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COMMISSION ON HUMAN RIGHTS

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SUMMARY RECORD OF THE 31st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 21 February 1989, at 10 a.m.

Chairman: Mr. BOSSUYT (Belgium)

CONTENTS

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 (continued)

Organization of the work of the session (continued)

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The meeting was called to order at 10.20 a.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 1, 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, 35, 38, 40, 41, 49 and 52, E/CN.4/1988/17 and Add.1, E/CN.4/Sub.2/1988/12, 15, 18/Rev.1, 20 and Corr.1 and 20/Add.1 and Add.1/Corr.1, A/43/779, A/C.6/42/L.12)

1. Mrs. DIKLIC-TRAJKOVIC (Yugoslavia) said that Mr. Bossuyt's analysis concerning the second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (E/CN.4/Sub.2/1987/20) represented an important contribution to the consideration of a delicate question. Her Government had already replied in detail to the Committee on Human Rights on that issue. A discussion on the abolition of the death penalty was currently going on in Yugoslavia, with the participation of jurists, philosophers and human rights activists. For the time being, Yugoslavia remained in the category of those countries whose Governments could not yet take a final decision on the subject. Her delegation did, however, consider that the draft prepared by the Special Rapporteur provided a good basis for further elaboration of the optional protocol.

2. The text of the draft declaration on the independence of the judiciary as contained in documents E/CN.4/Sub.2/1988/Add.1 and Add.1/Corr.1 was more acceptable than the previous one. However, her delegation would welcome further elaboration of article 11 (c) of the draft. It approved of the elaboration of a body of principles and guarantees for the protection of mentally-ill persons.

3. Mr. Kooijmans' report on torture and other cruel, inhuman or degrading treatment or punishment (E/CN.4/1989/15) confirmed that torture continued to be practised in various parts of the world. Bearing in mind the importance of the problem, her delegation supported the extension of the Special Rapporteur's mandate.

4. As the report in document E/CN.4/1989/18 made clear, the problem of enforced or involuntary disappearances had not diminished. It seemed desirable, therefore, that the Working Group should seek to make fresh contacts and develop new forms of co-operation with the Governments concerned.

5. Commenting, with regard to the question of the human rights of all persons subject to any form of detention or imprisonment, on her country's policy and practices in that field, she said that the Yugoslav Constitution and legal system prohibited all discrimination in the way individuals were

treated before the courts. Trials were open to the public and to the press, the norms of criminal proceedings were fully respected, the accused had the right to counsel, the sentence was pronounced on the basis of evidence and the right to appeal was granted to all accused. The Criminal Code, which made punishable the dissemination of any ideas based on racism, racial discrimination and national or ethnic intolerance guaranteed that proceedings would be conducted in the language of the defendant, even if that was a minority language.

6. Mrs. ZHANG (China) said that, pursuant to article 37 of her country's Constitution, the freedom of person of citizens of the People's Republic of China was inviolable and unlawful deprivation or restriction of that freedom by detention or other means was prohibited. Proceeding from those principles, the Chinese Government had always vigorously supported all action within the United Nations framework against torture and other cruel or inhuman treatment or punishment. China had participated actively in the drafting of the Convention against Torture. It had signed that Convention two years previously, and the Standing Committee of the People's Congress had ratified the instrument in September 1988.

7. In order to preclude all possibility of torture, her Government had taken not only legislative, but also various administrative, judicial and educational measures. For example, educational programmes on the prohibition of torture were carried out for professional legal staff. Furthermore, under article 189 of the Criminal Law of China, judicial personnel who subjected imprisoned persons to corporal punishment and abuse were liable to be sentenced to up to three years' imprisonment. In practice, severe punishments were indeed meted out to law enforcement personnel found to have resorted to torture.

8. Upon the receipt of communications transmitted by Mr. Kooijmans concerning alleged cases of torture, the Chinese Government had passed them on to the departments concerned for investigation and written replies based on facts had been made to the Special Rapporteur (see E/CN.4/1989/15). The three letters transmitted by the Special Rapporteur had all related to persons arrested or temporarily detained during the riots in Lhasa between October 1987 and March 1988. Written replies had been submitted to Mr. Kooijmans through the Permanent Mission of China at Geneva; they had shown the lack of substance and even the absurdity of the allegations. A further allegation, to the effect that four nuns arrested on 5 March 1988 had been beaten was mentioned in the "urgent action" section of the report. It had also given rise to an inquiry, which had confirmed that some nuns had indeed been detained on 5 March 1988; their names had, however, differed from those contained in the allegations and the detained women had been released without being subjected to any form of maltreatment. The Chinese Government was proceeding in a serious manner with the preparation of the periodic report to be submitted to the Committee against Torture.

9. The report submitted by the Secretary-General (E/CN.4/1989/19) mentioned the case of Mr. Zhu Juwang, a Chinese staff member at the United Nations, which had been brought to the Secretary-General's attention by staff representatives. Mr. Zhu Juwang had, she said, been a P-3 translator in the Chinese Section of the Languages Service of the United Nations Office at Geneva, a post for which he had been recommended by the Government of China in January 1985. The Government had placed great hopes in him, but he had failed

to perform his duties conscientiously and, worse still, he had shown a lack of integrity in his private life which had aroused strong reactions in China, a country with its own morality and traditions. Under the circumstances he had tendered his resignation, but he had also asked to return to his work at the United Nations, claiming that he was being persecuted. Some people were now making appeals on his behalf and, seeking to politicize the question, had even attempted to nominate him for election as a staff representative. The case was in no way one of human rights. She assured the Commission that her Government was not violating the rights of Mr. Zhu Juwang and that he would be allowed to leave China when the question of his resignation had been settled.

10. Mr. MEZZALAMA (Italy) announced that in November 1988 his country had ratified both the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture. It was deplorable that torture remained widespread in the world and that, whereas in some countries investigations had contributed to the improvement of the situation, in others an alarming deterioration was apparent. Furthermore, torture was, as the Special Rapporteur had said, intricately linked with other violations of human rights.

11. His delegation appealed to those States which had not yet acceded to or ratified the Convention against Torture to do so. To date, 39 States had taken such action, but their geographical distribution was uneven. In addition, the Committee against Torture was encountering difficulties in its work, a matter on which the Special Rapporteur's remarkable report (E/CN.4/1989/15) provided very interesting information. The Italian delegation hoped that the system of visits mentioned in the report would be gradually enlarged. Such visits would reduce the danger that contacts limited to official circles might be used by violators as an alibi. Furthermore, analysis of the report showed that a number of Governments had made either incomplete or no replies to the Special Rapporteur's communications; such lack of co-operation was condemnable.

12. His delegation believed that the Commission should give more thorough consideration to questions such as enforced or involuntary disappearances, the independence of the judiciary and the detention of political prisoners. It had taken note with great interest of Mr. Bossuyt's draft second optional protocol (E/CN.4/Sub.2/1987/20). Italy, which had abolished the death penalty, supported the proposal that the draft should be brought to the attention of the States Members of the United Nations.

13. The suggestion by the Special Rapporteur on questions relevant to torture concerning programmes of advisory services and technical assistance was of great significance, especially as violations could often be traced back to institutions in charge of maintaining national security or internal stability. It was the duty of the Commission to satisfy requests from governments for assistance in fulfilling their commitments in the field of human rights. For that reason the Italian Government had decided to double its contribution for the current year to the Voluntary Fund for Advisory Services and confirmed its contribution to the Voluntary Fund for Victims of Torture.

14. Mrs. QUISUMBING (Philippines) said that torture merited universal condemnation. In his report (E/CN.4/1989/15), Mr. Kooijmans, the Special Rapporteur, said that no society was immune to torture and that it could occur anywhere.

15. The Philippines was one of the 28 countries mentioned in the report that had provided Mr. Kooijmans with information. The Philippine Government, which had announced the creation of an independent authority competent to receive individual complaints, had been swift to call for enquiries into the cases brought to its attention by the Special Rapporteur and to inform him of the results. Although in the Philippines the concept of human rights had not been properly articulated, much less expressly incorporated in the Constitution, prior to the 1986 revolution, the prohibition of infringements of human dignity, particularly torture, was clearly formulated in the 1987 Constitution, especially article III thereof. In addition, the law provided for penal and civil sanctions for violations of those constitutional provisions. The Constitution also provided for the payment of compensation to victims of torture or similar practices and their families. In 1987, the Philippine Commission on Human Rights had given a total of 440,000 pesos to the families of 48 human rights victims, including the families of 17 persons killed and 8 others wounded in an incident in Lupao.

16. As a State party to the Convention against Torture the Philippines was pleased that the number of States which had ratified that instrument or acceded to it was steadily increasing. At present there were 39 States parties: 6 out of 51 African States, 3 out of 41 Asian States, 7 out of 11 east European States, 10 out of 33 Latin American States and 13 out of the 22 States belonging to the "western European and other States" group. To increase the number of States parties, the text of the Convention should be widely disseminated. The Philippine Government had described in detail in its initial report to the Committee against Torture (CAT/C/5/Add.6, 19 October 1988) the measures it itself had taken to give effect to the Convention.

17. Regarding enforced or involuntary disappearances, her country had regularly informed the Working Group of the investigations carried out into, and the measures taken to prevent the recurrence of disappearances. President Aquino had personally assured families of missing persons that they would be assisted in determining the whereabouts of their loved ones. In December 1988, after meeting members of the non-governmental organization Families of Victims of Involuntary Disappearances (FIND), the President had approved a proposal to designate city and provincial State prosecutors as "human rights co-ordinators" to help families to search for missing persons in military camps and detention centres. A Human Rights Committee had been set up to advise the President, particularly on the matter of aid to families of missing persons presumed to be illegally detained. The composition of that Committee had been fixed by Administrative Order No. 101, of 13 December 1988. Furthermore, on 14 February 1989 the Philippine Commission on Human Rights had created a task force to study the 413 outstanding cases of disappearances, most of which had been inherited from the almost 20 years of dictatorship.

18. With regard to the impartiality of the judiciary, jurors and assessors and the independence of lawyers, she stated that, since the restoration of democracy in February 1986, the Philippines had re-established an independent and upright judiciary. The 1987 Constitution gave the Supreme Court powers of judicial review and fiscal and administrative autonomy. Judges at all levels were now appointed by the President from a list of nominees proposed by a body comprising representatives of the judiciary, Congress and the private sector; since they were no longer appointed by the Commission on Appointments of

Congress, they were cushioned from political pressure. Like the Acting Chairman of the Philippine Commission on Human Rights, many of the 30,000 members of the Philippine Bar belonged to well-known NGOs which defended human rights.

19. On 21 June 1988, President Aquino had created a task force charged with studying ways of improving the administration of justice. Several of the task force's recommendations had been adopted and implemented by the Supreme Court: inter alia a system of continuous hearing was now being tested in nine courts in Metro Manila and in 79 regional courts. The Supreme Court, the legislature and agencies of the executive branch had taken the necessary measures for implementing other recommendations of the task force.

20. After 20 years of repression, Filipinos held freedom of expression and opinion particularly dear. The freedom of the media was second to none in the world, and the Constitution guaranteed freedom of expression as well as the right to assemble peacefully and to petition the authorities for redress of grievances. There were no obstacles to the peaceful exercise of rights and freedoms.

21. Her delegation was ready to support the draft second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. The 1987 Philippine Constitution had abolished the death penalty except for heinous crimes, and even in those cases a special decision by Congress was required.

22. The most important factor of the respect for human rights in the Philippines was the commitment of the political leadership to democracy. President Aquino had always preferred the rule of law and the observance of due process to political or administrative manoeuvring. The present political, economic and military difficulties notwithstanding, the Philippines was determined to continue along the road to democracy.

23. Mrs. RICO (Spain) said that the practice of enforced or involuntary disappearances affected not only the direct victims but also their families and friends. The most recent report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1989/18) sadly revealed that the numbers of cases studied and of missing persons subsequently found dead had increased, and that persons belonging to associations of relatives of missing persons were increasingly being persecuted. Too many cases were still outstanding and, in contrast to Egypt and Kenya, where the few reported cases of disappearances had been fully elucidated, the Governments of Afghanistan, Angola, Chile, Guinea, Iran, Nepal and the Seychelles had not replied to the Working Group's communications.

24. As far as the Working Group's methods were concerned, Spain shared the opinion of a member of the Committee on Conventions and Recommendations of the UNESCO Executive Board to the effect that the system of keeping unsolved cases under review irrespective of political developments in the country in question was a "fundamental ethical principle". That procedure was intended to confirm that respect for human rights took precedence over political change and that States, and not Governments, were responsible for the situation of human rights.

25. The report also described the judgement rendered by the Inter-American Court of Human Rights concerning a case in Honduras, whose Government had accepted the jurisdiction of the Court, an example which other States should follow. In particular, the Court had declared that in human rights matters the principle of the exhaustion of domestic remedies, which was theoretically essential for the submission of a case to international jurisdiction, was not always applicable and that, where human rights were concerned, States could not base their defence on the victim's inability to advance evidence, since in the vast majority of cases that evidence could not be obtained without the co-operation of the State. Such considerations underlined the primacy of the protection of human rights and made the individual and his rights the central point of reference for judicial matters.

26. With respect to the Working Group's visit to Colombia (see document E/CN.4/1989/18/Add.1), she praised the co-operation shown by the Colombian Government. She hoped that Government would implement the Group's recommendations, particularly as regarded the strengthening of the network of personeros to act as, so to speak, municipal ombudsmen.

27. The Working Group on Detention should carry on its study of the draft declaration on enforced or involuntary disappearances. Her delegation was ready to support the appointment of a special rapporteur to study the question of political prisoners.

28. Mr. DESPOUY (Argentina) observed that the international community had given itself important means for stopping torture and enforced disappearances: 1986 had marked the entry into force of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Committee against Torture, charged with monitoring the application of the Convention, had held its first session in April 1988. The Committee would meet again the coming April to start examining reports from States and was to hold a further session during the course of the year. However, to enable the Committee to function properly, more States should accede to the Convention and do so without entering any reservations concerning article 2, paragraph 3, or article 3. The meeting of States parties to the Convention could, no doubt, study that question as necessary.

29. Thanks to the United Nations Voluntary Fund for Victims of Torture, which had been created under General Assembly resolution 36/151, victims and their families had been aided and doctors had been given appropriate training. Argentina had benefited from that aid and wished to emphasize the humanitarian character of the Fund. With regard to the most recent report of the Special Rapporteur on questions relevant to torture (E/CN.4/1989/15) Argentina was convinced, like the Special Rapporteur, of the necessity of prohibiting incommunicado detention as a means of preventing torture. The practice of visits, which often provided an opportunity for fruitful dialogue with governments, should be made systematic, including in those countries which, like Argentina, had already received the Special Rapporteur.

30. The latest report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1989/18 and Add.1) revealed that the Group had extended the geographical scope of its activities and, as proved by the recent visit to Colombia, had the co-operation of numerous Governments. The Colombian Government was to be praised for its efforts to ensure respect for human rights in what was a difficult situation.

31. Whilst the Working Group was also to be praised for trying to improve its methods of work (E/CN.4/1989/18, paras. 20-24), it was very disturbing that certain Governments were not co-operating with it at all (*ibid.*, para. 310). The Group had reported appropriately on the measures taken in Argentina regarding the consequences of disappearances and had contacted the Paraguayan authorities in the case of four Argentine children illegally detained in Paraguay. For their part, the Argentine authorities had spared no effort in trying to resolve that case, and they were pleased to note that the new Paraguayan authorities, in keeping with the democratic evolution of that country, had given guarantees on the matter. In action within the framework of the Organization of American States, Argentina had also invited the Inter-American Commission on Human Rights to draw up a report on the case and on the phenomenon of the enforced disappearance of children in Latin America in general; that report had been issued as a document of the Commission (E/CN.4/1989/66).

32. Argentina hoped that at its next session the Working Group would make known its opinions on the Sub-Commission's draft declaration on enforced or involuntary disappearances. In addition, his country had within the framework of the Organization of American States, supported the idea of a draft inter-American convention on enforced disappearances. A draft instrument had now been elaborated by the Inter-American Commission on Human Rights and was under review by the Governments concerned.

33. His delegation had already declared its support for a second optional protocol aimed at abolishing the death penalty, and for the idea advanced in Sub-Commission resolution 1988/11 of compensating victims of gross violations of human rights. The Argentine Parliament had recently passed a law providing for pensions to be paid to the families of disappeared persons and 1,900 of the 4,687 requests for such aid had already been granted. With regard to restrictive measures affecting international civil servants and their families, his delegation was particularly concerned by the case of Mr. Mazilu mentioned in paragraph 17 of the Secretary-General's report on the matter (E/CN.4/1989/19). It was to be hoped that the Romanian authorities would very soon communicate the desired information to the United Nations.

34. As President Alfonsín's period of office would shortly be coming to an end, the Argentine delegation wished briefly to describe the main features of, and the lessons to be learned from the transition to democracy in its country. In 1983 Argentina had been in the grip of authoritarianism and isolated internationally. By reforming the law, ratifying all relevant international instruments and recognizing the competence of international monitoring bodies, the constitutional authorities had taken steps not only to dismantle the institutional apparatus of the military dictatorship, but also to restore constitutional guarantees and to enable all citizens to exercise their rights.

35. It had also been necessary to carry out, through Comisión Nacional de Desaparición de Personas, inquiries into the past, but to do so without jeopardizing the future. The main culprits had been brought before the courts. Although the limits on prosecution set in laws Nos. 23492 and 23521 had sometimes - and no doubt quite justifiably - been criticized, particularly by victims' families, the situation must be seen in context: there had been three uprisings by extreme right-wing military groups and the latest of them, the previous December, had had as its principal demand an amnesty for

those responsible for violations of human rights. President Alfonsín had, however, refused to bow to pressure and, in a speech to parliament (reproduced in document E/CN.4/1989/63), had maintained that in matters of violations of human rights all citizens were subject to the law, whether or not they were members of the armed forces. Seeds of violence remained, of course, and several days previously an extreme left-wing group had attacked a military unit. In the face of such a difficult situation, everyone must try to ensure that freedom prevailed.

36. In that respect, mention must be made of the important role of non-governmental organizations. The fact that a former defender of human rights, Jorge Baños, had participated and been killed in the recent attack should not serve as a pretext for criticizing human rights organizations. Two of the foremost such organizations in Argentina, the *Asemblea Permanente por los Derechos Humanos* and the *Movimiento Ecuménico por los Derechos Humanos*, had unequivocally condemned terrorism. The defence of human rights called for the rejection of all activity that infringed such rights, most particularly the right to life, independently of political considerations or of any form of opportunism. Any future violation of Argentina's democratic institutions would be punishable by law and be dealt with within the framework of the legal system. Further to the forthcoming presidential elections, the first transfer of power between constitutional presidents in over 60 years would occur on 10 December 1989. Argentina had been faced with many evils but she knew that her passage to democracy had only been possible thanks to integral respect for human rights.

37. Mrs. MARTINS GOMES (Portugal) observed that the Working Group on Enforced or Involuntary Disappearances had reported that the number of countries affected had risen and the number of individual cases had almost doubled since 1987. The great majority of the cases brought to the attention of Governments remained unclarified. Her delegation categorically condemned authorities which, in pursuit of their aims, resorted to a practice of violence that violated several human rights, most particularly the right to life. That was why it had, at the previous meeting, supported the two-year extension of the Working Group's mandate. It was comforting to know that the urgent action procedure established by the Group had saved human lives. The Group's request for the staff of the Centre for Human Rights assigned to it, to be increased and supplied with adequate electronic data processing equipment should be granted.

38. The nine years of struggle against enforced disappearances had had repercussions on a regional level. Among them was the judgement of the Inter-American Court on Human Rights on a case of disappearance in Honduras; it set a precedent with regard to the investigation and judgement of a case of disappearance by a supranational judicial organ. The fact that the Government concerned had recognized the jurisdiction of the Court, the Court's methods of investigation and its criteria for assessing evidence, which were less formal than in national legal systems, were all novel. The Court's conclusions concerning the exhaustion of domestic remedies and the need for those remedies to be adequate were also very important. However, the point of greatest importance for the Commission was undoubtedly that, on the matter of the international responsibility of the State in situations of the kind in question, the Court had declared that responsibility continued to exist beyond any changes of government and irrespective of any other practical or juridical repercussions. That resolved the question of the temporal limits of

admissibility. Moreover, the fact that two witnesses in the case had been murdered while the matter was before the Court showed to what extent the parents and friends of missing persons were in danger. It was therefore vital for Governments to act immediately to stop such abuses.

39. Although disappearances were, sadly, frequent in some countries of Latin America - the region which had also originated the proposal for the elaboration of a convention on the matter - they were now very common in other continents too. Moreover, the number of cases reported to the Working Group was probably well below the true figure. The reasons why it had been possible to identify a relatively high number of missing persons in Latin America were not only that disappearances were widespread there but also that the region was one with numerous NGOs, a solid juridical tradition and a heightened social and political conscience. Things were not so in all areas of the world. Although the Working Group acted in a solely humanitarian spirit, there were still Governments that refused to co-operate with it, even though their image and credibility were at stake. The Working Group had even suggested to the Governments of El Salvador, Iran, Iraq, the Philippines and Sri Lanka that they should agree to invite it so that it might better assess and remedy the situation, as it had done, for example, in Colombia, which it had visited in 1988.

40. The report on the Working Group's visit to Colombia (E/CN.4/1989/18/Add.1) revealed that the Government of that country was faced with a Herculean task in trying to put an end to violence. The Group's conclusions and recommendations should be helpful to the Colombian Government, which, by inviting the Group, had shown that it thought the Commission could be of assistance in the matter. In addition, to avoid promoting the persistence of the causing of disappearances, exemplary punishments ought to be meted out to the guilty in such cases. As the Working Group emphasized, Colombia deserved the support of the international community, and of the Commission in particular.

41. Drawing attention to the situation in East Timor, an area for which Portugal had a special responsibility and where cases of torture and disappearance continued to be reported to the Chairman of the Working Group on Enforced or Involuntary Disappearances, as well as to the Indonesian Government, whose forces had been occupying the territory since 1975, she said it was difficult for the international community to comprehend the extent of the suffering inflicted on the people of Timor since the Indonesian occupation for information varied considerably according to whether it originated from the Indonesian Government or from other sources. However, the information that had reached the outside world, despite all the difficulties of communication, since 1985 showed that the question of violations of human rights in East Timor regrettably remained pressing. Indigenous inhabitants who had been able to leave the territory were no longer staying silent out of fear of jeopardizing relatives still in the country, but were determined to react against the conspiracy of silence over their humiliation and suffering. A short time previously, the Commission and the Sub-Commission had heard moving testimony in that regard. More recently still, Abilio Sereno, a student in Djakarta who held a Portuguese passport, had arrived in Portugal. It had taken him three years to obtain permission to leave Indonesia and three of his friends in the same situation were still held up in Djakarta.

42. In December 1988, Mgr. Carlos Belo, the apostolic administrator in Dili, commenting on the wave of detentions and imprisonments that had occurred during the visit of the Indonesian President to East Timor at the start of November 1988, had stated that imprisonment, interrogation and torture had become common practice in East Timor, in total violation of civilized law and Christian morals, and that the propaganda to the effect that there were no violations of human rights in East Timor should be denounced as false.

43. The Indonesian Government, which, since the creation of the Working Group on Enforced and Involuntary Disappearances, had always denied any obligation towards that body of the Commission, had nevertheless finally agreed to give some clarification on certain cases which had been brought to its attention. However, the information that had been supplied unfortunately still reflected a lack of real will to co-operate since, according to the Indonesian Government, the missing persons were "in prison" or "residing in various villages".

44. The vital question of the isolation imposed on the people of East Timor had been brought up by Amnesty International during the discussions of the Special Committee on Decolonization in August 1988, and by the organization "Asia Watch", which had published in November 1988 a report indicating that the area was deprived of all the benefits of outside observation. Indeed, the policy of the occupying Power consisted in prohibiting or rigorously controlling access to the territory by visitors and in restricting the freedom of movement of the population.

45. In the face of the constant international criticism in that respect, the Indonesian authorities had announced that from 1 January 1989 access to East Timor would be subject to the rules applied in Indonesia itself. However, five of the territory's 13 districts - where two thirds of the population lived - would still be subject to the previous restrictions. Nor was the practical effect of the decision guaranteed: some people had already been refused entry into the territory because they had not had the necessary authorization.

46. If the Indonesian Government's willingness to co-operate and the opening-up of the territory were genuine, independent observers and representatives of humanitarian organizations and the international press should have free access to East Timor and the Indonesian Government should invite the Special Rapporteur on questions relevant to torture or the members of the Working Group on Enforced or Involuntary Disappearances to see the situation for themselves.

47. Mr. HAMDAN (Observer for Lebanon) said that on 7 November 1988, Ms. Suha Bishara, a Lebanese citizen, had been accused of involvement in the attempted murder of an officer of the so-called South Lebanon Army, which collaborated with the Israeli occupation forces. To investigate the case, the Israeli military authorities had transferred Suha Bishara to Israel. The Lebanese Government had therefore asked the International Committee of the Red Cross to urge the Israeli authorities to respect the provisions of article 49 of the fourth Geneva Convention of 1949 and to allow Red Cross delegates to visit Suha Bishara in order to inspect the conditions in which she was being detained. In a reply dated 22 November 1988, ICRC had stated that its representatives in Tel-Aviv had contacted the Israeli authorities but had been told by them that Suha Bishara was not in Tel-Aviv. Thus the high command of

the Israeli-created, -trained and -financed so-called South Lebanon Army had refused to authorize ICRC representatives to visit persons detained in the occupied areas of southern Lebanon that Israel called the "safety zone". Having received information to the effect that Suha Bishara was indeed being detained in an Israeli prison, the Lebanese Government had once again requested the aid of ICRC, but in a letter dated 23 January 1989, the latter had indicated that the situation was unchanged.

48. The Lebanese Government, fearing that Israel had delivered Suha Bishara into the hands of the high command of the so-called South Lebanon Army, had asked the Centre for Human Rights to intercede with the Israeli authorities for her transfer to the legitimate Lebanese authorities for trial in accordance with Lebanese law, since the incident had occurred in Lebanon and concerned a Lebanese citizen. On 12 January 1989, the Centre for Human Rights had reported that it had entrusted the matter to the relevant Special Rapporteur and that he had sent a telegram to the Israeli authorities requesting them to guarantee Suha Bishara's right to life. Nevertheless, no positive reply had yet been received and the Lebanese authorities were extremely worried about the fate of Suha Bishara who was apparently still in the hands of the Israeli authorities.

49. The attitude of the Israeli Government, which was violating the most fundamental human rights as well as the principles of international law, was far from unprecedented. In recent years, the Israeli authorities had arrested numerous Lebanese citizens, tried them in military courts in Israel for having resisted the Israeli occupation of southern Lebanon, and given them prison sentences of up to 30 years. More recently still, in December 1988, members of the Israeli intelligence service had kidnapped four Lebanese citizens and taken them for trial to the occupied border zone.

50. In November 1988, ICRC had declared that, while it considered the detention of Lebanese citizens in Israeli gaols to be a flagrant violation of the provisions of the 1949 Geneva Conventions, its terms of reference unfortunately did not permit it to intervene in order to obtain their release. For its part, Israel still refused to allow ICRC delegates to visit detainees in the camps in the zones under Israeli control in southern Lebanon.

51. The Lebanese authorities were extremely concerned about the torture and cruel, inhuman and degrading treatment being inflicted on Lebanese citizens detained in Israeli prisons and the prisons created by Israel in Lebanon and they appealed to the conscience of the international community to persuade Israel to free the detained Lebanese citizens and allow ICRC representatives to visit Israeli prisons in order to inspect the conditions in which the detainees were kept.

52. Mr. VAN DEN BERG (Observer for the Netherlands) said that during the nine years of its existence the Working Group on Enforced or Involuntary Disappearances had achieved most of what it had set out to do and had even shown itself capable of innovation with respect to procedures for protecting human rights. The Group therefore deserved the Commission's full support.

53. As in previous years, the Group's report was alarming since the list of countries where disappearances had occurred continued to grow and the number of cases reported was nearing 18,000, a figure which perhaps represented only a fraction of the true total. One of the most important points made in the

Working Group's report was that, following a detailed analysis, the Inter-American Court on Human Rights had declared that States had, irrespective of changes of government, an absolute obligation to investigate cases of violations of human rights which had occurred within their territory. Hopefully, all the Governments which had recognized the competence of the Inter-American Court would respect that opinion. The Court having also held that the obligation of the State to investigate disappearances continued to exist for as long as uncertainty remained concerning the ultimate fate of the missing person, he hoped that Governments would no longer argue in favour of a time-limit on the duration of investigations.

54. From the Working Group's previous reports, his delegation had noted that the problem of disappearances regularly occurred in the same three countries. Now a fourth Government, that of Iraq, had been called upon to answer charges of numerous cases of disappearance as well as of torture, political killings and the use of chemical weapons against civilians. Moreover, the Iraqi Government apparently refused to co-operate with the Working Group. It was to be hoped that no effort would be spared to clarify all those cases.

55. Over the years, the Working Group had been able to persuade a number of Governments to invite it to visit their countries in order that it might make an objective assessment of the situation regarding disappearances there. The Group had thus been able to give the Commission valuable information on situations which merited particular attention, for example situations in Peru and Guatemala. Since such invitations had unfortunately been very scarce, it was all the more heartening that the Government of Colombia had decided to ask the Working Group to visit that country and had demonstrated by its co-operation with the members of the Working Group its desire for dialogue. Nevertheless, on reading the Group's report, the Netherlands Government had noted with concern the complexity of the situation - which made attributing responsibility very difficult, the intensity of the violence of which countless people had become victims and the level of impunity enjoyed by so many of those responsible for crimes and violations of human rights. The Colombian Government should therefore be urged to use all available resources to restore the country to the rule of law.

56. Commenting on the question of torture, he referred first to General Assembly resolution 43/173, concerning the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, a resolution which, in his opinion, was a good supplement to the provisions of the International Covenant on Civil and Political Rights and provided more legal guarantees than the Standard Minimum Rules for the Treatment of Prisoners. He highlighted the interpretation given to the term "cruel, inhuman or degrading treatment or punishment" in the footnote to Principle 6, for it filled a gap left by the Convention against Torture. In order to give more weight to that interpretation, the Committee against Torture should formulate a General Comment using the interpretation as a guideline. It was gratifying that the Committee against Torture, which had been admirably assisted by the secretariat, had quickly approved its rules of procedure. The Netherlands, which had recently become a party to the Convention, would follow the Committee's work with great attention. Its main current concern was the financial basis of the Committee's operations, for there was a sizeable number of country reports awaiting consideration. The Commission should do its part to solve that problem, which was worrying a large number of delegations.

57. The Netherlands Government welcomed the existence of the United Nations Voluntary Funds for Victims of Torture as proof that the United Nations not only condemned violations of human rights but also provided help to the victims. The countries, organizations and individuals contributing to the Fund was encouraging; it showed that forces were joined universally to provide effective care for the victims of an odious crime.

58. The report by Mr. Kooijmans on torture (E/CN.4/1989/15) gave little cause for optimism. The victims' plight was, of course, horrendous, but it should not be forgotten either that the malign triad formed by torture, disappearances and summary executions constituted a very serious attack on the moral fibre of society. The Commission was dutybound fully to discharge its responsibilities in that respect and it was, therefore, vital that all possible resources should be used to that end.

59. Mr. Kooijmans' report clearly proved the value of the visits made to various countries and of the recommendations offered to Governments in a genuine desire to help improve the situation. Regarding Turkey, where torture was regrettably still practised despite the elaborate measures taken by the Government to combat it, the Netherlands Government was pleased to note that the question of human rights was increasingly the subject of debate and that those responsible for acts of torture had recently been brought to trial. The Turkish Government thus seemed to recognize that there was a problem of torture in Turkey; it was to be hoped, therefore, that it would intensify its efforts to combat that problem and would take the Special Rapporteur's recommendations into account in doing so.

60. Mr. TÜRK (Observer for Austria) said that torture and related inhuman practices were based on a concept of the human being that Austria found totally unacceptable. It had been said that torture was worse than death, since it was an assault on human dignity; that amongst other reasons, was why torture was banned by the various international human rights instruments and why its use by State organs could never be justified under any circumstances. The fact that 41 States had already ratified, and another 27 States had already signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was evidence of the determination of the international community to eradicate that evil. His delegation hoped that other States would join the 18 which had already made the declarations provided for in articles 21 and 22 of the Convention; it regretted that the Secretary-General's report on the Status of the Convention omitted to mention the 10 States which had entered a reservation to the effect that they did not recognize the competence of the Committee against Torture under article 20 of the Convention.

61. Encouraging developments had taken place since the previous session of the Commission on Human Rights, the most significant being the first session in Geneva of the Committee against Torture, which had been very successful. His delegation supported the Committee's decision to hold two regular sessions of two weeks' duration per year. The Committee could play an important role in the international combat against torture, provided that the Convention was widely ratified and that governments complied with all their obligations under that instrument, including their reporting and financial duties.

62. The European Convention for the Prevention of Torture, which had come into force on 1 February 1989 and which Austria had ratified on 10 December 1988, differed from the United Nations Convention in that it sought to prevent, rather than to repress. It provided for a unique system of confidential visits to any place where persons were deprived of their liberty by a public authority; only in exceptional circumstances could the State party concerned object to such a visit. The idea of the visits had been initiated by the Swiss Committee against Torture in co-operation with the International Commission of Jurists and had at first been submitted to the United Nations Commission on Human Rights by Costa Rica in 1980, as material for an optional protocol to the United Nations Convention against Torture. His delegation believed that, subject to the avoidance of overlapping of the systems that already existed under regional agreements, that idea should be pursued on a world-wide level. Such a system of visits would be a concrete means of effectively combating the serious and widespread violation of human rights and human dignity that torture was. Other international efforts to combat torture included those of the Conference on Security and Co-operation in Europe, which at its closing meeting in Vienna, had adopted a Concluding Document in which the 35 participating States had taken on significant political commitments aimed at prohibiting torture and other cruel or inhuman treatment or punishment and at penalizing those guilty of such practices.

63. His delegation congratulated Mr. Kooijmans for his outstanding report on torture (E/CN.4/1989/15) and fully shared his view that Governments had a special responsibility to investigate allegations of torture and to take all appropriate measures to prevent torture being practised by government agents. It was in fact in the interests of the States concerned to make such investigations in order immediately to put a stop to the crimes or to prove to the international community that the allegations were unfounded. A visit by the Special Rapporteur could be extremely valuable in that connection. The Austrian delegation thoroughly approved the Special Rapporteur's recommendations, in particular those concerning the regular medical inspection of detainees and the regular inspection by independent bodies of places of detention.

64. His delegation also welcomed the report of the Working Group on Enforced or Involuntary Disappearances. It was particularly pleased to note that in 1988 the situation had improved in several countries mentioned in the report and that in Egypt and Kenya all outstanding cases had been clarified. It was, however, disappointed that certain Governments had not replied to allegations transmitted to them and it appealed earnestly to all the States concerned to co-operate fully with the Working Group.

65. Austria, where the death penalty had first been abolished in 1787, was firmly convinced that capital punishment was, like corporal punishment, a form of cruel, inhuman and degrading treatment. His delegation therefore urged the members of the Commission to decide upon the speedy transmission to the General Assembly through the Economic and Social Council of the draft second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

66. Mr. GÖKCE (Observer for Turkey) said that there was no doubt that the manner in which the Special Rapporteur on questions relevant to torture had conducted his work constituted a positive contribution to the fight against that inadmissible practice. The Special Rapporteur's task was all the more

difficult because he had to guard against being influenced by incorrect or exaggerated reports which, for political ends, were deliberately disseminated by certain circles in order to mislead the international community by directing its attention towards a few specific areas. It was essential to elaborate global uniform criteria for objectivity and to avoid selectivity. It was also imperative to fight against all those who sought to exploit the question of torture for partisan aims.

67. The allegations of torture which had been made against Turkey and which originated from well-known sources bore no relation to the true situation. Turkey had in fact taken measures to halt the violence which had occurred during the difficult period in its history that, to the satisfaction of all those whose concerns were exclusively humanitarian and to the dismay of those who would like to continue exploiting the issue to their own advantage by disseminating false information about the country, was now almost at an end. Objective evaluation of a situation required the correct screening of the information available and the disregarding of any deliberately aimed at creating confusion. Failing that, the conclusions reached would be unfair and might completely undermine the credibility and the effectiveness of the Special Rapporteur's work.

68. His delegation was certain that, as they always had done for any sincerely motivated suggestions and recommendations, the Turkish authorities would give serious attention to the Special Rapporteur's recommendations concerning Turkey.

69. Mr. LÓPEZ (Servicio Paz y Justicia en Latinoamérica) remarked that the latest report of the Working Group on Enforced or Involuntary Disappearances, showed 17 of the 41 countries where such disappearances occurred to be in Latin America and 70 per cent of the victims of the barbarous acts in question to be Latin Americans. The five worst affected countries were, in descending order of gravity: Peru, Colombia, Guatemala, El Salvador and Honduras. The situation was all the more alarming because the true number of disappearances far exceeded the number of cases reported.

70. He wished that he had the power to make the whole world comprehend the atrocity of the acts in question. Despite all their years of struggle and hard work, the defendants of human rights had only managed to achieve the condemnation of two Argentine generals and the recognition by the Inter-American Court on Human Rights that the Honduran Government was guilty of complicity in the enforced disappearance of two Honduran citizens, Angel Manfredo Velásquez and Saúl Godínez Cruz. Despite its efforts to obtain justice for those victims, in 1988 the Commission on Human Rights had been unable, because of the opposition of two States, one in South America and one in Central America, to apply to Honduras the confidential procedure provided for in Economic and Social Council resolution 1503 (XLVIII). Torture and disappearances therefore continued in Honduras, a country which had agreed to co-operate with the Working Group but had yet to supply it with credible, precise information on the 142 cases about which clarification had been requested. The American Convention on Human Rights did not define enforced disappearance as a crime as such, which was why his organization supported the draft convention on enforced or involuntary disappearance that was currently before the Organization of American States. His organization also supported the idea of making the Working Group on Enforced or Involuntary Disappearances and the Group on Torture permanent bodies; it did so precisely because of the

permanent threat which those two forms of oppression represented. Moreover, it felt that there should be a declaration and a convention providing for universal guarantees against torture and acts which resulted in the enforced disappearance of persons.

71. He had himself been pronounced guilty, along with several other persons, of the murder of a former Commander-in-Chief of the Honduran armed forces and had been condemned to death. He wished to state publicly that he was neither a terrorist nor a supporter of terrorism and he totally denied all the accusations that the Honduran Minister for Foreign Affairs had made against him, without any evidence, when addressing the Commission on Human Rights on 4 March 1988. He also protested about the campaign of denigration being conducted by the Guatemalan Government and army against the members of the Guatemalan Commission on Human Rights who were accused of being guerrillas. All these events were happening in countries having civilian governments that in reality were under strong political pressure from the military. These governments were nevertheless considered to be developing democracies or democracies undergoing a period of transition and therefore went unpunished. The Commission ought to apply in all such cases the procedures provided for within the framework of agenda item 12.

72. He drew the attention of the Commission to the situation of the 131 political prisoners there were in the United States of America and to the absence in that country of a time-limit on detention in custody. He particularly mentioned the case of a Puerto Rican, Filiberto Ojeda-Rios.

ORGANIZATION OF THE WORK OF THE SESSION (agenda item 3) (continued)

73. After consultations with the other members of the Bureau, the CHAIRMAN proposed that the report of the recent mission to Cuba (E/CN.4/1989/46) should be examined under agenda item 11 his "Consideration of the report of the mission which took place in Cuba in accordance with the Committee decision 1988/106". As that was a substantive item, all the procedural rules concerning the discussion of agenda items, including time-limits for member delegations, observers and non-governmental organizations, would be applicable. The Bureau also proposed that the debate on the report should take place before that on agenda item 12. He thanked all the delegations that had contributed in one way or another to the elaboration of the proposal and said that, if there were no objections or comments, he would consider it adopted.

74. It was so decided.

The meeting rose at 1 p.m.