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COMMISSION ON HUMAN RIGHTS

Forty-fifth session

SUMMARY RECORD OF THE 30th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 20 February 1989, at 3 p.m.

Chairman: Mr. HELLER (Mexico)

later: Mr. BOSSUYT (Belgium)

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The meeting was called to order at 3.15 p.m.

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 (chapter I, section B, decision 2); E/CN.4/1989/15, 16, 17, 18 and Add.1, 19, 50, 58 and 63; E/CN.4/1989/NGO/3, 12, 30, 38, 40, 49 and 52; 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)

1. Mrs. FAUCHERE (World Confederation of Labour), referring to the detention of international civil servants and their families, emphasized that the category in question embraced all such employees, regardless of nationality, grade, status or type of recruitment.

2. At the forty-third session of the General Assembly, the Secretary-General had pointed out that the situation had deteriorated since 1987, there being at least 168 further cases of arrest, detention or kidnapping in 16 different countries. In almost all cases, proper procedures had not been followed and the right to legal representation had been denied. Those described as "detained" had been imprisoned without any form of trial, in some cases for over five years. Conditions in some countries were deplorable and serious health problems had arisen. The Secretary-General was not permitted to arrange medical care for those concerned, and some had even died in detention. Her organization condemned all the Governments concerned for flagrant violations of the rights defined in the International Bill of Human Rights.

3. Cases of kidnapping and hostage-taking were more difficult to deal with because they involved groups, rather than States. The organizations concerned should use all the means available to them to obtain the release of their staff members, following the example of the United Nations Relief and Works Agency (UNRWA), which had acted successfully on behalf of two of its staff members in southern Lebanon. Furthermore, States which had links with neither kidnappers nor kidnapped might be formally instructed to act on behalf of the United Nations to that end, and States could exert considerable pressure if they acted collectively.

4. Her organization called for the immediate release of all those detained. Failing that, the Secretary-General should request the suspension of operations in the country concerned, in accordance with the decision of the Administrative Committee on Co-ordination (E/CN.4/1989/19, para. 40).

5. Given that the Charter of the United Nations provided for the independence of international civil servants, recognizing implicitly the right to be protected by the Organization from all political pressure or threats on the part of Governments, the Secretary-General and heads of specialized agencies were entitled to know the grounds for arrests and to check their validity.

6. Furthermore, resistance to pressure had, in some cases, resulted in the non-renewal of staff members' contracts. In other cases, staff members on home leave or otherwise visiting their country of origin had been compelled by their Governments to remain there and had thus been deprived of their freedom of movement. Such interference by a Government in the contractual arrangement between employer and employee was unacceptable. It prevented the employee from fulfilling the terms of his contract and from honouring his commitment to the principle of independence of the international civil service.

7. In most cases, the Secretary-General eventually received a letter of resignation, but such letters were invalid, having been written under duress. Her organization strongly rejected that practice and called upon the United Nations to continue to regard the persons in question as staff members until it had been able to ascertain that the resignation was a voluntary one. Furthermore, it should suspend recruitment of staff from countries whose Governments did not respect the contracts of employment.

8. She welcomed the decision of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to commission a study of the violations in question and of their implications with regard to the operation of United Nations bodies.

9. Mr. ALVARADO (World Student Christian Federation) said that, since the general amnesty had been proclaimed in El Salvador, the civilian population, especially trade unionists, had been suffering increasing repression. Threats, physical brutality and torture were commonly used, sometimes resulting in death. The death squads, linked with senior military officials and the security bodies, inflicted both psychological and physical torture before killing their victims and mutilating their bodies. Forty disappearances had been reported in 1988.

10. The brutal beating and murder by the security forces of a Swiss visitor to El Salvador and of two Salvadorians, had been characterized by the European Parliament in 1988 as an escalation of State terrorism in that country. The Government itself had been at pains to cover up that murder, claiming even that the person in question had died in combat. In view of the deteriorating human-rights situation there, his organization hoped that the Government would permit the Working Group on Enforced or Involuntary Disappearances to visit El Salvador.

11. The civilian population of Guatemala was defenceless in the face of terrorism practised by death squads, the army and the other security forces. Students, trade unionists and others were under constant threat, and claims that an individual had belonged to the guerrilla movement were likely to be made in order to justify disappearances, kidnapping or extra-judicial executions. Human-rights organizations were dubbed "destabilizers of democracy" and linked with the revolutionary movement.

12. There had been an increase in the number of paramilitary groups, which threatened the opponents of the Government and were responsible for kidnappings, torture and murders. For example, Eleodoro Ordon Camey had been detained and threatened by members of a civil defence patrol and later kidnapped by armed men in civilian clothing. His body had been found a week later showing signs of torture and gunshot wounds. National and international human-rights organizations had demonstrated the direct link between such groups and the army.

13. People were being forced to join civil defence patrols in violation of a range of human rights and fundamental freedoms. Members of one such patrol had been persuaded by the army to threaten to kill a priest, Fr. Ventura Lux Herrera, who had been accused of belonging to the guerrilla movement because he had said mass for persons who had disappeared.
14. The Government had ratified a number of international human-rights instruments, but those served merely as a front. The Guatemalans were without legal or physical protection. In 1988, alone 1,706 people had disappeared.
15. It was a matter of the greatest concern that all the agents of repression acted with impunity. In one case, a police chief, Oscar Díaz Urquizú, known to be a friend of the President of the Republic, had been released on bail after the judge originally trying his case had been kidnapped, and his companion tortured and murdered.
16. His organization called upon the Government of Guatemala to implement the international instruments it had signed and ratified, dismantle the whole apparatus of repression, guarantee the safety of its people and punish those responsible for human-rights violations before and during the period of civilian government. It also requested the Commission to appoint a special rapporteur to examine the human-rights situation in Guatemala.
17. Mrs. SIMONOTTI (International Association against Torture) said that the Special Rapporteur on questions relevant to torture had shown in his report (E/CN.4/1989/15) that, in spite of general condemnation, torture continued to be used in many societies. Her organization had recently investigated the situation in El Salvador in that regard, being well aware that similar situations existed in other areas where there was an armed conflict. The very poor peasant population was affected by the continual military operations, which not only caused material damage, but provoked a range of psychosomatic symptoms, such as trembling, diarrhoea and insomnia. Furthermore, members of the armed forces systematically abused young women sexually. Those who wished to avoid multiple rape had to prostitute themselves with one soldier or official in exchange for "protection".
18. Civil war produced a devastated and impoverished society, whose human rights were denied systematically. The process of dehumanization that that situation entailed weakened a number of important faculties, such as the ability to hope, and the capacity to respond to the suffering of others. It resulted for example, in hatred, the desire for revenge and paranoid defensiveness. It also produced insecurity and loss of motivation and direction.
19. Characterized by social polarization, institutionalized lying and the militarization of social existence, the war produced a state of disorientation which could extend to complex forms of alienation in young people in the affected areas. Furthermore, the atmosphere of lies fundamentally affected the sense of identity and the militarization of life could lead to progressively militaristic attitudes. Enforced or involuntary disappearances involved the torture not only of the victims, but also of their relatives, who suffered through being helpless to do anything about it.
20. Torturers could use methods which left no physical signs. A person might, for example, be left alone in a room fully aware that there was no

question of self-defence or assistance after threats had been made to harm his family or his friends. Sometimes a prisoner was forced to listen to or watch a member of his family, even one of his or her small children or an elderly parent being tortured. Anyone who had had such an experience became seriously disturbed.

21. Another method involved continuous interrogation over a period of 8 to 10 days. The prisoner had to remain seated without food, water or sleep. The aim was to force him or her to sign a confession, which would then be used as proof of guilt in a trial. Failure to yield meant that the treatment would be repeated, resulting eventually in total dehumanization.

22. Her organization expressed grave concern at the offences committed by governmental and non-governmental forces. All parties to a conflict must respect human rights, above all those of the civilian population, in accordance with the four 1949 Geneva Conventions and their Additional Protocols.

23. Ms. GUZMAN (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that, while the activities of the Working Group on Enforced or Involuntary Disappearances over the past year had undoubtedly contributed to the prevention of such disappearances, the restoration of democracy in many Latin American countries that had previously been subject to military dictatorships had given the false impression that enforced disappearances were no longer a problem there. As the report of the Working Group indicated, however, the practice had increased in some countries and the overall number of individual cases had doubled. Given that many disappearances occurred in remote areas and that fear might prevent them from being reported, the real figure was undoubtedly even higher. Moreover, a new form of enforced disappearance had emerged in Nicaragua, where the contra forces carried out kidnappings in the border regions. Eight thousand people were reported to have disappeared in that way.

24. Disappearances were not restricted to the Latin American countries, however, and Sahrawis, Kurds, Palestinians and Filipinos were also reported to have disappeared.

25. Her organization stressed that causing an enforced disappearance was a crime against humanity. Cases should not be closed simply because a certain period of time had elapsed. For instance, the names of all those who had disappeared in Argentina between 1976 and 1983, including citizens of many other nationalities, were still listed, despite the fact that their cases were unresolved. In addition, her organization did not agree with the Working Group that cases could be considered resolved simply because the bodies of the victims had been found. It was essential to ascertain what had happened prior to death, and to discover and punish whoever was responsible, in accordance with the laws in force.

26. Because offences associated with enforced disappearances were not legally defined in any of the countries concerned, and because the impunity of those responsible was actually enshrined in specific laws in some countries, the fate of thousands who had disappeared was still unknown, and the culprits allowed to go free, being employed in most cases by State security forces. It was disturbing, in that connection, that the power of the armed forces was growing. In some cases they were already more powerful than the democratically elected Governments.

27. She drew attention in that regard to the agreements concluded in 1987 by the Latin American armies (with the conspicuous exception of the Mexican army), which provided for joint action above and beyond the duties they were assigned in their own countries. In view of that undermining of democracy, the international community must support the countries concerned and adopt the draft declaration on the protection of all persons from enforced or involuntary disappearances, further reinforced by the adoption of a convention against enforced disappearance as a crime against humanity.

28. The condemnation of the State of Honduras by the Inter-American Court of Human Rights in connection with the disappearance of Manfredo Velásquez and Saúl Godínez demonstrated that international laws could be effective, given the will to apply them. Furthermore, it confirmed that there should be specific laws against the causing of enforced or involuntary disappearances. The Commission should thus consider drafting a convention, similar to that being prepared by the Inter-American Commission on Human Rights, against enforced disappearances.

29. People in many countries continued to suffer from repression and intimidation. In Honduras, persons connected with bodies such as the Human Rights Committee were facing growing aggressive pressure, including death threats; in Colombia, people faced danger from so-called death squads. Human-rights lawyers had been threatened, and even killed, in Colombia, Peru, Guatemala, El Salvador and Bolivia; the world community should call upon States to give the utmost possible protection to those carrying out legitimate humanitarian tasks.

30. It was essential for all States to adhere to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; no effort should be spared to ensure respect for its provisions in every day practice. The relatives of disappeared persons in Argentina had expressed their concern at the establishment of the National Security Council following the so-called La Tablada incident, since the armed forces, which had committed serious human-rights violations in the recent past, might do so again.

31. The Working Group on Enforced or Involuntary Disappearances should be given all possible support and enabled to receive and deal with allegations and amass information about the security forces and/or paramilitary groups involved. Means of enforcement should be available that could be applied against countries unwilling to receive visits by the Working Group; some Latin American Government should offer to act as host for that Group's next meeting. The World Campaign for Human Rights should lay special emphasis on raising awareness about enforced disappearances and the means of preventing and reporting them. There should also be special provision, under United Nations funds, to assist victims of repression as well as for technical assistance relating to human rights, to help organizations of victims' relatives and human-rights organizations in general.

32. Mr. BARLETTA (International Centre of Sociological, Penal and Penitentiary Research and Studies) said that his organization sought to promote international human-rights standards in the practice of penal law and criminal procedure and in criminological and sociological research; to that end, it had developed and organized international courses and seminars aimed at the judiciary, lawyers, the medical profession, police and prison staff.

33. The Centre for Human Rights had recognized the value of its courses, having awarded a number of fellowships to police officers to attend them. It was noteworthy that the Commission, in its resolution 1988/33, had expressed its appreciation that a focal point had been created within the Centre for Human Rights relating to co-ordination among organizations and with NGOs in the field of human rights in the administration of justice. His organization noted with satisfaction the co-ordination achieved in programmes carried out at Geneva and Vienna as well as with ILO, the Council of Europe, OAS and other competent bodies; and it was ready to offer its competence and experience for any such co-ordination efforts, particularly with inter-agency working groups.

34. With regard to standard-setting, it welcomed the success of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; it was following with interest the preparation of a draft declaration on the protection of all persons from enforced or involuntary disappearances; and it attached the greatest importance to the draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, based on Sub-Commission document E/CN.4/Sub.2/1985/20/Add.1.

35. With regard to monitoring and assistance procedures, his organization greatly valued the annual report presented by the Special Rapporteur on states of emergency (E/CN.4/Sub.2/1988/18 and Add.1), and wholeheartedly supported the development of the United Nations Voluntary Fund for Victims of Torture. It was also seriously concerned at the detention of international civil servants and experts in various parts of the world, and supported the action taken by the Secretary-General and the competent bodies to obtain their freedom and respect for their fundamental rights.

36. Mr. AHLUWALIA (India) said that his delegation attached great importance to the current agenda item and shared the concern expressed by several others that, despite international standards and national laws, instances of torture and disappearances still occurred in various parts of the world. It agreed with the Special Rapporteur on questions relevant to torture that the need to take effective preventive measures was relevant for all countries (E/CN.4/1989/15, para. 8). The worst types of torture were practised in prisons and detention centres; another manifestation, perhaps harder to detect, was denial of respect for the individual personality - as in South Africa, where the majority was denied equal rights and the political system was built on racist contempt. Apartheid's very existence fostered institutional injustice and physical torture as natural extensions of State policy.

37. Effective measures against torture and enforced or involuntary disappearances, or any other form of human-rights violations, had the same starting point as the rule of law in general. His country's Constitution conferred a fundamental right to life and personal liberty on all citizens; article 21 prescribed that no person should be deprived of his life or personal liberty except according to the procedure established by law.

38. The law forbade a police officer to use more than the minimum force required or to cause the death of any person, even one resisting or evading arrest; any infringement reported led to an immediate inquiry, and any official found culpable was liable to severe punishment. Any death in police

custody was subject to an independent inquiry by a magistrate - an important statutory protection, since the executive and the judiciary were completely separate.

39. The Government issued directives from time to time on police conduct during investigations, and police personnel found guilty of using third degree methods were liable to exemplary punishment; a High Court in one Indian state had recently awarded large damages against the government of that state because of a death in police custody. The constitutional, judicial and legal safeguards were backed by others such as an unfettered press, public media and healthy political institutions.

40. His Government had co-operated fully with the Special Rapporteur on questions relevant to torture and with the Working Group on Enforced or Involuntary Disappearances. It would be sending a comprehensive reply with regard to some cases of alleged torture that had been referred to it. However, some of those cases had come to its attention prior to the notification by the Special Rapporteur and, in cases where the allegations had been upheld, the victims had been compensated and action against the guilty officials was being taken. Some of the allegations had proved false, however, and one had seemingly been made only for the purpose of defaming the police. The details in the Special Rapporteur's report (E/CN.4/1989/15, paras. 53 and 54) were somewhat at variance with the cases as they were referred to his authorities; the latter, however, would be replying to the Special Rapporteur on all specific matters.

41. His Government had also extended full co-operation to the Working Group on Enforced or Involuntary Disappearances, although it found some of the latter's procedures disquieting. For example, that part of its report relating to India (E/CN.4/1989/18, paras. 149-161) incorporated certain allegations by the Chairman of the self-styled Sikh Human Rights Group, asserting inter alia that, in India, two years must elapse before a writ of habeas corpus could be filed. That and the other allegations were utterly baseless, and it was unfortunate that the Working Group had not referred them to his Government for its comments before including them in its report.

42. While it was true that an appeal under the Anti-Terrorist Act could be made only to the Supreme Court, the inherent jurisdiction of the High Courts under articles 226 and 227 was intact; the Supreme Court was the highest court in the land, and judicial review was therefore maintained. Nor was an appeal to the Supreme Court as difficult as had been implied; the latter had treated even a postcard as a writ petitioning for the protection of fundamental rights.

43. A procedure which implied giving credence to unsubstantiated allegations against Governments without the latter having an opportunity to respond must be reviewed immediately; the Working Group's discharge of its sensitive humanitarian mandate would be compromised if it was interpreted as being one of publicizing unsubstantiated and even false allegations or of embarrassing Governments rather than co-operating with them.

44. His delegation was pleased to note in that regard that the Chairman of the Working Group on Enforced or Involuntary Disappearances had indicated, in his introductory statement, that the Working Group would consider improving its reporting on allegations and proposals of a general nature received from

non-governmental organizations; and it strongly supported the suggestion that the Working Group should revise its own procedures with a view to responding more effectively to the different situations it faced.

45. Mr. STEEL (United Kingdom) said that his Government regarded all the human rights guaranteed by the International Covenants on Human Rights as interrelated and of great importance, but attached special importance to those covered by agenda item 10, since they concerned the right of every individual to full respect for the integrity of the person and to a society ruled by law and justice; if those rights were denied, no others could mean very much or could last very long.

46. Everyone agreed that torture was a loathsome practice. As the Soviet representative had said, it degraded and corroded those who inflicted, defended or merely condoned it. The Commission had a duty to stamp it out and prevent its recurrence; to that end, it should give every support to the Special Rapporteur on questions relevant to torture and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

47. The United Kingdom had ratified that instrument on 8 December 1988, the day on which the General Assembly had celebrated the fortieth anniversary of the Universal Declaration on Human Rights; it had been active in preparing the Convention and hoped that States which had not yet become parties to it would do so as soon as possible. States parties' obligations under that instrument included the financing of the Committee against Torture; his Government rejected the assertion by any State that it was entitled to impose its own limits in that regard.

48. Enforced or involuntary disappearances involved an obnoxious abuse of human rights, whether perpetrated by Governments, semi-official or unofficial groups supporting them, or bodies opposed to them. His delegation was grateful to the Working Group for its report (E/CN.4/1989/18) and commended those Governments that had co-operated with it. There were, unfortunately, many Governments that had not responded adequately, or at all, to the Group's communications or to those of the Special Rapporteur and of other relevant Commission mechanisms; his delegation wondered whether Governments which behaved in that fashion realized how strongly they thereby accused themselves of the practices whose investigation they sought to evade.

49. With regard to the report (E/CN.4/1989/18/Add.1) on the visit to Colombia by two members of the Working Group, his delegation congratulated the latter and the Government of Colombia, which had facilitated the visit, thus showing how Governments should behave towards the Commission's bodies and representatives. On that subject, his delegation welcomed the statement, by the Observer for Nicaragua, that its Government intended to invite the Working Group to visit the country. It also congratulated the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and, above all, the Government of Honduras on the encouraging development reflected in the judgement recorded in the Working Group's report (E/CN.4/1989/18, chapter I, section F).

50. He noted with interest the Sub-Commission's work on the question of the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers. Since the Commission had completed its task on the subject, it should be referred to the Committee on Crime Prevention and

Control. His delegation looked forward to a report by the Sub-Commission's Rapporteur on the question of administrative detention without charge or trial, as well as to the paper, being examined by the Sub-Commission, on the right to freedom of expression and opinion. It also welcomed the General Assembly's adoption, by resolution 43/173, of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

51. With regard to the Secretary-General's updated report (E/CN.4/1989/19) on the detention of international civil servants and their families; it was shocking - to say the least - that over 50 United Nations staff members were still detained, imprisoned or reported missing. The case of Mr. Dumitru Mazilu, already mentioned in the discussion of agenda item 19, was relevant in that context, because the Romanian Government's action was flouting the Commission, in respect of the functioning of the Sub-Commission, and also represented a flagrant violation of the right, guaranteed by article 12 of the International Covenant on Civil and Political Rights, of every person to leave his own country and to return there. His Government, which felt strongly about such a violation, would continue to raise the matter at every possible opportunity and in every relevant context until the abuse was remedied. More generally, it called on all Governments to co-operate fully with the Secretary-General in his attempts to ensure the exercise of human rights and fundamental freedoms by all international civil servants and their families, without exception.

52. At its previous session, the Commission had adopted by consensus resolution 1988/39, introduced by his delegation, on political prisoners, a subject on which his delegation and others had expressed concern in the Commission as well as in the Economic and Social Council and the General Assembly; it was difficult to imagine that any delegation would wish to dissociate itself from supporting the initiative taken. The United Nations should address the problem; it had an important role to play in protecting the human rights of those concerned. His delegation was drafting a resolution accordingly and hoped that, as at the previous session, it could be adopted by consensus.

53. Mr. HOLMES (Canada) said that the Special Rapporteur on questions relevant to torture had concluded that torture was still rampant in various parts of the world. The statistics provided by the Working Group on Enforced or Involuntary Disappearances revealed that unchecked governmental authority and unrestrained competition for political power constituted no less of a threat to the individual human being than when the concept of human rights was first advanced. There was thus a need, firstly, to sustain and reinforce the Commission's monitoring mechanisms with regard to detention, and, secondly, to build on the recommendations for domestic and international reform.

54. His delegation wished to focus attention on two particular themes in considering the relevant reports and issues before the Commission. The first concerned the obligation of all Governments to co-operate with the representatives of the Commission. The reports of both the Special Rapporteur (E/CN.4/1989/15) and the Working Group (E/CN.4/1989/18) were replete with indications of failures by Governments to respond to inquiries based on substantive allegations of human-rights violations. The failure to respond in timely fashion could not but heighten concerns about the factual underpinnings of the allegations. It was noteworthy, in that connection, that inadequate co-operation was evident in the cases of at least 10 countries subject to

special proceedings under other items of the Commission's agenda. It was also most disturbing that some half dozen States that were members of the Commission had not seen fit to co-operate fully in clarifying all the cases brought to their attention.

55. His delegation welcomed the candour of the Working Group on Disappearances in expressly identifying several Governments that presented chronic problems of non-co-operation and hoped that the Special Rapporteur on questions relevant to torture would do likewise in his next report. Consideration should also be given to mentioning in the Commission's resolutions specific countries that had chronically failed to co-operate with the Special Rapporteur and the Working Group.

56. A second common thread was the emphasis placed in both reports on the need for all countries to develop certain basic legal procedures to protect their citizens against excesses of governmental authority. He hoped that the specific suggestions made would be reflected in the relevant resolutions and in projects developed under advisory services programme.

57. Concerned Governments would do well to take the recently adopted Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment as a possible guide to appropriate domestic regulations, particularly the principles outlining safeguards concerning incommunicado detention and habeas corpus. The binding obligations of the Convention against Torture constituted another important international source of protection for persons subjected to detention. He regretted to note, however, the questionable reservations of one new State party to the provisions contained in articles 2 and 3 of the Convention, reservations that would undoubtedly require careful study by all the States parties with a view to assessing their consistency with the objects and purposes of the Convention.

58. Although his Government had been most impressed by the work of the Committee against Torture, the established financial arrangements whereby the States parties had themselves to cover the costs of monitoring was a serious disincentive to all but the wealthiest of countries to assume the obligations entailed thereby. His own and other delegations had thus advanced a number of ideas for coming to grips with the crisis affecting the system of human-rights treaty monitoring and would be pursuing that initiative later in the session.

59. As important as the question of the treatment of detainees was the problem of the continued detention of international civil servants and members of their families. His delegation noted with concern the report of the Secretary-General, which described the significant increase in the detention of international civil servants, contrary to international law.

60. The fact that human-rights violations were often the result of unrestricted political competition within States was most apparent in the case of political prisoners and the Commission should take appropriate action to address the problem. In conclusion, his delegation hoped that the World Campaign for Human Rights would encourage universal adherence to the basic principles which all Member States had pledged themselves to uphold.

61. Mr. RIVAS POSADA (Colombia) said that he was pleased to note the interest shown by the international community, by governments and by non-governmental organizations alike, in the human-rights situation in his country. He was

also pleased at the way in which his authorities' open policy had worked with a view to increasing knowledge of the factual situation in his country.

62. Various observer missions had visited the country in recent years, some of which had produced positive results while others had resulted in confused and partial information that did not always facilitate a proper understanding of the complex human-rights situation there. However, the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1989/18/Add.1) constituted a model through the balanced and objective way in which it dealt with the facts it had obtained and the responsible way in which it had assessed that information. The report brought out clearly the situation with regard to missing persons and presented an accurate résumé of the many factors affecting the country as well as a description of Colombia's institutional structure, with its limitations and its achievements with regard to guaranteeing the rights of citizens and fundamental freedoms.

63. The climate of violence described in the report not only affected the life and security of individual Colombians but also weakened the State's vital institutions. Judges and police officers constantly fell victim to forces acting outside the law, as did innocent citizens who found themselves in the midst of a struggle they did not well understand. The large number of persons involved in the violence complicated the task of the State and its efforts to restore and protect human rights.

64. Nevertheless, his Government continued to combat the multiple challenge represented by the subversion of its institutions, drug trafficking and outbreaks of violence. That multiplicity of negative factors explained the maintenance of the exceptional measures authorized by the National Constitution and approved by the Supreme Court of Justice. Those measures of exception in no way restricted freedom of expression, association or political participation. The democratic process continued in Colombia and, far from being weakened or diminished, was growing and expanding, given the Government's commitment to pursue reformist policy that would help to consolidate the country's representative institutions.

65. Despite the fact that it had not been easy to organize the services necessary to provide a broad and appropriate response to the concerns of the world community, major steps had been taken to that end, ranging from the establishment of the Presidential Advisory Council for Human Rights - responsible for promoting human rights and co-ordinating efforts to defend and protect those rights - to measures taken to improve investigatory and judicial action. The fundamental purpose of those reforms was to ensure inquiries into events that might constitute violations of human rights as well as appropriate and impartial punishment for such violations.

66. In view of the importance of informing competent international bodies about reports submitted to them on specific cases, his Government had established an Inter-Agency Working Group to collect up the existing information and provide a stimulus for investigations to be carried out by specialized bodies. The Working Group, which had been established in August 1988, was responsible for looking into the complaints submitted by the International Labour Organisation and the Working Group on Enforced or Involuntary Disappearances. The latter had been presented with a detailed report during its visit to Colombia and was currently following up outstanding cases. The Inter-Agency Working Group also dealt with reports submitted to

the Sub-Commission on Prevention of Discrimination and Protection of Minorities, with a view to ensuring their prompt clarification.

67. The composition of the Inter-Agency Working Group which represented various bodies concerned with the protection of human rights, had made it possible to study the entire phenomenon of involuntary disappearances within the context of the Colombian social situation and to recommend to the Executive and to Congress measures designed to resolve the problem. One such recommendation was that causing the enforced or involuntary disappearance of persons should be made a crime under the law. That was the subject of a bill which the Minister of Justice had submitted to the Legislature. In addition, a decision by the Office of the Attorney-General of the nation had removed any temporal limitations on administrative action in respect of disappearances, and various provisions were under study to guarantee assistance for the families of missing persons.

68. The actions undertaken constituted tangible proof of his Government's firm intention to deal with the many factors of social and political destabilization. They were also a demonstration of its desire to co-operate with the international bodies whose mission was the promotion and restoration of full respect for human rights.

69. His Government sincerely believed that the action of the international community, whether by Governments or by non-governmental organizations, could not be limited to sundry complaints which did not help to improve difficult situations. Those sincerely interested in a world in which the fundamental rights of the human person would be fully respected had a duty to help to ensure the full enjoyment of those rights, wherever they were threatened. That duty was particularly clear in the case of States determined to co-operate with the various bodies of the United Nations system and to receive from them the necessary assistance that would enable them to overcome any obstacles they encountered on their path to development and social peace.

70. In tackling its difficult responsibilities, the Commission had finally succeeded in ceasing to concentrate unfairly on certain regions or countries. Another equally important achievement was the growing importance of the advisory services of the Centre for Human Rights, which would help to ensure that unacceptable situations were corrected and that the advances made by countries with regard to respect for human rights were consolidated.

71. Mr. ZODIATES (Cyprus) said that, while torture was a phenomenon as old as mankind itself, the proportions which that heinous practice had taken on during the second half of the twentieth century were alarming, as was the use of modern scientific advances to destroy the individual's personality. The report of the Special Rapporteur on questions relevant to torture (E/CN.4/1989/15) made it clear that torture and other cruel, inhuman or degrading treatment or punishment continued to be applied in practice in a methodical manner in a large number of countries.

72. Torture, which essentially amounted to the total denial of the most basic and fundamental human rights, was generally and unequivocally condemned and absolutely prohibited under contemporary international law. The prohibition of torture should thus be regarded as belonging to the rule of jus cogens, as an international obligation of States erga omnes, a rule from which no derogation could be accepted.

73. In a number of States, torture had become an everyday occurrence which tended to take on a consistent and systematic pattern inspired or condoned by Government officials. It was of paramount importance, therefore, that the rules of contemporary international law and of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment be implemented. Assurances that a country adhered to the Convention were not enough when reports led to the unavoidable conclusion that torture was a practice applied in that country. The recommendations put forward by the Special Rapporteur merited serious consideration by all countries in an effort to put an end to that inhuman practice.

74. With regard to the phenomenon of enforced or involuntary disappearances, one of the basic conclusions to be drawn from the report of the Working Group (E/CN.4/1989/18) was that the practice had yet to be eliminated. His delegation underlined once again the absolute need for the international community in general and the Commission in particular to continue lending their full and undivided support to the Working Group. It expressed appreciation for the attitude of those countries which had chosen to co-operate with the Working Group and hoped that their example would soon be followed by the others.

75. The most tragic aspect of the problem in his own country concerned missing persons. Since the 1974 invasion, 1,619 persons, including 11 women and 26 children had been missing. In 1981, an internationally sponsored investigatory Committee on Missing Persons had been established to look into that tragic matter and to ascertain the exact fate of those unfortunate persons, but it had achieved no real progress so far owing to a persistent refusal to provide convincing information about the fate of the missing persons. However, his Government would continue to co-operate with the Committee with the sole aim of solving that purely humanitarian problem through a thorough investigation.

76. The brief reference in the Working Group's report to the situation of missing persons in his country was objective and reflected the readiness of its authors to assist the Committee on Missing Persons if need be. His delegation, which found that willingness both encouraging and promising, thanked the members of the Working Group therefor.

77. Mr. Bossuyt (Belgium) took the Chair.

78. Mrs. dos SANTOS PAIS (Portugal) said that the principle of the inviolability of moral and physical integrity was a fundamental right which was guaranteed under the Portuguese Constitution and Criminal Code. On 9 February 1989, Portugal had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and had recognized the competence of the Committee against Torture to receive and examine communications from another State party or individual regarding the violation of one of the provisions of the Convention. Her delegation was prepared to step up its efforts to combat torture at the international level, and believed that solidarity among States was a decisive factor.

79. It was in that spirit that her delegation had lodged an objection to the statement made by the representative of the German Democratic Republic concerning the financing of the Committee. Her Government was currently studying Chile's reservations which also seemed to be contrary to the purpose of the Convention.

80. Her delegation noted with concern that a number of States had failed to comply with the requests for information of the Special Rapporteur on questions relevant to torture and had sometimes even questioned the legitimacy of the action taken by the Special Rapporteur in terms of State sovereignty. The Special Rapporteur played an important role in providing effective and rapid support to victims - or potential victims - of torture; he assisted States which were eager to implement effective measures to prevent and eliminate recourse to torture; and he helped keep the international community informed about the practice of torture throughout the world.

81. Civil wars and domestic conflicts often involved recourse to torture. Her Government therefore attached particular importance to international or national standards which guaranteed the legality of states of emergency, since the declaration of a state of emergency could help protect the rights of citizens, in particular by ensuring that they had access to the courts. Portugal had adopted its own law on the subject and it welcomed the decision of the Sub-Commission to encourage the drafting of model provisions on states of emergency.

82. The greatest priority with regard to the prevention of torture should be given to information and training. A growing number of international instruments had been disseminated in the Portuguese language and the distribution of such texts was very often accompanied by meetings to explain their content. Training courses for security personnel, law enforcement officials and magistrates included a chapter on human rights, in which considerable attention was devoted to achievements in the field of international law. Her delegation supported the Special Rapporteur's proposal to associate the programme of advisory services with the training activities to be undertaken in that field. International organizations could also make important contributions.

83. On 1 February 1989, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which Portugal had signed, had entered into force. Before the Convention's entry into force, the Council of Europe had conducted an important seminar at Strasbourg, with broad participation of representatives of government sectors and non-governmental organizations concerned with the future application of the Convention. The conclusions of the seminar reaffirmed the preventive - not judiciary - nature of the actions to be taken and emphasized the importance of co-operation between the Committee established under the convention and the States parties. It might be useful to hold other regional meetings for the purpose of studying and exchanging experience regarding the practice of torture. Such meetings could perhaps make use of the advisory services, and their conclusions could be reflected in information submitted by the Special Rapporteur.

84. Her delegation thanked the Special Rapporteur of the Sub-Commission for his excellent report on the draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1988/20 and Corr.1). In that regard, the implementation of a system which would guarantee adequate legal protection to all, even to those lacking financial means, was a guarantee of respect for the fundamental rights of each individual and served as a check on the abuse of power.

85. At the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, her delegation had supported the adoption of the Basic Principles on the Independence of the Judiciary. It was also very interested in the preparations being made at Vienna for the Eighth Congress. It was important that the documents prepared at Vienna and the draft Declaration submitted by the Special Rapporteur should be considered together in order to take account of the different perspectives, to ensure their harmonization and to stress the fundamental role of the application of those principles and their importance for the promotion and protection of human rights.

86. Mr. RIETJENS (Belgium) said that any allegation of torture which was brought to the attention of a Government by the Special Rapporteur should lead to an appropriate inquiry by the competent authorities, which should inform the Special Rapporteur of the results. It was disconcerting therefore that, of the 38 countries to which the Special Rapporteur had sent allegations, approximately half had not responded. His delegation, which hoped that that silence did not necessarily imply a refusal to co-operate, urged all Governments to reply to the Special Rapporteur's requests for information, especially when they dated from earlier years, and to co-operate with the Commission. Replies should be substantive and should provide information on measures which had been taken to investigate, or at least to try and investigate, the allegations that had been made.

87. His delegation welcomed the fact that the Governments of Peru, the Republic of Korea and Turkey had invited the Special Rapporteur to visit their countries in order to carry out an exchange of views with the local authorities regarding measures which had been taken or were to be taken to eliminate and prevent torture. It was heartening that such an interesting and welcome development, begun in 1987 by the Governments of Argentina, Colombia and Uruguay, was continuing.

88. If the international community truly wished to respect the dignity and physical and moral integrity of the human person, it must concentrate on more adequate means to prevent torture. In that regard, his delegation endorsed the recommendations of the Special Rapporteur contained in paragraphs 239 to 247 of his report (E/CN.4/1989/15), in particular those dealing with the prohibition of incommunicado detention, the need for regular medical inspection, the obligatory identification of all persons present during interrogations and the possibility for experts or independent bodies to inspect places of detention regularly.

89. It wholeheartedly supported the recommendations dealing with the provision of advisory services by the international community in order to assist certain Governments in their efforts to correct existing situations or to prevent the recurrence of past errors. In that regard, the programmes proposed by the Special Rapporteur in paragraphs 237 and 238 of his report were exemplary.

90. The report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1989/18) presented a grim picture of the alarming human-rights violations in that area. His delegation was therefore dismayed at the fact that seven countries continued to refuse to co-operate with the Working Group, and urged those countries to change their attitude. States had the responsibility to elucidate cases of enforced or involuntary disappearances in

order to eliminate that phenomenon, and it was essential that the Governments concerned should co-operate with the Group. With regard to the report on the visit to Colombia by two members of the Working Group (E/CN.4/1989/18/Add.1), his delegation endorsed the Group's conclusion that the international community should provide Colombia with the support needed to overcome its current difficulties.

91. His delegation attached great importance to the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, and wished to thank Mr. Singhvi for his impressive report (E/CN.4/Sub.2/1988/20/Add.1). The time had come to include that legal study in the work of United Nations bodies in the field of crime prevention and the treatment of offenders, work that had already resulted in the adoption of highly valuable instruments, such as the Basic Principles on the Independence of the Judiciary.

IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF (agenda item 22) (E/CN.4/1989/44 and 67)

92. Mr. MARTENSON (Under-Secretary-General for Human Rights), introducing the item, recalled the statement by the General Assembly in its resolution 43/108 that freedom of thought, conscience, religion and belief was a right guaranteed to all without discrimination. The Assembly had expressed its serious concern that intolerance and discrimination on grounds of religion or belief continued to occur in many parts of the world and pledged again its determination that further efforts were required to promote and protect that right to eliminate all forms of intolerance and of discrimination based on religion or belief. The General Assembly had requested anew the Commission on Human Rights to continue its consideration of measures to implement the Declaration.

93. At its forty-fourth session the Commission had continued to do so and had adopted resolution 1988/55 under which it had requested the Secretary-General to report to it at the current session on measures taken to implement the resolution.

94. Following the requests to the Secretary-General contained in paragraphs 5, 6, 7 and 8 of the Commission resolution, the Centre for Human Rights had undertaken a number of steps. First of all by a letter dated 26 May 1988, the United Nations University and other academic research institutions had been invited to undertake programmes and studies on the encouragement of understanding, tolerance and respect in matters relating to freedom of religion or belief.

95. Secondly, the attention of the Department for Public Information had been drawn to the request of the Commission to continue to give high priority to the dissemination of the text of the Declaration in all official languages of the United Nations and to consider measures to enhance the promotional and public information activities of the United Nations in matters relating to freedom of religion or belief. The text of the Declaration was contained in the publication entitled A compilation of international instruments recently re-issued by the Centre in the context of its information campaign relating to the fortieth anniversary of the Universal Declaration of Human Rights. The booklet in question was being published in all official languages of the United Nations and would be widely disseminated.

96. In connection with the World Campaign for Human Rights, the study prepared by Mr. Odio Benito on religious intolerance was being reprinted in all official languages as No. 2 of the new "Human Rights Study Series".

97. Thirdly, by a letter dated 25 May 1988, the Secretary-General had invited interested non-governmental organizations to consider what further role they would envisage playing in the dissemination of the Declaration in national and local languages. In reply to that letter, some non-governmental organizations had informed the Secretary-General of measures they had taken to promote the Declaration or to encourage tolerance and mutual understanding in matters relating to freedom of religion or belief. It was reported that specific material was being prepared for schools and local religious groups asking them to take the Declaration into account in their respective activities. Others had said that they were organizing seminars on the subject and that they were taking steps to translate the Declaration into local languages. According to other information received, organizations had published the text of the Declaration in relevant international or regional publications issued by them.

98. By the same resolution, the Commission had extended by two years the mandate of the Special Rapporteur to examine incidents and governmental actions inconsistent with the provisions of the Declaration. The report of the Special Rapporteur was contained in document E/CN.4/1989/44.

99. In addition, the Commission had requested the Sub-Commission to prepare a compilation of provisions relevant to the elimination of intolerance and discrimination based on religion or belief contained in the Declaration and other international instruments; to examine, mindful of General Assembly resolution 41/120, of 4 December 1986, and taking into account the provisions of the existing international instruments in that field, the issues and factors which should be considered before any drafting of a further binding international instrument on freedom of religion and belief took place; and to report on the above issues to the Commission at its forty-fifth session.

100. At its fortieth session, the Sub-Commission, in response to the Commission's request, had adopted resolution 1988/32 entitled "Draft international instrument on freedom of religion or belief", in which it had recommended to the Commission that it should consider establishing a pre-sessional Working Group on the topic immediately after the mandate of the Working Group to draft a convention on the rights of the child had come to an end.

101. The Sub-Commission had also adopted decision 1988/112 in which, after noting the request of the Commission, it had decided to undertake the tasks mentioned in paragraph 11 of resolution 1988/55. It had also decided to request Mr. van Boven to prepare, without financial implications, a working paper with a view to assisting it to carry out the above-mentioned tasks at its forty-first session.

102. Mr. ALMEIDA RIBEIRO, Special Rapporteur to examine incidents and governmental actions inconsistent with the provisions of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, introducing his report (E/CN.4/1989/44), said that, all too often, people still risked death, cruel, inhuman or degrading treatment and punishment, arbitrary detention and curtailments of their freedom of expression and movement or of other fundamental rights and freedoms, on the

grounds of their religion or beliefs. That situation remained worrying in many respects and required constant vigilance on the part of the international community.

103. While intolerance could be the expression and result of a deliberate government policy, it could also arise from historical disputes or economic, social or cultural disparities and take the form of tensions and hostile acts among the various groups. Certain dogmatic interpretations could also spread misunderstanding among various religious denominations or stir up dissension within them. The question of legal restrictions on the freedom to express one's religion or belief had been subject to varying interpretations, thus adding to the complexity of the subject.

104. In the light of those factors, he had considered it expedient to pursue and broaden the dialogue with Governments through direct contacts as well as through the transmission of allegations referring to their countries and the examination of the Governments' comments. That method, reflected in chapter II of his report, in no way implied any accusation or value judgement; rather, it represented an attempt to find, together with the parties concerned, a solution to problems which affected the very essence of human rights and fundamental freedoms. He had been pleased at the large number of replies he had received, and thanked the Governments which had supplied precise and detailed comments to his communications.

105. He had noted with satisfaction the positive results of the policy of openness and transparency in the field of religious freedom and practices during the period covered by his report; in particular, he commended the celebration of the millenium of Christianity in Russia. The preparatory work on new legislation concerning freedom of conscience in the Soviet Union, and the commitments which had been made in that regard by the participants at the Vienna Conference on Security and Co-operation in Europe were very encouraging.

106. Since the publication of his report, he had received replies from the Governments of Argentina and Mauritius. Analysis of that and other information revealed that a number of countries had enacted legislation which guaranteed freedom of thought, conscience, religion and belief, and had adopted specific measures to promote tolerance and prohibit discrimination. In that regard, there was great diversity in the manner in which the right to freedom of conscience and religion was defined. Certain legislation reflected the relevant provisions of the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights; other legislation was based on international instruments of a regional nature, such as the European Convention on Human Rights. In certain cases, the national constitution stipulated that the legislative power may not draft any law regarding the establishment of a religion.

107. The replies often mentioned other legislative provisions, such as civil and criminal codes or other, more specific, laws and regulations. Reference was sometimes made to various measures for ensuring the application of legal rules and the effective functioning of recourse procedures for victims of violations of the right to freedom of religion or belief, including the establishment of national human-rights commissions, advisory commissions on freedom of religion and other appropriate mechanisms.

108. The promotion and protection of freedom of thought, conscience and religion was a long and delicate undertaking. Religious intolerance could not be considered in isolation, and its elimination required the existence of an auspicious political climate and the application of social and economic measures aimed at reducing interdenominational friction and strife. It also required measures to inculcate a spirit of tolerance and respect for other people's values. More specifically, a certain number of measures must be adopted in order to ensure the application of the 1981 Declaration. In his two previous reports on the subject, he had made a number of proposals which were still valid and, in chapter V of the report under consideration, he had set forth a number of pertinent recommendations.

The meeting rose at 6.05 p.m.