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COMMISSION ON HUMAN RIGHTS

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SUMMARY RECORD OF THE 33rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 22 February 1989, at 10 a.m.

Chairman: Mr. BOSSUYT (Belgium)

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

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR

- (a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
- (b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
- (c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(agenda item 10) (continued) (E/CN.4/1989/3 - E/CN.4/Sub.2/1988/45 (chap. I, sect. B, decision 2), E/CN.4/1989/15, 16, 17, 18 and 18/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 and 20 and 20/Corr.1, 20/Add.1 and 20/Add.1/Corr.1; A/43/779; A/C.6/42/L.12)

1. Mr. URRUELA (Observer for Guatemala), speaking in exercise of the right of reply, said that anyone who knew his Government's concern for human rights could not but doubt the truth of the contents of the statements made by certain non-governmental organizations which had the effect of causing certain countries to be chary of helping to strengthen the democratic process in Guatemala. It was vital that those countries should continue to support the programmes to assist his Government in human rights matters, so as not to encourage violent and radical elements which, for personal and ideological reasons, sought to isolate Guatemala from the international community. Whatever the situation in Guatemala might be, it was absurd to imply that that country was violating human rights in order to promote the aims of certain opposition groups which, because they remained apart from the democratic decision-making process, sought to destroy the institutional order.

2. The primary duty of the Commission on Human Rights was to eliminate any confusion in people's minds and to search objectively and impartially for the truth, as Mr. Gros Espiell had done in his report on Guatemala. Detractors of the Government of Guatemala still refused to recognize the progress made in the country in the field of human rights and closed their eyes to historical reality which, unfortunately for them, was different from what they imagined. The Guatemalans objected to living in a climate of ideological struggles which ended up in a predominance of confusion, deceit, informing, false witness and distortion of the truth. As Mr. Gros Espiell said in his report, the struggle for human rights was not the special province of a political party or an ideology of opposition. It was an essential for democratic progress, for social peace, for comprehensive development and for the establishment of a strong and just society. Such was precisely the aim of the efforts made by the Guatemalan Government: the establishment of a society based on democracy, freedom and prosperity, and the elimination of the after-effects of 40 years of minority dogmatism, which had deprived the country of all possibility of modernization. It was for the Commission on Human Rights to reach its own conclusions on the basis of the report submitted to it.

3. Mr. HACENE (Observer for Algeria), speaking in exercise of the right of reply, said that accidents of history could happen in any country and Algeria was unfortunately no exception. The media's exaggeration of the distressing

events which had happened in the country in October 1988 was, perhaps, due to the fact that Algeria had been a sort of example in the field of human rights since it was one of the few countries that had never given the Commission any cause for concern. Having suffered torture during the War of Liberation, his people knew the meaning of the word all too well and it was difficult, therefore, to imagine for one moment that his authorities could tolerate any systematic practice thereof. In fact, the authorities had reacted quickly and vigorously to the new challenges with which they were faced. They had ordered the release of any minors who had caused damage or destruction and the provision of immediate aid to the families of victims, and they had encouraged the Algerian League for Human Rights to carry out investigations into the October events. In addition, the Head of State had taken the initiative to introduce a whole series of reforms, including the elaboration of a new constitution strictly guaranteeing human rights, which would be subject to referendum in a few hours' time (23 February).

4. A people and its leaders ought to be judged by the way in which they reacted rather than by the hazards they encountered, and the Algerian people had not, in the circumstances, shown themselves unworthy of the confidence placed in them by the international community.

5. Mr. OTHMAN (Observer for Malaysia), speaking in exercise of the right of reply, said that, contrary to what the International Commission of Jurists had said, the three judges, including the President of the Supreme Court of Malaysia, had not been removed because they had committed acts contrary to the will of the Malaysian Government nor by an arbitrary decision of the Government. They had been judged by two courts specially created to that end which had found them guilty of professional misconduct and suspended them from their duties, in accordance with article 125 (3) of the Federal Constitution of Malaysia. The findings and the texts of the decisions of the two courts had been made public. His delegation wished to emphasize the fact that the judges had been removed on the recommendation of two independent courts, which had done nothing other than strictly apply the law and the provisions of the Constitution.

6. As regarded the Internal Security Act (ISA), which had been mentioned by representatives of the Regional Council on Human Rights in Asia and the Commission of the Churches on International Affairs, his delegation recalled that Malaysia had twice (in 1969 and 1987) experienced bloody racial riots; his Government therefore wished to avoid at all costs the recurrence of such events. The right to freedom of expression and movement and all other fundamental rights were guaranteed by the Malaysian Constitution. Nevertheless, his Government had deemed it necessary to impose certain restrictions on persons who had previously been detained under the Internal Security Act, to ensure, at least in the immediate future, that there was nothing that could threaten harmony in a society made up of several races, religions and cultures. The strict application of the Act had allowed the vast majority of Malaysians to continue to live in peace and stability, the indispensable conditions for political, economic and social progress in a country.

7. Mrs. GONZALEZ (Observer for El Salvador), speaking in exercise of the right of reply, said that respect for human rights had always been one of the fundamental aims of the policy of the constitutional Government of her country, as had been recognized on several occasions by the Special Representative of the Commission, Mr. Pastor Ridruejo. Moreover, various non-governmental organizations had been invited by her Government to come to see the situation in that country for themselves. Unfortunately, certain of those organizations had given a false and biased image of the situation in order to discredit all the efforts made by President Duarte's Government. One of them had even used extreme language which was insulting to the poor and the women of El Salvador.

8. Her delegation also reminded the Commission that the laws of El Salvador prohibited the maltreatment and torture of detainees, and stated that steps had been taken to guarantee the implementation of those laws. Every detainee had thus to be entered in a register and had to undergo a medical examination to determine his state of health. The detention had to be reported to the representatives of the International Committee of the Red Cross and to the Human Rights Commission (governmental). Certain NGOs had been irresponsible to say the least in speaking of the generalized use of torture in El Salvador. Such delegations should base their statements on well-documented facts and not on misleading allegations. His Government did not deny that the peasant communities were the main victims of the crisis the country was undergoing. Unfortunately it was difficult at times, as had been observed by the Special Representative, to distinguish between a civilian and a guerrilla fighter. As for the mines placed near military bases by the armed forces, they were a generally accepted security measure, and the practice did not constitute a violation of the human rights of the people of El Salvador. In contrast, the methods used by the FMLN to terrorize the population were a form of generalized psychological torture which, in the words of one NGO, led to "a process of dehumanization" of the conflict.

9. Mr. ALFONSO MARTINEZ (Cuba), speaking in exercise of the right of reply, said he regretted that certain speakers had tried to give a mendacious picture of the human rights situation in his country. However, that was not surprising in view of the fact that those statements formed part of the disinformation and destabilization campaign being waged by the detractors of the Cuban Revolution, who had been endeavouring for years to bring Cuba back to its earlier situation, that is to say to a period when the expression "human rights" had had no meaning in the country. Among those detractors were people who had been condemned for counter-revolutionary crimes but who had been released before having completed their full sentences (which had been pronounced with all the necessary constitutional guarantees) and who had then been able to go and settle in another country. Moreover, those people had been given sentences less severe than those deserved for acts of terrorism designed to re-establish an ignominious régime, which had been characterized by the violation of human rights and which the Cuban people wanted nothing more to do with.

10. As for the people who claimed to have been maltreated at Havana Airport on their arrival in Cuba, he wished to inform the Commission that those persons had tried to use the tourist visas granted to them by the Cuban authorities in order to carry out investigations into the human rights situation in Cuba. They had been warned before their departure that they

would be sent back if they insisted on acting in any way other than as simple tourists. His Government was willing to have people come and study on the spot the true situation in Cuba, and to that end it had already invited NGOs on several occasions, but it also reserved the right to decide for itself what activities could be carried out on its territory by foreigners.

11. His delegation once again stated that detainees in Cuban prisons had never been subjected to ill-treatment or torture. The allegations of torture formulated by certain non-governmental organizations - for example imprisonment in refrigerated rooms - were too fantastic to deserve the attention of the Commission. The Commission would decide for itself how much credence to place in them.

12. Miss CHAALAN (Observer for the Syrian Arab Republic), speaking in exercise of the right of reply, said that her delegation regretted to see that, for purely political purposes, the representatives of some Member States and of certain non-governmental organizations were currently exploiting before the Commission the noble and sacred cause of the defence of human rights.

13. The United States, which had formulated totally unfounded accusations against Syria, should rather devote its efforts to defending human rights in accordance with the provisions of the American Constitution and with the principles set out in the Universal Declaration on Human Rights and the Charter of the United Nations. It was a well-known fact that the CIA was engaged in dubious activities in various parts of the world, in violation of the principles of international law and of the Constitution of the United States, and the Government of that country had itself been guilty of violating the fundamental rights of entire nations, such as Grenada and Nicaragua. Moreover, the whole world knew that, without the unlimited support given to it by the United States, Israel would not be able to continue its inhuman policy in the occupied Arab territories. It was therefore obvious that, by attacking Syria, the United States delegation was seeking not to defend human rights but solely to promote certain political aims.

14. As far as the statements made by Amnesty International were concerned, Syria, which had always been very concerned to respect human rights, and whose Constitution punished all acts that could violate the rights of its citizens, regretted that the organization in question, which was usually more serious, had based its accusations on information from dishonest and unreliable sources. Her delegation hoped that in future it would show greater circumspection and would check the accuracy of any information that reached it.

15. Mr. SORIANO (Philippines), speaking in exercise of the right of reply, said that his Government had always recognized the important role played by the non-governmental organizations in the prevention and protection of human rights. In response to the concern expressed by the NGOs, President Aquino had given her assurance that all allegations of violations of human rights in the Philippines would be investigated and, if appropriate, punishment would be administered. More particularly the International Commission of Jurists had spoken on 16 February of the cases of five human-rights lawyers. Three of those cases were currently being investigated and in one of them it had been found that the murder of the lawyer had nothing to do with his human rights activities. The murderer of Mr. Surigao, one of the lawyers, had already been sentenced to life imprisonment by a judge of the Regional Trial Court in Cebu City.

16. The representative of Sweden had expressed concern about the growing number of disappearances. The Philippine Commission on Human Rights was investigating the 39 cases reported and his Government would keep the Working Group on Enforced or Involuntary Disappearances informed of developments. The inquiries already carried out had clarified some cases: Augustin Sambog, Deogracias Mangaoang and Flaviano Rudas had been found, alive and well and living normal existences.

17. Despite its Government's desire to co-operate with the non-governmental organizations, his delegation could not but take exception to the remarks made before the Commission by the World University Service: his country was a constitutional democracy, both de jure and de facto and article 2 of the Constitution stipulated that the military authorities were at all times subordinate to the civil authorities.

18. Moreover, in connection with a statement by Amnesty International, he wished to point out that military officers had been imprisoned in the Philippines for committing violations of human rights. A general had been court-martialled the previous year and, as a result of a prosecution by the Philippine Commission on Human Rights, a number of soldiers had been found guilty and sentenced, namely Captain Felipe Achate, Sergeants Constancio Tuyau and Francisco Arial and Pfc. Marino Paguidupan. In December 1988, of the 70 cases of human-rights violations involving military personnel, 3 had resulted in discharge from the service, 14 had been referred to a court-martial, 21 were being investigated or undergoing pre-trial assessment and 29 were to be subjected to inquiries.

19. For its part, the Commission of the Churches on International Affairs of the World Council of Churches had been guilty of inaccuracy on the subject of torture in the Philippines. The representative of that organization had spoken of 1,463 complaints of torture submitted to the Philippine Commission on Human Rights up to the end of 1987, whereas that figure concerned human-rights violations of any kind which had been reported to the Commission, most of which had been committed under the Marcos administration.

20. Lastly he referred to a United States State Department report on the human-rights situation in his country. During a hearing by the United States Congress, in the course of which that report had been examined, the Chairman had noted that organizations such as Amnesty International and Task Force Detainees had made no effort to balance their own reports with figures and facts on human-rights violations committed by the armed groups threatening the countryside. Cardinal Sin himself had recently deplored the activities of elements which were out to destroy democracy in the Philippines. He was able to assure the Commission that, as long as democracy reigned in the Philippines, there would be no systematic violations of human rights arising from the policy of the Government.

21. Mr. FUJITA (Japan), speaking in exercise of the right of reply, referred to the remarks of a non-governmental organization on the "substituted prison system" in his country, and to the report of two lawyers, Mr. Parker and Mr. Jaudel, on the system. Neither the organization nor the authors of the report seemed to know very much about Japanese criminal justice.

22. For example, the non-governmental organization spoke of measures such as garde à vue, which did not exist in Japan. Except in the case of flagrant offence, all arrests were carried out in accordance with a warrant issued by an independent judge. As for Mr. Parker and Mr. Jaudel, when they had been received in Japan, it had become apparent that they had no knowledge of the system of suspension of prosecution by public prosecutors applied in the country, which was fundamental to Japanese justice. Contrary to what they stated in their report, it was not the police nor the public prosecutor, but an independent judge who decided on the place where a suspect was to be detained. They also spoke of violations of the right of the accused to contact defence counsel; in fact, that right, which was guaranteed by the Constitution and the Code of Criminal Procedure, was duly respected by those responsible for the application of laws during investigations. The Code of Criminal Procedure provided that the public prosecutor could, if he deemed it necessary for the inquiry, designate the time and place of questioning prior to prosecution provided that the accused was not delayed thereby in exercising his rights in connection with his defence. Incidentally, there was nothing in Japanese criminal procedure which imposed an unreasonable restriction on those rights. In addition, as far as the treatment of suspects during inquiries was concerned, despite the criticisms in the report, all relevant legislation and regulations were respected and the rights of suspects were fully protected.

23. The bills for the amendment of prison law had been drafted on the basis of the report adopted by the Legislative Council of the Ministry of Justice, after four years of intensive discussion. The Council was composed of academic jurists, judges, public prosecutors, administrative officials and lawyers recommended by the Japanese Federation of Bar Associations. The bills in question were designed to improve the living conditions of detainees and ensure the enjoyment of their human rights.

24. Mr. ISSE (Somalia), speaking in exercise of the right of reply, said that the massacre reported by Amnesty International had been perpetrated by a group of terrorists and not by the Somali armed forces. Amnesty International would have been better informed if it had accepted the invitation of his Government to visit the country to study the human rights situation there; he thus repeated that invitation. He also announced that his delegation would reply to other allegations, particularly those concerning torture, under agenda item 12.

25. Mr. WIRAJUDA (Observer for Indonesia), speaking in exercise of the right of reply, said he deplored the allegations of torture and disappearances in East Timor made by the delegation of Portugal. First of all, he reminded that delegation that his Government had always co-operated with the Special Rapporteur on questions relevant to torture, with the Special Rapporteur on summary or arbitrary executions and with the Working Group on Enforced or Involuntary Disappearances.

26. Indonesia could not be held responsible for events resulting from Portugal's abandonment of the territory in the midst of a civil war. However that might be the figure of 200,000 victims in East Timor, which had been quoted by the representative of Portugal, was greatly exaggerated. The credibility of such a figure had, for instance, been questioned by an article written by Mr. Peter Hastings entitled "East Timor's War of Facts and Figures", which had appeared in the Sydney Morning Herald of 20 April 1987;

the writer of that article noted that neither the International Committee of the Red Cross, which was very active in the territory, nor UNICEF, which had a major programme funded by Australia there, had confirmed such figures.

27. As for the three students wishing to emigrate, to which the Portuguese delegation had referred, he emphasized that the right to emigrate was respected in his country with due observance of the regulations and the procedures in force, which the persons concerned had failed to observe. The three students in question were not being detained in Djakarta but were free to pursue their studies.

28. As for the reference to a pastoral letter by Archbishop Belo, it was true that a certain number of arrests had been made in East Timor in October and November 1988, following the discovery of a plot to disrupt the Presidential visit in November. Eight individuals had been arrested, two of whom were to be brought to trial. He was able to assure the Commission that torture and violence were prohibited by law in East Timor, as in all the provinces of Indonesia.

29. Even the reports of Amnesty International and Asia Watch, quoted by the representative of Portugal, had welcomed the progress that had been made in the province of East Timor. The testimonies of respected international humanitarian organizations such as the International Committee of the Red Cross, UNICEF and UNDP, which had been active in the Province for several years, should also be mentioned. Moreover, many journalists, diplomats and parliamentarians had visited the Province. The most recent visit had been that of Mr. Marshall Perron, the Chief Minister of the Northern Territory of Australia, in November 1988. Mr. Perron had been accompanied by a group of 12 citizens of Darwin, of East Timorese origin, who had testified to the fact that there was no "strict blockade" in force. All of them had been able to travel freely throughout the Province. The East Timorese could travel anywhere in the other provinces, and vice versa, while visits by foreigners to East Timor and the other provinces were authorized if they complied with the immigration regulations.

30. Lastly, if East Timor really were "isolated", as was asserted, then the Indonesian Parliament would not have invited the Portuguese Parliament to send a delegation to visit the Province. Finally, he said that his delegation would supply the information requested concerning "the Lampung incident" under the appropriate agenda item.

31. Mr. CHEN Shiqiu (China), speaking in exercise of the right of reply, said he rejected the allegations made by certain non-governmental organizations concerning incidents which had occurred at Lhasa. Those incidents had been the result of a plot by certain elements in Tibet which had tried to make use of ignorant people to divide the country, disrupt social order and endanger the lives of officials, particularly police officers. The authorities had re-established order in strict compliance with the law. A number of persons implicated had been arrested, but most of them had soon been released; only a few had been sentenced, for very serious crimes.

32. In addition some speakers, referring to incidents that had occurred at the University of Nanking, had tried to damage before the Commission China's reputation and its good relations with African countries. In fact, it had been a matter of isolated incidents and, in consultation with the African ambassadors in China, his Government had taken steps to solve the problems. There was no racial discrimination in China: at the domestic level, his Government practised a policy of unity among the nationalities; at the international level, it strongly supported unity among all nations and was resolutely opposed to apartheid. China associated itself with the other developing countries and had solid relations of mutual support with the African peoples.

33. Mr. APUNTE (Observer for Ecuador), speaking in exercise of the right of reply, referred to a statement made the previous day by the Andean Commission of Jurists concerning disappearances in his country. He emphasized the fact that his Government co-operated regularly with the Working Group on Enforced or Involuntary Disappearances and that, of all the cases which had been reported to it, only four remained unclarified. Further information communicated on 26 January 1989 to the Working Group by the Permanent Mission of Ecuador at Geneva should clarify the remaining cases. He also recalled that the new Government of Ecuador, which had taken office on 10 August 1988, was firmly committed to the promotion and defence of human rights, an attitude that was reflected by its co-operation with the Commission and the Commission's organs.

34. Mr. OMAR (Observer for the Libyan Arab Jamahiriya), speaking in exercise of the right of reply, referred to a statement by the International Federation of Human Rights concerning freedom of movement in his country and the troubles that had arisen after the cancellation of a football match at Tripoli, in the course of which four people had allegedly died. The representative of that organization had also spoken of the interruption of prayers in the Libyan Arab Jamahiriya. Firstly, he wished to emphasize that the allegations concerning freedom of movement and those concerning troubles during the football match contradicted each other. Moreover, incidents of that type occurred throughout the world and did not justify the Libyan Arab Jamahiriya being specially accused.

35. As far as freedom of movement in his country was concerned, exit visas for nationals had been abolished, as had a previous list of prohibited persons. Customs controls between the Libyan Arab Jamahiriya and Tunisia had also been abolished and any Libyan citizen could visit Tunisia and return therefrom without obstacles and Tunisians could do the same between their country and the Libyan Arab Jamahiriya. It was envisaged that similar measures would be undertaken with Algeria and Morocco and would be further encouraged by the establishment of the Arab Maghreb Union.

36. His delegation had announced at the previous session that its Government was making great efforts to co-operate more effectively with the human-rights organizations. Thus, despite the contradictions and errors contained in the allegations of the International Federation on Human Rights, they had been communicated to the Libyan authorities and the organization had been invited to visit Libya to study on the spot the human-rights situation there.

37. Mr. DELGADO BARRETO (Peru), speaking in exercise of the right of reply, said that certain non-governmental organizations which had spoken of enforced or involuntary disappearances in his country should have mentioned the efforts being made by his Government; in particular, the Working Group on Enforced or Involuntary Disappearances had acknowledged the close co-operation of Peru.

38. Mrs. MARTINS GOMES (Portugal), replying to the Observer for Indonesia, said that her delegation had indeed recognized that some progress had been made in the co-operation between Indonesia and the Working Group on Enforced or Involuntary Disappearances; however, cases reported four years previously had still not been clarified. In addition, the Special Rapporteur on questions relevant to torture had still not been invited to visit East Timor.

39. Various figures had been quoted concerning the number of victims of the events that had occurred since the invasion of East Timor by Indonesia in 1975, but it could reasonably be estimated that there had been between 100,000 and 200,000. Those high figures were confirmed even by Indonesian sources: an article in the National Geographic magazine quoted the former Governor of Djakarta, who had admitted that it was impossible to know the exact number of victims or even to find their bodies. Portugal could not be held responsible for all these deaths in East Timor: it had left the territory at a time when it was decolonizing all its former territories, and it had not had the means to oppose the Indonesian invasion.

40. The National Geographic magazine had also spoken of a climate of fear in East Timor. In that connection, she also quoted Mr. Cheysson who, on behalf of the Commission of the European Communities had acknowledged that the various reports concerning the extent of violence in that territory had been too consistent to be ignored. The visitors of whom the Indonesian representative had spoken had only been able to travel around the territory under escort. A member of the European Parliament who had visited East Timor in that way had subsequently recognized that there were contradictions between what he had been told officially and the true situation. In addition, the Indonesian delegation, by announcing that the territory had been opened to outside visitors, implicitly recognized that entry into the territory had previously been forbidden. It should be noted that the new openness mentioned concerned only travel between East Timor and the rest of Indonesia.

41. After stating that the students wishing to emigrate, whom her delegation had mentioned, had been asking permission for over three years - a fact which made it difficult to believe that they had not followed the necessary procedures - she expressed the hope that a delegation of members of the Portuguese Parliament would soon be able to visit East Timor, as a result of discussions taking place in New York between Indonesian and Portuguese representatives. Finally, she reminded the Commission that Indonesia's argument, according to which the International Committee of the Red Cross had not confirmed the number of victims in East Timor, was meaningless: everyone knew that ICRC did not divulge what it knew about the situation in a country.

42. The CHAIRMAN, noting that no other delegation wished to exercise its right of reply, said that the Commission had concluded its discussion of agenda item 10.

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

43. Mr. ASSOUMA (Togo) recalled that, on the basis of the conclusions reached by a special seminar organized at Geneva in September 1978 within the framework of the advisory services programme, the General Assembly had invited Member States, by its resolution 34/49, to establish national institutions for the promotion and protection of human rights. Bearing in mind the aspirations of the Togolese people and that resolution, which moreover, reflected article 26 of the African Charter on Human and People's Rights, the Togolese National Assembly had established the National Togolese Commission on Human Rights in 1987.

44. Before outlining the activities of that Commission, he wished to thank the Under-Secretary-General for Human Rights, who had supplied the Togolese authorities with the necessary documentation and had sent his closest colleague, Mr. Nyamekye, to Lomé to represent him at the inauguration of the Commission. On the occasion of the fortieth anniversary of the Universal Declaration on Human Rights, the Togolese Commission had joined with the Centre for Human Rights to organize an African regional seminar at Lomé from 5 to 7 April 1988, followed immediately by a national training scheme from 8 to 15 April.

45. Article 11 of the Act establishing the Togolese Commission stated that any person considering himself to be the victim of a violation of human rights - particularly a civil or a political right - as a result of an act or an omission on the part of the administration, could submit a petition to the Commission. As a result, the Togolese Commission was currently seized of 208 petitions from all parts of Togo and even from abroad: one from France - from the International Federation on Human Rights; three from the United Kingdom - two of them from Amnesty International; one from Ghana; one from Benin and another series originating from persons living in the Federal Republic of Germany, Sweden, Belgium and Austria. Those petitions implicated gendarmes and police officers, prefects, village chiefs, judges and high-ranking civil servants. However, 21 of the petitions did not concern the administration and 38 had been found to be groundless. The National Commission had thus admitted only 149 petitions, 78 of which had already been clarified, the remainder being still under investigation. There were cases of persons held under arrest beyond the legal limit, who had been released or prosecuted; persons detained for civil or commercial cases, who had been released; persons detained beyond the end of their sentences for the non-repayment of embezzled funds, who had been released by the intervention of the Commission; and, finally, cases in suspense with the courts that had been unblocked.

46. Apart from those cases, the work of the Togolese Commission had been centred on the prevention of violations of human rights, since the administrative officials responsible often acted not deliberately but through

ignorance. The Commission had therefore organized a seminar of information and sensitization for high officials of the gendarmerie, the police and the civil administration, on 22 and 23 February 1988, and another seminar on 21 and 22 October of the same year, on the occasion of its first anniversary.

47. The third aim of the National Togolese Commission on Human Rights was to educate the population. Members of the Commission had toured the country from 23 to 31 May and from 12 to 16 June 1988 talking to citizens in their vernacular languages. Many lectures and discussions had also been organized throughout the country. On 10 December of the previous year, in celebration of the fortieth anniversary of the Universal Declaration, the Commission had organized a round table to inform the general public of the work of the United Nations in the sphere of human rights over the past 40 years. Lastly, the Togolese Commission had suggested to the authorities - which had agreed - that human rights should be taught in the schools, starting at the secondary level. The Commission was also authorized to make periodic visits to prisons. Such in essence was the work carried out by the Togolese Commission in the first year of its existence.

STATEMENT BY THE MINISTER FOR FOREIGN AFFAIRS OF SPAIN ON BEHALF OF
THE 12 STATES MEMBERS OF THE EUROPEAN COMMUNITY

48. THE CHAIRMAN said that the fact that the 12 States members of the European Community were making their first joint statement to the Commission was a very important event. The initial project for the economic integration of six European countries had taken on much greater dimensions, to the extent that it currently united 12 States, which also co-ordinated their foreign policy, including their human rights policy. By presenting its common position, the Community would help to increase the Commission's efficiency.

49. Mr. FERNANDEZ ORDOÑEZ (Minister for Foreign Affairs of Spain), speaking on behalf of the 12 States members of the European Community, said that respect for human rights had been one of the foundations of European co-operation for the past 30 years. The recognition of inalienable rights and of the dignity of human beings had been deeply rooted in European heritage since antiquity and one of the best examples of it was to be found in the 1789 Declaration of the Rights of Man and of the Citizen. The Twelve had emphasized, in the 1986 Brussels Ministerial Statement and on other occasions, their deep commitment to the promotion of human rights in the context of parliamentary democracy and the rule of law.

50. Last December, on the occasion of the fortieth anniversary of the Universal Declaration of Human Rights, the Twelve had reaffirmed before the General Assembly of the United Nations that respect for the fundamental rights of human beings had become a moral, normative and political imperative, both for the world community and for each individual nation. The catalogue of rights included in the Declaration was an indivisible whole which could not be subject to any form of hierarchization, selectivity or ideological evaluation. The Twelve therefore attached particular importance to respect for those rights in their relations with other countries and were convinced that, in that area, the principle of non-interference in the internal affairs of other countries was not applicable. As the International Court of Justice had pointed out, the principles relating to the fundamental rights of the

human being represented obligations of Governments towards the international community as a whole. The Twelve, which did not assert that the protection of human rights was flawless in their own countries, were parties to the international instruments of the United Nations and to the conventions of the Council of Europe. Cases had often been brought against them before the European Commission of Human Rights and the European Court of Human Rights.

51. Due in a large measure to the efforts of the United Nations, a great deal of progress had been made in the field of the respect of human rights in the last 40 years. The old disputes on matters such as Article 2, paragraph 7, of the Charter had been shelved; decolonization and the exercise of the right to self-determination had changed the face of the world; the rights of each person as an individual and as a member of a political and cultural community had been recognized and a new solidarity had appeared. At the same time, there had been an increase in the non-governmental organizations concerned with human rights, many of which were contributing to the work of the Commission. Governments guilty of human rights abuses would have to accept that individuals had acquired substantial rights under international legal instruments.

52. In several continents, particularly Latin America, political régimes based on the omnipotence of the State and disregard for the individual had been replaced by elected Governments aware of their obligations. That development had to be irreversible, despite the problems certain countries faced in guaranteeing the protection of human rights and democratizing institutions and society. A positive development had also been observed in some Eastern European countries and, a few weeks previously at Vienna, had facilitated the adoption of the final document of the Conference on Security and Co-operation in Europe, which provided the 35 participating States with more precise criteria concerning human rights. It was to be hoped that developments as welcome as those occurring in Hungary, the Soviet Union and Poland would one day take place in other countries of that region. However, human rights were not an exclusively European or Western concern. They were universal and could not be limited by moral, philosophical, ideological or cultural considerations.

53. Nevertheless, systematic violations of human rights continued to occur. The recent improvement in the international climate, characterized by agreements on cease-fires, troop withdrawals and progress towards disarmament, should be accompanied by progress in the respect for human rights. The Commission had a central role to play in the system developed by the United Nations over the previous 44 years to implement the accepted standards, codification of which constituted one of Organization's most significant achievements. All States that had not yet done so should become parties to the two 1966 Covenants and the corresponding control mechanisms should be made as effective as possible. However, even for those States who were not parties to any human rights convention, respect for such rights was embodied in the Charter and the Universal Declaration and reflected in international customary law and was thus a universal obligation. It was also to be hoped that the convention on the rights of the child and the second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty would be completed at the current session. Other instruments, such as the declaration on the protection of human rights defenders, were also well advanced. Nevertheless, the objective should be the eradication of abuses and the effective implementation of standards and not

the standards themselves. The Commission also played a role of unprecedented importance in directing the world's attention to violations of human rights and to the moral and legal obligations of States and individuals in that area, which it did with the help of many NGOs. The Commission had also developed various mechanisms for investigating alleged human rights violations which had made it possible to improve the situation in various countries.

54. The Commission should henceforth strive to promote and implement accepted human rights standards more effectively throughout the world and, to do so, should improve the established mechanisms further. The Twelve therefore supported the efforts made by the Commission and the Sub-Commission to rationalize their work and, in particular, those aimed at speeding up the procedures. Moreover, the United Nations should assign an increasing part of its budget to human rights activities, particularly the Centre for Human Rights. It was the responsibility of the Organization and its Member States to ensure that the treaty-monitoring bodies had sufficient financial resources. Consequently, the Twelve had been pleased to learn, at the opening of the session, that the financial difficulties that had been hampering United Nations human rights activities in recent years would soon be overcome. They supported the plans of the Under-Secretary-General for Human Rights to develop those activities, in particular the world information campaign for human rights which had been launched in the current year.

55. The Twelve were particularly attached to the institution of special rapporteurs or special representatives, which had proved to be a vital complement to the other mechanisms available to the Commission and to the system of supervision and control of the human rights treaty monitoring bodies. The institution should thus be further strengthened both materially and morally. Thematic rapporteurs, though the most recent initiative of the Commission, had proved very useful in making Governments and public opinion more aware of human rights problems by making more information available on abuses such as torture, enforced or involuntary disappearances, summary executions or religious intolerance. The Twelve thus welcomed the decision of the Economic and Social Council to extend the mandate of those rapporteurs for two years and the fact that Governments seemed better disposed to co-operate with them. The mention of the situation in a particular country by one of the rapporteurs should not, however, be interpreted as meaning that mass or systematic violations of human rights were occurring in that country.

56. The Twelve took the view that the country rapporteurs should be appointed in an objective spirit, avoiding geographical selectivity and political considerations, whenever a serious, massive and continued violation of human rights was thought to be occurring in a country. The conclusions of the country rapporteurs should not be unduly influenced by the degree of co-operation of the Government concerned, and the United Nations should assist and protect the rapporteurs adequately, particularly during visits to the country under examination.

57. The confidential procedure established by resolution 1503 (XLVIII) of the Economic and Social Council had proved an effective means of inquiry into alleged violations, at the initiative of individuals or of non-governmental organizations. That procedure, which by its very nature implied that the Governments concerned were willing to co-operate with the Commission, could, nevertheless, be improved. Cases concerning non-co-operating Governments, such as that of Albania, should surely be dealt with in public.

58. The system of advisory services was a potentially very important preventive mechanism and a way of assisting countries which had just achieved democracy and the rule of law, but the formula should not be used to avoid responsibilities in cases of serious or systematic violations. With that proviso, the Twelve supported the Under-Secretary-General for Human Rights' intention of reinforcing the services in question.

59. More generally, the Twelve deplored the politicization that often harmed the work of the Commission and the Sub-Commission, when it was necessary to strengthen technical competence and to differentiate clearly between genuine concern for human rights in a given country and political or ideological confrontation. It was also regrettable that geographical or ideological solidarity sometimes prevented investigations from being carried out into well-documented allegations of human rights violations. Several years previously, the Commission had been accused of "selectivity" and it was true that some cases - including very serious ones - had never been examined. The spirit of co-operation and the search for a consensus should not prevent the Commission from striving for universal respect for human rights standards.

60. The agenda of the current session alone showed that it had still not been possible to put an end to certain odious practices, such as apartheid. The Twelve, which in recent months had frequently condemned the constant violations of human rights in South Africa, were continuing their policy of working towards the peaceful dismantling of the system of apartheid and had repeatedly indicated to the Pretoria authorities that the persistence of such abuses would further strain relations between themselves and South Africa.

61. The Commission was the appropriate body to deal with specific human rights violations in any country, as the Twelve had explained at length in a statement made in November 1988 in the Third Committee of the General Assembly. In particular, the Twelve hoped that the problems of Cyprus and East Timor would be solved. There was continued cause for concern also in the countries for which the Commission had appointed a special rapporteur or a special representative - Iran, Afghanistan, Chile and El Salvador. In Iran, it appeared that the number of executions of political opponents, of arbitrary detentions and of cases of persecutions of minorities was on the increase. Although it was a positive development that the Iranian authorities had offered to co-operate with the Special Representative, they should respond in full to the numerous and serious allegations of human rights violations and should authorize visits to the country. He reminded the Commission that, two days previously, the Twelve had made a joint statement on the Salman Rushdie affair. In the case of Cuba, the Commission had, at its previous session, accepted the invitation of the Cuban Government to send a mission to that country. The Twelve appreciated the co-operation extended by the Cuban Government to that mission and were awaiting with interest the report of the mission and the subsequent discussion.

62. The human rights situation in the occupied territories had considerably deteriorated over the past 14 months, as a result of the repression of the Palestinian uprising. The Twelve recalled that the Fourth Geneva Convention was applicable in that case, and they hoped that an international conference could be convened which would lead to a just and lasting solution based on the right of all States in that region, including Israel, to exist within secure and recognized boundaries.

63. The Twelve were also ready to support action by the Commission on other disturbing situations which it had not yet addressed. First of all, there was the situation in Romania, with its resettlement policy in the rural areas and the treatment of ethnic minorities. Moreover, one of the Sub-Commission's experts, Mr. Mazilu, was being deprived of his right to leave the country. Mention should also be made of the tragic events of the previous year in Burma, which had made thousands of victims, as well as of the violations of human rights in Iraq, violations which were mentioned in the reports on enforced or involuntary disappearances and on summary executions. The fate of the Kurds in that country, and in other countries where they were numerous, was a great cause for concern.

64. It was to be hoped that the new climate in international relations which had been developing over the past two years, enhanced by the active role of the United Nations and its Secretary-General, would favour the prompt solution of some long-standing conflicts involving the exercise of the right to self-determination. The United Nations and the Commission could not but enhance their credibility by tackling human rights questions in an objective and non-political way. The moderate tone of the debates, which had been perceptible since the beginning of the session, should lead to the strengthening of mechanisms and the means at the Commission's disposal to encourage States to discharge their moral and legal obligations towards all those under their jurisdiction.

65. The Twelve were ready to co-operate with the Commission to ensure that human rights were respected. The United Nations and its Secretary-General, which had played such an outstanding role in the pacific settlement of disputes and in peace-keeping operations should do more in that field. The proposal to appoint a high commissioner for human rights deserved to be considered in that light.

66. The CHAIRMAN thanked the Minister for Foreign Affairs of Spain for the valuable contribution he had made to the work of the Commission on behalf of the 12 States members of the European Community. There was no doubt that joint action by the European States in the sphere of human rights was essential to increase solidarity among the democracies and that every stand in favour of the victims of human rights violations offered comfort, whereas silence served only to increase despair. In that respect, the statement by the Minister was an encouragement to all defenders of human rights.

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

67. Mr. MARGIOTTA BROGLIO (Italy) said that the third report submitted by Mr. d'Almeida Ribeiro (E/CN.4/1989/44) demonstrated the continued existence in almost every region of the world, and in very varied forms, of violations of the provisions of the Declaration. However, it also showed that a real effort had been undertaken at the national and international levels to combat intolerance based on religion or belief. Indeed, in his first report (E/CN.4/1987/35), the Special Rapporteur had noted that intolerance and discrimination existed in all the economic, social and ideological systems of the world and, in his second report (E/CN.4/1988/45 and Add.1), he had stressed the persistence of that threat, which made action on the part of the

international community all the more necessary. In his third report, he noted the great interest shown by the international community in freedom of thought, of conscience and of religion, and underlined that a fruitful dialogue had begun between himself and the Governments. In that regard, the decisions taken at the latest session of the Conference on Security and Co-operation in Europe fully confirmed the favourable developments in international politics with regard to respect for the principles set out in the Declaration.

68. Thus, even if the Special Rapporteur's conclusions regarding specific situations were hardly conducive to optimism, it did seem that people were becoming more aware of a number of truths regarding their lives in community which were the fruit of very different - and sometimes radically opposed - concepts. It was in that spirit that the Special Rapporteur and the Sub-Commission intended to study the relevant questions and factors before beginning the possible elaboration of new international standards for the protection of freedom of religion.

69. His delegation drew the attention of the Commission more particularly to the question of the right to freedom of opinion within religious groups and churches and to the protection of the freedom of religion or belief in periods of armed conflict. In paragraph 17 of his latest report, the Special Rapporteur mentioned allegations brought before him concerning "new religious movements". The question was a very serious one which had alarmed public opinion and had accentuated the need to guard against certain excesses and to protect individuals against any form of abusive manipulation. It was also a matter of the application of article 1, paragraph 3, of the Declaration and of the problem of the limitations which might be imposed on the freedom to manifest one's religion or beliefs. The complexity of the problem had become apparent in the implementation of all the international human rights instruments, but it was particularly evident in the case of "sects", in view of the fact that most States had not worked out specific legislation, either out of indifference or because certain constitutional rules tended to favour religious minorities. Amongst the small number of States which had adopted specific legislation on the subject, reactions to the phenomenon of the proliferation of certain movements varied considerably, from an extremely liberal attitude to the adoption of very strict repressive measures. In that connection, it was important to reaffirm the essential value of freedom of thought and of all the freedoms arising therefrom, particularly those concerning belief and association, and the Special Rapporteur should continue to give all requisite attention to the phenomenon of the new religious movements to the extent that they claimed the exercise of the fundamental freedoms and rights proclaimed in the Declaration, while very often neglecting them in their own practices.

70. The Commission and the Sub-Commission had not, perhaps, paid sufficient attention to the meaning of the principle set forth in article 1, paragraph 2, of the Declaration that "no one shall be subject to coercion which would impair his freedom to have a religion or a belief of his choice". Freedom of thought and conscience did not mean solely the freedom to manifest one's religion or belief; it presupposed that thought and conscience were not subjected to any form of coercion. In other words, it was not an acquired liberty that must be guaranteed but freedom to train the conscience, whether or not in a religious way, that must be encouraged and free from all coercion that might interfere with a very delicate process, particularly in the case of children and in primitive societies.

71. The role of the press and the audio-visual media in that field posed a difficult problem, since the media could often foster indifference, inaccurate ideas and even prejudices in the public towards people of a little known religion or people of no religion. His delegation thus wished to draw the attention of the Special Rapporteur particularly to the possible need to check whether the codes of ethics issued by many associations of journalists contained provisions relating to religion or belief, which could lead journalists and media directors to carry out a valuable examination of conscience. For its part, the Italian Republic had undertaken a comprehensive reform of its legislation concerning freedom of religion and, more particularly, it had modified the relations between the State, the Churches and religious persuasions by signing an agreement with the Holy See on 18 February 1984.

72. It was necessary to emphasize that tolerance, equality and non-discrimination in matters of religion and belief were very closely linked to cultural aspects of development and that the basic error often committed in that field was to affirm that so-called traditional societies could not be modernized without changing their beliefs and their values to meet the requirements of development. In fact, it seemed henceforth clear that so-called traditional societies could be modernized without having to reject the beliefs and values which were an integral part of their cultural identity. Religious tradition could not be suppressed in order to facilitate economic growth and development, and some aberrant demonstrations of ethnicity and fundamentalism showed, moreover, the distortions to which non-respect for cultures could lead.

73. In modern times, the world could accept neither the hegemony of the West nor the anti-modernist or fundamentalist reactions of some countries or tendencies. At a time when there was an ever-increasing divide between the North and the South and a growing incongruity between the concerns of personal life and the ascendancy of the great mechanisms organizing and managing collective life, it was vitally necessary to seek a principle of unity which would reconcile universalism and particularism, reason and religion, without however advocating a Utopian solution. That task of redefining human rights in relation to modernity should be the main thrust of the Commission's work in the coming decades.

74. Mr. PASHAZADA (Union of Soviet Socialist Republics) said that, according to the principles of Islamic law as enshrined in the Koran, man was on earth in order to lead a just and worthy existence and every human being would be rewarded according to his acts, irrespective of any considerations of nationality or social, cultural or religious adherence. As was apparent from the very composition of the Commission, in which many cultures and beliefs were represented, all inhabitants of the globe were concerned about the problems in the world and the inevitable disagreements could be overcome only if everybody showed the necessary sense of responsibility and respected the opinions and beliefs of others. Thus, the members of the Commission were united not to revive tensions and increase prejudices, which would inevitably lead to deadlock, but to exchange their views freely and thus contribute to raising the moral and spiritual level of all societies. For its part, Islam had always called for peace, justice and respect for individual and collective rights and freedoms.

75. Nevertheless, far from living in such an ideal situation, human beings were all too often crushed by evils, suffering injustices and victim to all sorts of violations. To the exhaustion of natural resources, pollution and the disruption of economic and social values could be added the arms race, the ultimate threat to the right to life of the whole of mankind. Faced with all those evils, the Muslim communities of over 60 countries had united their efforts, during an international conference held at Baku in 1986 with the participation of the organizations of the United Nations system, to examine all questions related to violations of human rights throughout the world and it was planned to hold an ongoing meeting in the United Arab Emirates of the Muslim communities. Even if the problems facing the world were most disturbing, there could be no doubt that solidarity could go a long way towards solving them.

76. The human rights situation in the USSR had changed profoundly in the past five years, in that religious believers had previously been the victims of a whole series of restrictive measures. Henceforth there was free access to places of worship, freedom of religion was respected and new places of worship had even been opened. The recognized principles of democracy were to be incorporated into the law and, as the initial measure, religious leaders had, for the first time, been authorized to stand as candidates for election to the Soviet of People's Deputies. Many problems still remained, despite the profound changes in the moral climate of the country, but by respecting the principle of tolerance among human beings, every society could change if each individual showed the necessary good-will.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES, INCLUDING:

- (a) QUESTION OF HUMAN RIGHTS IN CYPRUS;
- (b) STUDY OF SITUATIONS WHICH APPEAR TO REVEAL A CONSISTENT PATTERN OF GROSS VIOLATIONS OF HUMAN RIGHTS AS PROVIDED IN COMMISSION RESOLUTION 8 (XXIII) AND ECONOMIC AND SOCIAL COUNCIL RESOLUTIONS 1235 (XLII) and 1503 (XLVIII): REPORT OF THE WORKING GROUP ESTABLISHED BY THE COMMISSION AT ITS FORTY-FOURTH SESSION;

(agenda item 12) (E/CN.4/1989/23-28; A/43/630 and 743 and Add.1)

QUESTION OF HUMAN RIGHTS IN CHILE (agenda item 5) (E/CN.4/1989/7 and 72; A/43/624)

77. Mr. MARTENSON (Under-Secretary-General for Human Rights), introducing agenda item 12, said that the consideration of violations of human rights, wherever they occurred, constituted an essential part of the work of the Commission. In that connection, a continuous process of surveillance of the application of the international human rights instruments had been set up so that the International Bill of Human Rights could be made a living reality to the individuals for whose protection it had been designed. In order to have at its disposal the information needed for objective and impartial consideration of the question, the Commission had designated a number of special rapporteurs and had given each of them a mandate to report on the situation in a particular country or on a thematic issue.

78. For its consideration of agenda item 12, the Commission had before it the report of its Special Representative on the situation of human rights in El Salvador (E/CN.4/1989/23), the report of its Special Rapporteur on the situation of human rights in Afghanistan (E/CN.4/1989/24), the report of its Special Representative on the situation of human rights in the Islamic Republic of Iran (E/CN.4/1989/26) and the report of its Special Rapporteur on summary or arbitrary executions (E/CN.4/1989/25).

79. Under item 12, the Commission would also deal with the question of human rights and mass exoduses. In that connection, following the requests addressed to him by the Commission in paragraphs 5 and 6 of its resolution 1988/70, the Secretary-General had submitted to the General Assembly a report (A/43/743 and Add.1) which dealt in particular with the establishment of the Office for Research and Collection of Information, to which he had assigned the responsibility of alerting him to new situations and monitoring factors related to possible refugee flows and comparable emergencies. The report also contained the replies by Governments to the note verbale sent by the Secretary-General to all Governments with regard to that question. Since no further developments had occurred in the field in question since the publication of the Secretary-General's report, that same report had been made available to the Commission together with a note from the Secretariat (E/CN.4/1989/27) containing two further replies from Governments to the note verbale. In addition, Mr. James Jonah, Head of the Office for Research and Collection of Information, would address the Commission.

80. Pursuant to its resolution 1988/66, the Commission also had before it the report of the Secretary-General on the situation of human rights in Southern Lebanon (A/43/630). Moreover, by its resolution 1988/17, the Commission had decided to discontinue consideration of the human rights situation in Albania, under Economic and Social Council resolution 1503 (XLVIII) and to take up consideration of the matter under the public procedure provided for by Commission resolution 8 (XXIII) and Council resolution 1235 (XLII).

81. For its consideration of the question of human rights in Cyprus, the Commission had before it a report by the Secretary-General regarding the implementation of its previous resolutions on the subject (E/CN.4/1989/28).

82. Lastly, with regard to agenda item 5, the Commission had before it the report of its Special Rapporteur (E/CN.4/1989/7), which supplemented the report submitted to the General Assembly in November 1988, and concerned in particular the fourth visit of the Special Rapporteur to Chile in October 1988. The Government of Chile had submitted its observations in document E/CN.4/1989/72. The Special Rapporteur on the situation of human rights in Chile regretted that, for health reasons, he could not introduce his report in person.

The meeting rose at 1.20 p.m.