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DRAFT REPORT OF THE COMMISSION

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* Documents E/CN.4/1996/L.10 and addenda will contain the chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Commission, as well as draft resolutions and decisions for action by, and other matters of concern to, the Economic and Social Council, will be contained in documents E/CN.4/1996/L.11 and addenda.

VIII. QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:
(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; (b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; (c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES; (d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. The Commission considered agenda item 8 and sub-items (a), (b), (c) and (d) at its 23rd to 29th meetings, from 2 April to 9 April 1996, at its 51st to 52nd meetings, on 19 April 1996, and at its 58th meeting, on 23 April 1996. 1/
2. For the documents issued for the fifty-second session of the Commission under item 8 and sub-items (a), (b), (c), (d) see annex IV to the present report.
3. At the 24th meeting, on 3 April 1996, the Special Rapporteur on the question of the independence of judges and lawyers, Mr. Param Kumaraswamy, introduced his report (E/CN.4/1996/37).
4. At the same meeting, the Chairman-Rapporteur of the Working Group on Arbitrary Detention, Mr. Louis Joinet, introduced the report on the Working Group (E/CN.4/1996/40 and Add.1). At the 27th meeting, on 4 April 1996, the Chairman-Rapporteur made his concluding remarks.
5. At the 28th meeting, on 9 April 1996, Mr. Abid Hussain, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, introduced his report (E/CN.4/1996/39 and Add.1-2).
6. In the general debate on agenda item 8, statements 3/ were made by the following members of the Commission: Algeria (25th), Australia (27th), Austria (26th), Belarus (26th), Brazil (27th), Chile (26th), Cuba (24th, 29th), Egypt (26th), India (28th), Indonesia (28th), Mexico (25th), Netherlands (28th), Pakistan (27th), Peru (28th), Republic of Korea (28th), Uganda (28th).
7. The Commission heard statements by the observers for: Afghanistan (25th), Bolivia (24th), Iran (Islamic Republic of) (26th), Norway (26th), Saudi Arabia (28th), Tunisia (27th). Statements were also made by the observers for Switzerland (24th), the International Committee of the Red Cross (24th), UNAIDS (26th).
8. The Commission heard statements by the following non-governmental organizations: African Association of Educators for World Peace (29th),

Afro-Asian People's Solidarity Organization (28th), All Pakistan Women's Association (26th), American Association of Jurists (25th), Andean Commission of Jurists (27th), Arab Organization for Human Rights (23rd), Article XIX: the International Centre against Censorship (25th), Asian Cultural Forum on Development (29th), Commission for the Defense of Human Rights in Central America (25th), Federation of Associations of Former International Civil Servants (25th), France Liberté: Fondation Danielle Mitterand (23rd), Indigenous World Association (25th), International Association against Torture (23rd), International Association of Democratic Lawyers (25th), International Association of Educators for World Peace (29th), International Commission of Jurists (25th), International Conference of Free Trade Unions (27th), International Federation of ACAT (Action of Christians for the Abolition of Torture) (26th), International Federation of Human Rights (23rd), International Human Rights Association of American Minorities (25th), International Indian Treaty Council (27th), International Institute for Peace (23rd), International Islamic Federation of Student Organizations (27th), International League for the Rights and Liberation of Peoples (23rd), International Movement against All Forms of Discrimination and Racism (25th), International Movement for Fraternal Union among Races and Peoples (25th), International Pen (23rd), International Prison Watch (28th), International Union of Lawyers (25th), Muslim World League (27th), Pax Christi International (25th), Pax Romana (23rd), Survival International (29th), Transnational Radical Party (23rd), United Towns Agency for North-South Cooperation (29th), World Alliance of Reformed Churches (28th), World Muslim Congress (27th), World Press Freedom Committee (29th).

9. Statements in exercise of the right of reply were made by the representatives of Bangladesh (27th, 33rd), China (25th, 27th), Cuba (29th), Egypt (29th), Ethiopia (29th), Italy (25th) and the Philippines (29th), and by the observers for Honduras (25th), Nigeria (29th), the Syrian Arab Republic (27th), Turkey (29th) and Viet Nam (29th).

(a) Torture and other cruel, inhuman or degrading treatment or punishment

10. At the 24th meeting, on 3 April 1996, the Special Rapporteur on the question of torture, Mr. Nigel S. Rodney, introduced his report (E/CN.4/1996/35 and Add.1, Corr.1 and 2).

11. In the general debate on agenda item 8 (a), statements 3/ were made by the following members of the Commission: Australia (27th), Chile (26th),

China (26th), Denmark (27th), Indonesia (28th), Italy (on behalf of the European Union) (24th), Mexico (25th), Netherlands (28th), Pakistan (27th), Peru (28th), Russian Federation (26th), Uganda (28th), United States of America (27th), Venezuela (26th).

12. The observers for Norway (26th), Saudi Arabia (28th), Senegal (28th) and South Africa (28th) also made statements.

13. The Commission heard statements by the following non-governmental organizations: Asian Buddhists Conference for Peace (25th), Centre Europe-Tiers Monde (29th), Himalayan Research and Cultural Foundation (25th), International Association of Democratic Lawyers (25th), International Commission of Jurists (25th), International Confederation of Free Trade Unions (27th), International Falcon Movement (26th), International Federation of ACAT (Action of Christians for the Abolition of Torture) (26th), International Islamic Federation of Student Organizations (27th), International League for Human Rights (25th), Liberation (26th), Movement against Racism and for Friendship among Peoples (29th), Pax Christi International (25th), Survival International (29th), Transnational Radical Party (23rd), United Towns Agency for North-South Cooperation (29th), World Alliance of Reformed Churches (28th), World Federation of Democratic Youth (27th), World Muslim Congress (27th), World Organization against Torture (25th), World Society of Victimology (25th).

14. Statements in exercise of the right of reply were made by the representative of China (27th) and the observers for Afghanistan (27th), Bahrain (29th) and Nigerian (29th).

(b) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

15. In the general debate on agenda item 8 (b), statements 3/ were made by the representatives of Australia (27th) and the United States of America (27th) and by the observer for South Africa (28th).

16. The Commission also heard statements by the following non-governmental organizations: International League for Human Rights (25th), Transnational Radical Party (23rd), World Federation of Democratic Youth (27th).

(c) Question of enforced or involuntary disappearances

17. At the 24th meeting, on 3 April 1996, the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, Mr. Ivan Tosevski, introduced the report of the Working Group (E/CN.4/1996/38 and Add.1).

18. At the same meeting, the member of the Working Group responsible for the special process on missing persons in the territory of the former Yugoslavia, Mr. Manfred Nowak, introduced his report (E/CN.4/1996/36).

19. In the general debate on agenda item 8 (c), statements 3/ were made by the representatives of Australia (27th), Austria (26th) and Brazil (27th) and by the observers for Afghanistan (25th), Bosnia and Herzegovina (24th), Croatia (24th), Cyprus (24th) and South Africa (28th).

20. The Commission also heard statements by the following non-governmental organizations: African Association of Education for Development (29th), American Association of Jurists (25th), Commission for the Defense of Human Rights in Central America (25th), Indian Council of Education (29th), International Human Rights Association of American Minorities (25th), International Institute for Non-Aligned Studies (25th), International Institute for Peace (23rd), International Prison Watch (28th), Latin American Federation of Associations of Relatives of Disappeared Detainees (25th), Survival International (29th), Women's International League for Peace and Freedom (26th), World Alliance of Reformed Churches (28th), World Peace Council (27th), World Society of Victimology (25th).

21. A statement in the exercise of the right of reply was made by the representative of Mexico (27th).

(d) Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

22. At the 23rd meeting, on 2 April 1996, the Chairman-Rapporteur of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mr. Carlos Vargas Pizarro, introduced the report of the working group (E/CN.4/1996/28).

23. In the general debate on agenda item 8 (d), statements 3/ were made by the following members of the Commission: Australia (27th), Brazil (27th), United States of America (27th).

24. The Commission heard statements by the observers for Costa Rica (26th), Senegal (28th) and South Africa (28th). Statements were also made by the observers for the International Committee of the Red Cross (24th) and the Asian Buddhists Conference for Peace (25th).

Report of the Working Group on Arbitrary Detention

25. At its 52nd meeting, on 19 April 1996, the representative of Cuba withdrew draft resolution E/CN.4/1996/L.31, which read as follows:

"1996/... Report of the Working Group on Arbitrary Detention
The Commission on Human Rights,

Recalling that, as recommended by the Commission, the Economic and Social Council, by its decision 1991/243 of 31 May 1991, decided to establish the Working Group on Arbitrary Detention with the task of investigating cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant legal instruments adopted by the States concerned,

Bearing in mind that at the time when the Commission recommended to the Council to establish the Working Group, there existed a clear difference, both in the juridical literature and in United Nations practice, between the situation of 'detention' and that of 'imprisonment', particularly in the light of the 'use of terms' applicable to each of these distinct situations for the purposes of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted three years previously by the General Assembly in its resolution 43/173 of 9 December 1988,

Recalling that pursuant to the Body of Principles, the term 'detention' means the condition of a person deprived of personal liberty, except as a result of conviction for an offence, while the term 'imprisonment' means the condition of a person deprived of personal liberty as a result of conviction for an offence,

Considering that in the case of contractual legal instruments, including human rights instruments, the acceptance by States of the juridical obligations contained therein takes place by means of ratification, accession or any other valid expression of consent by the State concerned,

Having duly taken into account its previous resolutions on this subject, namely resolutions 1991/42 of 5 March 1991, 1992/28 of 28 February 1992, 1993/36 of 5 March 1993, 1994/32 of 4 March 1994 and 1995/59 of 7 March 1995,

Having also duly taken into account the previous reports submitted to the Commission by the Working Group (E/CN.4/1992/20, E/CN.4/1993/24, E/CN.4/1994/27 and E/CN.4/1995/31 and Add.1-4),

Having been able fully to appreciate the practical consequences of the so-called 'deliberations' adopted by the Working Group, in which it has expressed, on several occasions, its views on the sense and practical scope of the original mandate conferred upon the Group by the Economic and Social Council,

Having reviewed the fifth report submitted by the Working Group (E/CN.4/1996/40), in particular, its chapter III and Annex I, as well as the decisions adopted by the Group at its eleventh, twelfth and thirteenth sessions (E/CN.4/1996/40/Add.1),

Conscious that by resolution 1994/32 it extended for a further three years, ending in 1997, the initial three-year mandate of the Working Group,

1. Takes due note of the fifth report submitted by the Working Group on Arbitrary Detention (E/CN.4/1996/40);

2. Requests the Working Group to take duly into account in the exercise of the functions conferred upon it by the Economic and Social Council in its decision 1991/243 of 31 May 1991, the clear differentiation existing both in United Nations parlance and practical action, between the situations of 'detention' and 'imprisonment', as established by the General Assembly in resolution 43/173 of 9 December 1988;

3. Also requests the Working Group, when analysing the admissibility of a complaint against a State and/or the applicability of the provisions of a human rights instrument to a particular human rights situation, to also take duly into account whether such instrument is only a standard of a purely recommendatory nature or a contractual legal instrument establishing juridical obligations for the State concerned and, in the latter case, whether such obligations are applicable to the said State as a party to that particular legal instrument;

4. Further requests the Working Group to reassess the appropriateness of substituting an approach based on cooperation for its

present 'adversarial' method of work which, in fact, propitiates unnecessary confrontations between the Working Group and States concerned;

5. Requests the Working Group to revise further its present methods of work, as summarized in annex I to its report, so as to make them compatible with the guidelines established in the present resolution;

6. Also requests the Working Group to report to the Commission at its fifty-third session on the steps taken to implement the present resolution."

26. At the 51st meeting, on 19 April 1996, the representative of France introduced draft resolution E/CN.4/1996/L.37/Rev.1, sponsored by Argentina, Austria, Belgium, Finland, France, Germany, Hungary, Ireland, Portugal, Sweden and Switzerland. Australia, Bulgaria, Chile, Costa Rica, Cyprus, the Czech Republic, Denmark, El Salvador, Georgia, Greece, Italy, Latvia, Liechtenstein, Luxembourg, Norway, Poland, Romania, the Russian Federation, Senegal, Slovakia, Spain, the United Kingdom of Great Britain and Northern Ireland and Uruguay subsequently joined the sponsors.

27. A statement in connection with the draft resolution was made by the representative of Cuba.

28. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to the administrative and programme budget implications 2/ of the draft resolution.

29. Statements in explanation of vote before the vote were made by the representatives of Canada and the United States of America.

30. The draft resolution was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1996/28.

Staff members of the United Nations and of the specialized agencies in detention

31. At the 51st meeting, on 19 April 1996, the representative of Portugal introduced draft resolution E/CN.4/1996/L.39/Rev.1, sponsored by Australia, Belgium, Benin, Bulgaria, Cameroon, Canada, Costa Rica, the Czech Republic, Denmark, El Salvador, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Madagascar, New Zealand, Norway, Portugal, the Republic of Korea, the Russian Federation, Sweden and Ukraine. Argentina, Austria, Bangladesh, the Dominican Republic, Hungary, Iceland, Latvia,

the Netherlands, Peru, Philippines, Slovakia, Spain and the United Kingdom of Great Britain and Northern Ireland subsequently joined the sponsors.

32. Statements in explanation of vote before the vote were made by the representatives of Cuba and Mexico.

33. The resolution was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1996/29.

Question of enforced or involuntary disappearances

34. At the 51st meeting, on 19 April 1996, the representative of France introduced draft resolution E/CN.4/1996/L.51, sponsored by Argentina, Australia, Austria, Belgium, Bulgaria, Cameroon, Costa Rica, Côte d'Ivoire, Cyprus, Denmark, Ecuador, France, Georgia, Germany, Greece, Ireland, Israel, Italy, Latvia, Luxembourg, Madagascar, the Netherlands, Norway, Poland, Portugal, the Republic of Korea, Romania, the Russian Federation, Senegal, the Slovak Republic, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America. Andorra, Belarus, Benin, Canada, the Czech Republic, Chile, Colombia, the Dominican Republic, Finland, Hungary, Liechtenstein, Nepal, New Zealand, Uruguay and Venezuela subsequently joined the sponsors.

35. The resolution was orally revised by the representative of France as follows:

- (a) Operative paragraph 5 was added;
- (b) Operative paragraph 18 was added;
- (c) Operative paragraph 30 replaced old operative paragraphs 28 and 29,

which read as follows:

"28. Also requests the Secretary-General to solicit the observations of Governments on any measures they have taken for the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance;

29. Finally requests the Secretary-General to keep the Working Group and the Commission on Human Rights regularly informed on the steps he takes for the widespread dissemination and promotion of the Declaration on the Protection of All Persons from Enforced Disappearances."

36. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to the administrative and programme budget implications 2/ of the draft resolution.

37. The draft resolution, as orally revised, was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1996/30.

Human rights and forensic science

38. At the 51st meeting, on 19 April 1996, the representative of the Russian Federation introduced draft resolution E/CN.4/1996/L.58, sponsored by Argentina, Armenia, Austria, Belarus, the Czech Republic, France, Germany, Greece, the Russian Federation, Portugal and Spain. Canada, Denmark, the Dominican Republic, the Slovak Republic and the United States of America subsequently joined the sponsors.

39. The resolution was orally revised by the representative of the Russian Federation by adding in operative paragraph 8, after the words "Centre for Human Rights" the following text "and the Crime Prevention and Criminal Justice Branch."

40. The resolution, as orally revised, was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1996/31.

Administration of justice, in particular children and juvenile detention

41. At the 51st meeting, on 19 April 1996, the representative of Austria introduced draft resolution E/CN.4/1996/L.59, sponsored by Argentina, Armenia, Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Chile, Cyprus, Denmark, El Salvador, Finland, France, Germany, Guatemala, Haiti, Honduras, Hungary, Ireland, Italy, Latvia, Luxembourg, Madagascar, Mali, the Republic of Korea, Romania, Paraguay, Portugal, Slovakia, Slovenia, South Africa, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine and Uruguay. Andorra, Benin, Canada, the Czech Republic, the Dominican Republic, Ethiopia, Liechtenstein, Malta, New Zealand and the Philippines subsequently joined the sponsors.

42. The resolution was orally revised by the representative of Austria as follows:

(a) At the end of the first preambular paragraph, the words "which explicitly states that no one shall be arbitrarily deprived of his life and prohibits the imposition of the death penalty for crimes committed by persons below 18 years of age," were deleted;

(b) Operative paragraph 13, which read as follows, was deleted:

"13. Invites Governments of those countries where there are traditional systems of justice to ensure that such informal justice methods are compatible with international standards in the field of human rights in the administration of justice and the Convention on the Rights of the Child;"

(c) In operative paragraph 14, the words "both before trial and after conviction" were replaced by "in particular before trial";

(d) In the same operative paragraph, after the word "separated", the words "as appropriate" were added.

43. Statements in connection with the revisions were made by the representatives of Austria and Cuba.

44. A statement in explanation of vote before the vote was made by the representative of Cuba.

45. The resolution, as orally revised, was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1996/32.

Torture and other cruel, inhuman or degrading treatment or punishment

46. At the 52nd meeting, on 19 April 1996, the representative of Denmark introduced draft resolution E/CN.4/1996/L.63/Rev.1, sponsored by Australia, Austria, Belgium, Bulgaria, Canada, Chile, Costa Rica, Côte d'Ivoire, Cyprus, the Czech Republic, Denmark, El Salvador, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, Madagascar, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, the Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay and Venezuela. Andorra, Argentina, the Gambia and the Republic of Korea subsequently joined the sponsors.

47. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to the administrative and programme budget implications 2/ of the draft resolution.

48. The draft resolution was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1996/33.

Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers

49. At the 52nd meeting, on 19 April 1996, the representative of Belgium introduced draft resolution E/CN.4/1996/L.74, sponsored by Argentina, Australia, Austria, Belgium, Bulgaria, Chile, Cyprus, Denmark, France, Hungary, Ireland, Italy, Latvia, Luxembourg, Madagascar, Norway, Portugal, the Slovak Republic, Slovenia, South Africa, Sweden, Switzerland and Uruguay. Benin, Canada, the Czech Republic, El Salvador, Finland, the Gambia, Germany, Greece, Honduras, Malawi, the Netherlands, the Republic of Korea, the Russian Federation, Spain and the United States of America subsequently joined the sponsors.

50. The resolution was orally revised by the representative of Belgium by replacing, in operative paragraph 7, the word "notably" by the words "for instance".

51. A statement was made by the representative of China.

52. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to the administrative and programme budget implications 2/ of the draft resolution.

53. The draft resolution was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1996/34.

The right to restitution, compensation and rehabilitation of victims of gross violations of human rights and fundamental freedoms

54. At the 52nd meeting, on 19 April 1996, the representative of Chile introduced draft resolution E/CN.4/1996/L.76, sponsored by Argentina, Australia, Austria, Bulgaria, Canada, Chile, Colombia, Costa Rica, Cuba, Denmark, the Dominican Republic, Ecuador, Finland, France, Hungary, Italy, Latvia, the Netherlands, Nicaragua, Philippines, Poland, the Republic of Korea, Senegal, South Africa, Sweden, the United Kingdom of Great Britain and Northern Ireland, Uruguay and Venezuela. Angola, Estonia and Gambia subsequently joined the sponsors.

55. The draft resolution was orally revised by the representative of Chile by inserting, at the end of operative paragraph 7, the words "entitled 'Question of the human rights of all persons subjected to any form of detention or imprisonment'".

56. The draft resolution, as orally revised, was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1996/35.

Right to freedom of opinion and expression

57. At the 53rd meeting, on 19 April 1996, the representative of Canada introduced draft resolution E/CN.4/1996/L.84, sponsored by Andorra, Australia, Austria, Canada, the Czech Republic, Denmark, El Salvador, France, Honduras, Latvia, Liechtenstein, Madagascar, Norway, Portugal, the Slovak Republic, Sweden and Uruguay. Argentina, Brazil, Bulgaria, Cameroon, China, Colombia, Côte d'Ivoire, the Dominican Republic, Ecuador, Guinea, Hungary, India, Ireland, Italy, Finland, Germany, Japan, Luxembourg, Malawi, Nepal, the Netherlands, Nicaragua, Peru, the Philippines, the Russian Federation, Switzerland, the United Kingdom of Great Britain and Northern Ireland, Uganda, Ukraine and Venezuela subsequently joined the sponsors.

58. The draft resolution was orally revised by the representative of Canada as follows:

(a) In the sixth preambular paragraph, the words "to seek and receive" were replaced by "to seek, receive and impart";

(b) At the end of the tenth preambular paragraph, the symbol (E/CN.4/1996/39) was added;

(c) A new fourteenth preambular paragraph was added.

59. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to the administrative and programme budget implications 2/ of the draft resolution.

60. The draft resolution, as orally revised, was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1996/53.

Question of human rights and states of emergency

61. At the 52nd meeting, on 19 April 1996, the Commission considered draft resolution I, recommended by the Sub-commission for adoption by the Commission (see E/CN.4/1996/2-E/CN.4/1995/51, chap. I, sect. A).

62. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to the administrative and programme budget implications 2/ of the draft resolution.

63. The draft resolution was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1996/36.

Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

64. At the 52nd meeting, on 19 April 1996, the representative of Costa Rica introduced draft resolution E/CN.4/1996/L.60, sponsored by Argentina, Armenia, Austria, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cameroon, Chile, Colombia, Costa Rica, Côte d'Ivoire, Cyprus, the Czech Republic, Denmark, the Dominican Republic, Ecuador, El Salvador, Finland, Germany, Guatemala, Haiti, Honduras, Hungary, Italy, Latvia, Liechtenstein, Luxembourg, Madagascar, Malta, the Netherlands, Norway, Paraguay, Peru, Poland, Portugal, Romania, the Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Ukraine, the United Kingdom of Great Britain and Northern Ireland, Uruguay and Venezuela. France, the Gambia, Greece, Nicaragua and the United States of America subsequently joined the sponsors.

65. The representative of Costa Rica orally revised the draft resolution by replacing, in operative paragraph 2, the words "and to begin" by the words "including the beginning of".

66. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to the administrative and programme budget implications 2/ of the draft resolution.

67. The draft resolution was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1996/37.

Hostage-taking

68. At its 52nd meeting, on 19 April 1996, the Commission decided to postpone consideration of draft resolution E/CN.4/1996/L.64/Rev.1.

69. At the 58th meeting, on 23 April 1996, the Commission resumed consideration of the draft resolution, which was introduced by the representative of the Russian Federation.

70. The representative of the Russian Federation orally revised the draft resolution as follows:

- (a) Delete the fourth preambular paragraph;

(b) In the seventh preambular paragraph, replace the word "including" with the words "in different forms and manifestations, including, inter alia,";

(c) In the ninth preambular paragraph, replace the word "growing" by the word "continuing";

(d) In the tenth preambular paragraph, insert after the word "respected", the words "and facilitated";

(e) In the eleventh preambular paragraph, after the words "in order to", insert the phrase ", in strict conformity with international human rights standards,".

(f) At the end of operative paragraph 1, delete the phrase "irrespective of considerations of a political, philosophical, ideological, religious, racial, ethnic or other nature invoked to justify it".

(g) Replace operative paragraph 3, which read "Calls upon States to take all necessary measures to prevent, combat and punish the taking of hostages, including strengthening international cooperation in this field;" with a new text.

(h) Replace operative paragraph 4, which read "Encourages non-governmental organizations to include, where appropriate, the problem of hostage-taking in their deliberations and findings and to supply relevant information to the United Nations human rights bodies;", with a new text.

(i) Replace operative paragraph 5, which read "Urges the relevant treaty bodies and special representatives, special rapporteurs and working groups of the Commission on Human Rights to pay due regard, within their respective mandates, to the consequences of hostage-taking, including when committed by terrorists and armed groups;" with a new text.

(j) In operative paragraph 6, replace the "fifty-third" by "fifty-fourth".

71. The draft resolution, as orally revised, was adopted without a vote. For the text of the resolution, see chapter II, sect. A, resolution 1996/... Special process on missing persons in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro)

72. At the 52nd meeting, on 19 April 1996, the Commission decided to postpone consideration of draft resolution E/CN.4/1996/L.61, sponsored by Afghanistan, Albania, Algeria, Bangladesh, Bosnia and Herzegovina, Croatia, Egypt,

Iran (Islamic Republic of), Kuwait, Malaysia, Pakistan, Senegal and Turkey. El Salvador, the Gambia, Indonesia and Tunisia subsequently joined the sponsors.

73. At the 58th meeting, on 23 April 1996, the representative of Croatia withdrew draft resolution E/CN.4/1996/L.61, which read as follows:

"1996/... Special process on missing persons in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro)

The Commission on Human Rights,

Guided by the Charter of the United Nations, the Universal Declaration on Human Rights, the Geneva Conventions of 12 August 1949 for the protection of victims of war and the Additional protocols thereto of 1977, as well as by other relevant documents and resolutions of the General Assembly and the Security Council of the United Nations,

Recalling its resolutions 1994/72 of 9 March 1994 and 1995/35 of 3 March 1995 concerning the special process on missing persons in the territory of the former Yugoslavia,

Expressing its full support for the General Framework for Peace in Bosnia and Herzegovina, initialled in Dayton, Ohio on 21 November 1995 and signed in Paris on 14 December 1995, the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium, signed on 12 November 1995, and Security Council resolution 1037 (1995), by which the Council established the United Nations Transitional Authority in Eastern Slavonia,

Dismayed by the huge number of persons missing as a consequence of the continuing practice of ethnic cleansing and of the armed conflict in the territory of the former Yugoslavia, particularly in the Republic of Bosnia and Herzegovina and in the Republic of Croatia,

Deeply disturbed by the fact that, according to the estimates, there are still approximately 30,000 unresolved cases of missing persons in the Republic of Bosnia and Herzegovina and in the Republic of Croatia, and in particular by discoveries of a large number of mass graves whose sites require to be guarded and excavated without delay in a professional, impartial and well coordinated manner,

Drawing attention to the need for immediate activity directed to the determination by qualified experts of mass grave sites or sites where

arbitrary executions or killings of many thousands of persons are reported to have taken place, in particular near Srebrenica, Žepa, Prijedor and Vukovar, and the communication of such information to the families of the missing,

Seriously concerned about the destiny of nearly 10,000 persons, mostly civilians, who are considered missing following the attack on the United Nations safe and demilitarized areas of Srebrenica and Žepa by the Bosnian Serb paramilitary forces,

Expressing its concern that the international humanitarian organizations present in the field did not act to assist, or were prevented from assisting, the civilians fleeing from the areas of Srebrenica and Žepa, thus creating the situation that led to the disappearance of many unfortunate victims of this war crime,

Dismayed about the reports of possible detention of an undisclosed number of Bosniacs and Croats still held in camps, mines or other places, where they are kept as forced labour or prisoners by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serbs, and as such may be considered missing,

Recognizing steps taken by the High Representative and the United Nations organizations in implementing the humanitarian provisions of the peace agreement for Bosnia and Herzegovina,

Aware that the implementation of the Framework Agreement, as well as the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium, opens new opportunities, which the United Nations and the international community must live up to according to their commitment, particularly in clarifying the fate of missing persons,

Emphasizing again that the cooperation of the Governments of the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), as well as the parties and organizations in a position to help, is essential to the achievement of the objectives of the special process on missing persons in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro),

Stressing that urgent and effective cooperation between the parties in resolving the problem of missing persons represents a critical test of their commitment to the peace process and restoration of confidence in the region,

1. Commends the expert member of the Working Group on Enforced or Involuntary Disappearances for his report (E/CN.4/1996/36) on the special process on missing persons in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro);

2. Requests the Governments of Bosnia and Herzegovina and the Republic of Croatia and the Bosnian Serb authorities to intensify their cooperation with the expert for the special process, and expects them to continue effective searches for all missing persons in their territory;

3. Reminds the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) of its responsibility to investigate enforced disappearances, enhance its cooperation with the Republic of Croatia in tracing missing persons and to provide complete and precise information on this subject, and calls upon the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to live up to its bilateral agreement with the Republic of Croatia to this effect and to respond positively to the efforts of the expert for the special process and others to this end;

4. Requests the expert member of the Working Group on Enforced or Involuntary Disappearances, in conjunction with his mandate for the special process dealing with the problem of missing persons in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), to coordinate his efforts to excavate mass graves with the International Criminal Tribunal for the Former Yugoslavia, the High Representative, the Special Rapporteur and the International Committee of the Red Cross, in the context of the Expert Group on Exhumations and Missing Persons established under the authority of the High Representative, and to prepare a comprehensive plan for dealing with this question in the Republic of Bosnia and Herzegovina, as well as in the Republic of Croatia, in full cooperation with the respective Governments;

5. Recalls the commitment of the Implementation Force to work to provide a secure environment for these tasks;

6. Reminds the parties of their commitment, made in Rome on 17 February 1996, to provide unrestricted access to the sites described above;

7. Demands that all parties refrain from any action intended to destroy, alter, conceal or damage any evidence of violations of human rights and international humanitarian law, and that they preserve such evidence;

8. Urges the expert for the special process to make a detailed assessment of the respective financial resources needed for the excavation of mass graves in Bosnia and Herzegovina and in Croatia and the exhumation of bodies contained therein, so that the international community, organizations and private donors could help in financing these operations essential for establishing the fate of tens of thousands of missing persons;

9. Decides to establish a voluntary fund for excavating, exhuming and identifying victims buried in mass graves, and invites the interested Governments, organizations and private donors to contribute generously to this highly humanitarian operation;

10. Requests the expert for the special process to convene meetings with high-level participation of the Government of the Republic of Croatia and Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Administrator of the United Nations Transitional Authority in Eastern Slavonia with a view to expediting the tracing of the persons missing from the Republic of Croatia;

11. Invites the expert member for the special process to organize, if necessary, meetings of Governments and the parties concerned, the International Criminal Tribunal for the Former Yugoslavia, the High Representative, the Special Rapporteur and the International Committee of the Red Cross, with a view to coordinating the overall process in tracing the missing persons and discussing eventual coordination, financial and other problems that need to be solved;

12. Decides to extend for one year the mandate of the expert for the special process dealing with missing persons, and requests him to

carry out visits to the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) and to submit periodic reports to the Commission on Human Rights and to the General Assembly;

13. Requests the Secretary-General to continue providing the special process on missing persons with the necessary resources so that it can perform its functions continuously, expeditiously and commensurately with the commitment and expectations arising from the present resolution."
