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COMMISSION ON HUMAN RIGHTS

Forty-fifth session

SUMMARY RECORD OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 16 February 1989, at 3 p.m.

Chairman: Mr. BOSSUYT (Belgium)

later: Mrs. ILIĆ (Yugoslavia)

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- (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.

The meeting was called to order at 3.05 p.m.

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION; ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS; NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (agenda item 11) (continued) (E/CN.4/1989/3-E/CN.4/Sub.2/1988/45 (chapter I, section A, resolution I); E/CN.4/1989/20, 21 and 47; E/CN.4/1989/NGO/32; E/CN.4/1989/CRP.1 and 2; A/RES/43/128)

1. Mr. MOSES (Grand Council of the Crees) said that his organization commended the Under-Secretary-General for Human Rights on the efforts he had made to include non-governmental organizations in the work programmes of the United Nations and his constant efforts to inform and consult with non-governmental organizations on relevant resolutions adopted by United Nations bodies and organs.

2. With regard to the World Campaign for Human Rights, he recalled the statement made in August 1988 to the Sub-Commission on Prevention of Discrimination and Protection of Minorities by 26 non-governmental organizations which had emphasized the need for the United Nations to give priority to the question of the abuse of the rights of indigenous peoples. The Commission had made particular progress on the issue of indigenous rights, but its findings and conclusions were not being disseminated throughout the United Nations system. He thus welcomed the statement by the Under-Secretary-General that a United Nations information booklet on indigenous rights would soon be published and suggested a number of facts that should be included in it. He also suggested that the Universal Declaration of Human Rights and other United Nations instruments should be translated into the various indigenous languages.

3. His organization, which was convinced that universal respect for human rights depended upon a basic understanding of all peoples, considered it imperative that factual information about indigenous peoples should be made available to the widest possible public. Consequently, the United Nations should assume the responsibility of making such information part of the World Campaign for Human Rights.

4. Mr. YULQUILA (Indian Council of South America) said that, although the ideological attachment of priority importance to colonial European ethnocentrism continued to exist, the Universal Declaration of Human Rights was making a significant contribution to the process of decolonization. Most indigenous organizations in South America currently had as their main objective the promotion of human rights and the effective enjoyment of those rights and fundamental freedoms.

5. The Universal Declaration had been translated into some indigenous languages, which was a significant step forward, since the Universal Declaration comprised philosophical views held by the majority of the world's people. In the past, some Governments had regarded the Universal Declaration as a subversive document undermining the integrity of the State but the belief that those promoting human rights were terrorists was no longer widely held. For their part, the indigenous populations were merely claiming their historic rights and certainly had no intention of establishing new States.

6. The Indian populations in some countries of South America lived in marginalized conditions from the human-rights standpoint and the Commission should call on the Member States to promote the Universal Declaration of Human Rights by inter alia, ensuring that it was taught in primary and secondary schools. It was essential that the peoples of South America should become acquainted with the provisions of the Declaration.

7. With regard to the celebration of the so-called "discovery" of the Americas, he said that, since 12 October 1492, Indians in the Americas had been subjected to violence of all kinds. In the view of the Indian peoples, 12 October 1992 should be a historic opportunity for recognition of the dignity of the Indian peoples, and the Commission should declare 1992 to be the International Year of Solidarity with Indian Peoples.

8. Mrs. TEEKAMP (Observer for the Netherlands) said that her Government had always considered that human-rights instruments required an effective implementation mechanism and had advocated the introduction of an optional individual complaints procedure, which it continued to believe could be a very effective mechanism. However, so long as only a few countries had recognized such procedures, compliance must be ensured by other means. All the major conventions obliged States parties to report on the implementation of their substantive provisions and periodic reporting by the States parties enhanced international accountability as well as providing them with a valuable opportunity to review their policies.

9. As for the problems confronting the system of reporting obligations, in the first place, States parties faced the burdensome task of drafting a series of reports. Several steps had been taken to alleviate the burden such as extending the reporting cycle, making assistance available to States parties under the programme of advisory services and issuing practical recommendations regarding the set-up of a reporting machinery. Further prospective measures to rationalize reporting procedures included the preparation of a reporting manual and efforts to identify overlapping in reporting. The report of the meeting of chairpersons, which had covered many aspects of the matter, contained some useful and relevant suggestions.

10. The second area of concern related to the meetings of the monitoring bodies, five of which had encountered financial difficulties. The general impression was that, while the quality of the servicing was beyond reproach, the various committees needed more staff to prepare meetings and draft papers. Possible reasons for that deficiency, on which the views of the Under-Secretary-General for Human Rights would be welcome, might be a shortfall in budget estimates, the setting of new priorities when it became apparent that a budget target would not be met, inadequate redeployment schemes in the Centre for Human Rights, or an inadequate allocation in the budget for the Conference Services Division for the servicing of human-rights meetings.

11. The monitoring bodies established under the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment faced financial problems arising from arrears in contributions. The record of some of the States parties and the small sums involved made her wonder whether those States had ever intended to pay. However that might be, she urged them once again to meet their financial obligations under those Conventions.

12. Her delegation, which supported the plan approved by the General Assembly for a World Campaign for Human Rights, stressed the central co-ordinating role of the Centre for Human Rights in that regard. Emphasis should be on publicity through the Department of Public Information, which should make the resources required available on a liberal basis. The report submitted to the Commission (E/CN.4/1989/21) did not indicate clearly the amount of resources earmarked for each separate activity nor was it possible to judge the relationship between the amount of resources used and the impact of each activity. Her delegation deemed it preferable to emphasize activities providing practical information to the largest possible audience.

13. Her delegation had always strongly supported the special rapporteurs' system which, over the years, had become a widely accepted mechanism to monitor the implementation of human-rights standards. The system could, however, be strengthened. While each mechanism should be carefully adapted to the specific requirements of the area concerned, working methods or reporting modalities which had been developed in one field could usefully be taken into account elsewhere. In that connection, she welcomed the suggestion that a Government that flatly refused to co-operate with a working group or special rapporteur reporting to the Commission should be named in the draft resolution regarding the mandate in question which the Commission recommended for adoption by the Economic and Social Council.

14. One of the advantages of the special rapporteurs' system was that it was open and flexible. That open-ended character at the same time constituted a direct responsibility for the Commission, since it had to consider at each of its sessions whether other issues qualified for special scrutiny by a thematic rapporteur or a country rapporteur and whether a new mandate should be instituted to enlarge the coverage of human-rights problems or to focus on new developments in specific countries. It went without saying that the Commission must approach every human-rights problem on its merits and not be prompted by any political considerations.

15. Miss FOSTIER (Belgium) said that, since 1966, when the General Assembly had invited the Commission to give urgent consideration to measures to be taken to strengthen ways and means available to the United Nations to put an end to human-rights violations wherever they occurred, the Commission had developed a range of methods and mechanisms to examine cases involving violations of human rights. That machinery was a very complex one which had developed empirically. The same was true in respect of the so-called thematic investigations. However, the mechanism which the Commission used most frequently was that of the special rapporteur, a person who was entrusted with the task of examining the human-rights situation in general in a specific country or of investigating a specific type of violation throughout the world.

16. The Commission, as the conscience of mankind, was duty-bound to continue making use of that mechanism, which in no way affected the monitoring systems established by the various conventions but which complemented them. That was a key instrument of the Commission but it might, perhaps, be desirable to be somewhat flexible in selecting the ways and means of dealing with situations giving cause for concern. Therefore, some guidelines would be useful so that the Commission would know clearly what was involved if it should decide to appoint a special rapporteur.

17. To render the procedure of appointing special rapporteurs more systematic, it might be desirable to establish the principle that the appointment should always be made by a joint decision of the Commission's officers from a list of persons, proposed by members of the Commission, who met the criteria for independence, high moral standards and recognized competence. The possibility of terminating the mandate of a rapporteur in respect of a country situation might also be envisaged. The use of a special rapporteur should be regarded not necessarily as constituting an accusation against a country but rather as a means of examining a specific situation or phenomenon for the sole purpose of seeking a satisfactory solution to the problem.

18. The existence of a well-informed public opinion was an additional guarantee of the effective enjoyment of human rights and fundamental freedoms and the development of information activities in that field was very welcome. She thus commended the General Assembly on having decided to launch a World Information Campaign for Human Rights. Its objectives, based on a consistent strategy, should be in the form of data readily accessible to all, including persons belonging to disadvantaged sectors of society. The information should be drafted simply and clearly and disseminated widely, so that individuals would know that they could also appeal to the United Nations in the event of a violation of their rights.

19. The overall nature of the activities being carried out in all areas of the world in a balanced, factual and objective manner required the co-operation and participation not only of the United Nations system but also of Member States and of non-governmental organizations. The success of the Campaign would depend largely on close co-operation between the Centre for Human Rights and other United Nations departments, in particular the Department of Public Information. Since the existing United Nations resources would not be sufficient for the Campaign, the report of the Secretary-General envisaged the possibility of those resources being supplemented by voluntary contributions from Member States and private sources (E/CN.4/1989/21, para. 82). Her delegation was dubious as to the viability of such a suggestion and thought that the Department of Public Information possessed a sufficient budget to make funds available for the Campaign. Since it was clear that the financial aspect would be a decisive factor, full and complete co-operation between the Centre for Human Rights and the Department of Public Information was essential for the success of the operation.

20. The Commission should continue its restructuring efforts with a view to increasing its effectiveness. It would have to strengthen its implementation and monitoring mechanisms, safeguard their independence, highlight their areas of competence and ensure that the opportunities they offered were better known.

21. Mrs. QUISUMBING (Philippines) said that the Constitution of the Philippines mandated the teaching of human rights. There were formal and informal instructional programmes in schools as well as in relevant sectors. In April 1989, the Department of Education and Culture was to organize a national congress of educators with participants at the highest level, the agenda of which would, for the first time, include an item on human rights and peace, with emphasis on the rights of the child and indigenous rights. It was hoped that the end result would be the effective and systematic incorporation of those principles into the academic curriculum from primary schools upwards.

22. The Philippines Commission on Human Rights had several noteworthy programmes, including training for human-rights investigators and prosecutors, assistance to human-rights victims and the protection of witnesses. The United Nations Centre for Human Rights had been of great assistance in those activities.

23. Her Government supported the idea of a regional arrangement for the promotion of human rights and fundamental freedoms for the Asian-Pacific countries. In that connection, her Minister for Foreign Affairs had informed the Centre for Human Rights that the Philippines was considering the possibility of acting as host to a regional seminar to examine the issues and the alternative approaches. Manila had been an active and enthusiastic host for several regional and international conferences on human rights, and her Government encouraged that free environment for dialogues on human-rights issues.

24. In that connection, she congratulated the Centre for Human Rights and said that its publications were most useful, particularly the ABC of the teaching of human rights, as complementing materials which her country itself had developed with the use of indigenous or local materials. Her delegation thus associated itself with draft resolution I of the Sub-Commission on Prevention of Discrimination and Protection of Minorities which supported efforts to enhance the role of the Centre as a co-ordinating unit in the system of bodies dealing with the protection and promotion of human rights (E/CN.4/1989/3-E/CN.4/Sub.2/1988/45). It also endorsed the suggestion by the representative of China that the Centre should be encouraged to have a better geographical representation of all regions in its staff.

25. In conclusion, she wished to make some suggestions concerning alternative approaches and ways and means within the United Nations system of improving the effective enjoyment of human rights and fundamental freedoms. First, the hereto "Western" image of human rights must be countered by the establishment of regional centres for human rights in other parts of the world. International human-rights law affected the individual directly; decentralization of the administrative machinery that implemented the law must soon be made more readily accessible to individuals.

26. Secondly, the fundamental principle of the universality of human-rights principles was well established. Reference to domestic, local or indigenous cultural values would serve to reinforce those principles and make human-rights rules more relevant, particularly among grass-roots audiences.

27. Thirdly, the mass media should be encouraged to include regular sections on human-rights promotion. In that connection, United Nations human-rights concerns had been a focal point in the Philippines since the fortieth anniversary of the Universal Declaration of Human Rights.

28. Fourthly, the Commission's work and accomplishments should be systemically shared with different government agencies as well as with non-governmental organizations. Her Government, which planned to do so in the Philippines, believed that the people should be informed about current developments and issues on human rights and consulted throughout the year in preparation for the next session of the Commission.

29. Her delegation shared the view that the World Campaign for Human Rights was an idea whose time had come. The Philippines Commission on Human Rights and her country's democratic institutions and people pledged their commitment to the objectives of the Campaign.

30. Mr. ZAMIR (Bangladesh) said that, while his delegation commended the efforts of the Under-Secretary-General and his staff in promoting awareness of human rights throughout the world, it considered that more practical and effective steps could be taken in that regard. In particular, the purpose and procedures of the Commission on Human Rights should be reviewed.

31. Over the years, the issue of human rights had become more complex. Standards were being set, and his Government welcomed all the efforts made to strengthen the human-rights machinery. However, the Commission should take into account the capabilities of developing countries which had limited resources and were hampered by widespread illiteracy. Steps should be taken to assist such countries to achieve minimum levels of social and economic development in order to enable them to meet the standards set by the various international human-rights institutions.

32. There was a need for balanced and equal representation from developing countries in the Centre for Human Rights, and a number of Asian countries, including Bangladesh, had taken the initiative of drafting a resolution on that issue. His delegation hoped that the resolution in question would gain the necessary support from all the members of the Commission.

33. Mr. ALVAREZ VITA (Peru) said that human rights had become the privileged field of a small group of experts, and the work of the Commission was becoming inaccessible to many people who wished to take part in the promotion of human rights. Clear and simple formulas must be found so that human rights could be made comprehensible to as many people as possible. To that end, it was necessary to prepare educational programmes which took account of all aspects of human activity; his delegation would support any measure in that regard, at both the international and national levels. In particular, the rights of minorities, women, youth, children and the handicapped must be promoted.

34. It was everyone's duty to promote human rights, and both the State and individuals could contribute to that goal. The media should provide every possible service to disseminate information about human rights. The Centre for Human Rights and non-governmental organizations must also step up their promotional activities.

35. His delegation had been surprised by several speakers who had asserted that his Government's efforts to popularize the Universal Declaration of Human Rights in the native languages were meaningless, inasmuch as the illiteracy rate among the indigenous peoples of Peru was very high. While the lack of access to the printed work could in itself be regarded as a violation of human rights, it should be recalled that there were other technical means, such as radio broadcasting - widely used in the Peruvian Andes - for spreading information about the Declaration. His Government was also taking many other steps in order to ensure that knowledge about human rights was not the preserve of the privileged few.

36. Mr. HAWKES (Observer for Ireland) said that the World Public Information Campaign for Human Rights must be addressed primarily to those whose rights

were being violated and to individuals and organizations who or which spoke out on their behalf, often at great personal risk. The previous year, his delegation had welcomed the proposal for the Campaign and had urged that non-governmental organizations should be involved to the greatest extent possible. It had thus been pleased to learn that consultations on the subject of the Campaign had already taken place between the Centre for Human Rights and the non-governmental organizations.

37. Proposals had been made with regard to mechanisms and methods for avoiding confrontation in the Commission and, to the extent that such proposals contributed to the advancement of the cause of human rights, his delegation was in full agreement with them. However, it should not be forgotten that the purpose of the Commission was not to resolve specific problems through the traditional diplomatic methods of compromise and co-operation but to promote respect for fundamental human rights throughout the world. What mattered was the extent to which it succeeded in protecting persons whose rights were endangered and in ensuring that there was an end to gross, flagrant violations of human rights.

38. Where there was genuine agreement on the fundamental question on the role of the Commission, international co-operation in tackling the causes of such abuses and eradicating them would follow naturally. The Commission would, however, be doing a grave disservice to the victims of most appalling human-rights abuses if it were to invert those priorities. Many such abuses had first come to light through the dedicated, selfless and courageous commitment of the members of non-governmental organizations, and the Commission had the obligation to involve them in its work, to support them in every way possible and to be advised by them.

39. Mr. LIVERMORE (Canada) said that, while each treaty-based monitoring body experienced different problems, the common elements were inadequacies in Secretariat servicing, problems with periodic reporting, financial shortfalls and limited timetables for meetings. The Commission was the logical starting point for a discussion on ways to overcome such difficulties and, at its next session, it should undertake consultations by means of an open-ended working group with a view to considering a range of possible solutions.

40. His delegation was pleased that the non-governmental organizations had been informally consulted about the activities of the World Campaign for Human Rights. Non-governmental organizations were crucial to the Campaign's success, since they would be the main originators of ideas, purveyors of information and implementation agents for much of the Campaign. It was disappointing, however, that there was an almost total absence of any attempt to link the activities of the Campaign to the dissemination of human-rights materials to individuals, groups and organizations which must know and act upon their rights. A mere eight pages of the Secretary-General's report (E/CN.4/1989/21) were devoted to future plans.

41. Priorities must be established for the Campaign. Attention should be given to publications which were both useful and easily produced, such as newsletters and bulletins. Similarly, the value and place of high-level seminars, whose grass-roots impact was often minimal, should be carefully considered. Another concern was the choice of activities which merited support within the limits of available funding. In order to ensure the achievement of the Campaign's objectives, an effort should be made to produce

the greatest possible impact through the use of the limited material available in the Centre for Human Rights and the Department of Public Information (DPI).

42. While the role of DPI should be reaffirmed, care should be taken to avoid duplication of effort between New York and Geneva and the Campaign should not detract from any other aspects of the ongoing work of the Centre for Human Rights, especially its obligations in the area of implementation and advisory services. The funding and resource requirements of the World Campaign should be clearly laid out for examination by the Commission; in that way, the progress of the Campaign could be clearly assessed and the resource needs weighed carefully against other objectives which had been identified and different programmes which had been developed. The Under-Secretary-General should pursue informal consultations with all the regional groups during 1989 in order to identify a multifaceted programme which could form the basis of the Commission's discussion of the Campaign.

43. The Commission still lacked a means of responding quickly to emergency situations. One idea which partially met the growing requirement for timeliness was to vest in all five of the Commission's officers the collective power to meet periodically when the Commission was not in session for the purpose of addressing urgent situations. Clearly, a wide consensus within the Commission was essential if that concept was to work, and some minimal guidelines might be required to determine the duties of the Chairman of the Commission in the event of the absence or unavailability of other officers.

44. Mr. ARANEO (Observer for Uruguay), speaking in exercise of the right of reply, said that the legislative Power of Uruguay, by its Act 1548, had declared that the State's authority to punish military and police officials for crimes committed up to 1 March 1985, had lapsed. The sense of and the basis for that Act was the same as in the case of Act 1537, which declared a broad amnesty for persons who had taken part in subversive activities. That Act, adopted in March 1985, had been one of the first legislative measures following the restoration of democratic institutions in Uruguay; and it had great moral value since it granted amnesty to persons who had taken up arms and had committed crimes prior to the military régime, at a time when the rule of law was still in force. The two Acts had been inspired by a desire for peace and national reconciliation, which were indispensable for the functioning of democratic institutions. Both legal instruments were the product of an effort in which the Government and the opposition had participated, and had been ratified by a democratically elected Parliament.

45. The people of Uruguay currently enjoyed the full exercise of democratic freedoms. There was absolute respect for human rights, so much so that Act 1548 was to be the subject of a referendum to be held in April 1989 in accordance with the Constitution. If more than 50 per cent of the electorate were opposed to the Act, it would become null and void. The holding of that referendum demonstrated that democracy belonged to all the people of Uruguay and not to just a particular sector of the population.

46. Mr. GONZALES (International Indian Treaty Council) said that, until the voices of their leaders were heard among the nations of the earth, the indigenous peoples and their cultural and spiritual ways would continue to be regarded as an obstacle to "progress" and development. Indigenous spirituality was disrespected, persecuted and misunderstood. Once the indigenous peoples' spiritual relationship to the land was properly understood

the persecution of indigenous people would subside. The United Nations should seek alternative approaches and ways and means to improve indigenous peoples' effective enjoyment of human rights and fundamental freedoms.

47. At the previous meeting, the representative of the United States of America had given credit to the United States Constitution and its founding fathers for having created an instrument by which to govern their new society. However, words such as "we the people" and "all men are created equal" had been taken from the teachings of the confederate Indian Six Nations. The people of the United States should be aware of the history and origin of those profound words, which had been credited to Benjamin Franklin and Thomas Jefferson.

48. Both Franklin and Jefferson had lived for some time among the Six Nations and had studied their ways of government, diplomacy and communal living. Clearly, the "founding fathers of the United States Constitution" had been influenced by the Six Nations in their choice of a government system. The basic structure of a democratic government, with its executive, legislative and judicial branches, had existed and functioned for hundreds of years among the Indians of the Atlantic coast, long before the coming of the white man.

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 (agenda item 10) (continued) (E/CN.4/1989/3-E/CN.4/Sub.2/1988/45 (chap. I, sect. B, decision 2), E/CN.4/1989/15, 17, 18 and Add.1, 19, 50, 58 and 63; E/CN.4/1989/NGO/3, 12, 38 and 49; E/CN.4/1988/17 and Add.1; E/CN.4/Sub.2/1988/12, 15, 18/Rev.1 and 20 and 20/Corr.1, Add.1 and Add.1/Corr.1; A/43/779; A/C.6/42/L.12)

49. Mr. MARTIUS (Federal Republic of Germany) said that his country had been among the Member States which had initially submitted to the General Assembly in 1980 a proposal for the world-wide abolition of the death penalty. The draft second optional protocol to the International Covenant on Civil and Political Rights, the key article of which would oblige States parties to abolish capital punishment, was currently before the Commission for its consideration.

50. Having paid tribute to Mr. Bossuyt for his excellent analysis, as Special Rapporteur, of the international legal situation with regard to the death penalty (E/CN.4/Sub.2/1987/20), he referred to the growing number of States that had abolished it already. In addition, many of those States whose laws provided for the death penalty had not applied it for a very long time. It was regrettable, however, that the death penalty was not only still imposed, but was often misused by undemocratic régimes as a means of dealing with political opponents. Such régimes even applied the penalty to the extent of having mass executions.

51. His delegation had no wish to pass moral judgement on systems retaining capital punishment, since it respected each State's sovereign right to decide on the matter. Those who did not consent to the abolition of capital punishment would not be placed at any legal disadvantage by the adoption of the second optional protocol, nor would they come under any pressure to accede thereto. There was, therefore, no plausible reason why States that were not willing to abolish the penalty should prevent others from undertaking that commitment under international law. He urged that the draft be submitted to the General Assembly at its forty-fourth session.

52. A possible reservation admitting the application of the death penalty in time of war was of no relevance to the Federal Republic, which had abolished the death penalty without providing for any exceptions. He suggested that States which had not done so already should be given the opportunity to comment on the text of the draft protocol, so that it could be submitted to the General Assembly together with a report containing the views of Governments thereon.

53. With regard to the activities of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1989/18 and Add.1), the 392 new cases reported in 1988 were 392 cases too many. The overall increase in the number of new cases reported recently was a matter of serious concern to his Government. He pointed out, however, that it was still important to investigate existing cases since silence was worse than knowing the truth about what had actually occurred.

54. Although the Working Group reported an increasingly productive dialogue with most of the Governments concerned, there were still countries in which Governments were neither ready nor able to co-operate. He appealed to those Governments to pay more attention to the cases brought to their notice, and to support the Working Group.

55. Torture was one of the most horrifying abuses of human rights. His Government had signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it regarded as a major advance in the promotion of universal respect for, and observance of, human rights and fundamental freedoms. It fully supported the work of the Special Rapporteur on questions relevant to torture, whose report (E/CN.4/1989/15) was of utmost importance to all who wished to eradicate it and help the victims thereof. His work in no way duplicated that of the Committee against Torture. The United Nations Voluntary Fund for Victims of Torture had a very important role to play. His Government had recently, therefore, made a further contribution thereto.

56. Mrs. Ilić (Yugoslavia) took the Chair.

57. Mr. NDIAYE (Senegal), having emphasized the close relationship between respect for human rights and the preservation of international peace and security, said that international relations were seriously affected by outrageous violations of human rights in various parts of the world, particularly South Africa, Namibia and the occupied Arab territories.

58. Upon gaining international recognition of its sovereignty, Senegal had solemnly proclaimed its attachment to human rights as defined, for example, in the Universal Declaration of Human Rights. It had ratified almost all the

relevant international instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

59. Ratifying an international convention was one thing, however, guaranteeing its effective implementation was quite another. According to the Senegalese Constitution, any treaties or agreements ratified took precedence over national laws from the date of their publication. Accordingly, the provisions of article 9 of the International Covenant on Civil and Political Rights, which prohibited arbitrary arrest or detention, had been incorporated into Senegalese law.

60. Where separation of powers existed, it was essential for the judiciary to be the "guardian of rights and freedoms". Given also that the Senegalese Constitution provided for the inviolability of the freedom of the human being, it followed that arbitrary detention was prohibited. In fact, the Senegalese Penal Code provided for the civil downgrading of any public official found guilty of ordering or committing an arbitrary act constituting an attempt upon the freedom of the individual.

61. The most common attempt upon individual freedom occurred when a person was taken into custody, arrested or detained by the judicial police, in other words, by an extra judicial body, for the purposes of an investigation. The human-rights implications of that situation demanded legislation to ensure that the person arrested was informed forthwith of the grounds for his arrest, and that the judicial authority having control over the police be informed thereof immediately. Senegalese law provided for a period of custody lasting 24 hours, with the possibility of only one extension, which seemed consistent with international standards. Other provisions ensured that the person concerned could be heard quickly by an examining magistrate, and established that anyone held for more than 24 hours without an interview was regarded as being arbitrarily detained. Furthermore, the Constitution provided for defence as an absolute right, which meant, for example, that a lawyer was automatically assigned to any defendant who was without one.

62. The rigorous conditions governing the treatment of an arrested or detained person in Senegal reflected the fundamental principle enshrined in law that the human being was sacred and that it was incumbent upon the State to respect and protect him. Torture was automatically excluded in Senegal in accordance with the relevant Convention, which was an integral part of positive law.

63. The existence of legal provisions such as those described precluded in Senegal the human-rights violations covered by agenda item 10. It was paradoxical that most of the countries in which such violations commonly occurred were signatories to the International Covenant on Civil and Political Rights. His delegation proposed that, in order to achieve stricter observance of the international rules concerning human rights, all States parties to the Covenant should be asked to ratify the Optional Protocol thereto. Only if a State were party also to that Protocol, could the Human Rights Committee consider communications from individuals subject to the jurisdiction of that State, in respect of alleged violations of the rights set forth in the Covenant.

64. The right to an independent judiciary was not a privilege or concession, but a human right enshrined in article 10 of the Universal Declaration.

Senegal had adopted two measures with a view to achieving that aim. Firstly, it had laid down the principle of irremovability of judges in order to prevent their being transferred without their consent, and secondly, it had instituted a council of the magistracy where the promotion of judges was subject to the approval of their peers.

65. He pointed out that, although his delegation was receptive to the idea of there being an international convention on the independence and impartiality of the judiciary, that independence could be neither regulated nor codified by national or international instruments. It was, in fact, a state of mind or personal creed. It would be more appropriate, therefore, to concentrate on education and the dissemination of information with a view to instilling the notion of human rights into all individuals, including the members of the judiciary. It was with that aim in view that Senegal had set up a university institute of human rights in Dakar. It was hoped that similar institutions would come into being around the world.

66. Mrs. NÚÑEZ de ESCORCIA (Observer for Nicaragua) said that, since 1979, the systematic use of torture for the purposes of investigation, threat or intimidation had been prohibited in her country. A humane penitentiary system had been instituted, the fundamental objective of which was social rehabilitation.

67. There were five different stages of imprisonment, which permitted progressively more freedom. Upon completion of 60 per cent of their sentence, prisoners reached the final stage when they were allowed to live at home. Civil rights were still suspended at that stage. Recent figures indicated that nearly 15 per cent of the penal population was either living at home or working on "open" or "semi-open" farms. All women prisoners were detained under the "open" régime, regardless of their offences, which enabled them to spend time with their families, the aim being to preserve the family unit.

68. The objective of rehabilitation upon which the national penitentiary system was based had produced a proliferation of cultural and educational activities, and widespread participation in sports. Literacy classes were held as part of an ongoing campaign in penal institutions, and a substantial number of prisoners had completed their primary education while serving sentences. Many others were receiving technical training. The teachers themselves were also prisoners.

69. More than three-quarters of the prison population was involved voluntarily in those and other such activities, supported by advisory bodies elected by the prisoners and consisting of their family members, under a pilot scheme in operation in the "open" and "semi-open" farms. It was planned to extend the scheme to all penal institutions in 1989.

70. The current economic crisis had resulted in substantial cut-backs in public expenditure, which would inevitably affect the penitentiary system. The staff reductions needed would affect the degree of personal contact between prisoners and instructors, and, while none of the programmes would disappear, there would inevitably be less material available.

71. With regard to medical care, treatment was affected by a shortage of medicines. Although the International Committee of the Red Cross, which

inspected prisons every two months, played an extremely important part in providing medical and other supplies, there was an urgent need to find other sources of supply.

72. Her Government was making every effort to reduce the prison population. It had initiated activities and programmes designed to combat the root causes of criminality. With regard to the former National Guards and counter-revolutionaries still held prisoner, their release had not yet taken place in spite of the amnesty declared by the Government, because the Central American Presidents had not all implemented the agreements covered by the procedures for the establishment of a firm and lasting peace in Central America, signed in August 1987.

73. Nevertheless, President Ortega had recently informed the four other Presidents of his decision to release prisoners in accordance with the classification provided by the Inter-American Commission on Human Rights at the request of the Nicaraguan Government. Thus, the remaining former National Guards would soon be released. Not only would they have learned to read and write, but they would also be provided with employment, enabling them to return to society.

74. With regard to the question of enforced or involuntary disappearances, she said that since 1980, when the Government of a super-Power had unleashed the war of aggression against Nicaragua, the contras had been abducting civilians in accordance with the rules of psychological warfare, the main aims being to intimidate the civilian population and retard the progress being made by newly-organized peasant farmers, and to swell the contra ranks. According to witnesses and victims who had managed to escape, all abductions were accompanied by torture and brutal mutilation. In most cases, however, the whereabouts of those abducted were not known. People of all ages, including children, were disappearing daily at the hands of armed groups receiving foreign support and based in neighbouring territories. In 1988 alone, the contras had abducted 1,708 people in spite of the halt to military operations declared unilaterally by her Government.

75. Methods of warfare had evolved more swiftly than the world community's capacity to control them. Systematic human-rights violations of the sort suffered by Nicaraguans were perpetrated by irregular groups, not by direct Government action, and thus did not warrant the attention of human-rights bodies, even the Working Group on Enforced or Involuntary Disappearances, as the latter had acknowledged in general terms in its report (E/CN.4/1988/18).

76. Nevertheless, her Government had continued to collaborate closely with the Working Group, submitting to the latter the results of official investigations into the cases mentioned, although it had found a number of discrepancies, some arising from the fact that many allegations referred to incidents during the war of liberation, before the current Government was in control. Only a few cases remained to be clarified, most of them relating to the period during which her country had suffered from a cruel war of aggression; the investigations were continuing. The practice of enforced or involuntary disappearances caused by government agencies did not exist in Nicaragua, as was shown by the fact that, although the aggression still continued, not a single case had been reported since early 1987.

77. Nicaragua was prepared to receive the Working Group. Moreover, at the summit meeting of Central American Presidents, her Government had formally proposed an international verification system, to be implemented by international human-rights organizations including the Working Group; unfortunately, the other four Presidents had not accepted the proposal. Nicaragua had also enacted important legislation in that field during 1988, inter alia, providing explicitly that recourse to habeas corpus could in no circumstances be suspended.

78. Mr. DAO (International Labour Organisation) said that paragraph 18 of the report on the visit to Colombia by two members of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1989/18/Add.1) reflected the situation of violence against trade unionists, which had been the subject of complaints lodged with ILO by Colombian and international trade-union organizations, drawing attention to killings and disappearances affecting over 2,000 trade-union members and leaders since 1986.

79. His Organisation had sent two missions to the country, in 1986 and 1988, by agreement with the Colombian Government; the second visit was mentioned in the Working Group's report (E/CN.4/1989/18). On the basis of the findings of that mission, the ILO Committee on Freedom of Association had voiced its concern about the situation in Colombia, expressed alarm at the extremely high number of killings and disappearances - more than 200 since 1986 - most of which were connected with the Single Central Organization of Workers (CUT), noted that a series of measures taken by the Government had not achieved the desired results, noted that most of the murders were the work of hired killers and so-called paramilitary groups, mostly in the pay of rich landowners, business proprietors and drug traffickers, operating against anyone they deemed reformists, and observed that the prevailing situation, in which judges and witnesses were intimidated by death threats, enabled the culprits to escape justice.

80. The Committee had requested the Colombian Government to take firm measures at the national level to disband such groups and bring them and their financiers to justice swiftly, to take steps to strengthen the forces of law and order, to keep the Committee informed on those matters and on the course of judicial inquiries concerning the cases about which it had replied, and to comment on other allegations hitherto unanswered.

81. With regard to drug trafficking, a situation noted inter alia in paragraphs 12-14 and 124 of document E/CN.4/1989/18/Add.1, the ILO Governing Body had invited the Director-General to express to the competent United Nations bodies its deep disquiet about the devastating effect of illicit drug trafficking and to mobilize the United Nations system for a concerted action programme. An ILO representative had spoken on the subject at Vienna in 1988 at the opening of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

82. The Director-General of ILO had suggested to the Secretary-General of the United Nations that ACC should consider that topic in 1989 with a view to enhanced co-ordination of action, and had written to the international trade-union confederations in consultative status with ILO accordingly. Further ILO initiatives were described in its document GB 242/10/5/2.

83. Mr. HAWKES (Observer for Ireland) said that, of all human-rights violations, the practice of torture evoked the deepest revulsion. Unlike other human-rights abuses, no one, not even its practitioners, had ever tried to justify it. Particularly intense reactions to such shocking practices had been aroused through the work of the Special Rapporteur, who was to be congratulated on his measured, objective and practical approach, particularly in focusing on the task of eradicating the climate of opinion and other conditions in which such practices could take place (E/CN.4/1989/15).

84. Some valuable suggestions had been made, and his recommendations regarding the prohibition of incommunicado detention, early reference to judicial authority, medical examinations and interrogation procedures would, if widely implemented, make the practice on its current scale impossible. He had rightly noted that the need for preventive measures was relevant to all countries and had made the point, in connection with the willingness of States parties to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to accept visits by independent experts to their places of detention, that such visits took place whether or not any allegations of torture had been received. The Irish delegation had noted his intention to monitor the operation of that aspect of the European Convention and hoped that the experience would lead to a wider application of that procedure.

85. His delegation supported the Special Rapporteur's view that invitations to him by Governments to visit their countries should be seen mainly in the light of the prevention of torture. The Special Rapporteur, in submitting allegations to Governments, adopted no position with regard to their grounds. It was all the more regrettable, therefore, that so many Governments had consistently failed to respond; world opinion was bound to draw certain conclusions from repeated failures of that kind.

86. As the Special Rapporteur had rightly pointed out, Governments had a special responsibility in times of civil strife or civil war to investigate allegations of torture and to adopt measures to prevent its practice by government agents. Should a Government fail to do so, the conclusion that it tolerated such practices would be drawn not only by the international community but by the practitioners thereof, and its use would spread. Indeed, wherever torture was tacitly tolerated, there could be little confidence that other human rights would be respected.

87. Throughout his visits, the Special Rapporteur had received repeated appeals for assistance and advisory services. The fact that some countries had already requested instruction programmes for security personnel was very encouraging; programmes such as those proposed in the report had a valuable role to play in the elimination from the political and administrative sphere of the state of mind which supported the practice of torture, and the educational measures recommended were examples of the valuable role of advisory services in creating a climate of opinion in which torture was unacceptable.

88. Mr. BRODY (International Commission of Jurists) said that when a Government sought to undermine the rule of law and deprive its opponents of their fundamental rights, it had first to crush the independence of the judiciary. Such was currently the case in Malaysia, where three Supreme Court judges, including the President, had been removed because of decisions

consistent with the rule of law but contrary to the authorities' wishes, closely followed by an amendment which had stripped the judiciary of its constitutional authority. ICJ, addressing the Sub-Commission, had referred to the arbitrary use of administrative detention in that country. That might also be the case in Kenya, where the Government had persuaded Parliament to adopt a constitutional amendment authorizing the President to suspend judges at his discretion.

89. A free and fearless legal profession was essential to an independent judiciary. However in Brazil, for example, dozens of lawyers who provided legal advice to rural workers in land and labour disputes had been harassed, threatened and even murdered. Recent killings had reportedly been by gunmen in the pay of big landowners, and evidence suggested that such crimes were often committed with the local authorities' acquiescence or complicity and in no case had those guilty been brought to justice.

90. In the Philippines, five lawyers had been murdered during the past 15 months, and many others harassed and threatened; in the case of the murdered human-rights lawyer Alfonso Surigao, the gunman had stated that he was acting on behalf of a major in the Philippine armed forces. The violence made it difficult to find lawyers willing to take up victims' causes.

91. Such events illustrated the need for the United Nations to develop standards on the independence of judges and lawyers and to monitor violations and develop implementation mechanisms. The standard-setting task was well under way, as was evidenced by the General Assembly's approval, by resolution 40/146, of the Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Eighth Congress would be considering the 24 Basic Principles on the Role of Lawyers prepared by the Committee on Crime Prevention and Control.

92. With regard to the draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, which had been referred to the Commission by Sub-Commission resolution 1988/25, ICJ shared the reservations expressed by some experts and Governments about the degree of detail as well as on the wisdom of acting in parallel with the Committee on Crime Prevention and Control with its quinquennial Congresses. Nevertheless, human-rights bodies had an important role to play in monitoring implementation, being the only forums in which inroads into the independence of judges and lawyers, and thus into human rights, could be reviewed. ICJ thus hoped that the Commission would agree to maintain the subject as a separate item on the Sub-Commission's agenda.

93. On the question of detention, UNHCR had drawn attention to the plight of asylum-seekers detained for prolonged periods under harsh conditions in a number of countries (A/AC.96/713). It had stressed that asylum-seekers and refugees should not be automatically subject to detention, and that any detention during procedures to determine their status should be in humane conditions, not prolonged and subject to judicial or administrative review.

94. In June 1988, the Hong Kong authorities had introduced a new screening policy under which Vietnamese arrivals would henceforth be considered illegal immigrants unless they could prove political grounds. Since that time, about 10,000 Vietnamese arrivals had been detained in three closed camps, where it

was alleged that conditions were appalling and inmates beaten by officials, an allegation later confirmed by a Government-appointed inquiry committee. In addition, some 15,000 Vietnamese, classified as refugees and awaiting resettlement abroad, were detained in prison-like camps. ICJ respectfully submitted that the Hong Kong authorities should take steps to render the camp conditions more humane.

95. Mr. Bossuyt (Belgium) resumed the Chair.

96. Ms. CHOROBİK de MARIANI (International Movement for Fraternal Union among Races and Peoples) said that her organization denounced the activities of Argentine military circles aimed, ever since the restoration of constitutional government, at destabilizing it. Everyone knew about the political abductions of children in that country and of her organization's ceaseless efforts to obtain news about some 30,000 disappeared persons. Justice and truth, and the restitution of children to their families, were still awaited five years after the overthrow of the military dictatorship. The culprits remained at large and, in many cases where they had been traced, even disputed with the real parents the right to custody of the children. Those responsible for the deaths of 30,000 people, 365 clandestine camps and the abduction of hundreds of children remained free and still posed a public threat.

97. In 12 years, a mere 48 of the hundreds of disappeared children had been traced; at that rate, it would take over 100 years to find the rest. Her organization had requested the President of Argentina to establish a post of Protector of Missing Children; although it appeared that that was not legally possible, a judicial commission had been established in November 1988, consisting of members of the Attorney-General's office and the Protector of Minors, authorized to deal with cases involving children. Despite that recent further assistance and the use of the Genetic Data Bank (BNDG), the pace of progress had not increased. The inability of a country to apply greater effort on behalf of hundreds of abducted children should be of concern to the world community.

98. The Sub-Commission, in its decision 1987/107, had expressed to the Commission its desire to facilitate the return to their families of Argentine children traced to abductors in Paraguay and its request that one or more of its members be appointed to look into the matter. The Commission, by its resolution 1988/76, had approved that request and appointed Mr. van Boven to seek information from the appropriate authorities; and the Economic and Social Council, by its decision 1988/138, had authorized the Secretary-General to provide him with all the requisite assistance. A visit had taken place accordingly in July 1988 but had been hampered by the Paraguayan Government's refusal to receive the mission.

99. Unfortunately, the resultant report had not been issued because of objections by the Argentine delegation at the Sub-Commission's fortieth session, thus blocking the Organization's efforts and dashing the hopes of the children's families and of all those desirous of upholding respect for human rights. It was hoped that the change of government in Paraguay would result in progress towards the return of the abducted Argentine children.

100. Her organization therefore requested the Commission to consider, as a matter of urgency, the situation of abducted children on which the

Sub-Commission had failed to reach a decision, to arrange that future treaties or conventions imposed an obligation on States parties to facilitate the return of abducted children to their country of origin, to recommend to the Government of Argentina speedier and more effective measures for the return of disappeared children, and to recommend to the General Assembly the adoption of the draft declaration on the protection of all persons from enforced and involuntary disappearances (E/CN.4/Sub.2/1988/28, annex I), the draft international convention on the prevention and punishment of disappearances and the draft convention on the rights of the child (E/CN.4/1989/29).

The meeting rose at at 5.55 p.m.