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Major Developments in 1990 at the UN Commission on Human Rights

Reed Brody, Penny Parker, and David Weissbrodt*

The forty-sixth session of the United Nations Commission on Human Rights met from 29 January to 9 March 1990. It was the first meeting of the Commission following the democratic changes in Central Europe, the suppression of the pro-democracy movement in China, and the US invasion of Panama. The Commission also met after the General Assembly had called for an enlargement of its membership to remedy the under-representation of third world countries, while asking the Commission to study ways of making its work more effective.

The Commission adopted eighty-one resolutions and sixteen decisions, of which sixty-two resolutions and thirteen decisions were adopted by consensus. Among the principal results of the session, which was marked by a growing north-south split, were resolutions on Cuba, El Salvador, Guatemala, Haiti, Myanmar (Burma), and the US invasion of Panama. The Commission failed to act, however, on resolutions regarding China and Iraq, or to break new ground on thematic issues. It also failed to reach any decision on enhancing its working methods—a decision later taken by the Economic and Social Council (ECOSOC) in May 1990.

The outgoing chairman, Marc Bossuyt of Belgium, began the session with a minute of silence to remember the late Andrei Sakharov as well as all those who died during the year in the struggle for human rights. Under-Secretary-General Jan Martenson noted that the past year had seen the

* This article is adapted from one which appeared in 44 ICJ Review (1990).

adoption by the General Assembly of the Convention on the Rights of the Child\(^2\) and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.\(^3\) In addition, he noted, a Draft Convention on the Protection of the Rights of All Migrant Workers and Their Families is in the final stage of elaboration by the General Assembly.\(^4\) Curiously, he did not refer to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries which was also adopted by the General Assembly.

Purificacion V. Quisumbing (Philippines) was elected chair of the session. Todor Ditchiev (Bulgaria), Kongit Sinegiorgis (Ethiopia), and Zelmira Regazzoli (Argentina) were elected to represent their respective regions on the Bureau, and Ross Hynes (Canada) was elected as rapporteur, giving the Bureau the participation of three women for the first time. During the session, the Commission heard speeches by President Wojciech Jaruzelski of Poland, the vice president of the Sudan, and the foreign ministers of Ireland (who represented the twelve European Community (E.C.) countries), Austria, Cyprus, and Guatemala, the deputy foreign ministers of Hungary, the Philippines, the United Kingdom, and the USSR, and the UN High Commissioner for Refugees.

The Commission also witnessed a radical shift in the positions of Eastern European countries. For example, Bulgaria and Hungary voted for scrutiny of China, Cuba, and Iraq. While the USSR voted against the first two resolutions and did not participate in the vote on the third, it put forth strong proposals to increase the role of the Human Rights Commission in the future. The Hungarian secretary of state for foreign affairs even proposed creation of a special rapporteur to review the situation of those imprisoned for their political beliefs as well as of a commission that the secretary-general could dispatch in emergency situations to pursue on-site inquiries. (Interestingly, Yugoslavia, as chair of the nonaligned group, and a former advocate of a more active role for the Commission, proposed severe limits on the Commission's work.\(^5\)) At the same time, abstentions by most Latin American countries resulted in the failure of the resolutions on China and Iraq.

Before and during the session, drafting groups continued work on draft declarations on the rights of human rights defenders, the rights of mentally ill persons, and the rights of minorities.

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I. ENLARGEMENT AND "ENHANCEMENT"

The Commission is presently composed of eleven members from African states, ten from the "Western European and Others Group" (WEO), six from Latin America and the Caribbean, nine from Asia, and five from Eastern Europe. Although the WEO nations have played a leading role in the development of the Commission, it is clear that the developing countries are currently under-represented; fully half the western and eastern European states are represented on the Commission, for instance, while fewer than one-quarter of African and Asian countries have seats.

The regional imbalance has received greater attention as the Commission has become increasingly politicized and polarized. Regional blocs have taken on increased importance over the years. In the developing countries, these blocs are often able to prevent or control measures sought to be taken against one of the region's governments. Bloc solidarity has long prevented public Commission initiatives in Africa (outside southern Africa). The disproportionate scrutiny of Latin American countries in the 1980s, combined with the highly political US campaign to condemn Cuba from 1987 to the present, has caused the Latin American bloc to consolidate. The "Group of 8" now effectively determines the limits of resolutions on Chile, El Salvador, and Guatemala and probably would prevent initiatives on Colombia and Peru.

The Asian group had long been divided by a diversity of cultures, languages, and forms of government. Nevertheless, the Asian group combined in 1989 to limit substantially a French initiative on Myanmar (Burma). In 1990, the nonaligned movement's Group of 77 began, for the first time, to meet regularly and to exert its weight at the Commission. At the same time, the WEO group votes as a bloc in favor of all country resolutions except those on South Africa and the Occupied Territories and, with the exception of Sweden, against initiatives from the developing countries on issues of development, mercenaries, and economic, social, and cultural rights. The Eastern European countries, as a result of the changes sweeping that region, are coming to ally themselves increasingly with WEO positions, thus setting the stage for an increased north-south confrontation and fueling the move by developing countries to change the Commission's composition to ensure equitable representation.

6. The Western European and Others Group (WEO) of countries in the Commission includes Belgium, Canada, France, Italy, Federal Republic of Germany, Portugal, Spain, Sweden, United Kingdom, and United States.
8. The "Group of 8" comprises Argentina, Brazil, Colombia, Mexico, Peru, Uruguay, and Venezuela (Panama was excluded during the tenure of the Noriega government).
This movement gained momentum when the Sub-Commission in 1989 adopted a resolution critical of China. China has since been lobbying heavily within the Group of 77 to curtail the powers of the UN in regard to human rights on the ground of noninterference in the internal affairs of states.

At its 44th session in 1989, the General Assembly adopted a resolution recommending an expansion in the size of the Commission on the basis of "equitable geographical distribution." In the same resolution, as a compromise to gain Western European and Eastern European support, the General Assembly asked the Commission "to examine ways and means of making its work more effective. . . ."11

The Commission therefore created an open-ended working group which met during the session to consider means of "enhancing" the Commission's work.12 It soon became clear, however, that the countries of the north—Western Europe and Eastern Europe—and the developing countries grouped in the Group of 77 had radically different ideas about the meaning of the term "enhancement."

Among the WEO proposals for enhancement were, first, to create a permanent mechanism, through the Bureau or the Geneva Permanent Missions, to allow the Commission to respond to urgent situations between sessions. With the Beijing crackdown on everyone's mind, this proposal ran into strong opposition from the Group of 77. The WEO nations also proposed strengthening the Commission's theme mechanisms—the special rapporteurs and the Working Group on Enforced or Involuntary Disappearances—by giving them longer mandates (three, four, or even five years). This security of tenure, it was believed, might enable the rapporteurs and the Working Group to become more active and creative in pursuing their mandates and more critical of violating countries. Longer terms would also strengthen their capacity to deal with governments that do not respond to requests for information, that respond with unsatisfactory denials, or that give misleading or inaccurate responses.13

The Group of 77, however, led by India and Pakistan, without real debate

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11. G.A. Res. 44/167, supra note 9, at 473.
or input from other regions, rapidly adopted a position paper with several counter-proposals: to replace the thematic rapporteurs with geographically-balanced working groups composed of staff from the Geneva Permanent Missions; to require that all allegations of human rights violations brought by individuals be channeled through the confidential 1503 procedure of ECOSOC rather than through the rapporteurs and the working groups; and to reduce the Sub-Commission to the role of setting standards and producing studies.\(^{14}\)

The position paper also suggested that all proposed oral statements of nongovernmental organizations (NGOs) be submitted in writing at least twenty-four hours in advance and that a Commission working group be established to monitor complaints against NGOs.\(^{15}\)

The Group of 77 position paper called for a depoliticization of the Commission’s work and an end to “aspects of the functioning of the Commission which accentuate judgemental, selective or inquisitorial approaches, or which would establish an unequal treatment for issues of one category of human rights as compared to the treatment of other categories.”\(^{16}\) It thus sought to ensure priority consideration of apartheid and fair treatment of economic, social, and cultural rights.\(^{17}\)

The diametrically opposed proposals left little room for common ground. The northern countries’ proposals did not seem to recognize the Group of 77 view that the Commission has largely followed an agenda weighted towards the northern countries’ concerns, while many of the Group of 77 proposals seemed aimed at eviscerating serious Commission scrutiny of violations. On the very last day, the closing of the Commission’s session was delayed for eight hours as the two groups sought in vain to achieve consensus, even as to how the discussions should continue. The WEO group was anxious to reach agreement on enhancement measures before finalization of the issue of enlargement (to be considered at ECOSOC in May 1990—see below). The Group of 77 appeared interested in postponing the enhancement debate until next year, by which time enlargement of the Commission would have already been accomplished. In the end, in a victory for the Group of 77, the Commission could not even agree to create an inter-sessional working group to continue debating the matter. In May 1990, a global agreement was reached at ECOSOC. A resolution, passed over the sole dissent of the United States, endorsed the urgent need


\(^{15}\) Draft N.A.M. Position Paper, supra note 13, at 4; see also U.N. Doc. E/CN.4/1990/WG.3/WP.6, at 3–4 (1990). Evidently, the Group of 77 was concerned about NGO statements that might be critical of governments.

\(^{16}\) Draft N.A.M. Position Paper, supra note 14, at 1–2.

for a more equitable regional representation in the United Nations.\textsuperscript{18} ECOSOC enlarged the Commission to fifty-three members, adding four to Africa, three to Asia, and three to Latin America and the Caribbean, to be elected in May 1991.\textsuperscript{19} Although the WEO proportionately lost influence from that decision, they also won on three issues. First, ECOSOC decided that the Commission can meet exceptionally, when an urgent situation arises regarding human rights violations, provided that a majority of the Commission so agrees.\textsuperscript{20} Second, ECOSOC recommended that the term of special rapporteurs be extended to three years rather than two years.\textsuperscript{21} Third, ECOSOC also decided that the Commission's Bureau would meet in the week following each session to make suggestions as to the organization of the Commission.\textsuperscript{22}

II. COUNTRY SITUATIONS

The Commission also heard reports and passed resolutions concerning the human rights situations in a number of countries, as well as on other matters. These topics will be discussed individually.

A. Afghanistan

The Special Rapporteur Felix Ermacora (Austria) reported that the human rights situation remained grave, with conditions of detention, landmines, and refugee resettlement of particular concern.\textsuperscript{23} In a consensus resolution under the agenda item of self-determination, the Commission called on all parties concerned to work for the urgent achievement of a comprehensive political solution and the creation of the necessary conditions for peace and normalcy that would enable Afghan refugees to return voluntarily to their homeland in safety and honor.\textsuperscript{24} The resolution was adopted despite the Soviet withdrawal of forces from Afghanistan. In another resolution adopted without a vote, this time on the human rights situation, the Commission decided to extend the mandate of the special rapporteur for one year, requesting him also to report to the General Assembly at its forty-fifth session.\textsuperscript{25}

\textsuperscript{19} See id.
\textsuperscript{20} Id.
\textsuperscript{21} Id.
\textsuperscript{22} Id.
B. Albania

By twenty-seven in favor, three against (China, Cuba, Pakistan), and twelve abstentions, the government of Albania was asked to provide information on the concrete manner in which its constitutional and legal measures comply with the provisions of the Universal Declaration of Human Rights and to respond to the specific allegations transmitted to the Commission by its special rapporteur on the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.26

Those allegations include the existence of specific legal provisions violating the right to freedom of thought, conscience, and religion, for example, a decree ordering the annulment of all religious charters, prohibiting all religious rites, and imposing grave penalties for violators of the decree; an article of the 1976 constitution forbidding all religious activities and organizations; and an article of the penal code that imposes the death penalty for religious activities in some cases.27

In practice, those laws allegedly have resulted in the persecution and killing of religious believers, including the alleged killing of priests for baptizing children.28 The performance of other religious rites, such as making the sign of the cross, allegedly have resulted in prison sentences of up to ten years.29 There reportedly are prisons, concentration camps, and internal exile locations for religious offenders.30

The government of Albania denied these allegations in its written response of 30 August 1989, to the special rapporteur.31 The reports of viola-

28. Id.
29. Id.
30. Id.

A third statement, dated 21 February 1990, indicated that a videocassette had been sent to the Commission refuting “the statements of those who have invented the so-called tragic killing of the four Prasos brothers.” Statements were also filed on 23 February 1990, U.N. Doc. E/CN.4/1990/80, and 1 March 1990, U.N. Doc. E/CN.4/1990/85, by the Albanian consulate, including a newspaper interview from the Minister of the Interior, refuting claims of improper detentions, and a brief response to the “malicious and unfounded accusations” contained in a recent written statement from the delegation of
tions of the right to freedom of thought, conscience, and religion have been corroborated by other sources, however.\textsuperscript{32} Given the persistence of the allegations, the resolution could have appointed a special rapporteur for Albania to undertake a first-hand investigation of the alleged violations.

The Albanian government has been reluctant in the past to respond to criticisms. For five years the Commission attempted to establish a dialogue with Albania through its confidential 1503 procedure. In 1988, when Albania again refused to respond, the Commission resolved to consider Albania's human rights violations under the public procedure authorized by ECOSOC resolution 1235.\textsuperscript{33} While the government is generally regarded as having improved its receptivity to inquiries, the responses for the most part still lack any specifics.

C. Cambodia

The Commission met for the first time following the Vietnamese withdrawal from Cambodia, a fact hardly even mentioned in the resolution sponsored by the Association of Southeast Asian Nations (ASEAN) on self-determination.\textsuperscript{34} The ASEAN resolution was adopted by a vote of thirty-one to five (Cuba, Ethiopia, India, Ukraine, USSR), with six abstentions (Belgium, Canada, Hungary, Iraq, Madagascar, Sweden). Bulgaria did not participate in the vote. The resolution again condemned the "persistent occurrence of gross and flagrant violations of human rights"\textsuperscript{35} by the Vietnamese backed government while, in the face of the growing threat from the Khmer Rouge, it again made only a passing and unidentified reference to the importance of a "non-return to the universally condemned policies and practices of a recent past. . ."\textsuperscript{36}

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Yugoslavia at the Commission (the Yugoslav statement had charged that the Albanian government was intentionally encouraging Albanian nationals in the Kosovo district of Yugoslavia to rebel. U.N. Doc. E/CN.4/1990/82 (1990)).


\textsuperscript{35} Id. at 36.

\textsuperscript{36} Id.
D. Chile

Beginning in 1975 the Commission established a working group to study the human rights situation in Chile. In 1979 the Commission replaced the working group with a special rapporteur. During its 1989 session, the Commission on Human Rights expressed concern at the persistence of serious human rights violations in Chile, as described in the comprehensive report of the special rapporteur, who referred to cases of murder, abduction, disappearances, torture, arbitrary arrest, prolonged periods of incommunicado detention, political prisoners, death threats, and the intimidation of opponents of the government.

During the adoption of the agenda of the Commission's 1990 session, the special agenda item on Chile was removed because of the recent democratic elections in that country. As reported by the special rapporteur, the new democratic government will have the responsibility of restoring the system of human rights protection that existed prior to the 1973 military coup d'etat and of ensuring that redress is made for the human rights violations that have occurred since then. Chile's government-elect let it be known that it wished all scrutiny to end, a position not contested by the Chilean NGOs in Geneva. The special rapporteur also recommended that his services be discontinued. The Commission adopted a consensus resolution ending the special rapporteur, but asking the government-elect to report, at a special meeting of the forty-seventh session in 1991, on the follow-up to the recommendations previously adopted by the United Nations in connection with the restoration of human rights.

E. China

The brutal suppression of pro-democracy demonstrators in Tiananmen Square during June 1989 was of obvious concern to many at the Commission. The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, which is a subsidiary body to the Commission and meets during August of each year, had adopted a critical resolution by secret ballot in

38. Id.
41. Id.
August 1989. The Sub-Commission’s resolution, though unprecedented in its subject matter (it was the first resolution ever passed by the Sub-Commission against one of the five permanent members of the Security Council), was mild in its criticism, simply noting concern over reports of human rights abuses, urging clemency for those being detained, and asking the secretary-general “to transmit to the Commission on Human Rights information provided by the Government of China and by other reliable sources.”

The Chinese government lobbied strenuously to defeat the resolution at the Sub-Commission, but was unsuccessful. The official response of the government of China to the resolution, contained in the secretary-general’s report, deserves to be reproduced in full because of the brazenness of its attack on the principle that human rights are of universal concern:

Last June, there occurred in Beijing a rebellion which was supported by hostile forces abroad and constituted an attempt to overthrow the legitimate Government of the People’s Republic of China and subvert the socialist system set forth in the Constitution through violent means. The Chinese Government took resolute measures to quell the rebellion in the interests of the overwhelming majority of the Chinese people. This is entirely China’s internal affairs and is a matter different in nature from the question of human rights. However, with the plotting and encouragement of some Western members, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1989/5 at its forty-first session. This is a brutal interference in China’s internal affairs while hurting the feeling[s] of the Chinese people. The Spokesman of the Foreign Ministry of the People’s Republic of China issued a statement on 2 September 1989, solemnly declaring the firm objection of the Chinese Government to the resolution and deeming it to be illegal and null and void.

The secretary-general’s thirty-three page report also summarized the well-documented reports of human rights violations in China issued by Amnesty International, the International League for Human Rights, and the International Commission of Health Professionals. The resolution against China which was offered in this session of the Commission sought only an appeal for clemency for detainees, a welcoming of the government’s lifting of martial law and release of prisoners, and an urging of the government to continue to take similar, positive measures to protect human rights in the future.

The debate on China followed the same lines as that which took place in the Sub-Commission. The floor debate was intense as the Chinese delegates made it clear that they viewed the entire process as an invasion of
their sovereignty. The Chinese delegation attempted to block the student leader Wuer Kaixi from addressing the Commission on behalf of the Federation Internationale des Droits de l'Homme,\textsuperscript{47} which only drew further attention to the intervention. With Australia leading the way, it seemed that a mild resolution cosponsored by Japan and seventeen Western countries (members and observers) had a good chance of passage, despite unusually strong lobbying by Beijing.

Nevertheless, no country came forward to introduce the resolution formally and when Pakistan moved to take no action on the resolution, its motion carried seventeen-fifteen-eleven.\textsuperscript{48} Voting for the motion were Bangladesh, China, Cuba, Cyprus, Ethiopia, Ghana, India, Iraq, Madagascar, Nigeria, Pakistan, Sao Tome and Principe, Somalia, Sri Lanka, Ukraine, the USSR, and Yugoslavia. Voting against were the ten WEO countries, Bulgaria, Hungary, Japan, Panama, and Swaziland. Abstaining were Argentina, Botswana, Brazil, Colombia, Gambia, Mexico, Morocco, Peru, Philippines, Senegal, and Venezuela. The resolution's defeat came as several countries inexplicably voted differently on the motion to take no action than they had indicated they would on the substance of the resolution. Some observers expected, for example, that India would abstain on the resolution but India voted in favor of the motion to take no action.

F. Cuba

The United States introduced a resolution aimed at the reprisals that the Cuban authorities reportedly took against witnesses who testified before the delegation of six Commission members who visited Cuba in 1988. The text of the resolution and the debate surrounding it were more subdued than in prior years. The United States has made a censuring resolution against Cuba its chief and, in some years, its only objective at the Commission. According to an intercepted communique from Secretary of State James Baker released by the Cuban delegation, the United States prepared "a high-level lobbying effort tailored to individual countries."\textsuperscript{49} Indeed, several members of the US Congress visited the Commission to impress upon third world delegations the importance of their vote on Cuba. At the 1989 session, the United States had attempted to pass a harsh resolution against Cuba, and its campaign

had been embarrassingly disorganized, causing political division among Commission members.\textsuperscript{50} The US campaign ultimately failed, and a weaker Latin American proposal was adopted instead.\textsuperscript{51}

The US task was made easier in 1990 by geopolitical changes that occurred over the previous year, combined with a hardening of the Cuban position, its increasing isolation, and reports of its retaliation against witnesses who wanted to inform the Commission about violations. Bulgaria, Hungary, and Panama voted with the United States, while Czechoslovakia and Poland, as observers, co-sponsored the US resolution which passed by the comfortable margin of nineteen-twelve-twelve. The resolution expressed concern over the reports of reprisals against witnesses, called on Cuba to respond to those reports, asked the secretary-general to report to the next session on his contacts with the Cuban government, and placed Cuba on the agenda of the 1991 Commission under item 12 for "violations."\textsuperscript{52}

\textbf{G. El Salvador}

Once again, the Latin American group presented the traditional European cosponsors with a draft text as a \textit{fait accompli}. Nevertheless, the Latin American group did accept several amendments before the vote, to take into account the deteriorating human rights situation, including the rise in summary executions evidenced by the murder of six Jesuit priests. The report of the special rapporteur noted "a disturbing increase in government actions of all kinds against trade union, peasant, humanitarian and other organizations."\textsuperscript{53} The government claimed that some of these organizations are tied to the Frente Farabundo Marti para la Liberacion Nacional (FMLN).\textsuperscript{54} The final resolution passed by the Commission was more critical than in the past, both of the government and the FMLN, whose offensive in San Salvador probably cost it diplomatic points. The Commission expressed its serious concern at "the increase in the number of grave, politically motivated violations of human rights, such as summary executions, torture and abductions, and at the persistence of enforced disappearances."\textsuperscript{55} It strongly appealed to the government of El Salvador and the FMLN to use the good offices of

\begin{thebibliography}{55}
\bibitem{51} Id. at 594.
\bibitem{54} Id.
\end{thebibliography}
the UN secretary-general to endeavor to achieve "a negotiated political solution to the armed conflict that will encourage the existence and strengthening of a democratic, pluralist and participatory process involving the promotion and respect of the human rights of the Salvadorian people. . .".56

H. Guatemala

One of the hardest-fought battles at the Commission concerned Guatemala which had, since the accession of a civilian government, been receiving advisory services.57 Guatemala had succeeded in 1987 in removing itself from the item of the Commission agenda that concerns "the violation of human rights and fundamental freedoms" and instead was placed under the "advisory services" item. While many of the same issues theoretically can be discussed regardless of the agenda item, the symbolic significance of transferring a country to the advisory services agenda item has become very important in recent years. This development has both undermined the otherwise salutary intentions of the advisory services program and created an artificial "prize" that countries under attack could seek to win by engaging in various political maneuvers (often by seeking support from countries that still consider the advisory services programs constructive vehicles for positive change). In principle, an expert under the advisory services program cannot find facts about human rights violations. In practice, the expert has wide latitude as to how to present the human rights situation in the report.

The weaknesses of the advisory services program were particularly apparent in Guatemala during 1989–1990. In the past year there had been an alarming escalation in political violence, accompanied by the continuation of a longstanding pattern of severe human rights violations. Meanwhile, the government has failed to assert its authority over military and paramilitary groups, to protect those people who attempt to exercise their democratic rights, or to investigate and prosecute those military and police forces who are responsible for abuses. Four different reports by UN bodies submitted to the Commission, including reports on torture and disappearance, evidenced this worsening situation.58

The degradation of the human rights situation again raised the question: When and under what conditions should the United Nations provide a government with advisory services? During the debate, the New York-based

56. Id. at 159–60.
Lawyers Committee for Human Rights issued a report on the advisory services program in Guatemala which concluded that the program has had no effect on Guatemala's dismal human rights situation and urged the Commission on Human Rights to renew its commitment to monitor the ongoing human rights abuses occurring in Guatemala through appointment of a special rapporteur. The report of the advisory services expert, Hector Gros Espiell, criticized in the past for his gentle treatment of the government, was pessimistic this year.

In response to this worsening situation, the WEO group, led by Sweden, introduced a resolution calling for the appointment of a special rapporteur and transferring the Guatemalan discussion back to the "violations" item of the agenda. Several Latin American countries, however, prepared a competing resolution criticizing some of the worsening conditions in Guatemala, but essentially preserving the status quo, keeping Guatemala under the advisory services program.

The stakes were raised when, a few days before the vote, a Guatemalan guard at the Swedish embassy in Guatemala was killed in what some observers believed may have been a reprisal against Sweden for its role in the resolution. The Guatemalan foreign minister, who spoke to the Commission the next day, did not refer to the incident.

In the end, a compromise resolution was approved unanimously, in part because many of the Western countries were interested in currying favor with the Latin American countries, whose votes would become critical a few days later during the China debate. The resulting compromise resolution amended the Latin American draft by raising the level of scrutiny one-half notch and inventing a new hybrid. The Commission asked the secretary-general to appoint an "independent expert" as his representative to examine the human rights situation in that country and, at the same time, to supervise the provision of advisory services. This hybrid concept is novel, apparently permitting a mixture of advisory services and fact-finding duties. The resolution even left open the agenda item (violations or advisory services) under which it would consider this matter at its next session.

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64. See id. at 168.
I. Haiti

Like Guatemala, Haiti represented, in the eyes of many, an abuse of the advisory services program. In this case, however, the abuse consisted of the absence of any demand for or use of advisory services. The thorough report by the expert Philippe Texier (France) demonstrated how the military government of Haiti had used the formal existence of the program to avoid proper scrutiny.\textsuperscript{65} The somewhat pessimistic, but basically realistic conclusions of Texier, for the second year running, together with the state of siege declared on the island just as the Commission session began, indicated that the Commission should put an end to the offer of advisory services to the government of Haiti. Some Latin American delegations, which were apparently upset by the strong language used in Texier's report, as well as his visit to the French and US embassies in Port-au-Prince but not to the Venezuelan ambassador, balked at upgrading his mandate to that of a special rapporteur. Finally, the chair of the Commission was asked to appoint an “independent expert” to examine developments in the human rights situation in Haiti and to report back to the Commission under the “violations” item\textsuperscript{66}—thus giving to the mandate the content, but not the name of a special rapporteur. The Latin American delegations agreed after the session to the appointment of Texier for another year as the independent expert.

J. Iran

Beginning in 1988, the Commission resolution on Iran was not introduced by any government, because no government wanted to face the risk that Iran would cause its citizens to be taken hostage or would otherwise retaliate. In 1989 the Commission had before it reports from the Special Rapporteur on Executions, Amnesty International, and the special representative to Iran, even though he was still denied access to the country. The reports presented numerous accounts of human rights violations, including executions of political prisoners, arbitrary arrests, torture, and unfair trials. The Commission adopted a resolution that urged Iran to grant access to the special representative and expressed concern over the numerous allegations of human rights violations.\textsuperscript{67}

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The Commission's special representative, Reynaldo Galindo Pohl (El Salvador), was finally able to visit Iran shortly before the 1990 session began. Although there were rumors that witnesses with whom he met were subsequently harassed, his report was quite restrained. The special representative noted that it was physically impossible to accommodate everyone who wanted to make a statement during his visit, and those who did obtain appointments to meet with him were sometimes unable to keep them due to the numbers of people crowding outside the UN office. The special representative also prominently reported the government's concern about terrorism, which was repeated by several witnesses he heard. In addition, the representative received complaints of unlawful executions, torture, imprisonment beyond the expiration of the sentence, and unfair trials, including trials conducted without defense counsel.

Several observers believed the restraint manifested in the report was in exchange for permission to conduct a second visit. The Commission's consensus resolution, also mild, welcomed the decision of the government to invite Galindo Pohl and encouraged the government to comply with international instruments on human rights—including the International Covenant on Civil and Political Rights, to which Iran is a party—and to ensure that all individuals within its territory and subject to its jurisdiction enjoy the rights recognized in these instruments. The resolution expressed concern over testimony gathered by Galindo Pohl about human rights violations, while "recogniz[ing] that testimony was also gathered representing the opposite and thus two different kinds of personal experience and view were received." It also unusually "recognize[d] that the Special Representative rules out allegations that political prisoners had been executed under false charges of drug trafficking unless specific proof is submitted to him in this regard."*

K. Iraq

At the meeting of the Sub-Commission in August 1989, an Iraqi government-sponsored NGO had invited individual Sub-Commission members to visit Iraq to judge the human rights situation. Several observers believed, however, that if UN action on the human rights situation in that country was to

69. Id.
70. Id.
71. Id. at 53.
be deferred as a result of such an invitation, it would be necessary to ensure that the visit took place in accordance with standard UN factfinding procedures.\textsuperscript{74} Otherwise, a government could avoid responsibility for human rights violations by inviting individual members (rather than the Sub-Commission \textit{qua} Sub-Commission) for a visit to its territory without any of the procedures normally accompanying UN factfinding visits.\textsuperscript{75}

Several western countries therefore proposed a draft decision welcoming the invitation, asking the chair of the Sub-Commission to consult the experts on the visit, asking the members to report on the visit to the Sub-Commission at its next session, asking the secretary-general to facilitate the visit in accordance with UN practice, and asking the Sub-Commission to report to the Commission the results of the visit. Iraq let it be known outside the public debate, however, that it opposed this formalization of the visit through a resolution which could be interpreted as a rebuke or result in agenda item 12 (violations) treatment. Voting on the resolution was delayed as the two sides sought in vain to achieve a compromise. Iraq then moved to take no action on the draft decision. Its motion carried eighteen-fourteen-nine. Once again, the abstentions of Latin American democracies (Brazil, Colombia, Peru, and Venezuela) provided the margin, while Argentina even voted in favor of the motion to take no action.

The failure of the Commission to adopt any resolution on Iraq puts the standing invitation extended to Sub-Commission members in a peculiar status. The Sub-Commission normally is not authorized to visit in an official capacity without direction from the Commission. If the Sub-Commission members travel to Iraq in their unofficial, private capacities, however, their authority is unclear. The government of Iraq nonetheless has indicated that its invitation remains open, and the Sub-Commission has not resolved formally whether and under what conditions it might visit Iraq.

L. Israeli-Occupied Territories

For the first time in many years, the twelve states of the European Community proposed a resolution on the Israeli Occupied Territories. The resolution affirmed that "the settling of Israeli civilians in the Occupied Territories is illegal and contravenes the relevant provisions of the Fourth Geneva Convention" and called upon the government of Israel to refrain from settling immigrants in the Occupied Territories.\textsuperscript{76} It passed unanimously, except for

an abstention by the United States. Another resolution condemned the ill
treatment and torture of Palestinian detainees and Israel's refusal to apply
the protections of the Fourth Geneva Convention.\textsuperscript{77} A third resolution con-
demned abuses in occupied Syrian territory.\textsuperscript{76}

\textbf{M. Lebanon}

The Commission, voting forty-one to one (United States) with one abstention
(Swaziland), condemned the continued Israeli violations of human rights in
southern Lebanon.\textsuperscript{79} It called upon Israel to put an immediate end to such
practices and to implement the relevant resolutions of the Security Council
which require the immediate, total, and unconditional withdrawal of Israel
from all Lebanese territory and respect for the sovereignty, independence,
and territorial integrity of Lebanon.\textsuperscript{80} During the session, the Commission
chair appealed for a cease-fire in East Beirut.

\textbf{N. Myanmar (Burma)}

Under the confidential 1503 procedure, a French-sponsored resolution was
reportedly adopted by consensus asking the chair to appoint an independent
expert to establish direct contacts with the government on developments
relating to the human rights situation in Myanmar and to report to the
Commission at its next session.

\textbf{O. Panama}

The United States sought to avoid Commission debate on its December 1989
invasion of Panama, arguing that to do so would "politicize" the Commission
with an issue already discussed (and with a resolution censuring the US
military intervention) by the General Assembly. Mexico pointed out, how-
ever, that the Soviet invasion of Afghanistan had been condemned regularly
by the Commission. The International Commission of Jurists intervened to
refute the United States' purported justifications\textsuperscript{81} under international law
for the military action. Finally, a Cuban-sponsored resolution to condemn

\textsuperscript{80} Id.
\textsuperscript{81} See, e.g., D'Amato, The Invasion of Panama Was a Lawful Response to Tyranny, 84 Am.
the invasion as a violation of the Panamanian people’s right to self-determination was adopted fourteen-eight-seventeen. Notable were the abstentions by several US allies (Belgium, France, Spain, Sweden) as well as several Latin American governments, and the vote of all five Eastern European countries in favor of the resolution. Counter-proposals submitted by the United States and Panama were withdrawn before the Commission could vote on them.

P. Romania

The special rapporteur on Romania appointed in 1989, Joseph Voyame (Switzerland), who was denied entry into Romania before the fall of Ceaușescu, was able to visit that country during the Commission’s session and reported back on the important changes which had occurred. With the agreement of the new authorities, the Commission, noting “the considerable improvement in respect for human rights that has taken place in Romania,” renewed the special rapporteur’s mandate for a further year. This step was seen as an important precedent. By contrast, when dictatorships fell in Guatemala and Haiti in 1987, the Commission rapidly terminated the mandate of the special rapporteurs, only to find that the human rights situation did not improve. Similarly, some criticized as premature the termination of the mandate of the special rapporteur for Chile this year.

Q. South Africa

Commission debate reflected the changing situation in South Africa and the liberation of Nelson Mandela, which occurred during the session. The Commission received reports from the Ad Hoc Working Group of Experts on southern Africa, the Group of Three established under the Apartheid Convention, and the Sub-Commission expert Ahmed Khalifa (Egypt) on corporations doing business in South Africa. The Commission adopted a res-
olution by consensus on the detention and torture of children\(^8\) while it voted on another inviting the international community not to ease sanctions against South Africa until further progress is made.\(^9\) Efforts to arrive at a consensus text for this resolution failed, primarily over the issue of whether sanctions should be considered mandatory or discretionary.

A third resolution, adopted by a vote of thirty-one to eight with four abstentions, condemned "the assistance rendered by the major Western States and Israel to South Africa in the political, economic, financial and particularly the military field. . . ."\(^90\)

The Commission approved a resolution forwarded to it from the Sub-Commission, renewing Khalifa’s mandate to report on banks and corporations that do business with South Africa and calling upon all governments to cooperate with Khalifa’s efforts and to disseminate his report.\(^91\) The vote on this resolution was thirty-two to eight with three abstentions.\(^92\)

The Commission also addressed actions of the South African government under its agenda item on self-determination and colonial domination. By a vote of thirty-two to two with nine abstentions, the Commission condemned censorship and other practices of the South African government and condemned "the wanton acts of aggression and destabilization perpetrated by the apartheid regime of South Africa against front-line and other neighboring States. . . ."\(^93\)

The Group of Three was asked to continue its work under the International Convention on the Suppression and Punishment of the Crime of Apartheid, including the examination of legal action "which may be taken under the Convention against transnational corporations whose operations in South Africa come under the crime of apartheid. . . ."\(^94\) The Ad Hoc Working Group also was asked to continue its reporting on human rights violations in southern Africa.\(^95\)


Countries voting against the resolution were Belgium, Canada, France, Federal Republic of Germany, Italy, Portugal, United Kingdom, and United States. Abstentions included Japan, Panama, Spain, and Ukraine.

\(^92\) Countries voting against the resolution were Belgium, Canada, France, Federal Republic of Germany, Italy, Portugal, United Kingdom, and United States. Japan, Spain, and Ukraine abstained.


The resolution passed by a vote of thirty-two to two with nine abstentions.

R. Western Sahara

Following the consensus reached at the General Assembly, reflecting the talks underway between the king of Morocco and the Polisario, the Commission for the first time adopted without a vote a resolution on self-determination for the people of the Western Sahara.96

S. Confidential “1503” Procedure

The Commission failed to take action on the Sub-Commission decision to postpone consideration of all communications not received by the working group on communications at least five months prior to the working group’s session in late July.97 This postponement will result in 1503 complaints that are more than one year old by the time the Commission on Human Rights considers any situations that are referred by the Sub-Commission. Such dated information may impede Commission deliberations under the 1503 procedure.98

The Commission also did not act on the Sub-Commission resolution allowing 1503 decisions to be voted by secret ballot. Previously, the Sub-Commission had used the secret ballot only for elections.99 The proponents of the resolution argued that, due to the politically sensitive nature of the Sub-Commission’s consideration of gross human rights violations under the 1503 procedure, the secret ballot was necessary to protect the independence of Sub-Commission members from political pressure.100

The Commission had before it allegations of gross violations involving Brunei, Haiti, Myanmar, Paraguay, and Somalia. It dropped consideration of Brunei, where the long-term prisoners in question had been released, transferred Haiti to public scrutiny (see above), and suggested that Paraguay apply for advisory services. Somalia was left pending, while an independent expert, as described above, was appointed for Myanmar.

97. See Maher & Weissbrodt, The 41st Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 12 Hum. Rts. Q. 290, 304 n.63 (1990). The Commission apparently was sympathetic or indifferent to the Sub-Commission’s desire to give governments at least five months to respond to communications.
98. Id. at 304.
100. See id.
T. Other Countries

The Commission once again failed even to consider action regarding some of the worst situations. Abundant evidence, including that gathered by the Commission's own thematic procedures, pointed to Colombia, Peru, the Philippines, and Sri Lanka as countries with mass violations. The genocide against the Yanomami Indians in Brazil was ignored by all but a few NGOs, as were the troubling situations in Ethiopia, Liberia, Sudan, and Zaire.

III. THEMATIC MECHANISMS

The thematic mechanisms, established by the Commission to examine specific types of human rights violations everywhere in the world, have proved in the ten years since the creation of the Working Group on Enforced or Involuntary Disappearances to be the most effective and objective monitoring bodies of the international community. As noted above in Section I of this article, the mandate of those mechanisms became one of the issues at stake in the "enhancement" debate. The draft resolutions on torture, executions, and disappearances, prepared by WEO countries, would have extended their mandates for longer than the current two years. The Group of 77 countries countered by threatening to have the mandates reduced to one year. In the end, all the mandates were again extended for two years, although the agreement reached at ECOSOC will mean three-year mandates in the future.

A. Disappearances

In the past ten years, the Working Group on Enforced or Involuntary Disappearances has transmitted some 19,000 qualifying cases to governments in all parts of the world.\footnote{101. U.N. Doc. E/CN.4/1990/13, at 87 (1990).} In 1989 alone, it dealt with 721 new cases, described as "an alarming increase" over the 1988 figure of 400.\footnote{102. Id.} Once again, Peru topped the list, with 404 cases reported to have occurred in 1989, followed by Iran (121), Guatemala (forty), the Philippines (thirty-six), El Salvador (thirty-four), and Sri Lanka (thirty-three).\footnote{103. See id. at 29, 35, 46, 62, 68, 74.}

Since its establishment ten years ago, the working group has been the most effective of the Commission's theme mechanisms. It has been the cornerstone of international efforts to help relatives in their search for the
victims of disappearances and in working to prevent future disappearances. Its methods of work, including its urgent action procedure, its practice of providing feedback to the sources of information, and its reporting on the substance of cases transmitted, have served as a model for the other thematic procedures. Of the thematic mechanisms, only the working group invites the authors of complaints to comment upon the official responses of governments so as to help judge the veracity of the response.

In its concluding observations, the working group looked back on its first decade. It reiterated the view that disappearances "constitute the most comprehensive denial of human rights in our time," violating "practically all basic human rights of a disappeared person."104 It reviewed the relationship between disappearances and states of emergency.105 The group identified impunity as "perhaps the single most important factor contributing to the phenomenon of disappearances," confirming the "age-old adage that impunity breeds contempt for the law."106 Among the factors leading to impunity are the use of military courts, institutional paralysis of the judicial system, and the lack of an effective habeas corpus mechanism.107

The US delegation proposed, in a closed WEO meeting, to abolish the working group, on the ground that it was established in answer to Argentina's dirty war tactics of 1975 through 1979 and had outlived its usefulness.108 The United States proposed to consolidate the group with the special rapporteur on executions in one mandate, on the rationale that most of the disappeared are eventually killed. The idea met with unanimous rejection by the rest of the WEO group and dismay from the NGO community, but is reportedly part of a larger US plan, not fully announced yet, which calls for the eventual termination of all thematic mechanisms except for rapporteurs on political killings and disappearances (combined), torture, and religious intolerance, as well as a future rapporteur on free elections.

Several NGOs suggested that the Commission could enhance the role of the working group by giving more attention to the recommendations in its report when adopting resolutions. This suggestion related to both general recommendations, as well as those appeals addressed to specific countries which have either not cooperated with the working group or have failed to carry out the recommendations addressed to them as a result of country visits. The Netherlands remarked that the Commission "has thus far been rather meek in insisting on feedback" from governments on country-specific

105. Id. at 84.
106. Id.
107. Id.
recommendations. As a result of the lobbying by the International Commission of Jurists, the resolution adopted by the Human Rights Commission for the first time emphasized the need for governments to ensure prompt and impartial investigations of alleged disappearances and the importance of maintaining habeas corpus even in states of emergency. The Commission resolution also called on the Sub-Commission to complete its work on the draft declaration on disappearances.

B. Executions

The special rapporteur on summary or arbitrary executions, Amos Wako (Kenya), reported more than 1,500 alleged cases of extrajudicial executions in forty-eight countries. He noted a rise in death threats, in particular against judges, lawyers, human rights activists, public office holders, trade unionists, educators, journalists, witnesses to crimes, and opposition leaders. Citing the report of the Centre for the Independence of Judges and Lawyers on the “Harassment and Persecution of Judges and Lawyers,” he also looked at the phenomenon of human rights defenders as victims of summary or arbitrary executions. On a positive note, he considered ECO-SOC’s 1989 adoption of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions to be a “milestone” for his mandate and annexed the Principles to his report. The special rapporteur commended the contribution made by nongovernmental organizations, in particular by the Minnesota Lawyers International Human Rights Committee, in promoting the principles.

In pursuing his mandate, he visited Colombia and Suriname. His report on Colombia detailed assassinations committed during the past four years against union leaders (259), teachers (129), and members of the left wing Union Patriotica (567). It also listed seventy-three “massacres” of more than four persons in 1988 and twenty-one between January and August 1989. As with last year’s report on Colombia by the working group on

111. Id. at 85.
113. Id. at 103.
114. Id. at 104.
115. Id. at 105.
116. Id.
118. See id. at 16–19.
disappearances, the Commission took no action on the Colombia report, failing to even mention Colombia in the resolution extending the special rapporteur’s mandate.\textsuperscript{119}

C. Torture

The special rapporteur on torture, Peter Kooijmans (Netherlands), summarized his communications with governments concerning cases of alleged torture reported to him.\textsuperscript{120} This practice, already used by the special rapporteur on executions and the working group on disappearances, provides a much more vivid picture of the practices alleged to take place in particular countries and places a greater burden on the countries in question to respond adequately to the allegations. The special rapporteur noted that torture “still remains a common phenomenon in today’s world,”\textsuperscript{121} and pointed to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment\textsuperscript{122} as a “checklist,”\textsuperscript{123} compliance with which “would make torture during detention or imprisonment virtually impossible.”\textsuperscript{124} He made a number of recommendations, most of which were contained in his earlier reports. Among these recommendations were that “incommunicado detention should be prohibited” and that detainees should be given access to legal counsel no later than twenty-four hours after arrest.\textsuperscript{125}

During the year, the special rapporteur sent fifty-one urgent appeals to twenty-six countries (receiving replies from only thirteen)\textsuperscript{126} and carried out missions to Guatemala, Honduras, and Zaire in response to invitations by those governments. Before his visit to Guatemala, he visited exiles in Costa Rica to discuss the situation with them. Importantly, he also published responses from South Korea and Turkey to recommendations he made after visits to those countries last year.\textsuperscript{127}

Several countries stressed that the roles of the special rapporteur and the Committee against Torture were complementary and that the exchange of information between the two should be increased. Switzerland also suggested that the special rapporteur use country visits to encourage ratification of the Convention against Torture.

\begin{enumerate}
\item Id. at 81.
\item Id. at 83.
\item Id.
\item Id. at 5.
\item Id. at 76–80.
\end{enumerate}
D. Mercenaries

The special rapporteur on mercenaries, Enrique Bernales Ballesteros of Peru, presented a report on mercenary activity against Angola, Colombia, Comoros, Maldives, and Nicaragua. As a result of visits to Nicaragua and the United States, he was able to provide great detail, particularly in his report to the General Assembly, on the use of mercenaries in the US-sponsored aggression against Nicaragua. He also looked at the collusion between mercenaries and drug traffickers, as in the case of Colombia, and the vulnerability of small island states, such as Comoros and Maldives, to mercenary activity.

At its 1989 session, the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. As the Convention contains no monitoring mechanism, the Commission asked the special rapporteur to include in his future reports information on the state of ratifications and the mode of application of the Convention.

IV. SUB-COMMISSION ELECTIONS

In keeping with the new four-year terms of Sub-Commission members, half the experts stood for reelection in 1990. One of the most closely watched elections was in the WEO group, where China had lobbied strongly against Louis Joinet (France) as architect of the Sub-Commission’s resolution criticizing the suppression of the prodemocracy movement. Joinet was easily elected, however, as were the two other incumbents, Daes (Greece) and Palley (UK), defeating a challenge by a Spanish candidate.

In Eastern Europe, Stanislav Chernichenko (USSR) was reelected unopposed. In Africa, where eleven candidates sought three positions, Attah (Nigeria) and Ksentini (Algeria) were reelected together with El Hadji Guisse (Senegal), while incumbent Agboyibor (Togo) was defeated. Asian experts Tian Jin (China) and Al-Khasawneh (Jordan) were reelected together with Rajindar Sachar (India) who was nominated in the place of Bhandare after the defeat of the Congress party with which he was closely connected.
Latin America, Leandro Despouy (Argentina), who was renominated despite a change of governments and with strong support from human rights activists, was reelected together with new members Claude Heller (Mexico) and Gilberto Vergne Saboia (Brazil), while incumbent Luis Varela Quiros (Costa Rica) was defeated.

V. OTHER DEVELOPMENTS

The Commission also discussed and took action on several other issues, which are discussed individually below.

A. Armed Opposition Groups

Peru and Colombia proposed a draft resolution which would have set up a working group to study violations of human rights by armed opposition groups and drug traffickers. Nongovernmental human rights groups, together with several delegations, opposed the resolution because, among other reasons, they felt that the Commission should not dedicate its energy to studying and reporting on these entities rather than on government actions. A revised resolution was presented, however, calling on existing special rapporteurs to "pay particular attention to the activities of irregular armed groups and drug traffickers" in their reports and asking the secretary-general to collect information on these questions. 138 Peru made clear that its resolution was not aimed at national liberation movements but at irregular bands seeking to overthrow democratically elected governments and that it did not intend to diminish state responsibility for protecting human rights. On a roll-call vote, the resolution was adopted with only Cuba and Sweden abstaining. Mexico criticized the ambiguity of the term "irregular armed groups," stating that there was no clear difference between such groups and national liberation movements and noting that the word "irregular" has no precise meaning. 139 It also criticized the magnitude of the request to the secretary-general.

B. Cooperation with UN Rapporteurs

Responding to allegations that individuals meeting with the special rapporteur on Iran and the Commission delegates visiting Cuba in 1988 suffered

reprisals, and to a draft law in El Salvador that would penalize those who give harmful information to UN bodies, the Commission called on governments to “allow unhampered contacts between private individuals” and UN representatives, and on the secretary-general to submit information to its next session “on reprisals against witnesses or victims of human rights violations.”

C. Minorities

Progress in democratic political systems throughout central Europe unfortunately has also been marked by the increasing visibility of ethnic and national rivalries. As a consequence, the Commission finally, after four decades of reluctance, provisionally adopted a draft declaration prepared by an open-ended working group on the rights of persons belonging to national, ethnic, religious, and linguistic minorities. The Centre for Human Rights will prepare a technical review of the text for next year’s second reading.

The Vienna Concluding Document of 1989 within the Conference on Security and Cooperation in Europe contains stronger and perhaps more useful commitments for the protection of minorities than does the Commission draft. Hence, in reviewing its draft, the Commission might find useful guidance in the Vienna Concluding Document. One question posed by the events of this past year is whether the human rights structures developed since World War II can be used effectively during the next decade to prevent the sort of human rights violations which occurred in central Europe during the earlier part of this century. This problem undoubtedly will present many challenges to those countries and to the Commission as well as to other international bodies charged with addressing the rights of minorities.

D. Independence of Judges and Lawyers

The Commission declared that it was “[d]isturbed at the continued harassment and persecution of judges and lawyers in many countries” and endorsed the Sub-Commission’s decision to ask Louis Joinet to prepare a working paper on means by which the Sub-Commission could monitor the implementation of the Basic Principles on the Independence of the Judiciary and the protection of practicing lawyers. The Commission also recommended that the Eighth Congress on Crime Prevention and Control consider adoption of the Draft Basic Principles on the Role of Lawyers.

142. Id.
E. Advisory Services

Responding to widespread concerns, the secretary-general's report on the advisory services program gave a clearer definition of the program's priorities. A 1989 joint statement by eleven NGOs asserted that the promotional work of the advisory services programme must not be allowed to replace or undermine the monitoring programme of this Commission. This year, the Commission recognized the mistake it made in 1987 by returning Haiti to item 12 (violations) and by leaving that possibility open for Guatemala. The under-secretary-general also made it clear that UN assistance is not an exemption from scrutiny.

F. Other Actions

In other actions, the Commission,
- placed the question of implementation of the Convention on the Rights of the Child on next year's agenda;
- adopted the guidelines on computerized personal files prepared by Sub-Commission expert Joinet and transmitted them to the General Assembly for final adoption;
- over the opposition of the United States and Japan, noted the impact of debt induced structural adjustment policies on the enjoyment of human rights;
- endorsed the decision of the Sub-Commission to initiate a study on the right to a fair trial.

VI. CONCLUSIONS

The Commission's session was marked by a growing north-south division, both on substantive issues and on the future of the Commission itself. On two key votes concerning human rights violations, China and Iraq, the northern countries stood virtually alone. The abstentions by Latin American countries came as major disappointments. For years, the Latin American countries have complained, justifiably, that the Commission has been selective in its

condemnation of abuses—taking up violations in Latin America while ignoring those on other continents. Now, when the chance came to remedy that imbalance, the Latin Americans inexplicably abstained. Interestingly, the Latin American countries, which have traditionally shown little interest in Haiti, adopted it this year in arguing for a milder text on Haiti's behalf, thus bolstering the Latin Americans' selectivity argument.

The resolutions on Guatemala and Haiti, which increased scrutiny of both countries by only half a notch despite grave human rights problems, illustrated just how hard it is to appoint new special rapporteurs. Nevertheless, by creating new forms of mandates short of the traditional special rapporteurs, the Commission perhaps made the process more flexible by opening the possibility of a middle level of scrutiny.

The increased voice that will rightfully be given to developing countries underscores the long-term need for the human rights movement to develop constituencies in those countries that will help press governments to take pro-human rights stands on international issues. For the first time this year, as one diplomat from Eastern Europe noted, governments in that region had to explain to their people their votes on issues such as human rights in China. Yet democratic, pluralistic countries such as Argentina faced no such pressure. Did any of the active human rights groups in Buenos Aires know their government had voted with Saddam Hussein to prevent real scrutiny of Iraq? The vigorous Argentine press certainly did not report it. Similarly, in countries such as India and Pakistan, where new governments have shown themselves responsive to the demands of social action groups at the domestic level, no change was seen in their positions at the Commission. Again, did the Indian press or public—or the human rights activists appointed to high government positions—know that its government had voted against UN criticism of the Tiananmen massacre? Making sure that a domestic human rights constituency is developed in those countries will be an important challenge for human rights advocates during the decade ahead.
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