why it was essential to establish a new international economic order, particularly in view of the stress laid on the spiritual dimension of the human being by Pope John Paul II. Peru regarded the right to development as an inalienable and universal human right. That right, which was codified in a number of international instruments, reflected the aspiration of the peoples to live in a world of well-being, peace and social justice.
9. Peru agreed that, inasmuch as human rights were indivisible and interdependent, and as none was superior to the other, they should be examined as a whole and also together with the existing international economic order, for neither nations nor individuals could live at the expense of the efforts or goods of others, as was currently the case in international society where the large nations manipulated the economies of the developing countries. Consideration of human rights could not, therefore, be divorced from the new economic order and general and complete disarmament, for there could be no peace without development and no development without peace.
10. His delegation agreed that the right to development was of capital importance in the context of the new international economic order and was therefore gratified to note that it had been stressed in the study.
11. The report before the Sub-Commission would be extremely useful to the Working Group of Governmental Experts on the Right to Development. Peru, as a member of that group, would be grateful if the report could be placed at its disposal and also for such explanations as the Special Rapporteur might wish to offer.

The meeting was called to order at 3.10 p.m.

THE NEW INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS
(agenda item 13) (continued) (E/CN.4/Sub.2/1982/19/Rev.1 and Add.1; E/CN.4/Sub.2/477
and Corr. 1; E/CN.4/1334, 1421 and 1488)

1. Mr. EIDE said that the Special Rapporteur had laid the groundwork in his report (E/CN.4/Sub.2/1982/19/Rev.1 and Add.1) for a new dynamism in human rights, since the report went to the core of the value aspects of development. The debate in the United Nations on development had revealed three levels of concern, the first being with development as growth, the second with development as a question of basic needs, and the third, which was receiving increasing attention, with development as a question of the realization of human rights throughout the world. The third level also involved consideration of the barriers to human development throughout the world, which was the real subject of the report. In the debate on development two propositions were advanced which were both very reasonable but were unfortunately in opposition and therefore gave rise to profound ideological conflict, though not within the Sub-Commission. As both had merit, the Sub-Commission would do well to examine them with a view to arriving at a constructive policy of harmonization.
2. The first proposition was that the development of material wealth was the result of the hard work, ingenuity and creativity of many individuals in an atmosphere that allowed such creativity to develop. In support of that contention, it had been argued that there was often mismanagement of resources and a reluctance to engage in the hard work required to create the necessary wealth. The Special Rapporteur had pointed out that the existence of an unjust international economic order could not be used as a pretext for repression of individual human rights in any country. That was quite correct but there was also considerable truth in the opposite proposition, namely, that development in large parts of the world was blocked by the existing unjust national or international economic orders. There were structures of power in the world and they were often in the hands of those who had created their own wealth and deliberately endeavoured to prevent others from using their own creativity and ingenuity to develop their own resources for their own purposes.
3. A number of members had alluded to the complexity of the relationship between human rights and development. It had been noted that repression was used to exclude social justice and social movements that sought, through democratic means, to achieve social change and political equality. South Africa was the extreme example but there were many others. There were, however, also repressive regimes which aimed at promoting social justice, but if the purpose was in fact to improve conditions for the majority, then it should be possible to convince that majority that the regime was to their benefit, in which case repressive measures should be unnecessary. The problem was that, even when that was the purpose, the consequences could be disastrous in terms of the ensuing conflicts which were often exacerbated by international intervention. Such conflicts could block well-intentioned efforts to bring about by peaceful means more equitable relations both internally and internationally. It was in the context of those complex issues and that ideological struggle that the relationship between the new international economic order and the promotion of human rights must be discussed, for what was at stake was a question not merely of that order but of a global humane order. That was why the report before the Sub-Commission brought a new dimension to the debate on human rights.

4. Mr. ALVAREZ VITA (Observer for Peru) said that the possibility of an emergency plan to deal with the serious international economic situation had been discussed in a number of international bodies and he agreed with the Special Rapporteur that, while the adoption of such a plan was not incompatible with the struggle for a new world economic order, it was not the solution. In that connection he noted that the present crisis as analysed in many United Nations documents, took the form of virtually zero economic growth, the stagnation of world trade and the paralysis of international co-operation.
5. Global negotiations had yet to be launched, since everything depended on the will of States. What was needed was international agreement on the basis of a truly democratic international order, which meant active and equitable participation by all States with a view to the improvement of the world economic situation. As the Special Rapporteur had rightly noted, the solution of national problems was inextricably linked to the solution of international problems.
6. The developing countries had adopted the programme for economic co-operation between developing countries, which laid down objectives in various sectors, including the monetary, financial, commercial, food, commodities, energy and technological sectors. Peru, which considered that such co-operation was a partial palliative, also supported United Nations global negotiations, which it regarded as the best way of restructuring the existing unjust international economic order.
7. The developing countries continued to absorb, without adequate compensation, one third or more of the exports of industrialized countries. They contributed 4 per cent or more of the return which the industrialized countries obtained on their investments. They had difficulty in obtaining fair terms of trade at a time when statistics showed that, in the 1980s, they would contribute almost 30 per cent of the increase in world production.
8. The appalling violations of human rights reported daily in the mass media were merely symptoms of the injustice caused by the existing international economic order. That was why it was essential to establish a new international economic order, particularly in view of the stress laid on the spiritual dimension of the human being by Pope John Paul II. Peru regarded the right to development as an inalienable and universal human right. That right, which was codified in a number of international instruments, reflected the aspiration of the peoples to live in a world of well-being, peace and social justice.
9. Peru agreed that, inasmuch as human rights were indivisible and interdependent, and as none was superior to the other, they should be examined as a whole and also together with the existing international economic order, for neither nations nor individuals could live at the expense of the efforts or goods of others, as was currently the case in international society where the large nations manipulated the economies of the developing countries. Consideration of human rights could not, therefore, be divorced from the new economic order and general and complete disarmament, for there could be no peace without development and no development without peace.
10. His delegation agreed that the right to development was of capital importance in the context of the new international economic order and was therefore gratified to note that it had been stressed in the study.
11. The report before the Sub-Commission would be extremely useful to the Working Group of Governmental Experts on the Right to Development. Peru, as a member of that group, would be grateful if the report could be placed at its disposal and also for such explanations as the Special Rapporteur might wish to offer.

12. The CHAIRMAN thanked the Special Rapporteur for his valuable report. In the final version of his report, the Special Rapporteur would undoubtedly wish to deal with the action required to implement his suggestions.

13. Mr. FERRERO, Special Rapporteur, said that the debate had been so full that he would not have time to reply to each comment individually. He had, however, taken careful note of all the observations made.

14. When he had first been appointed Special Rapporteur, he had wondered whether it would not be more useful to carry out his research and to prepare his study in his own country and publish it under his own name. He now realized that there was an enormous difference between work carried out in isolation and that done for a collegiate body such as the Commission on Human Rights. He had benefited immensely from the comments, suggestions and advice of experts, many of whom had had far more experience and were far more knowledgeable than himself. He was therefore most grateful for their observations, which would assist him greatly in preparing the report he was to submit in 1983.

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

15. Mr. NYANEKYE (Deputy Director, Centre for Human Rights) said that the item under consideration had been included on the agenda on a regular basis, first, to ensure that the Sub-Commission would be constantly informed of activities undertaken by other organs of the United Nations and specialized agencies regarding matters that fell within its competence and, secondly, to enable it to assess the efficacy of the follow-up measures taken by its parent bodies with respect to recommendations it had made on matters it had previously examined. In that connection, he drew attention to the note by the Secretary-General (E/CN.4/Sub.2/1982/4), which reviewed developments between 16 June 1981 and 15 June 1982. It did not cover developments dealt with in the annotation to the agenda for the session.

16. The Sub-Commission also had before it a memorandum submitted by ILO (E/CN.4/Sub.2/1982/5), which summarized ILO's recent activities in combating discrimination in the field of employment and occupation. It also drew attention to an ILO report containing an analysis of recent developments regarding the policy of apartheid in labour matters.

17. A further memorandum (E/CN.4/Sub.2/1982/6) summarized UNESCO's recent activities relating to the prevention of discrimination and protection of minorities. It described, inter alia, the implementation of the UNESCO Declaration on the Fundamental Principles concerning the Contribution of Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War.

18. During the discussions on the organization of the work of the session, the Sub-Commission had decided that it would also examine, under the item, two other questions relating to the implementation of resolution 26 (XXXVI) and resolution 1982/22 of the Commission on Human Rights. In the first of those resolutions the Commission reaffirmed the principle governing the fundamental safeguards of the individual as set forth in various international instruments and requested the Sub-Commission to study the question and submit general recommendations to the Commission for its consideration. The Sub-Commission had now decided to consider the matter at its thirty-sixth session.

19. The second resolution concerned the establishment of a post of United Nations High Commissioner for Human Rights, in which connection the Sub-Commission had adopted resolution 12 (XXXIV) and decision 3 (XXXIV). In the light of those decisions, the Commission for Human Rights, in its resolution 1982/22, had requested the Sub-Commission to formulate a first study on possible terms of reference for the mandate of a High Commissioner on Human Rights and to submit its proposals to the Commission on Human Rights at its thirty-ninth session. During the debate on the organization of the work of the session, the question had been raised of establishing a working group to assist the Sub-Commission in its task and the Sub-Commission had subsequently approved a recommendation that a group, consisting of four members of the Bureau, should be appointed to consider the matter and report to the Sub-Commission.

20. The history and status of the debate on the question of the establishment of a post of High Commissioner for Human Rights were outlined in document E/CN.4/Sub.2/1982/26. It would be seen from that document how very complex that debate was. There had, however, been a large measure of agreement on the following two basic considerations, which had been expressed in resolutions of the General Assembly and of the Commission on Human Rights: first, the number and scale of violations of human rights made it essential for the United Nations to develop effective ways and means of responding urgently to such violations; and, secondly, it was desirable that major decisions concerning the organization and operation of the United Nations system for the promotion and protection of human rights should, in order to ensure their effectiveness, be adopted on a basis of a consensus which took account of different views expressed by Member States.

21. Mr. MASUD, speaking on the proposed setting up of an office of United Nations High Commissioner for Human Rights, said that members should consider very carefully whether that proposal would really improve the situation with regard to violations of human rights throughout the world. As he saw it, the proposed office was completely unnecessary. The Director of the Centre for Human Rights was already performing the functions which it was intended to assign to the new office and, so far, there had been no criticism of the Centre's activities.

22. If the post of High Commissioner for Human Rights were to be established conflicts would inevitably arise with regard to the respective rights, powers and duties of the High Commissioner and the Director of the Centre. The delicate question of distributing the existing functions between the office and the Centre would also arise. What everyone wanted was to get human rights activities carried out, not to see them become bogged down in conflicts of competence and functions. The fact was that gross violations of human rights were being committed in a number of countries. The only way to remedy that situation was to use pressure and persuasion to ensure that the countries concerned themselves remedied the violations. That being so, it was difficult to see what special advantage would be derived from the establishment of the proposed new office. There was clearly no certainty that violations of human rights would diminish after the appointment of a High Commissioner.

23. Another argument against the proposal was that it would imply criticism of the present functioning of the Centre for Human Rights. It would, however, certainly not be true to say that the Centre was not discharging its functions adequately.

24. The proposed High Commissioner would either have to act on his own discretion or report to the Sub-Commission. If he acted on his own discretion, his actions would inevitably be criticized as arbitrary. If, on the other hand, he reported to the Sub-Commission, the result would be a time-consuming procedure of no advantage to the furtherance of human rights. Lastly, a High Commissioner would not be able to take an active interest in the thousands of human rights violations. The result would be a top-heavy administration which would increase the financial obligations of the United Nations.

25. He now wished to turn to the question of religious intolerance, an important problem, which was disturbing world peace. He was himself a God-fearing man, proud to be a Muslim and believing in the virtues of his own religion. At the same time, he admired other religions and believed strongly that everyone must be faithful to his own religion. Freedom of religion, conscience or faith formed an essential part of the body of human rights. All beliefs and convictions, including disbelief, were entitled to respect. Religious intolerance was unfortunately very common at the present time. Persons were being oppressed, discriminated against and even stoned to death on account of their faith. In addition to conflicts between adherents of different faiths, there were disputes between persons of the same faith but of different sects. Men must appreciate that they were all children of God and repudiate such behaviour.

26. The problem of religious intolerance could be solved only through education. Secularism should be the universal law. The idea of unity in diversity, as an international concept, should be fostered. Faith should not be dogmatic but rational and based on universal values. He favoured the drafting of an international convention against religious intolerance, to which all countries could become parties.

27. Mr. BOSSUYT, commenting on the Secretary-General's note reviewing further developments in fields with which the Sub-Commission had been concerned (E/CN.4/Sub.2/1982/4), said he regretted the absence in that document of any reference to the declarations made under article 41 of the International Covenant on Civil and Political Rights and under article 14 of the Convention on the Elimination of Racial Discrimination.

28. He welcomed Mr. Masud's comments on the subject of religious intolerance. He was gratified that the text of a Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief had finally been adopted by the General Assembly in 1981 (resolution 36/55) and hoped that its contents would become a convention in due course. Some strengthening of the control machinery would, however, be necessary.

29. Action to provide an advisory service to Uganda (E/CN.4/Sub.2/1982/4, paras. 33 and 34) was on the right path, but was still on a very modest scale.

30. With regard to the question of the appointment of a United Nations High Commissioner for Human Rights, the proposal was one which, in his view, should attract the support of States. It was essential, however, that the High Commissioner should not be elected directly by the General Assembly but by the Assembly on the proposal of the Secretary-General or of the Economic and Social Council. It was also essential that he should report to the Commission on Human Rights, i.e. to the United Nations body specializing in human rights, rather than to the General Assembly, which dealt with all questions of concern to the United Nations.

31. There was a clear need for the post and its establishment would not involve any innovation, except for the introduction of a limited right of initiative. The High Commissioner would be authorized to contact Governments and to report confidentially to the Commission on Human Rights. Many tasks at present entrusted either to the Secretary-General himself or to special rapporteurs would be much better carried out by a High Commissioner enjoying a measure of independence. The latest report of the Commission on Human Rights provided examples of such tasks. There was, for instance, the work of the Ad Hoc Working Group of Experts on human rights violations in southern Africa, the Special Committee on Israeli practices affecting human rights in the occupied territories, the Commission's Special Rapporteur entrusted with the study on human rights and mass exoduses, the Commission's Special Rapporteur on the question of human rights in Chile, the Commission's Special Envoy to Bolivia, the Commission's Representative entrusted with the study of the human rights situation in El Salvador, and the Expert for Equatorial Guinea.

32. The Secretary-General undoubtedly experienced difficulties when he was invited to contact the Government of a country with regard to the human rights situation there. The fact was that human rights was only one of the Secretary-General's many concerns. Since he was concerned with the maintenance of peace and security throughout the world, he might well not consider it advisable to take up a human rights question with a Government because he had to deal with that same Government in connection with the avoidance of armed conflict. It was therefore in the interests of the efficient functioning of the Secretariat that certain duties at present entrusted to the Secretary-General in the matter of human rights should devolve upon a High Commissioner enjoying a measure of independence vis-à-vis the Secretary-General.

33. He saw no reason to fear any conflict of functions between the High Commissioner and the Director of the Centre for Human Rights. On the contrary, the establishment of the Office of High Commissioner would resolve certain existing institutional problems. The Centre for Human Rights was at present entrusted with secretariat functions but was sometimes also called upon by United Nations organs to carry out functions which should properly belong to a High Commissioner for Human Rights. In an increasing number of cases, United Nations organs had been entrusting the examination of the human rights situation in specific countries to special rapporteurs or experts drawn from delegations but appointed in their personal capacity. It would, however, be more satisfactory for such assignments to be carried out by a full-time official in the office of a High Commissioner for Human Rights than by a large number of individual part-time rapporteurs or experts. Such an arrangement would undoubtedly be a rationalization of United Nations work on human rights. Viewed in that light, the proposal for setting up an office of High Commissioner for Human Rights should become acceptable to many States which still had doubts about that proposal.

34. Mr. EIDE strongly supported the previous speaker's remarks. He also commended Mr. Masud for his remarks on the important issue of religious intolerance. Clearly, some system of control and enforcement was necessary to combat such intolerance.

35. Turning to the problem of the proposed High Commissioner for Human Rights, he recalled that the Commission on Human Rights had requested the Sub-Commission to undertake a first study on possible terms of reference for the High Commissioner's mandate and report to the Commission at its thirty-ninth session, and that the Sub-Commission itself had decided at the previous session to consider the positive role of a High Commissioner in ensuring the full enjoyment of human rights. The Sub-Commission could not fail to face up to those tasks. It therefore had to formulate possible terms of reference for the High Commissioner's mandate and also discuss his positive role. Those two topics were in fact closely interconnected, for the High Commissioner's role would depend on his terms of reference, and those terms would in turn shape the role he would perform.

36. The Bureau of the Sub-Commission had entrusted a small informal working group drawn from its own membership with the preparation of background material for that task; the results of the group's work were contained in document E/CN.4/Sub.2/1982/36. The document consisted simply of a synopsis of the formal proposals and amendments so far made in the Commission on Human Rights and the General Assembly with regard to the terms of reference of a High Commissioner for Human Rights. The proposals listed in the document concerned such questions as the appointment of the High Commissioner, his relationship with other United Nations bodies, the tasks he could perform and the way in which he might perform them.

37. In examining those issues, the Sub-Commission would have to bear in mind the existence of other bodies, such as the Human Rights Committee and its duties and functions in relation to those States which had ratified the Optional Protocol to the International Covenant on Civil and Political Rights. The functions of the High Commissioner would have to be related to those of other existing authorities.

38. He did not agree that any conflict of competence would arise with the Director of the Centre for Human Rights. On the contrary, the establishment of the post of High Commissioner would facilitate the Director's work by clarifying his functions. At present the Director was responsible for servicing the human rights organs of the United Nations and for implementing resolutions in the matter, in so far as it was possible for the Secretariat to do so. All his work was undertaken in response to decisions taken by human rights bodies. He was not called upon to take any initiatives and that was precisely the area in which a High Commissioner would be useful, apart from assisting States in the matter of human rights and establishing flexible and prompt contacts with governments.

39. Difficulties undoubtedly would arise and he agreed that certain human rights problems, such as religious intolerance, would not be easy for a High Commissioner to deal with. The existence of such difficulties and problems should not, however, deter the Sub-Commission from making a serious analysis of the question. He hoped that the availability of past proposals would prove of assistance to the Sub-Commission in that task. Lastly, he hoped that a division between two opposing camps - for and against the proposed High Commissioner - would not lead to a stalemate with regard to what constituted an important problem in the United Nations. A constructive discussion would help to overcome the difficulty through the framing of terms of reference that would make the High Commissioner and his mandate generally acceptable.

40. Mr. KHALIFA said that he shared the view that the establishment of an office of United Nations High Commissioner for Human Rights, as an addition to the existing United Nations human rights machinery, would serve no useful purpose and would merely be a cosmetic exercise. It was extraordinary that the Sub-Commission should start with the notion of such an office and then set about justifying that notion and trying to define its terms of reference and activities.

41. With regard to the memorandum submitted by the International Labour Office (E/CN.4/Sub.2/1982/5), he commended that organization on its efforts to combat discrimination, especially in matters of labour, with emphasis on the situation in southern Africa and particularly apartheid. He welcomed its intention to continue co-operating with human rights bodies, more specifically, the Commission on Human Rights and the Sub-Commission, but regretted that there was no mention in the memorandum of the ILO's intention to draw up a list of South Africa's economic collaborators, although the matter had been the subject of considerable discussion at the ILO General Conference for the past three or four years. He trusted that the memorandum submitted at the Sub-Commission's thirty-sixth session would report on new developments and steps taken, so that the work could be co-ordinated with the list prepared by the Sub-Commission under agenda item 6.

42. With regard to the report in document E/CN.4/Sub.2/1982/6, UNESCO's activities concerning racial, religious and other discrimination were of vital importance, because discrimination stemmed from prejudice, which was cultural in origin and the main remedy for which was education in the broadest sense, with scientific research playing its part in refuting the theories which bolstered discriminatory beliefs. He regretted that there was no mention in the report of any decentralization of UNESCO's efforts. The report was concerned with centralized activities, remote from the grass-roots level, and he could find nothing in it to allay his doubts about whether UNESCO's efforts went deep enough or reached the people concerned. Nor was there any indication of UNESCO's use of its vast network of subsidiary offices. He trusted that, in its report to the Sub-Commission's thirty-sixth session, UNESCO would indicate how it was playing its vital role, through the use of its subsidiary offices, in helping to combat discrimination by changing human beings through education, science and culture.

43. Mr. SAKER said that, while the Secretary-General's review of further developments in fields with which the Sub-Commission had been concerned (E/CN.4/Sub.2/1982/4) was a well drafted document, he had a few reservations. For example, the information on the status of the International Covenants on Human Rights and other instruments did not give the percentage of States which had ratified or acceded. While the increasing number of accessions to, and ratifications of, the various international instruments was gratifying, it was regrettable that certain countries - often the ones which declared their strong commitment to codes of human rights - had not yet acceded. In any case, since ratification of those instruments provided no certainty that human rights would be fully respected, it was essential that States parties to them should ensure that their provisions were implemented on their respective territories.

44. He noted in paragraph 15 of the report that the General Assembly, in its resolution 36/13 of 28 October 1981, had appealed once again to those States which had not yet done so to ratify or accede to the International Convention on the Suppression and Punishment of the Crime of Apartheid. It would be useful if those States could be named.

45. It should not be forgotten that the problems of human rights could not be separated from the problems of peace and the build-up of arms. The Sub-Commission should therefore express concern at the escalation in the stockpiling of nuclear weapons and its threat to mankind's survival.
46. He commended the ILO and UNESCO on their efforts in the human rights field, as reported in documents E/CN.4/Sub.2/1982/5 and 6 respectively.
47. He was opposed to the establishment of an office of United Nations High Commissioner for Human Rights, since such an appointment would give rise to conflicts of power and responsibility between the proposed High Commissioner and the Director of the Centre for Human Rights.
48. Mr. SOFINSKY, referring to the report of the informal Working Group on the question of the establishment of an office of United Nations High Commissioner for Human Rights (E/CN.4/Sub.2/1982/56), said the fact that the office had not yet been established was a measure of the controversial nature of such an appointment. In resolution 1982/22, in which the Commission on Human Rights had requested the Sub-Commission to formulate a first study on possible terms of reference, the Commission had also recognized "the desirability that major decisions concerning the organization and operation of the United Nations system for the promotion and protection of human rights be adopted on the basis of a consensus which takes account of different views expressed by Member States, in order to ensure their effectiveness". It was clear, however, from consideration of the question in various United Nations bodies, including the Sub-Commission, that far from there being a consensus, views were diametrically opposed, because of differing attitudes to the question of human rights. In some quarters the elimination of private ownership and property was regarded as a violation of human rights. In others - and rightly in his opinion - the elimination of private ownership of the means of production was regarded as a means of improving the implementation of human rights and achieving greater equality. He wondered how a High Commissioner for Human Rights would deal with a situation where the attitude to human rights was governed by the attitude to the means of production.
49. He believed that, as long as there was no threat to international peace and security, human rights were an internal matter concerning individual States. Yet some States regarded human rights as a weapon of foreign policy.
50. The establishment of an office of High Commissioner for Human Rights in existing circumstances was unnecessary, harmful and might well undermine one of the basic principles of the United Nations Charter, namely non-intervention in matters within the domestic jurisdiction of a State. The sort of officer envisaged by those advocating the appointment of a High Commissioner for Human Rights would need supranational jurisdiction of a kind that no one in the United Nations possessed, except, to some degree, the Secretary-General, and then only within strictly defined limits. With all the existing human rights bodies in the United Nations, including the General Assembly, the Commission, the Human Rights Committee and the Sub-Commission, he could not see why it should suddenly be thought that all human rights problems would immediately be solved by the appointment of a High Commissioner. Such an appointment would certainly involve financial difficulties since the United Nations budget was already overburdened. Moreover, States which opposed the appointment would refuse to contribute to its cost; many States would be unable to co-operate with the proposed High Commissioner and there would be further disputes.
51. To sum up, the Director of the Centre for Human Rights was discharging his functions very satisfactorily. In the absence of a consensus, a High Commissioner for Human Rights would not be able to do so and would merely be a new source of disagreement which would not be conducive to the promotion of human rights.

52. Mr. CAREY said that the proposed post of High Commissioner for Human Rights would not, as some had suggested, be a new function with new activities. It would be a gathering into one office of a number of functions which were already being undertaken, but which involved extra duties and responsibilities for the offices and personnel concerned as well as additional financial strains.

53. With regard to the suggestion that there would be conflict between the proposed High Commissioner for Human Rights and the existing Director of the Centre for Human Rights, the latter was an administrative official responsible for organizing the work of a large and active staff, whereas the proposed High Commissioner was intended to be a negotiator who would be free to communicate with governments in every part of the world and with both private parties claiming to have human rights problems and those alleged to be causing those problems, for the purpose of ascertaining the truth and endeavouring to improve the situation by persuasion and good offices.

54. The proposed new office would certainly not be the solution to every problem. It would involve a restructuring, reorganization and reassembling of existing functions so that they could be performed more efficiently. The proposed new official could, for example, take over some of the good-office functions which at present added to the burdens of the Secretary-General.

55. He also suggested two further precedents which would, by analogy, illustrate the kind of good office that the proposed High Commissioner could perform efficiently. The first was the authority given to the High Commissioner for Refugees by the General Assembly to deal with displaced persons as well as refugees, thus including persons who, although not refugees by definition, since they remained in their own country, had similar problems to those of refugees. The second was the conclusion by the former High Commissioner for Refugees, in a report on mass exodus, that the scale of that problem required the attention of a new official.

56. Those in favour of the proposed new office had in mind, not necessarily a High Commissioner for Human Rights, but an official with a title that would enable him to devote his entire attention to human rights problems, including those which persisted year after year, defying solution. Perhaps a new approach was needed. Perhaps the problem of religious intolerance would yield to negotiation by such an official. Perhaps the problems in South Africa or the Middle East could be handled in a new way, by a visit from such an official, to whom a government would find it difficult to refuse entry. A skilful and experienced negotiator might also be able to reconcile differing points of view on the new international economic order.

57. It had been argued that peace depended on human rights. Certainly wars had been fought over human rights issues. Since peace was the highest consideration of the United Nations, every possible means should be tried to ensure it and avoid armed conflict.

58. Mr. JIMETA believed that the question of a High Commissioner for Human Rights was a complex one; it had been the subject of discussion over a lengthy period and called for a decision in the context of the United Nations Charter and by consensus. In his view, the undoubted need for caution had not been heeded by the Sub-Commission in adopting its decision at the last session.

59. According to the information in paragraph 25 of the Secretary-General's note (E/CN.4/Sub.2/1982/26), the intention was that the High Commissioner should possess the degree of independence and integrity required for the discreet and impartial performance of his functions. It was difficult, however, to narrow down the exact meaning of those terms. It was hard to see how one individual could combine all those qualities or have the power to intervene quickly in any situation that might arise during his period of office. The Sub-Commission would have to define his functions in a more specific manner. That same paragraph also stated that the High Commissioner would be called upon to maintain relations with the Secretary-General and all United Nations agencies and advise them on co-ordination.

60. Years of effort had not apparently led to any better definition of the functions of the proposed High Commissioner, who would, it seemed, be a type of super-special rapporteur on all subjects pertaining to human rights throughout the world. He considered, however, that the present procedure of appointing special rapporteurs for particular topics had proved its worth and could not be bettered. Nor could he support the idea that the High Commissioner himself should be responsible for appointing special rapporteurs when necessary. The comparison that had been made with the United Nations High Commissioner for Refugees seemed to him to go to the heart of the matter. He did not think it was possible for a High Commissioner for Human Rights to have some sort of universal status. For instance, he could not imagine such an official visiting the USSR and the United States in order to verify the accuracy of reports on alleged arms build-up, which was in a sense linked with the massive violation of human rights. The time was not ripe for a development of that sort.

61. He supported the remarks made by Mr. Masud and Mr. Knalifa. Obviously, the United Nations should seek to help all victims of violations of human rights. However, the Commission on Human Rights, the present Sub-Commission and the Third Committee of the General Assembly, as well as other bodies, existed and were in a position to undertake action of as swift a nature as was possible under the United Nations Charter. Consequently, he considered that the entire matter of a High Commissioner for Human Rights should be approached with circumspection.

62. Mr. JOINET said that he had not yet been able to form any definite opinion on the subject. He was, however, a priori favourable to the proposed establishment of a post of United Nations High Commissioner for Human Rights, subject to the clarification of a number of points.

63. It was necessary, first of all, to decide whether such a post was indeed appropriate. There could be no doubt that a sense of impotence existed in the face of urgent situations calling for swift action to provide protection. The prime need was for speedy procedures and it was immaterial whether they were introduced through the establishment of the post of a High Commissioner or through an expansion of the terms of reference of the present Sub-Commission or of the Human Rights Committee.

64. The terms of reference of such a High Commissioner constituted the most important aspect of the item and called for thorough analysis, particularly regarding the relationship of the High Commissioner with existing bodies and the indirect repercussions of the establishment of that post on the Centre for Human Rights.

65. Where the procedural aspects of the matter were concerned, there was a risk that the High Commissioner would, in the daily execution of his functions; be governed by the confidentiality which was inherent in all activities relating to good offices. Furthermore, he was afraid that the existence of the High Commissioner would mean that other bodies at present concerned in the protection of human rights would find their responsibilities progressively diminished, with the result that violations of human rights would be far less publicized. While he was favourable to confidentiality, it should remain the exception rather than the rule.

66. Referring to section I of the note by the Secretary-General reviewing further developments in fields with which the Sub-Commission had been concerned (E/CN.4/Sub.2/1982/4), he said that the inclusion of the matter of human rights in Chile under the agenda item relating to further developments was paradoxical since, as was apparent from the report, there had been no new developments in the situation. The sad fact was that the measures adopted by United Nations bodies in that regard were gradually becoming commonplace. No reference had been made to the situation in Chile under agenda item 7, relating to the violation of human rights and fundamental freedoms, and the Chilean Government had not entered into any communication with appropriate United Nations organs. Furthermore, unlike some other countries in Latin America, there had been no relaxation whatsoever in the political situation.

67. Regrettably, however, since the date of publication of the report, there had been further developments resulting in a deterioration in the situation. During August 1982, some 100 persons had been arrested in the course of a hunger march and 28 persons had been detained during demonstrations calling for the return of exiles; in addition, there had been a dozen explosions and the occupation of the offices of a humanitarian organization, CODEPU, had been followed by the arrest of some 10 persons and the violation of the legal archives of that association. He had wished to call that situation to the attention of the Sub-Commission, since it showed how little heed the Chilean authorities paid to the authority of the United Nations.

68. Mr. CEASU said he had serious reservations regarding the proposal to establish a post of High Commissioner for Human Rights. He believed that it was premature for the Sub-Commission to consider terms of reference for such a post, since the necessary political decisions establishing the post had not yet been taken by the United Nations and since there was no clear agreement on the position that official would occupy in the existing structure or on arrangements for co-operation and co-ordination. The report of the informal Working Group (E/CN.4/Sub.2/1982/36) was not of very great value, since it merely pinpointed the existing divergence of opinion. He accordingly considered that, in the present atmosphere of indecision, the time was not ripe for such an innovation.

69. He recalled that the idea of establishing a United Nations High Commissioner for Human Rights had first arisen at the height of the "cold war", but had been abandoned during the period of détente, when the adoption of a number of legal instruments had been favoured. Revival of that proposal in the present climate of world opinion could only have adverse effects and would serve to provide yet another weapon in the ideological war, militating against the effective use of existing tools for the promotion of human rights.

70. Mr. MUDAWI said that he would not touch on the question of the desirability of establishing a post of United Nations High Commissioner for Human Rights, since a decision on that point had in fact already been taken at the previous session.

71. Where the appointment of the High Commissioner was concerned, that should be undertaken by the supreme organ of the United Nations, the General Assembly, since it would be an extremely important post, requiring a high degree of objectivity and impartiality, on a level with the post of Secretary-General or a judge of the International Court of Justice.

72. On the question of structure, in view of the volume of work involved, the High Commissioner for Human Rights would need assistance, so that he would be permanently available to tackle urgent situations without delay. The size of his staff could be fixed at a later stage.

73. His functions would include the investigation of situations where violations of human rights might have occurred, and reference had been made by Mr. Bossuyt to a number of possible types of situation. His functions should in no way resemble those of a judge or attorney-general, but should be confined to promoting and encouraging the observance of human rights. He would give advice and assistance to countries which requested it. It was his understanding that, at present, a number of countries approached non-governmental organizations for assistance and that, while it was given in some cases, in others those organizations were not qualified to provide it. Accordingly, the establishment of a post of High Commissioner would fill a real gap in the provision of assistance and advice. The High Commissioner could also help to persuade States to ratify conventions and other instruments, as the United Nations High Commissioner for Refugees had done, and could give advisory opinions to United Nations bodies when requested.

74. It seemed to him that while the establishment of a post of High Commissioner for Human Rights did not wholly satisfy the requirements for ideal machinery to guarantee the implementation of human rights, it represented a necessary step forward.

75. Mr. AKRAM said that he himself had had an open mind regarding the establishment of a post of High Commissioner, but, on listening to the suggestions being made regarding the Commissioner's possible terms of reference and functions, he had come to the conclusion that the establishment of such a post would either lead to duplication of activity or would not be feasible from the political viewpoint.

76. Any consideration of the whole issue should be based on a deeper analysis of the whole United Nations structure for the protection of human rights and on a study of ways of redressing existing shortcomings. As matters stood, the approach generally being followed by the United Nations was partial, social and economic rights to some extent being neglected as compared with civil and political rights. There was also a built-in tendency for alleged violations to be used for political purposes by a country or a group of countries. Furthermore, the situation was influenced by press reports, not always renowned as the most objective source of information, particularly in respect of the third world; such sources were also monopolized by certain countries. The contributions being made by non-governmental organizations were valuable, although not consistently impartial. The disadvantages of the procedure under Council resolution 1503 (XLVIII) were well known, including the problems raised by confidentiality and the fact that consideration of some communications could only be based on relatively illiterate sources.

77. A study of such shortcomings would certainly point to the changes required in the existing structure. It would then be necessary to have a consensus on the improvements that were needed. It seemed to him that such a consensus had not yet emerged from the Sub-Commission's deliberations and that further analysis was necessary before conclusions could be reached.

78. Mr. TOSEVSKI said that the task before the Sub-Commission was twofold: firstly, it had to devote some time to reviewing the question of a post of High Commissioner for Human Rights and, secondly, it had to prepare a preliminary study on possible terms of reference for such a post, as requested by the Commission on Human Rights. He suggested that the record of the current debate, together with the paper prepared by the informal Working Group (E/CN.4/Sub.2/1982/36), might be considered as a preliminary study on the terms of reference for the post.

79. Concerning the desirability and feasibility of such a post, he believed that, with the enlargement of the machinery of the United Nations system during the past 10 years, that machinery had become increasingly effective. The Commission, Sub-Commission and other human rights bodies should therefore continue to give their attention to improving the existing machinery. Although Mr. Bossuyt and Mr. Carey had claimed that the grounds for the proposal lay in the existing machinery, his own opinion was that it was precisely that machinery which provided an argument against it. Whatever terms of reference were suggested for the High Commissioner, the establishment of the post would have the effect of creating a bureaucracy. The existing machinery was composed of a number of bodies and individuals whose purpose was to protect and promote human rights throughout the world. The establishment of a new centralized body in the form of the office of a High Commissioner, however, would tend to narrow the field and might damage the cause of human rights at a time when the human rights machinery should be widened to involve regional commissions, more international organizations and other interested bodies. The existing machinery should not be abandoned, because it permitted an integral approach to human rights and led to greater participation by States and individuals than would a concentration of activities in a single office.

80. He believed that confidentiality was a most dangerous thing and that it would be wiser to open all doors, to the extent of reconsidering the question of the procedure laid down in Council resolution 1503 (XLVIII).

81. Mr. FOLI said that the Sub-Commission should not be holding lengthy debates arising out of the political controversies surrounding the question of the appointment of a High Commissioner for Human Rights. As an expert body, its function was to provide technical advice on the terms of reference of the post in question. It had already been decided that a High Commissioner would have a positive rôle to play, yet some speakers had described the proposed post in very negative terms, suggesting that the holder would virtually have dictatorial functions where Governments were concerned. That was certainly not the purpose of such an appointment. It was, however, one of the main duties of an international civil servant to be independent of his Government and it was precisely the lack of that kind of independence which had placed some regional organizations in difficulty in the past.

82. Concerning the question of confidentiality, he was convinced that the procedure under Council resolution 1503 (XLVIII) was very necessary when sensitive material was under consideration.

83. He endorsed the constructive statements by Mr. Carey and Mr. Mudawi. He himself believed that at a time when human rights abuses were increasing, the establishment of the post should be seen as an aid to defusing otherwise explosive situations by providing relevant and timely assistance and advice. It was significant that some of the most ardent supporters of the proposal in the Sub-Commission came from developing countries that had recently emerged from repressive regimes. They did not want to see any repetition of what they had had to suffer.

84. He proposed that the Sub-Commission should tackle the question of possible terms of reference, no matter how great the difficulties, thus ensuring that a High Commissioner would have a positive role to play. The Commission could then decide, on the basis of the study presented by the Sub-Commission, whether or not the post could be established. It was not the Sub-Commission's task to enter into arguments on its viability or usefulness.

85. Mr. WHITAKER said he agreed with Mr. Foli and Mr. Mudawi that it was not for the Sub-Commission to debate the desirability of a post of High Commissioner but to establish a constructive basis for the establishment of such a post. Referring to the note by the Secretary-General (E/CN.4/Sub.2/1982/26), he said he regretted that it was confined to giving a historical synopsis of discussions and resolutions; he would have preferred to see some positive suggestions. He was surprised that some of the members currently questioning the Commission's request had, only a few meetings before, been emphasizing that the Sub-Commission was a subsidiary body.

86. There could be no doubt that there was room within the United Nations system for more constructive means of defending human rights. It had regrettably become clear that the human rights machinery of the United Nations remained imperfect and presented a number of serious gaps. A particular problem was the time which elapsed between the occurrence of a significant violation of human rights and its consideration by the Commission. If a study was then requested, action was further delayed, by which time it might be of academic interest to the victim.

87. More and more countries, especially the developing countries, were expressing interest in the appointment of a High Commissioner. It should also be borne in mind that, in addition to the many positive functions that had been suggested, a High Commissioner could also play a very important invisible role in deterring violations. It was easier and better to try to prevent violations before they took place than to attempt to take action after the event. The establishment of such a post, if it had the recognition of the international community, might help to tip the scales in favour of human rights. Naturally, conflicts always existed within governments between idealistic considerations and opposing practical interests, so that the existence of a High Commissioner might have a very effective influence in promoting human rights and reducing the catalogue of horrors with which the Commission and Sub-Commission was faced every year. It might be more acceptable to those not yet wholly in favour of the establishment of such a post if the suggested terms of reference were submitted with the suggestion that an appointment should initially be made for a trial period of, say, four years. In view of the support expressed the previous year for the establishment of such a post and in view of the obvious imperfection of existing human rights machinery, he urged that the action should not be delayed for another year and that the Sub-Commission acquit itself immediately of the task assigned to it.

88. Mrs. ODIO-BENITO supported Mr. Foli and Mr. Whitaker. The Sub-Commission should not repeat the discussions of previous years but should prepare an initial study, as requested by the Commission. It was not a question of creating yet another United Nations body to study human rights problems, but of establishing a post or office to provide aid which was direct and effective, not cosmetic or theoretical, to victims or possible victims of human rights violations. There was no foundation for the claim that there would be duplication of work between the Centre of Human Rights and a High Commissioner. The Centre was carrying out tasks other than those which had been suggested in connection with terms of reference for a High Commissioner. The establishment of the post would not lead to the emergence of a supranational body which could intervene in the internal affairs of States but would provide a form of immediate, practical aid. Draft resolution A/C.3/32/L.25/Rev.1, contained in the Third Committee's report on item 76 of the General Assembly's agenda at its thirty-second session (A/32/423), was very pertinent and should serve as a guide for the Sub-Commission's work.

89. Mr. JACK (World Conference on Religion for Peace) said that, as a multi-religious, world-wide organization, the World Conference was deeply concerned with the implementation of human rights everywhere in all social systems. Although 20 years had passed since the adoption of the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, there were still forms of intolerance, for example, against Muslims in the Philippines, against Copts in Egypt, and against Jews and Christians in the Soviet Union. The inclusion of an item on religious intolerance in the provisional agenda of the General Assembly at its thirty-seventh session was an encouraging step towards implementation of the Declaration and could be very useful as a means of evaluating progress. He hoped that such an item might appear every year. Another means of implementing the Declaration might be the preparation of an expert study on religious discrimination. He hoped that work on a convention on that subject might also be resumed.

90. He fully supported the proposal for the appointment of a High Commissioner for Human Rights and welcomed the fact that the Division of Human Rights had been upgraded to a Centre. A High Commissioner would be able to work in parallel with the Centre and act as an ombudsman or mediator in the field of human rights. It was unacceptable to watch more Baha'is dying in Iran, more whites and blacks committing "suicide" in South Africa, Palestinians continuing to be denied the right of self-determination and 318 non-governmental organizations being denied visas to enter the United States to attend the Second Special Session on Disarmament. A High Commissioner might, with persistence and tact, make progress where, for a variety of reasons, the Secretary-General of the United Nations could not. It had been said that the post of High Commissioner was a post in search of a job. He believed that it was rather a question of racial, religious, ethnic and political minorities in search of legitimate protection.

91. He suggested that an expert study should be prepared on the interrelationship between human rights, peace and disarmament in the context of the so-called third generation of human rights. He also suggested that further consideration should be given to the question of genocide and means of rescuing humans threatened with massacre.

The meeting rose at 6.55 p.m.