



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/1989/SR.29

12 June 1989

ENGLISH

Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Forty-fifth session

SUMMARY RECORD OF THE 29th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 20 February 1989, at 10 a.m.

Chairman: Mr. BOSSUYT (Belgium)

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The meeting was called to order at 10.15 a.m.

STATEMENT BY THE SECRETARY OF STATE OF THE HOLY SEE

1. The CHAIRMAN said that the presence of the Secretary of State of the Holy See in the Commission was a further demonstration of the open attitude of the Catholic Church towards the world and of the Holy See's continuing support for the various United Nations organs in their efforts to ensure respect for moral values and human rights wherever these were threatened.
2. His Eminence Cardinal CASAROLI (Secretary of State of the Holy See) said that he welcomed the opportunity to address the Commission on Human Rights so soon after the fortieth anniversary of the proclamation of the Universal Declaration of Human Rights. On 10 December 1948, the General Assembly of the United Nations had performed a historic act of vital importance. After one of the most dramatic periods in its history, mankind had shown its determination never again to sink to depths which endangered the very survival of society. The Commission was, so to speak, the depository of the Declaration, as well as the forum within which further international instruments concerning human rights had been drawn up, in particular the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.
3. The individual freedoms valued by seventeenth- and eighteenth-century thinkers had gradually given way to collective rights, in particular the rights to development and the sharing of wealth, to peace and to a healthy environment. The Commission had played an exemplary role in that field. It had been able to go beyond ideological conflicts and political differences in order to affirm, in the first instance, the absolute character of human dignity and to adopt the formula of dialogue. It had been encouraged in that task by the contribution of numerous non-governmental organizations. Its agenda clearly demonstrated the practical nature of its work.
4. Unfortunately, the Commission's deliberations still often reflected the dramatic character of the lives of millions of human beings who still found their most fundamental hopes frustrated. Man, who had managed to control nature and perfect technology to a degree inconceivable only a few years previously, had still not succeeded in freeing himself completely from abuses committed by his equals in the name of the power they exercised.
5. In reality, the oppression of man by man or of one people by another had almost always resulted from pride, a desire for superiority and domination, and egoism and even hatred of other men, fuelled by a desire for vengeance or the denial of racial, national, social, ideological or other differences, as well as fear, which led to aggression. Obviously, the various factors which came into play were often mingled, producing interdependence between all those evils represented by slavery in its various forms, the exploitation of individuals and social groups, colonialism, racial segregation and oppression, expansionism, wars of religion and acts of violence committed in the name of an ideology.
6. Methods of "re-education", which unfortunately did not belong exclusively to the past, were thus designed to subdue victims not only physically, but also mentally, beginning of course with the youngest, but not excluding adults, whose "human fibre" was sometimes tougher and more difficult to change and whose re-education could easily take the form of serious physical

maltreatment. It was therefore important to combat the re-emergence of such phenomena and to remember at all times that human rights derived from the very dignity of man, which no historical event could ever undermine.

7. The Holy See fully endorsed the direction taken by the Commission in its work and hoped that its deliberations would increasingly contribute to the search for ways of filling the gaps revealed by its careful analysis. It was vital that there should be a continuing discussion on the fundamental questions which concerned all persons, since human rights would receive all the more respect if they were the subject of decisions taken by the international community within the framework of a discussion open to all components of society. In that respect it was gratifying that the Commission's deliberations, resolutions and even condemnations constituted a sort of jurisprudence applicable in all cases where human rights were threatened or violated. In addition, the principles established at the moral level should be introduced at the legal level, not in order that judgment might be passed, but to help States ensure that their practices were as far as possible consistent with established ideals. It was encouraging to note that the imperative nature of the principles applicable in the field of human rights was being increasingly recognized at the international level; it was therefore to be hoped that reality would increasingly correspond to the principles repeatedly proclaimed in the solemnly adopted instruments.

8. In expressing its encouragement to the Commission, the Holy See could not refrain from mentioning one specific aspect of the fundamental freedom of the individual to think and act according to his own conscience: the question of freedom of religion. For many years now, the Commission had been taking a growing interest in the question of intolerance in matters of religion or belief. During the previous three years it had devoted several days of its sessions to speakers who had echoed the feelings and hopes of a large number of individuals and groups concerning the possibility of freely expressing their faith in God and living in accordance with that faith. For three years it had been studying the conclusions of its Special Rapporteur on the subject, and had been basing its deliberations on information gathered and contacts established with representatives of religious, governmental and other circles. It had thus had three particularly important reports before it.

9. Several recent texts of international importance, such as the Final Act of the Conference on Security and Co-operation in Europe (CSCE) signed in Helsinki in 1975 and the Final Document of the follow-up meetings of that Conference which had been held in Madrid (1980-1983) and Vienna (1986-1989), had - in Europe at least - led to the strengthening of the view that freedom of religion should be considered a genuine civil and social freedom which could and must be exercised within any political system. As Pope John Paul II had said, religious freedom was a corner-stone in the edifice of human rights and for that reason it was essential that it should be protected. The Final Document of the most recent CSCE meeting in Vienna thus committed the 35 participating countries to take concrete measures to enable believers and their communities to assert themselves as such, both individually and collectively within society. It even provided for a series of verification "mechanisms" in order to ensure that those countries carried out their obligations fully. It was vital that each individual should be allowed to pursue his search for truth freely, to follow the path of his conscience, to belong to the religion of his choice, to profess his faith publicly while

belonging freely to any organized religious community, and to feel totally fulfilled as a human being and contribute to the common good, drawing on the sources of his innermost beliefs.

10. The numerous and serious shortcomings in that area had even led some people to think that it would be advisable to draw up an international convention for the elimination of all manifestations of intolerance in matters of religion or belief. It would, however, be still more positive to stress, in that convention, recognition of, and respect for, freedom of religion and its practical demands since, in addition to denouncing the still too frequent cases of intolerance, States, in their role as protectors of the rights of all their citizens without distinction, must agree to commit themselves to respectful impartiality in matters of religion or ideology.

11. The Commission knew that, in carrying out its demanding task, it could count on the support of the Holy See, whose delegation had consistently taken the greatest possible interest in its work. Human rights were, in fact, one of the main preoccupations and teachings of the Catholic Church and the Pope, since the organization of society was meaningful only inasmuch as it made the human dimension its central preoccupation.

12. He congratulated and thanked the members of the Commission for the tenacity and competence with which they strove constantly to improve the definition, defence and promotion of human rights, thus laying the foundations for a superior form of humanity towards which younger generations aspired. They must not be disappointed in such a well-founded hope.

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, E/CN.4/1989/16, E/CN.4/1989/17, E/CN.4/1989/18, E/CN.4/1989/18/Add.1, E/CN.4/1989/19, E/CN.4/1989/50, E/CN.4/1989/58, E/CN.4/1989/63; E/CN.4/1989/NGO/3, E/CN.4/1989/NGO/12, E/CN.4/1989/NGO/30, E/CN.4/1989/NGO/38, E/CN.4/1989/NGO/40, E/CN.4/1989/NGO/49, E/CN.4/1989/NGO/52; E/CN.4/Sub.2/1988/12, E/CN.4/Sub.2/1988/15; E/CN.4/1988/17 and Add.1, E/CN.4/Sub.2/1988/18/Rev.1, E/CN.4/Sub.2/1988/20 and Corr.1, and E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1; A/43/779; A/C.6/42/L.12)

13. Mr. TOSEVSKI (Chairman/Rapporteur of the Working Group on Enforced or Involuntary Disappearances) said it was apparent from the report of the Working Group (E/CN.4/1989/18 and Add.1) that the problem of disappearances continued to exist and had even worsened in some countries, despite positive developments elsewhere. On the other hand, there was more public awareness of the problem, as an increasing number of non-governmental organizations had reported cases to the Working Group.

14. The Working Group's report particularly emphasized the efforts made by Governments, governmental agencies and non-governmental organizations to formulate, propose or implement legal and institutional mechanisms designed to eliminate the practice of disappearances. In that context reference was made to a judgement by the Inter-American Court of Human Rights, which established a most significant precedent for the investigation of such cases and the question of State responsibility. The report also contained suggestions by governmental and non-governmental organizations for improving existing domestic and international protective mechanisms and investigating cases. The Working Group once again emphasized the responsibility of States in such matters. In addition, the Working Group had decided, in accordance with the request of the Sub-Commission, to consider the draft declaration concerning enforced or involuntary disappearances at its April session and to inform the Sub-Commission of its findings at its forty-first session. In that regard, the Working Group had received valuable information from a variety of sources which could help to define the phenomenon more precisely.

15. The bulk of the Working Group's activities consisted in examining individual cases which occurred in a number of countries. In that connection, the Working Group functioned as a channel of communication between the Governments concerned and the relatives of missing persons, and made repeated requests to those Governments to conduct investigations in accordance with the relevant domestic laws and international principles. That was the most complex aspect of its work and also the most fundamental, since it was designed not only to achieve the humanitarian objective of alleviating the anguish of relatives, but also to encourage Governments to take a firm stance, particularly in the case of internal conflicts, so as to prevent cases of disappearance from occurring in the future. Active co-operation had been established between the Working Group and Governments, some of which had developed national mechanisms for investigation purposes. Other Governments had taken steps to improve the efficiency of existing procedures and some had invited the Working Group to visit their countries, thus enabling it to obtain first-hand information. Two members of the Working Group had accordingly visited Colombia in October and November 1988. They had met representatives of all sectors of society and collected a vast amount of documentation, thanks to the co-operation of the Government and numerous organizations and private individuals. The findings of the Working Group were contained in document E/CN.4/1989/18/Add.1. The Working Group hoped that the invitations which it had received from the Peruvian, Guatemalan and Colombian Governments would be followed by others in the future. Nicaragua had stated that it would be prepared to welcome the Working Group in 1989.

16. The Working Group had also developed its contacts with human rights organizations and associations of relatives of missing persons, which helped to disseminate information on human rights. It wished to express its serious concern about harassment and threats directed against members of such organizations and associations and stressed the responsibility of Governments in protecting them. Governments should also provide special protection for witnesses of disappearances, who were often persecuted in turn.

17. The Working Group was conscious of the need to refine its own procedures in order to perform its task more effectively. For that reason it intended to improve its reporting on allegations of disappearances and proposals of a general nature received from non-governmental organizations, proposals which should be complemented by observations from the Governments concerned.

18. In conclusion, he wished to draw the Commission's attention to the urgent action procedure, which was also applied by the Special Rapporteurs with other thematic mandates. It was vital for the effectiveness of that procedure that Governments should reply with minimum delay to the Working Group's requests for information. The Working Group therefore hoped that the rate of clarification of urgent action cases - which was already considerably higher than for others cases - would improve in the future. In conclusion, he drew the attention of the Commission to the recommendations contained in the Working Group's report.

19. Mr. KOIJMANS (Special Rapporteur on Questions Relevant to Torture), introducing his report (E/CN.4/1989/15), said that from a legal viewpoint the efforts made to eradicate torture seemed to be very successful. About 40 States had thus ratified the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the number of States which recognized the right of individual complaint under the Convention, under the 1966 Covenants or under regional conventions prohibiting torture was steadily increasing. Mention should also be made of the recent entry into force of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which would allow independent international experts to visit places of detention in certain countries and to report on such visits. The world community at last seemed determined to deal a final blow to the practice of torture.

20. Nevertheless torture remained omnipresent and in certain countries it was even endemic. The number of allegations he had received as Special Rapporteur seemed to be increasing, even though that might be partly explained by the fact that his mandate had become more widely known. It was tempting to conclude that the adoption of instruments and the creation of machinery had become a poor substitute for the indispensable political will to eradicate the evil of torture. However, it would be too easy to assume that more political will on the part of the authorities would be sufficient to put an end to torture. He had repeatedly stressed that torture was often not an isolated phenomenon but an excrescence of a society in which human dignity was negated for ideological, political, religious or racial reasons. It was the moral quality of a society which eventually determined whether torture would become an exceptional incident or whether it would remain a potential risk.

21. International commitments by States should also begin to take shape at both the national and local levels, and in forms other than exclusively legal ones. If Governments sometimes denied, or failed to respect, their international commitments, that might be because they had problems in putting those formal commitments into effect in daily life. That was an area in which the United Nations could and should play a role, through the Centre for Human Rights programme of advisory services and technical assistance. There was in fact a logical and vital link between the thematic mandates established by the Commission and the advisory services programme, particularly in the case of torture. It was vital that countries experiencing trouble should ensure the continuous training of those responsible for the maintenance of law and order and introduce precautionary systems and corrective mechanisms.

22. All too often, Governments treated the Commission's Special Rapporteurs with thematic mandates as if they were political opponents. That attitude, which could perhaps be explained by the general revulsion which torture evoked, seemed to close the door on constructive dialogue between the

Commission and the Governments concerned. He considered his own mandate to be part of a continuum, in which the transmission of allegations led to consultations or investigations in situ, which in turn led to the rendering of advisory services by the Centre for Human Rights. During one of his visits he had been asked if his mandate - Special Rapporteur on Questions Relevant to Torture - could not be renamed, since it could imply that torture had actually occurred in the country concerned. He believed that torture ought to be called by its very name. It would be wrong to assume that, because torture was completely prohibited, it could never occur; it would also be wrong to assume that because a provision had been enacted it would automatically be implemented.

23. He expressed appreciation to the Governments of Peru, the Republic of Korea and Turkey for having invited him to visit their countries during the year under consideration. Those visits had enabled him to talk with the authorities responsible for the maintenance of law and order and with representatives of professional and other organizations, and thus to formulate appropriate recommendations. He would also visit Guatemala in 1989 and hoped that other Governments would recognize the relevance of such visits.

24. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provided for the submission of periodic reports to the Committee against Torture, constituted a considerable step forward in the prevention of torture. The entry into force of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which provided for a system of periodic visits to places of detention, was also worthy of mention. By means of that Convention, the contracting parties had recognized the importance of preventive measures. He hoped that that example would be followed in other regions or at a world-wide level, and that the concept of common responsibility in that area would take precedence over financial considerations. In a speech delivered on 7 September 1988 at his (Mr. Kooijmans') university, the Secretary-General of the United Nations had emphasized that, in the final analysis, the enjoyment of human rights depended on conditions and circumstances at the national level and that the advisory services programme in particular was designed to enable people throughout the world to exercise their rights. It was indeed the responsibility of national governments - with the assistance of the United Nations - to fight against torture. Governments should take seriously their obligation under the Charter to take joint and separate action, in co-operation with the Organization, for the achievement of universal respect of human rights and fundamental freedoms.

25. When the Declaration on the Protection of All People Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been unanimously adopted over 13 years before, nobody had expected torture to disappear immediately. However, great disappointment had been expressed at the results achieved, particularly by non-governmental organizations which since they often spoke on behalf of the victims, were the partners of the United Nations in human rights endeavour, as the Secretary-General had pointed out. It was therefore incumbent on Governments to give practical effect to the Declaration by taking the necessary measures at the national level. He had made recommendations to that effect in his report.

26. Since the publication of the report, the Governments of Ecuador, Turkey and Zimbabwe had sent the Special Rapporteur details of pending cases and 1 of the 10 Governments which had been sent a telegram within the framework of the urgent action procedure had replied.

27. Mr. STANEVSKI (Union of Soviet Socialist Republics) observed that, in the opinion of some delegations participating in the current session, the formulation of too many international instruments concerning human rights should be avoided. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was without doubt one of the most valuable documents to have been formulated in recent years. However, there was now a contradiction between the international community's desire to eliminate torture, on the one hand, and the fact that the majority of States had not acceded to the Convention, on the other. The phenomenon of torture was too widespread to justify non-participation in the mechanism designed for its solution, regardless of individual considerations specific to each State. Since the international community must also be a community in legal terms, it was essential to strengthen the legal and ethical systems which enabled the rape of legality represented by torture to be eliminated.

28. His delegation endorsed the definition of torture contained in article 1 of the Convention. The first session of the new Committee against Torture, in which a Soviet expert had participated, had given rise to an interesting substantive debate on the question. The practice of torture, far from being a relic of the Middle Ages, was still a widespread scourge in the twentieth century, at a time when modern technology and scientific progress should have enabled man to advance beyond the obscurantism of bygone ages. Torture and other cruel, inhuman or degrading treatment, besides attacking the physical and moral integrity of the victims, were prejudicial to those responsible and, as a whole, brought shame upon humanity. In that respect, the Commission must spare no effort which might contribute to the disappearance of that scourge and to the elimination of barbarous practices from a world which claimed to be civilized.

29. The international community and the Commission in particular should also urge States which still refused to sign or ratify the Convention against Torture to agree to conform to the principles of international law which were enunciated in the Convention and which guaranteed universal respect for human rights. Non-governmental organizations could play a leading role in that area.

30. Mrs. LOUKASHEVA (Union of Soviet Socialist Republics) said that she welcomed the efforts made by the United Nations to ensure respect for individual rights. However, international co-operation in that field should be increased, as should efforts at the national level.

31. In the USSR, the process of democratization had led in particular to a change in penal legislation: a decree of December 1988 had amended the penal codes of the various republics, so as to ensure greater social justice and full respect for humanitarian principles. Punishments would henceforth be replaced for the most part by fines and the regulations controlling the application of capital punishment had been radically changed. The most severe punishments could now be imposed only in the case of exceptionally serious crimes, for example premeditated murder without attenuating circumstances, and prison sentences would no longer exceed 10 years. In addition, there were now no longer any prisoners of opinion in the USSR and anti-Soviet propaganda was

no longer a crime under the Penal Code. The legal procedure and the structure of the courts had been changed so as to guarantee equal rights for all before the law, and the independence of the Judiciary. In that respect, the USSR was endeavouring to contribute constructively to the Sub-Commission Rapporteur's report on the independence and impartiality of the Judiciary.

32. Her Government considered that it was the responsibility of each country to take the necessary measures to compensate victims of violations of human rights. For its part, the Supreme Court of the USSR had taken a decision to that effect in December 1988. Her Government was basing itself on that concept of reform of the judicial system in considering the problems raised under agenda item 10 and undertook to play an active part in the Commission's work in that area.

33. Mr. EVERETT (United States) reminded the Commission that the United States had signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 18 April 1988; ratification should ensue shortly as soon as the Senate had given its consent. Numerous United States laws already prohibited the use of torture; they were extremely effective because judges were independent of the police.

34. Mere words were not enough to convey torture's true horror, which he himself had experienced in South-East Asia, and the physical and mental suffering of victims. Many would prefer to ignore or deny the existence of that practice which, however, thanks to the dedicated work of non-governmental organizations, was known to be practised on a world-wide basis. However, it was generally more widespread in societies in which democratic values were not yet fully implemented and respected. As the Special Rapporteur had noted, torture victims were not only political opponents; ordinary prisoners were also sometimes brutally treated. In that respect, his delegation endorsed the recommendations that incommunicado detention should be formally banned, detainees should be promptly arraigned before a judge, places of detention should regularly be inspected by national and international experts, and an autopsy should be performed whenever a person died while held in detention.

35. In some countries, the systematic use of torture against political opponents suggested that that practice was approved and encouraged by the political authorities. That was the case in Afghanistan, where the régime in power had used torture methodically, sometimes being abetted by Soviet advisers. In Iran, the Government, which had recently carried an extensive campaign aimed at repressing opponents, showed little disposition, despite an end to hostilities in the Gulf, to put an end to torture and executions. In Syria, there were highly sophisticated torture chambers which enabled Syrian officials to choose from about 35 different methods of inflicting pain. Lastly, the horrors perpetrated by the Khmer Rouge, which Mr. Hainq Ngor had described in his book, had assumed the proportions of a veritable genocide. The international community must do its utmost to prevent those responsible from ever returning to power.

36. Many other countries resorted to inhuman treatment, some cases even occurring in countries that were close friends of the United States. That was revealed by the Department of State's annual report to Congress on human rights abuses around the world. Of course, no Government would admit to the use of torture as an instrument of public policy and some would even cite national legislation or constitutional provisions which made torture a crime.

Yet these texts often remained a dead letter. In order to hide their actions more effectively from the eyes of the international community, the perpetrators of those crimes had even perfected methods of torture which left no evidence.

37. Torture was a vestige of mankind's primitive behaviour and an anachronistic abomination and could not be tolerated in any circumstances. The Commission on Human Rights, the United Nations as whole and the entire international community must continue to condemn that barbarous practice and spare no effort in attempting to put an end to it and restoring hope and dignity to all its victims.

38. Mrs. CHAHIN (Observer for Egypt) said that agenda item 10 raised a whole series of questions relating in one way or another to the administration of justice. Egypt totally and unconditionally supported the efforts of the international community to establish an institutional framework governing the administration of justice; for that reason it had acceded to the many instruments formulated in that area, most notably the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Chapters 3 and 4 of the Egyptian Constitution also set forth those principles and guaranteed the independence of the Judiciary, which was fundamental in ensuring the protection of individual rights and freedoms.

39. Respect for human rights was an obligation on all States, and any abuse of those rights was contrary to social progress and civilization. The torture and ill-treatment to which detainees, including children, were subjected in the occupied Arab territories and in Israeli prisons, particularly Gaza Central Prison and Ramallah Prison, as indicated in paragraph 60 of Mr. Kooijmans' report (E/CN.4/1988/15), could in no circumstances be justified by the maintenance of law and order and were in all cases contrary to the law.

40. Her delegation expressed its support for the United Nations Voluntary Fund for Victims of Torture and hoped that the Fund would become an organism with its own rules of procedure and budget to finance continuing projects. It appealed to all the industrialized countries to support the Fund more effectively.

41. Her delegation also supported the proposals contained in the Secretary-General's report (E/CN.4/1989/19) on the detention of international officials and their families, particularly the proposal that official explanations concerning the grounds for any arrest of a United Nations official should be given to the Secretary-General promptly. Her delegation reaffirmed the importance it attached to Mr. Singhvi's study on the independence and impartiality of the Judiciary (E/CN.4/Sub.2/1988/20 and Corr.1).

42. As to the formulation of a second optional protocol to the International Covenant on Civil and Political Rights aimed at abolishing capital punishment, Egypt felt that it was premature to consider such action since consensus had not yet been reached on the question, even in countries where the death penalty had already been abolished. Although capital punishment still existed in Egypt, it was only used as a last resort, when all legal guarantees and procedures had been exhausted; its application was therefore very limited. The question should be tackled within a wider framework than that to which some would like to confine it, i.e. within the framework of protection of the right to life, which all countries unanimously recognized as an essential principle.

43. Mr. KHERAD (Observer for Afghanistan) said that the awakening of the human conscience, recognition of the dignity inherent in human beings, and development of the concept of human rights and fundamental freedoms could not help but lead to the abolition of torture, which had been used since time immemorial as a method of interrogation permitted under various national legal systems.

44. Although universally condemned and banned by international law as a violation of human dignity, that practice was unfortunately still rife in many countries. Ever since its establishment, the United Nations had striven to put an end to the practice, and the adoption of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was a landmark in that struggle. The Convention provided a firm standard-setting base for the elimination of torture and a reliable guide for the adoption by States of national legislation on the subject. However, it was clear that its effectiveness would depend on the extent to which Governments were willing to implement its provisions and respect their international commitments. The concerted efforts of all nations and the political will of States were essential in that respect. The establishment of the Committee against Torture was an important step forward, but the ratification of the Convention by all States was an essential condition for its strict implementation firstly because States would be required to bring their domestic legislation into line with the provisions of the Convention, and secondly because they would enter into obligations at the international level. That was a question to which the Commission must draw the attention of States Members of the United Nations.

45. His delegation also considered that efforts to combat torture must include help for the victims of torture and their families. It was therefore of prime importance that all Governments should contribute to the United Nations Voluntary Fund for Victims of Torture.

46. In addition, his delegation categorically and unconditionally condemned the practice of enforced or involuntary disappearances, which was also a source of grave concern to the international community. It was extremely important that Governments should take measures to put an end to that phenomenon and ensure that those responsible were punished.

47. The Commission on Human Rights must mobilize world opinion in order to fight effectively against the odious forms of human rights violations represented by recourse to torture or to cruel, inhuman or degrading treatment, whatever form that might take, and the practice of enforced or involuntary disappearances, and to induce States to renounce those practices once and for all. The Commission had the means to perform that task.

48. Mr. VIGNY (Observer for Switzerland) expressed appreciation for the extent and diversity of Mr. Kooijmans' activities, as reflected in his fourth report on the world-wide practice of torture (E/CN.4/1989/15), and welcomed the extension of his mandate. Mr. Kooijmans had examined the situation of persons deprived of freedom in a number of countries, whether or not they were parties to the Convention against Torture; that was important since the competence of the Special Rapporteur and of the Committee against Torture were not identical, even though they might overlap at times. He noted in that connection that the report did not give details of contacts between the Special Rapporteur and the Committee; he would like to have further information on their co-operation, which must be close.

49. The Special Rapporteur had transmitted allegations of torture to the Governments of 37 countries, 15 of which were members of the Asian Group. Only three States in that Group had ratified the Convention against Torture; it was therefore desirable that others should follow their example. In addition, one Latin American State which had ratified the Convention on 30 September 1988 had expressed reservations concerning articles 2 and 3, reservations which could prove contrary to the aim and very purposes of the Convention. If a close examination of the facts revealed that to be the case, Switzerland might express an objection to those reservations, as it had done the previous year in the case of another State which, through a reservation, intended to evade part of the financial responsibilities deriving from the Convention. Switzerland hoped that States parties would shoulder their financial responsibilities so that the Committee against Torture would be able to work effectively. It would also be desirable for more States to contribute, as Switzerland did, to the Voluntary Fund for Victims of Torture.

50. He drew attention to the draft optional protocol to the Convention against Torture, which had been submitted in 1980 by Costa Rica. That draft provided for a system of visits to be made by an independent international Committee at any time and to any place of detention. Switzerland was in favour of that draft but considered that the Commission was not yet in a position to discuss it during the current year, as provided for in Commission resolution 1986/56. The feasibility of the draft should be examined in the light of the recent entry into force of the European Convention on the Prevention of Torture, which provided for a similar visiting system. Switzerland would therefore co-sponsor a draft decision requesting the Commission to defer consideration of that question until its forty-seventh session.

51. Reverting to Mr. Kooijmans' report, he noted that the Special Rapporteur had not taken up a position on the validity of the allegations submitted to him. That objective attitude should encourage the Governments concerned to investigate cases brought to their attention, in particular by ordering the medical examination by qualified doctors of any person claiming to have been tortured, by initiating serious criminal or administrative investigations, and by informing the Special Rapporteur of their results. Unfortunately, of the 37 States concerned 16 had not yet replied, and of the 21 which had, several had quite simply denied the allegations outright and called them defamatory. However, States should recognize that such behaviour could only confirm the validity of the torture allegations in the minds of the many readers of the report.

52. As far as urgent action was concerned, the situation was even more negative since, of 22 States challenged, 18 had not replied; of the 23 States which had not replied in 1986 and 1987, only 4 had deigned to reply to the reminder sent in 1988. Even though the fact that Turkey, Peru and the Republic of Korea had received the Special Rapporteur was to be welcomed, he hoped that Governments would go further still by authorizing Mr. Kooijmans to conduct on-the-spot inquiries concerning specific cases of alleged torture.

53. Switzerland unreservedly supported the recommendations submitted by Mr. Kooijmans, particularly those concerning advisory services and technical assistance in the area of efforts to combat torture. There was an urgent need for the Centre for Human Rights to help the Governments concerned by means of

the four types of preventive programmes proposed by the Special Rapporteur, in particular programmes for the training of members of the civil and military police and prison staff.

54. Mr. LEE (Observer for the Republic of Korea), referring to the comments made about his country in the report by Mr. Kooijmans, Special Rapporteur on Questions relevant to Torture (E/CN.4/1989/15), noted with satisfaction that the report contained a factual account of each alleged case of torture. Some of these cases had been fully clarified thanks to the swift and sincere replies of the Korean Government, and the persons in question had been released as a result of the presidential amnesty granted on 21 December 1988.

55. The Special Rapporteur had visited the Republic of Korea at the invitation of the Government, and there he had been able to meet freely persons concerned with law enforcement and human rights. As the Rapporteur had emphasized, the Government of the Republic of Korea had given him its assurance that it would improve the human rights situation in the country. The report outlined positive changes which had already occurred and bore witness to the Government's commitment to the cause of human rights. The Korean Government firmly intended to become a party to the International Covenants on Human Rights and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It had already contributed to the Voluntary Fund for Victims of Torture.

56. He welcomed the co-operation which had been established between his Government and the Special Rapporteur, and expressed the hope that other Governments concerned would follow that example and also welcome the Special Rapporteur. The current international climate should encourage dialogue.

57. Mr. HARTLEY (World University Service) pointed out that his organization had national committees in more than 40 countries, many of which had been the scene of gross violations of human rights. The members of those committees were teachers and students who had studied the circumstances of repression, and who, in many cases, had been its victims.

58. As far as the question of enforced or involuntary disappearances was concerned, the World University Service fully supported the resolution approved by the General Assembly of the Organization of American States in October 1983, the decision to draft an inter-American convention concerning disappearances, and the proposal by the Latin American Federation of Associations of Relatives of Missing Detainees (FEDEFAM) to draft an international convention on the subject. It was not surprising that those initiatives should originate from Latin America, the region where disappearances were clearly the most frequent. Of the 40 countries whose situation was under scrutiny by the Working Group on Enforced or Involuntary Disappearances, 17 were in Latin America, and of 16,817 disappearances reported to the Group, 12,042 had occurred in Latin America. In 1988, 346 of the total of 393 disappearances reported had occurred in Latin America.

59. It was paradoxical that disappearances should continue to occur in countries which were now governed by civilian authorities and that they should have been most numerous, in 1988, in six such countries: Peru (170), Columbia (70), Guatemala (53), El Salvador (40), the Philippines (39) and Honduras (9). The reason seemed to be that in those countries national security issues were still in the hands of the military.

60. Aware of the fact that impunity was the cornerstone of the apparatus of terror, the World University Service had joined other NGOs in forming a coalition against impunity for violators of human rights; a written statement by that coalition would be circulated at the current session and would be the subject of a further oral statement by his organization.

61. While appreciating the various reports on torture and enforced or involuntary disappearances (E/CN.4/1989/15 and E/CN.4/1989/18 and Add.1), he deplored the number of cases under-reported. For example, the report on torture referred to eight cases in Guatemala in 1988, whereas newspaper reports from Guatemala mentioned hundreds. The report on enforced or involuntary disappearances referred to 53 cases in Guatemala in 1988, while the Inter-American Commission on Human Rights reported 690 in the first half of the year alone. President Cerezo himself, in an interview given to the Mexican newspaper El Excelsior, had given a figure of 1,706 disappeared persons for 1988. Those figures showed that the Commission should once again appoint a special representative to study the situation in Guatemala. The events of the past few days could only encourage it to take such a decision: the tortured bodies of two students had been found on 15 February and four other students who had recently disappeared had not been found.

62. Advisory services could be provided to non-governmental organizations dealing with human rights in countries under repression, so as to familiarize those organizations with United Nations procedures. The organizations would then be better able to report human rights violations, which would help give a more accurate impression of the situation. It was also desirable that the mandates of the Special Rapporteur on Questions Relevant to Torture and the Working Group on Enforced or Involuntary Disappearances should be extended so as to permit a more detailed, in-depth analysis of those problems.

63. In the case of Colombia, he noted that the conclusions and recommendations contained in the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1989/18/Add.1) confirmed the concern expressed by his organization at the forty-fourth session. According to reports from trade-union and human rights organizations, more than 340 people had disappeared and 4,700 others had been murdered in 1988. The victims had mostly been students and teachers, but also trade unionists and people from many other backgrounds. The Spanish news agency EFE had reported that during the month of January 1989 alone there had been 1,400 political murders in Colombia; many of those had been cases of people who had previously disappeared and whose corpses had showed clear signs of torture.

64. In its report, the Working Group indicated that the Colombian armed forces or security services were probably involved in the enforced or involuntary disappearances. It also emphasized the fact that the extent of the tortures and murders in the country constituted a systematic violation of the rights of Colombians. In addition, the juridical structure of the country did not protect human rights but, on the contrary, served as a legal basis for the actions of paramilitary groups and ensured their impunity: article 10 of Decree No. 3398 of 1965 and Decree No. 48 of 1968 constituted the juridical basis for hundreds of "self-defence groups" which were in reality paramilitary groups. The maintenance of the state of siege for 40 or so years contributed to that situation, as did the implementation of article 28 of the Constitution and Decree-Laws Nos. 180, 181 and 182, which imposed serious limitations on individual freedoms and on habeas corpus.

65. The Colombian Government had repeatedly appealed for the understanding of the international community, claiming that it was a victim of various types of violence. Such understanding would be more forthcoming if the Government itself made the necessary effort by abolishing, as recommended by the Working Group in its report, those laws which facilitated violations of human rights and allowed them to go unpunished. The Colombian people undoubtedly deserved the support of the international community. His organization therefore requested the Working Group on Enforced or Involuntary Disappearances to continue to monitor the situation in Colombia and to produce a new report for the next session of the Commission.

66. Mrs. ROHRER SOTOMAYOR (World Movement of Mothers) said that even though the world was ill-informed about the situation in some countries, it was nevertheless known that in others there had recently been hundreds of cases of torture. In that way the World Movement of Mothers had learned of violations of human rights in Bulgaria. In certain East European countries, respect for human rights had appreciably increased. However, that was unfortunately not the case in Cuba, a member of the Commission, whose Government had remained in power for 30 years through means such as physical and mental torture and humiliation. In November 1988, she had visited Cuba with other women of various nationalities in order to see at first hand the actual situation in that country. Although they had possessed entry visas, they had been maltreated and then expelled. One of the party, Mrs. Loyola de Palacio, was a member of the European Parliament and a senator in Spain. Men who had accompanied the delegation had been treated in a disgraceful manner.

67. Torture, which was forbidden under article 5 of the Universal Declaration on Human Rights, was also forbidden under article 58 of the Cuban Constitution dated 24 February 1976, which read: "No violence or pressure of any kind shall be exerted against persons with the aim of forcing them to testify. Any statement obtained in violation of the above provision shall be null and void and those responsible for the violation shall be liable to the penalties provided for by law". However, the Cuban Government could not deny the ill-treatment which had been inflicted most particularly on Odalys Toledo Valladares, who had been sentenced to 14 years' imprisonment, Eneida R. Perez, who had been ill-treated along with her son, and Josefa Rodriguez Godefroy, who had been imprisoned for three days in a cold room only to find on release that her children had been entrusted to the Commission for the Defence of the Revolution in her area. The murders of Norma Diaz in 1983 and Sylvia Montiel in 1984 should also be mentioned.

68. In addition, the psychological torture caused by the enforced separation of families could not be passed over in silence. She cited among many others, the cases of Marcia Perez Garcia, Teresa Prieto Madruca and Lourdes Matos Gomez. More recently, the visit of members of the Commission on Human Rights had sparked off a series of reprisals against women, including Rita Fleitas, who had lost her job, Aida Valdes Santana and Mercedes Paz. Virginia Martinez, who had placed her house at the disposal of the persons writing the final report of the visiting mission, had subsequently been forbidden to leave Cuba, even though she had been in possession of the relevant documents.

69. Despite the fact that certain changes had now aroused hope in Paraguay and Chile, the situation in Cuba remained serious. The Commission must therefore keep the international community informed. There were also numerous cases of separated families and political detainees in Nicaragua, which the President of the World Movement of Mothers had visited in 1988 and where she had observed the despair of Nicaraguan mothers. It was to be hoped that the improvement promised by President Ortega would become reality.

The meeting rose at 12.55 p.m.