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Country-Related and Thematic Developments at the 1988 Session of the UN Commission on Human Rights

David Weissbrodt

I. THE UN COMMISSION ON HUMAN RIGHTS

The United Nations Commission on Human Rights is the principal and most important political organ of the United Nations concerned principally with human rights.¹ The Commission meets for six weeks every year in February and March. This year, for example, it met from 1 February through 11 March 1988.² The Commission is comprised of forty-three government representatives who are elected by the Economic and Social Council of the United Nations. The Economic and Social Council is, in turn, a subsidiary body of the United Nations General Assembly. When the UN Charter was written in 1945, the subject of human rights was so important that the Charter in Article 68 specifically prescribes that a Commission on Human Rights should be established.

The forty-three governments which are members of the Commission on Human Rights differ significantly, from countries which are known for their respect for human rights to countries which have very different reputations. It is remarkable, therefore, that the Commission has historically been the author of the principal norm-setting instruments of human rights. The Commission in its earliest days under the leadership of Eleanor Roosevelt drafted the Universal Declaration of Human Rights,³ which provides the most widely

1. See H. Tolley, *The U.N. Commission on Human Rights* (1987).

2. Commission on Human Rights, Report on the Forty-Fourth Session, U.N. Doc. E/CN.4/1988/88 (1988); I. Guest, Report on the 44th session of Commission on Human Rights, February 1–March 12, 1988 (1988); see also *Review and Assessment of U.S. Policy at the 44th Session of the U.N. Human Rights Commission*, Hearings before the Subcomm. on Human Rights and International Organizations, House Comm. on Foreign Affairs, 100th Cong., 2d Sess. (1988).

3. G.A. Res. 217A, U.N. Doc. 810, at 71 (1948).

accepted definition of human rights and constitutes the first part of the International Bill of Human Rights.⁴ The Commission has also drafted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,⁵ which make the Universal Declaration into treaties ratified by over eighty-five nations⁶ and also form part of the International Bill of Human Rights. Most recently, the Commission drafted the new International Convention Against Torture and Cruel, Inhuman and Degrading Treatment and Punishment.⁷

In addition to the forty-three government delegations, the Commission sessions in 1988 were attended by observers from seventy-six other nations and about 150 nongovernmental organizations, such as Amnesty International and the International Committee of the Red Cross.⁸

II. THE 1988 SESSION OF THE COMMISSION

A. Thematic Procedures⁹

At its 1988 session the Commission reviewed reports from a number of its thematic procedures which have become its most important mechanisms for implementing human rights. For example, it received an excellent report from the Working Group on Enforced or Involuntary Disappearances.¹⁰ The Working Group has since 1980 been using its influence to pressure governments to reveal what has happened to thousands of people who have been arrested and then subjected to clandestine imprisonment. Many of these individuals have been tortured and some have died. Their loved ones want desperately to know what has happened to the "disappeared." In regard to recent disappearances the Working Group has sent telegrams and made appeals which have resulted in the release of many individuals and has caused governments to acknowledge that they are detaining others. In "disappearance" cases of an older vintage the Working Group has been instrumental in clarifying the fate and bringing some closure to the suffering of

4. See Weissbrodt, *United States Ratification of the Human Rights Covenants*, 63 Minn. L. Rev. 35, 45-47 (1978).

5. G.A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16) at 49, 52, U.N. Doc. A/6316 (1967).

6. *Chart of Ratification of Major International Human Rights Instruments as of 1 January 1988*, in K. Vasak, *The International Dimension of Human Rights at Annex I of 1988* (1982).

7. G.A. Res. 39/46, 39 UN GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1985).

8. U.N. Doc. E/CN.4/1988/88, at 286-94 (1988).

9. Bossuyt, *The Development of Special Procedures of the United Nations Commission on Human Rights*, 6 Human Rights L. J. 179 (1985); Kamminga, *The Thematic Procedures of the UN Commission on Human Rights*, 34 Netherlands Int'l L. Rev. 299 (1987); Weissbrodt, *The Three "Theme" Special Rapporteurs of the UN Commission on Human Rights*, 80 Am. J. Int'l L. 685 (1986).

10. U.N. Doc. E/CN.4/1988/19 (1988).

the families who are still hoping that their loved ones might somehow be returned to them.

The Working Group for the first time this year gathered its procedural precedents into a section of its report on the Group's methods of work. That section will help the many individuals and organizations who ask for the Working Group's help and will guide the Working Group as its membership of five diplomats serving in their individual capacities gradually changes over time. From 1980 through 1986 the Working Group was kept on a rather short leash and had its mandate renewed only one year at a time. In 1986 its mandate was renewed by consensus for two years and in March 1988, the Commission renewed the Working Group for another two years, again by consensus.¹¹

The Commission has established very similar thematic procedures for a number of other significant human rights problems. For example, in 1982 it established the Special Rapporteur on Summary or Arbitrary Executions, who functions in a manner very similar to the Working Group on Enforced or Involuntary Disappearances. The special rapporteur's report for 1988 showed that the Kenyan lawyer who serves in that capacity has done a very thorough and impressive job during 1987 of trying to stop impending killings and of investigating past summary or arbitrary executions.¹² The special rapporteur also is developing some basic international norms for how suspicious deaths should be investigated and for adequate autopsies. For the first time in 1988 the Commission by consensus extended the special rapporteur's mandate for a two year period.¹³

The Special Rapporteur on Torture was established by the Commission in 1985¹⁴ and the Special Rapporteur on Religious Intolerance was established in 1986.¹⁵ While there were problems with their reports for the Commission in 1988, the Commission decided by consensus to develop a uniform practice of extending their mandates for two years.¹⁶ Indeed, the Commission even extended for two years the mandates of the new Special Rapporteur on Mercenaries¹⁷ and the Special Rapporteur Monitoring Investments in South Africa,¹⁸ who have quite different roles.¹⁹

Furthermore, at the 1988 session the British delegation proposed a res-

11. CHR Res. 1988/34, U.N. Doc. E/CN.4/1988/88, at 90 (1988).

12. U.N. Doc. E/CN.4/1988/22 (1988).

13. CHR Res. 1988/68, U.N. Doc. E/CN.4/1988/88, at 145 (1988).

14. U.N. Doc. E/CN.4/1988/17, at 1 (1988).

15. U.N. Doc. E/CN.4/1988/45, at 1 (1988).

16. CHR Res. 1988/32, U.N. Doc. E/CN.4/1988/88, at 86 (1988); CHR Res. 1988/55, U.N. Doc. E/CN.4/1988/88, at 122 (1988).

17. U.N. Doc. E/CN.4/1988/14 (1988).

18. Adverse Consequences for the Enjoyment of Human Rights of Political, Military, Economic and Other Forms of Assistance Given to other Racist and Colonialist Regime of South Africa, U.N. Doc. E/CN.4/Sub.2/1987/8/Rev.1, and E/CN.4/Sub.2/1987/8/Add.1 (1987).

19. See CHR Res. 1988/30, U.N. Doc. E/CN.4/1988, at 85 (1988).

olution calling for the release of political prisoners.²⁰ The British delegation had hoped to propose a Special Rapporteur on Political Prisoners, but the resolution ran into difficulty in defining who qualifies as a political prisoner. The British wanted to define a political prisoner as someone who had been imprisoned for peacefully exercising his or her rights. Several African countries wanted the assurance that members of liberation movements would qualify as political prisoners. In the end, a relatively weak resolution calling for the release of political prisoners was adopted by consensus using the British definition of a political prisoner, but the idea of a special rapporteur will have to wait for next year. Next year it is probable that the Commission will establish a Special Rapporteur on Arbitrary Detention, which would cover political prisoners, but which would not be so difficult to define.

B. Country-Specific Resolutions

The Commission had a full agenda of country-specific resolutions, whereby pressure was placed on various governments to improve their human rights performance. For example, the Commission in 1967 established an ad hoc working group of experts to investigate charges of violations such as arbitrary killings and torture in South Africa.²¹ Once again in 1988 the Commission adopted several resolutions on apartheid and other human rights abuses in South Africa and Namibia.²²

Similarly, the Commission has for many years adopted resolutions on human rights in Israel and the occupied territories. These resolutions have over the years developed an extreme rhetoric and have thus been the subject of dissent by several governments in Western Europe and North America. While there might have been sympathy this year in some Western European countries for several of the resolutions against Israel, the sponsors were not able to change the very strong language of the resolutions, and thus, the resolutions were adopted with the same number of negative votes.²³

During 1988 the Commission on Human Rights renewed the mandate of its Special Rapporteur on Chile.²⁴ The United States was one of seven governments which abstained on the resolution. One of the U.S. delegates explained that the resolution had been written before the report of the special rapporteur had become available and did not reflect the conclusions of the

20. CHR Res. 1988/39, U.N. Doc. E/CN.4/1988/88, at 98 (1988).

21. U.N. Doc. E/CN.4/1988/8, at 4 (1988).

22. See, e.g., CHR Res. 1988/8, 1988/9, 1988/10, 1988/11, 1988/12, U.N. Doc. E/CN.4/1988/88, at 38–54 (1988).

23. See, e.g., CHR Res. 1988/1, 1988/2, 1988/3, U.N. Doc. E/CN.4/1988/88, at 16–27 (1988).

24. CHR Res. 1988/78, U.N. Doc. E/CN.4/1988/88, at 161 (1988).

rapporteur²⁵ or the situation in Chile, so much as the political views of the drafters, including Mexico. The British delegation voted in favor of the resolution, but explained after its vote that it agreed with the substantive position of the United States. The British, however, did not want to vote against the resolution because such a vote would send the wrong message to the Chilean Government.

The Commission on Human Rights once again adopted a resolution continuing the Special Rapporteur on Human Rights in Afghanistan.²⁶ The resolution was adopted in the context of the Soviet promises to withdraw from Afghanistan.²⁷ The resolution was adopted over Soviet opposition by a vote of twenty-six in favor, eight against, and seven abstaining. The Soviet delegation had proposed its own resolution continuing the special rapporteur, but with slightly weaker language. The Commission decided not to accept the Soviet proposal.

The Commission on Human Rights in 1988 renewed the mandate of its Special Representative on Iran.²⁸ Last year the special representative was nearly defeated by an evenly divided vote to take no action. Last year the Eastern European countries and several Latin American countries voted to take no action on Iran, but this year they supported the resolution, abstained, or did not participate in the vote, so that the resolution passed easily by votes of 10-18-9 on the no-action vote and 20-5-14 on the resolution itself. There were two major problems surrounding the Special Representative on Iran. First, no government wanted to take responsibility of introducing the resolution because of fear that Iran would cause their citizens to be taken as hostages. In the end the chair accepted the resolution without any government introducing it. Furthermore, Iran has refused to permit the special representative to visit the country.²⁹

The Commission on Human Rights also renewed by consensus the mandate of its Special Representative on Human Rights in El Salvador.³⁰ There had been some discussion about shifting the issue of El Salvador from the scrutiny of the special representative under the Commission's agenda item for gross violations to the less serious agenda item for advisory services to assist the Salvadoran Government to remedy its violations. The Commission decided, however, not to decrease its oversight of human rights violations in El Salvador.³¹

The Commission presently has three countries for which it has established experts to provide advisory services to improve their ability to protect

25. U.N. Doc. E/CN.4/1988/7, at 59-62 (1988).

26. CHR Res. 1988/67, U.N. Doc. E/CN.4/1988/88, at 142 (1988).

27. U.N. Doc. E/CN.4/1988/25, at 12 (1988).

28. CHR Res. 1988/69, U.N. Doc. E/CN.4/1988/88, at 146 (1988).

29. See U.N. Doc. E/CN.4/1988/24, at 2 (1988).

30. CHR Res. 1988/65, U.N. Doc. E/CN.4/1988/88, at 138 (1988).

31. See U.N. Doc. E/CN.4/1988/23 (1988).

human rights: Guatemala,³² Haiti,³³ and Equatorial Guinea.³⁴ Many people believe that the human rights situation in those three countries have not improved during the last year and that the United Nations has had no substantial impact in assisting those countries. Nevertheless, the Commission renewed the mandate of the three experts on these countries in the hope that improvements might be forthcoming during this coming year. If not, at least Haiti may be moved to agenda item 12 for gross violations of human rights, so that a more forthright and complete assessment of the situation can be prepared.

The Commission also considered nine countries referred by its Sub-Commission under a confidential procedure established by Economic and Social Council Resolution 1503.³⁵ That Resolution requires the Commission to consider in closed meetings whether a government has engaged in a consistent pattern of gross violations of internationally recognized human rights. Governments generally try very hard to avoid being listed under the 1503 process. Several human rights situations were considered initially under the confidential procedures of 1503 and were later moved to the nonconfidential, country-related procedures discussed above.

Indeed, the most dramatic action taken by the Commission under 1503 at its 1988 session was the decision to remove Albania from the confidential procedures. Albania had been under discussion for five years and had never formally responded to the complaints against it filed by Amnesty International, the Canadian Conference of Catholic Churches, and by an organization representing the repressed Greek minority in Albania. During this past year, however, Albania has begun to come out of its self-imposed isolation from the rest of the world. It did send a letter to the UN Under-Secretary General for Human Rights, but specifically indicated that the letter could not be considered in connection with the 1503 process. Diplomats of the government of Albania did some lobbying in the capitals of governments, such as Italy, with which it has diplomatic relations. The majority of the Commission believed that the failure of Albania to respond to the allegations against it for five years warranted a decision to remove Albania from the 1503 process.³⁶ The Commission also recommended that all the 1503 files on Albania should be made public. This action would represent the development of a sensible and regularized means for terminating the 1503 process by publishing the confidential material, if the Commission

32. CHR Res. 1988/50, U.N. Doc. E/CN.4/1988/88, at 114 (1988); U.N. Doc. E/CN.4/1988/41 (1988).

33. CHR Res. 1988/51, U.N. Doc. E/CN.4/1988/88, at 115 (1988); U.N. Doc. E/CN.4/1988/38 (1988).

34. CHR Res. 1988/52, U.N. Doc. E/CN.4/1988/88, at 117 (1988).

35. E.S.C. Res. 1503, 48 U.N. ESCOR Supp. (No. 1A) at 8, U.N. Doc. E/4832/Add.1 (1970).

36. CHR Res. 1988/17, U.N. Doc. E/CN.4/1988/88, at 66 (1988).

decides that no adequate progress on human rights has occurred.³⁷ The decision on Albania was by a vote of fifteen in favor, eleven against, and seventeen abstaining. Those governments who opposed the decision argued that Albania was just beginning to come out of its isolation and should be given at least one more year to respond and to improve the situation. The majority, however, said that five years was enough time. Obviously, the long-time isolation of Albania made it easier for a decision to be taken against it at the Commission. Nevertheless, at the Economic and Social Council session in May of 1988 a vote was taken not to release the previously confidential records in regard to Albania.

The Commission also continued its consideration under the 1503 process of the situation of human rights in Brunei, Honduras, Paraguay, and Zaire.³⁸ The Commission discontinued its consideration of several cases—not all of those cases should have been allowed to escape from the 1503 process; the poorest example is Iraq, which is responsible for torture, political imprisonment, and extrajudicial executions.

For four straight years the Sub-Commission of the Commission has determined that Pakistan was responsible for a consistent pattern of gross violations of human rights. Each year the Commission has refused to pursue the consideration of Pakistan. The Commission in 1988 also rejected cases relating to Benin and Grenada.³⁹

III. THE U.S. INITIATIVE ON HUMAN RIGHTS IN CUBA

The basic goal of the United States delegation at the Commission on Human Rights in 1988 was to add Cuba to the relatively large list of countries which are subject to scrutiny by the Commission for their human rights problems. Indeed, in 1987 the U.S. delegation had similarly tried to convince the Commission to adopt a resolution appealing to the Cuban Government to improve its human rights performance. That effort had failed by a vote of nineteen to take no action on Cuba, eighteen in favor of the U.S. position, and six abstaining. In other words, the shift of a single vote would have given the United States a victory in 1987.

The United States identified Venezuela as the most obvious vote they should have received. There was even a story last year that President Reagan had called the president of Venezuela during the 1987 Commission session

37. In past years, Argentina, the Philippines, and Uruguay had requested that their 1503 files be released after there had been a major positive change in the government of those countries. In the case of Albania, however, the Commission decision was taken over the apparent objection of the government.

38. U.N. Doc. E/CN.4/1988/88, at 244 (1988).

39. *Id.*

and that the president of Venezuela had telexed the Venezuelan delegation to change its vote at the last moment. The Venezuelan president's instruction did not reach his delegation in time to stop its vote to take no action on the U.S. resolution against Cuba in 1987. The other votes for Cuba during the 1987 Commission session, which the United States might have sought to change in 1988 were those of Argentina, Colombia, Peru, and Sri Lanka. In addition, there were a number of governments which abstained in 1987, which could have been shifted to votes for the U.S. position, including Bangladesh, Pakistan, and Rwanda.

Lobbying prior to the Commission was undertaken by both the United States and Cuba. For example, U.S. ambassadors in nearly all of the capitals of the governments which are members of the Commission visited the foreign ministries of those countries to indicate how important the Cuban issue at the Commission was to the United States. The United States and Cuba probably used their bilateral influence with those countries to persuade them to vote in their favor.

During the Commission session the Cuban observer delegation at the Commission held a press conference at which the Cuban delegation distributed a pamphlet to show that the U.S. ambassador to the Commission, Armando Valladares, had been a police officer under the government of Cuba in the period of Batista. The pamphlet also states that Valladares was a terrorist who planted a bomb, that he was not a poet until he was imprisoned, that he was not a very good writer, and that he had not been ill-treated in prison. The Cuban pamphlet reprints a confidential telex of the United States State Department to U.S. embassies abroad responding to each of these claims and discusses Valladares' stay of twenty-two years in Cuban prisons as well as the torture he suffered. The State Department telex also reflects the broad U.S. effort to lobby home governments to obtain votes at the Commission.

Ambassador Valladares held several press conferences in Geneva during the forty-fourth session of the Commission. At one of those telex was genuine. Valladares also sought to refute the Cuban charges against him. Valladares stated in his press conferences and in his introduction to the resolution that there have been allegations against Cuba for its human rights violations by numerous organizations such as Amnesty International, the European Parliament, and the Inter-American Commission on Human Rights.

Valladares made several public statements to the Commission. In regard to item 10, which covers the issue of torture and detention, Valladares presented a very moving speech about the torture he suffered. In order to avoid inciting further dispute, Valladares never mentioned Cuba, although everyone was aware of the government he was discussing.

After consulting broadly about its initiative on Cuba, the U.S. delegation introduced a draft resolution which the United States acknowledged to be quite modest. The resolution does not necessarily assert that there are viola-

tions of human rights in Cuba, but only says that the allegations of such violations should be investigated. First, the draft resolution simply expressed concern over "allegations of violations of basic human rights and fundamental freedoms in Cuba." Second, the draft resolution *urges* the government of Cuba to permit the ICRC access to Cuban prisons, *requests* the UN Secretary-General to bring the resolution to the attention of the government of Cuba, and *invites* the Cuban Government to provide information about human rights in Cuba. Third, the draft resolution places Cuba on the agenda for the 1989 session of the Commission.

After weeks of lobbying, Ambassador Vernon Walters joined the U.S. delegation to make the principal U.S. speech on Cuba. Walters' statement of Tuesday, 8 March 1988, at about 3:30 p.m. began with words which showed that the U.S. delegation understood the principal political barrier to a Commission resolution on Cuba: "Let me start by saying, Mr. Chairman, that, quite frankly, I very much understand the sense of Hispanic solidarity. We are after all the world's fifth largest Hispanic power. We feel, however, that Hispanic solidarity should be with the people of Cuba, not with their unelected rulers. I am not here to ask this Commission to participate in a vendetta against the Government of Cuba."

As to the situation of human rights in Cuba, Ambassador Walters said, "Torture and clandestine executions continue to occur. Amnesty International states that unconfirmed reports indicate that a number of secret executions took place during 1987. Thousands of political prisoners exist—perhaps as many as 10,000 to 15,000 in Cuba's more than 200 prisons and labor camps. Some of these prisoners date back to the earliest days of the regime. . . . In addition to these long-term prisoners, there is a new generation of political prisoners known as "nuevos plantados" springing up. These are largely young prisoners, most born since the Revolution, who can no longer suffer certain aspects of the regime in Cuba. They, too, are found in Cuba's many political prisons and labor camps and suffer harsh conditions of detention."⁴⁰

While Cuba was inscribed on the speaker list of the Commission so that its delegation could have spoken promptly after Ambassador Walters, the Cubans exchanged places with several delegations to delay their presentation. That afternoon the rumor began to circulate that Cuba had decided to invite the chair of the Commission and several members to visit Cuba and see the situation for themselves.

The tension in the large room where the Commission was meeting continued to grow during the late afternoon and evening of Tuesday, the 8th of March. Small clumps of delegates could be seen around the room

40. Speech of Ambassador Walters to U.N. Commission on Human Rights (files of author, 1988). *But cf.* Amnesty International, Cuba, Political Imprisonment—An Update, AI Index: AMR 25/02/88 (January 1988); Amnesty International, 1987 Report 150–54 (1987).

discussing the Cuban invitation which had not been formally announced. Newspaper reporters stood a few feet away from the clumps of delegates hoping to overhear the discussions or to catch one of the delegates long enough to ask what was happening. During this time a number of nongovernmental organizations were making speeches about human rights situations in various parts of the world. Not too many people were listening and the hum in the room was so loud that the Italian vice-chair presiding over the session had to call for quiet.

Finally, at about 8:00 p.m. the delegate of Colombia, speaking on behalf of Argentina, Colombia, Mexico, and Peru, reported to the Commission that Cuba would be willing to invite the Commission to visit and see for themselves. The delegate of Cuba confirmed that his government had sent a letter to the chair of the Human Rights Commission inviting the chair and five members of the Commission to Cuba, to visit prisons, see documents, and make contact with government officials. The Cuban government offered in its letter to pay for the visit by stating that the mission would be without financial consequences. The U.S. delegation offered to meet with the delegations of Argentina, Colombia, Mexico, and Peru to discuss the Cuban offer.

That evening there were negotiations between the United States and the four South American countries. Cuba was not directly involved in the discussions. There was very little question that Cuba would not have issued the invitation had Cuba not been reasonably certain that the U.S. resolution had sufficient support to be adopted. Although, in some ways, the visit was far more than the United States had asked in its resolution, the Cuban invitation left several significant issues unresolved: Would the chair and the other members of the Commission be permitted to visit Cuba freely or would they be limited by the terms of the Cuban letter of invitation to prisons, documents, and government officials? Would the Commission members be serving in their individual capacities, so that they could report what they actually saw, or would they be representing their respective governments, and therefore, would report only what their governments wanted them to see? How long would the visit be? What members of the Commission would be selected? Would there be a bias in the members who are selected—for Cuba or against Cuba? Would the visit to Cuba be conducted in accordance with the established norms for UN fact-finding in regard to human rights?⁴¹

41. See Model Rules of Procedure for United Nations Bodies Dealing with Violations of Human Rights, U.N. Doc. E/CN.4/1021/Rev. 1 (1970); *reprinted in* International Law and Fact-Finding in the Field of Human Rights, 239–48 (B. Ramacharan ed. 1982). In some respects the invitation of Cuba was analogous to the invitation which the Government of South Viet-Nam gave to the United Nations General Assembly in 1963 and which resulted in a fact-finding mission to that country. See U.N. Doc. A/5630, at 4–8 (1963); see also Weissbrodt and McCarthy, *Fact-Finding by International Nongovernmental Human Rights Organizations*, 22 Virginia J. Int'l L. 1, 22–23 (1981).

Would the Colombian proposal be joined with the U.S. resolution? Would the United States continue to press for its original resolution in addition to the separate Colombian proposal? What about the Cuban resolution,⁴² which had been tabled criticizing the United States? Unfortunately, the negotiations were not successful.

The following morning, before the session of the Commission convened on 9 March, the South American countries met with the large nonaligned group of nations of the Human Rights Commission. The nonaligned delegations gave their support to the South American initiative. The agreement of the nonaligned nations indicated that the South American initiative had successfully undermined the support for the original U.S. resolution on Cuba. Since the negotiations had failed the night before and since the nonaligned nations had supported the South American proposal, the negotiations were stalled during the morning session of the Commission. The Commission continued its business of formally introducing resolutions and adopting them, but everyone remained in suspense as to what would happen with the Cuban issue.

Ambassador Valladares formally introduced the original U.S. resolution against Cuba,⁴³ which simply indicated the general need for an inquiry about human rights in Cuba. Valladares added a personal statement about how his father had been promised permission to leave Cuba, but the Cuban authorities had stalled the exit permit. The Cuban delegation introduced its resolution against the United States with a very bitter attack on all aspects of the United States, including the high rate of imprisonment, the execution of juvenile offenders, the large number of people awaiting execution on death rows, the failure to deal with the homeless, and the efforts to assassinate Fidel Castro.

The Commission ordinarily suspends its sessions at 1:00 p.m. for lunch, but it was not until 1:10 p.m. that the Colombian delegation formally presented their draft decision on behalf of the delegations of Argentina, Colombia, Mexico, and Peru. The Colombian proposal did not resolve any of the significant issues which had arisen in negotiations:

Having regard to the invitation of the Government of Cuba, the Commission on Human Rights decides:

(a) To accept the invitation that the Chairman and five members of the Commission, appointed following regional consultations, should visit Cuba in order to observe the human rights situation;

(b) That the Chairman of the Commission, together with the five other members of the mission, shall prepare a report to be submitted for consideration by the

42. U.N. Doc. E/CN.4/1988/L.35.

43. U.N. Doc. E/CN.4/1988/L.26.

Commission, which shall decide on the manner in which the report will be examined.⁴⁴

The Colombian proposal was supported by statements by each of the South American co-sponsors. The Venezuelan ambassador appealed to the chair of the Commission to get involved in the negotiations to help resolve the breach which had developed between the parties, so that the Commission would not be compelled to take a roll call vote on either the original U.S. resolution or the South American proposal. Just before the Commission broke for lunch, a member of the U.S. delegation, presented the U.S. position in public, so that governments could consider the position over the lunch hour. The United States proposed to amend its original resolution in several respects: First, the resolution would no longer urge the Cuban authorities permit the International Committee of the Red Cross access to Cuban prisons. Second, and more importantly, the resolution would be amended to take account of the Cuban invitation. The critical new language authorized "the Chairman of the Commission in consultation with the Bureau to select a Working Group of five members acting in their personal capacities to join the Chair of the forty-fourth session of the Commission who will examine the human rights situation on the basis of all information that it will seek and receive from all sources including a visit in accordance with established procedures." The new U.S. proposal made it clear that the United Nations would pay for the visit, that the Working Group would publish its findings, and that the findings would be considered under agenda item 12 relating to gross violations of human rights in all parts of the world.

Chairman Ambassador Alioune Sene of Senegal, contrary to the accepted procedure, entered into the stalled negotiations throughout the lunch hour and continued after the Commission had formally convened with one of the vice-chairman presiding. The Commission continued to transact its business on other matters, including the adoption of resolutions on other country situations, such as, Afghanistan, Iran, and Chile.

While the other business was being transacted, small groups of diplomats stood around the Commission room and in the lounge outside discussing the situation. The other resolutions seemed to pale in comparison. Indeed, most of the other resolutions had been discussed so fully that they were adopted without a vote.

Finally, at 7:00 p.m. Ambassador Sene resumed chairing the Commission, and began by saying, "Returning to agenda item 12." The chairman of the Commission then made a proposal to the Commission. He assured the Commission that the visit of the Working Group to Cuba would be without limits. He did not, however, make any reference to the established fact-finding procedures of the United Nations. He then asked a representative

44. U.N. Doc. E/CN.4/1988/L.103.

of the Centre for Human Rights to explain the financial implications which gave some picture of the sort of visit which was envisioned. The financial implications assumed a one week meeting of the Working Group in Geneva to adopt rules and prepare for the visit in May-June, a one week visit to Cuba in July-August, and a one week meeting in Geneva in January 1989 to adopt the Working Group's report.⁴⁵ Also, the statement of the Centre made clear that the United Nations would pay for the visit and that the Working Group would be assisted by the UN staff. Based on those oral assurances, the chair asked the Commission to adopt the Colombian proposal by consensus. Everyone in the room held their breath to see if there would be an objection; the chair did not delay for long before declaring the proposal adopted by consensus.⁴⁶

After the decision had been adopted, the chair made a further statement assuring that the members of the Working Group would be impartial, professional, and fully in accord with the standards of the Commission. He stopped short of stating that the members of the Working Group would be acting in their personal capacity. The chair stated that he assumed the Cuban resolution against the United States be withdrawn. The South American nations which had co-sponsored the Colombian proposal made speeches thanking and praising the chair for his assistance in resolving the difficulties. Ambassador Valladares also thanked Chairman Sene and stated that the Working Group would conduct its visit according to established UN fact-finding procedures. Valladares also withdrew the original U.S. resolution—relieving the tension. Finally, at about 7:25 p.m. the Cuban delegate took the floor to thank the chair and the South American nations who had acted out of a sense of solidarity among Latin nations. Cuba did not object to the statements of Chairman Sene or Ambassador Valladares concerning the modalities for the visit. Cuba also did not formally withdraw its resolution against the United States, although the resolution was never brought to a decision.

Ambassador Valladares immediately left the Commission session to hold a press conference. Valladares claimed victory. Cuba had been compelled by the impending success of the original U.S. resolution to invite a delegation from the Commission to visit Cuba and see for themselves the violations of human rights in that country. Valladares noted that Fidel Castro had earlier said the United Nations would never be permitted to enter Cuba, except by invading the island. The adoption of the resolution by consensus strengthened the Commission's initiative. Cuba would be considered next year under agenda item 12 for gross violations, just like Afghanistan, El Salvador, and Iran.

The Cubans were also pleased by the result of Thursday night. They

45. U.N. Doc. E/CN.4/1988/L.104 (1988).

46. CHR Dec. 1988/106, U.N. Doc. E/CN.4/1988/88, at 168, 230–35 (1988).

were able to avoid a vote on the resolution proposed by the United States. In addition, they had established a strong base of political support within the Latin American nations.

The next morning the agreement of Thursday night immediately began to unravel. The staff of the Human Rights Centre had prepared a tentative agenda for the 1989 session of the Commission.⁴⁷ The staff had placed the expected report of the Working Group on Cuba under item 12 which deals with gross violations and under which the decision to send the Working Group had been adopted. There were rumors that the South American nations would propose that the Working Group on Cuba should report under the agenda items for advisory services or that the Working Group's report should be considered under agenda item 3, which would permit the Commission at the 1989 session to decide how the report would be considered.

Once again, the business of the Commission rumbled forward, but the real work on the Cuban issue was being discussed in small groups of diplomats around the meeting room, outside in the lounge, and in the office of the chairman of the Commission. Ordinarily, the last Friday of the Commission is a rather dull day. The report of the Commission is adopted section by section without much debate, and any left over rights of reply are heard. The meeting rarely extends beyond 6:00 p.m., because many people have bags to pack and airplanes to catch. In 1988 the Commission was still meeting well after 7:00 p.m. The Commission had handled nearly all of its other business, and still the agenda dispute over Cuba was being discussed. At a little after 8:00 p.m. the Colombian delegation formally proposed that the Working Group's report on Cuba should be considered under agenda item 3 and not under 12. The secretary of the Commission explained that the report had been placed under item 12 (gross violations) because the decision to send the Working Group had been made under that item. Mexico, Argentina, India, Pakistan, and several countries, however, stressed the language of the decision itself, which said,

That the Chairman of the Commission, together with the five other members of the mission, shall prepare a report to be submitted for consideration by the Commission, which shall decide on the manner in which the report will be examined.

Mexico at one point even argued that the decision allowed the Commission in 1989 to decide "how or if" the Working Group's report would be considered. The debate continued. The United States did not speak, until after Belgium, Norway, and the United Kingdom had spoken to support the agenda as prepared by the staff. It was a surprise when Nigeria spoke in favor of the Mexican proposal. The Japanese delegate appealed for a res-

47. U.N. Doc. E/CN.4/1988/L.1.

olution of this procedural problem, because he had the previous night already sent a telex to his government in Tokyo reporting that the Commission had been a success. He did not want to have to write a second telex saying that he had been wrong the night before.

The debate continued until about 9:00 p.m. Venezuela once again appealed to the chair to try to resolve the impasse. Argentina asked for a "five minute recess" to try to obtain a consensus on some proposal. The U.S. delegation stated that the hour was late. The session was scheduled to end at 9:00 p.m., and simultaneous language interpretation would ordinarily end at that hour. The U.S. delegate said that there had been extensive efforts at a compromise, and the U.S. delegation did not believe that a compromise was possible; the United States called for a vote and opposed the recess. Norway asked whether there would be language interpretation when the Commission reconvened. The chair stated that he hoped the UN Under-Secretary General, who was present, would arrange for continued servicing of the meeting. Finally, the Commission could not even agree as to whether there should be a recess for further negotiation. A vote was taken with members raising their voting cards. The Commission decided to break for five minutes, which stretched to forty-five minutes.

At about 9:40 p.m. the Commission reconvened. The chair proposed a decision whereby the report of the Working Group would remain on the agenda under item 12, but the annotated agenda for 1989 would reflect a statement made earlier by the chair to the effect that the Commission would have the authority under item 3 to determine how the Working Group on Cuba's report would be considered. Again, the chair asked for his proposal to be adopted by consensus.⁴⁸ Ambassador Leandro Despouy of Argentina thanked the chair for his efforts to resolve the dispute. Everyone in the room appeared to hold his breath in apprehension of any objection. No one objected and the proposal was adopted by consensus.

Finally, at nearly 10:00 p.m. the Commission was ready to conclude. A representative of each of the five regional groups thanked the chair for his work at the Commission. While these speeches were an ordinary formality, there was a sense that Chairman Sene's personal influence and efforts had been critical in permitting the Commission to complete its work. Chairman Sene ended the Commission with extensive final remarks; everyone politely remained in his seat and listened. The chairman declared the meeting adjourned. The delegates shook hands, exchanged addresses, and headed home.

48. See U.N. Doc. E/CN.4/1988/88, at 277 (1988).