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COMMISSION ON HUMAN RIGHTS

Forty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 February 1990, at 3 p.m.

Chairman: Mrs. QUISUMBING (Philippines)
later: Mr. DITCHEV (Bulgaria)

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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:

- (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 on Situations established by the Commission at its forty-fifth session (continued)

*/ The summary record of the first part (closed) of the meeting appears as document E/CN.4/1990/SR.26; the summary record of the third part of the meeting appears as document E/CN.4/1990/SR.26/Add.2.

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Any corrections to the records of the public meetings of the Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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
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The public meeting was called to order at 4.55 p.m.

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:

- (b) STUDY OF SITUATION 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 ON SITUATIONS ESTABLISHED BY THE COMMISSION AT ITS FORTY-FIFTH SESSION

1. The CHAIRMAN announced, in accordance with established practice, that the Commission had examined in closed session, under Economic and Social Council resolution 1503 (XLVIII), the human rights situations in the following countries: Brunei Darussalam, Myanmar, Paraguay and Somalia. It had decided to defer until later consideration of the human rights situation in Haiti under the same procedure. In conformity with paragraph 8 of Council resolution 1503 (XLVIII), members of the Commission should make no reference in the public debate to the confidential decisions nor to any confidential material relating thereto. Since, however, it was the Commission's practice to disclose the names of the countries whose situations had been considered under the confidential procedure, it seemed only equitable to indicate that the human rights situations in Brunei Darussalam and Paraguay were no longer under consideration by the Commission under that procedure.

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.4/1990/12, 13, 15, 16 and 17 and Add.1; E/CN.4/Sub.2/1989/28 and 29/Rev.1; E/CN.4/Sub.2/1988/28 and A/44/708)

2. Ms. WESTERCAMP (International Federation of Action of Christians for the Abolition of Torture) said that the member associations of IFACAT, which was taking the floor in the Commission on Human Rights for the first time, were made up of Christians (Catholic, Protestant, Orthodox, Anglican and Quaker) and were independent of any political party or organization and of the Christian church authorities. The associations spoke out on behalf of any persons subjected to or threatened with torture, anywhere in the world and whatever their views or beliefs, and on behalf of anyone threatened with capital punishment. There were many cases for concern in that regard, but she wished to refer in particular to those of Turkey, Tibet, Haiti, Sri Lanka and Guatemala. Each member association of IFACAT called on its members to be vigilant in their own country and also undertook human rights teaching, particularly on the basis of the agreements signed by the Member States of the United Nations.

3. In order to spread the knowledge of the texts which prohibited torture, IFACAT was endeavouring to have the text of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment circulated everywhere, with a view to promoting its ratification by all nations. The Convention on the Rights of the Child, particularly its article 37, was a new addition to an already large body of texts, as was the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the Death Penalty.

4. In the field of prevention, IFACAT noted that the Committee against Torture and the Special Rapporteur to examine questions relevant to torture had different but complementary mandates and functions. Knowing the value which a large part of world public opinion attached to the mission entrusted to the Special Rapporteur by the Commission on Human Rights, IFACAT hoped that his mandate would be renewed; it felt that any limitation of that mandate would be seen as a setback in the struggle against what was regarded by all States as a scourge.

5. With a view to boosting the mobilization of action against torture, IFACAT stressed the timeliness of urgently applying some of the recommendations made by the Special Rapporteur to examine questions relevant to torture, namely, the prohibition of incommunicado detention, the establishment of regular inspection procedures for places of detention, the trying of persons responsible for acts of torture and the diffusion of texts which made clear the duty to disobey orders to practise torture, particularly in regard to personnel entrusted with maintaining order. The consequences which might stem from too wide a gap between proclaimed principles and reality could not be too strongly stressed.

6. Mr. Ditchev (Bulgaria) took the Chair.

7. Mr. KALKE (International Association Against Torture) said that the Special Rapporteur to examine questions relevant to torture must be enabled to continue his work of unmasking injustices suffered by prisoners during their detention. Consequently, the Association would like to see the Special Rapporteur's mandate renewed. It also invited countries which had not yet done so to sign the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; it continued to monitor the way in which situations developed in countries which, having signed the Convention, had nevertheless entered reservations, and to work against the practices of torture that still remained in some of the signatory countries.

8. In the United States, the persecution of political prisoners was directly linked to their resistance to oppression and their struggle to improve the quality of life of certain population groups (blacks, Puerto Ricans and indigenous Americans). They were in prison because they had stood up against oppression and injustice. Despite campaigns of disinformation, political prisoners were a reality in the United States. Some of them had been put in special quarters where they were under extra surveillance, involving video and audio equipment, had little time out of their cells and were subjected to frequent strip searches.

9. Although Chile had signed the Convention against Torture, it continued to use torture against political dissidents; it was alarming to see that, during the current transitional period, there were still over 400 political prisoners

in that country. His Association called for the release of all political prisoners during the transition period. While the forthcoming change to civilian government in Chile was welcome, there was no guarantee that steps would be taken to restore an independent judicial system in which judges and lawyers could freely investigate the cases of torture and the disappearances which continued to occur in that country.

10. In El Salvador, the authorities had used torture against members of religious groups and workers for international bodies. The whole world had been scandalized by the death of a number of Jesuit priests in November 1989 as well as by the arrest, torture and deportation of several dozen workers for international bodies. He had himself interviewed some of them, who had told him that torture had been systematically applied to terrorize and extract information from people working among the poor. The international community must voice its general condemnation of the Salvadorian Government for continuing to violate international standard rules for the treatment of prisoners.

11. In Honduras, there were grave shortcomings in the administration of justice, as was shown by the number of extrajudicial executions that had taken place during 1989: 44 persons had been executed, 8 while in the custody of the national police. A case worthy of particular attention was that of Norberto Flores, who, while in hospital after surviving one attempt on his life, had been abducted by the secret police and then killed. The perpetrators of that crime had not yet been brought to justice, and witnesses had been threatened. Human rights defence organizations had reported over 240 cases of torture in 1989. Human rights activists, too, had been threatened, often with death, in Honduras.

12. The Honduran Government had taken hardly any action to dissolve paramilitary groups or groups within the police force itself. His Association was also concerned about the presence of foreign troops, namely, United States soldiers, which aggravated the situation; it invited the Special Rapporteur to investigate further the interference of foreign troops in the life of Hondurans and the possible consequences for the administration of justice.

13. The situation in Guatemala was likewise a cause for deep concern: torture and forced disappearances continued. Human rights defence organizations working in Guatemala reported an alarming number of deaths in rural areas: peasants and the representatives of indigenous communities had been assassinated by military forces. Extrajudicial executions had many times been preceded by torture (fingers, hands or arms cut off, or tongues cut out). In some areas massacres had occurred. He urged the Special Rapporteur to pay close attention to developments in Guatemala, and invited the Commission on Human Rights to consider giving higher priority to the question of human rights there.

14. In Iraq, the use of chemical weapons had been reported to the Commission and Sub-Commission at their 1989 sessions. Documentation also existed on the torture of children, on many cases of forced disappearance and extrajudicial execution, and of the deportation of thousands of people on religious grounds. Bombing operations in the south indicated that opposition forces faced growing difficulty. The Government of Iraq had invited the members of the Sub-Commission to visit that country to observe the situation. His Association would like to know whether the invitation had been followed up

and, if so, what the outcome had been. If there had been no observer mission to Iraq, the Commission on Human Rights could perhaps pursue the matter with the Government.

15. One further question which disquieted his Association was that of the impunity of persons involved in human rights violations. Torture had become less frequently a matter of inhumane treatment applied by one soldier or police officer, and more a systematic practice by an unpopular Government against its opponents to extort information, silence them or create a climate of social terror so as to weaken opposition. Unless and until such a system was dismantled, it could be asserted that torture had ceased, and there would be a constant fear of its resurgence.

16. Representatives of his Association had visited Uruguay, Argentina, Chile, Guatemala, El Salvador and Honduras, among other countries, where they had listened to families of disappeared persons and heard the testimony of those who had been tortured; they could affirm that the fear existed and that restoration of democracy had not eradicated torture. Many torturers were still at large, and those who designed electric-shock implements or had devised mock executions were likewise at liberty. For that reason, he urged the Commission to continue to study the question of impunity for violators of human rights. To affirm principles and do nothing to put them into effect was farcical.

17. Mr. del GRANADO (International Abolitionist Federation) said he was speaking on behalf of his organization and of the International Federation for Human Rights. During the first two weeks of February 1984, the Bolivian Congress had begun a "responsibility trial" of General Luis García Meza and 55 of his chief collaborators who, after a bloody coup d'état, had exercised despotic power in Bolivia from July 1980 to August 1981. In Bolivian law, a "responsibility trial" involved criminal proceedings against former Government officials for crimes committed in the discharge of their duties. Cases were brought first before the Congress and then before the Supreme Court, which passed sentence.

18. The Congress had in fact brought the case before the Supreme Court in February 1986. In the context of the huge difficulties confronting the new democratic system in Bolivia, no arrests had been ordered, creating a situation of impunity which had had negative consequences for the subsequent progress of the trial. Luis García Meza and the other defendants had been accused of infringements of the right to life, liberty and security of the person, violations of academic freedom, murders and massacres of political and trade-union leaders, various disruptions of the economy and interference with public assets. For the most serious crime, murder, Bolivian criminal law provided a maximum non-remissible penalty of 30 years' imprisonment. In April 1986, the case had been brought before the Supreme Court. In order to render a judgement, the Court had had to apply the Ordinary Code of Penal Procedure which, in his view, was inadequate in such cases. When summoned, the defendants had not appeared before the Court. In January 1989, García Meza had left the city of Sucre, the seat of the Court, and his whereabouts had since been unknown. On 25 July 1989, the prosecution had submitted a long list of its witnesses. To date, only 10 witnesses had been heard; such slowness imperilled the operation of justice. At that rate, a judgement might not be forthcoming before 1991.

19. There were underlying reasons for the situation which he had just outlined. The dictatorship had, in fact, represented a means of exercising power and of defending certain interests which continued to exist under the democratic and constitutional system currently in place in Bolivia. Furthermore, many persons who had been prominent under the dictatorship were currently active in major political parties and discharging constitutional administrative duties. The judiciary was of very limited effectiveness. Responsibility for the situation he had just described therefore, went beyond the Supreme Court. It was equally attributable to Congress, which had not shown any eagerness to move the case forward.

20. It was true that the new Government, which had come to power on 6 August 1989, was making efforts to consolidate democracy, but the crisis of the legal system remained worrisome. When former Colonel Luis Arce Gómez, the chief architect of the repression under the García Meza dictatorship and the latter's co-defendant, had been captured by the police, the new Executive had not deemed it necessary to bring him before the Supreme Court. In his New Year address at the beginning of 1990, Mr. Jaime Paz Zamora, the constitutional President of the Republic of Bolivia, had stated that in the field of justice, it was not sufficient to replace individuals; thorough reforms were needed. The President of the Supreme Court had made similar observations at the beginning of the Court's 1990 session. Such reforms would help to create a new context for the "responsibility trial" of Luis García Meza and his co-defendants. Under those circumstances, it was to be hoped that the evidence-gathering stage could be completed in 1990, and that the verdicts - which were not subject to appeal - could be handed down shortly afterwards.

21. For their part, the Bolivian people had taken initiatives to speed up the trial, under the auspices of a committee which included the Bolivian Trade-Union Federation, the Standing Assembly for Human Rights, the National University, the families of the victims and several organizations which had instituted civil actions. The trial, the only one of its kind currently taking place, was symbolic because it placed on trial one of the dictatorships which had devastated Latin America in the recent past. Any verdict which might emerge from it could make an outstanding contribution to peace, the defence of human rights and democracy.

22. Mrs. Quisumbing (Philippines) resumed the Chair.

23. Mr. NDIAYE (Senegal) said that, in addition to the untiring efforts being made at the international level, such as those undertaken by the Commission, particularly under the procedures established by Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII), the protection of human rights depended more directly on each State's domestic behaviour towards its citizens. More specifically, the protection of individuals from arbitrary arrest or detention, which was the subject of the item under discussion, depended on the administrative and legal conditions established by States and on their practical application, which was within the province of the officers of the judicial police and the magistrates, especially the examining magistrates.

24. In a democratic system, the officers of the judicial police should be placed under the direct supervision of the judicial authorities. At that stage, the major problem was the question of pre-trial detention a measure of which enabled the judicial police to hold a person in custody for

investigation purposes. He summarized the measures adopted in Senegal to limit pre-trial detention as much as possible in accordance with internationally accepted standards, including those contained in article 9 of the International Covenant on Civil and Political Rights. In the first place, pre-trial detention was under the supervision of the Office of the Government Attorney. The arrested person must be informed immediately of the reason for his arrest, information concerning which must be conveyed immediately to the Government Attorney, the only person authorized to renew - and then only once - the pre-trial detention period, which was limited to 24 or 48 hours, as the case might be. The hearing record and pre-trial detention register, which had to be kept, must state the reasons for the measure, the date and time at which it was first imposed, the length of interrogations and even the rest periods (the purpose of the latter being to prevent confessions from being extorted under the pressure of fatigue or torture).

25. The above measures, which had already been in effect for several years (since the Act of 27 February 1985), were among those recently proposed to the international community by the Special Rapporteur on questions relevant to torture, Mr. Kooijmans, in his report (E/CN.4/1990/17). In Senegal, another important innovation consisted of giving not only the Office of the Government Attorney but also the arrested person, his lawyer and a third party, even if not a relative, the opportunity of requesting a medical examination at any time. The protection of the rights of the arrested person also required careful regulation of the right to defence; the Senegalese penal system recognized the defendant's right to choose a lawyer and to make no statement except in his presence. The case file must also be transmitted to the lawyer. Pre-trial investigative periods were strictly regulated, and a defendant whose request for release pending trial had not been reviewed within the prescribed time-limits was automatically released. A person subjected to an arrest warrant or detention order who was not interrogated within 24 or 48 hours, as the case might be, had also to be released.

26. None the less, for the legal and administrative provisions whose main features he had just outlined to have a genuine impact, a competent, just, independent and impartial judiciary was necessary. In Senegal, the independence of the judiciary was enshrined in the Constitution, whose provisions were in keeping with the standards and criteria of the Basic Principles on the Independence of the Judiciary, adopted in 1985. However, quite apart from national rules and international instruments, the independence of the judiciary was above all a state of mind, a "personal creed".

27. Senegal had incorporated the Convention against Torture into its domestic law through an Act adopted on 16 June 1986, i.e. prior to the entry into force of the Convention (26 June 1987). His Government had acted quickly because it had been aware that the new Convention marked a major stage in the international efforts arising from Article 55 of the Charter, and also because it was imbued with black African humanism, which made equal and inalienable human rights the basis of freedom, justice and peace in the world. Article 6 of the Senegalese Constitution provided that "the human person is sacred and the State is obliged to respect and protect him". Faithful to its undertakings, Senegal had opened its doors to foreign observers and scrupulously submitted its periodic reports, particularly to the Committee against Torture; Senegalese law provided criminal penalties against anyone responsible for an illegal arrest if the arrested person was subjected to physical torture (article 337 of the Penal Code).

28. Unfortunately, it appeared from the report of the Secretary-General (E/CN.4/1990/15) that the Convention against Torture had so far been ratified by only 49 States. Yet the importance of Governments' moral, political and legal adherence to international standards was well known. Amnesty International, in particular, had understood that, and, in the context of a memorable campaign, it had encouraged all Governments to ratify the international instruments. He paid tribute to that organization, and to the non-governmental organizations in general, which spared no efforts in condemning the practice of torture everywhere in the world. It was to be hoped that the Commission would adopt a resolution reminding the international community of the need to give the Convention against Torture the universal acceptance it deserved.

29. Mr. RHENAN SEGURA (Observer for Costa Rica) said that a Government which resorted to torture acknowledged its inability to govern. Torture not only constituted suffering for the victim; it also corrupted the torturers and the system which tolerated them. Unfortunately, it was not an isolated phenomenon, but a universal manifestation of barbarism and dehumanization. It could not be justified by the fight against terrorism, guerrilla fighters or delinquency. Moreover, the revulsion which it aroused ran counter to the objectives cynically invoked to justify it.

30. It was not sufficient to recognize that torture was a crime; States which did so none the less often resorted to torture. For his delegation, therefore, it was imperative to ensure the implementation of the instruments in international law which protected individuals against torture. Provisions to that effect were already contained in the Universal Declaration of Human Rights, the Geneva Conventions of 1949, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX)), the International Covenant on Civil and Political Rights (art.7), the European Convention on Human Rights (art. 3), the American Convention on Human Rights (art. 5) and the Charter on Human and Peoples' Rights adopted by the Organization of African Unity. More recently, the Convention against Torture had been adopted on 10 December 1984, and the Inter-American Convention to Prevent and Punish Torture on 9 December 1985.

31. The implementation of those international instruments should be ensured by new and effective monitoring mechanisms, including, in particular, a system of visits to places of detention. In 1980, his delegation had joined with other Latin American delegations in submitting a draft optional protocol to the Convention against Torture that had been prepared by the International Commission of Jurists and the Swiss Committee against Torture, making proposals along those lines on the basis of the experience of the International Committee of the Red Cross. In 1989, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which established a system similar to that envisioned by Costa Rica in 1980, had entered into force; it was to be hoped that the system would soon be extended to other geographical regions.

32. He congratulated once again the Special Rapporteur on questions relevant to torture, Mr. Kooijmans, on his report (E/CN.4/1990/17), and took the opportunity to urge Governments to support the United Nations Voluntary Fund for Victims of Torture, which was carrying out humanitarian work of the greatest importance, by making contributions to the Fund.

33. Mr. GONZALEZ (Christian Democratic International), after commending the Special Rapporteur on questions relevant to torture and the Working Group on Enforced or Involuntary Disappearances on their reports (E/CN.4/1990/17 and E/CN.4/1990/13), said that his organization was concerned at the cases of disappearances and torture in Central America and the Caribbean.

34. In the first place, he drew attention to the fact that, on 1 November 1989, three leaders of the Haitian opposition, Evans Paul, Jean-Auguste Mesyeux and Marino Etienne had been arrested and subjected to brutal treatment before being shown on national television. On 13 December, Sergeant Beauchard, one of the men responsible for the movement that had resulted in the removal of General Namphy in September 1988, had also been arrested. According to the International Group on Human Rights and the Right to Health of Harvard University, which had carried out a fact-finding mission in Haiti from 26 December 1989 to 4 January 1990 and which had been able to interview some political detainees, Evans Paul "could not stand up", Beauchard "had difficulty seeing and hearing", Marino Etienne "suffered from high blood pressure", and Mesyeux "had difficulty in urinating because of the blows he had received". On 14 December, Normillien Maxime had been arrested at Limbé and had died six days later as a result of the torture inflicted on him. On 12 January 1990, Mr. Nally Beauharnais, Director of the Public Transport Union, had been arrested and, according to his family, ill-treated.

35. In Cuba, on 13 December 1989, Carlos Novoa, Vice-Chairman of the Cuban Christian Democratic Committee, had been arrested for the second time and subjected to ill-treatment in Guanajay Prison.

36. He welcomed the fact that Nicaragua had, like Costa Rica, ratified the International Covenant on Civil and Political Rights and the Optional Protocol thereto, and had signed the Convention against Torture. He appealed to the Governments of the other Central American countries to ratify those instruments also. Nevertheless, his organization was concerned to note that cases of torture were reported in all the Central American countries, except Costa Rica. In its special report on Nicaragua of October 1989, Amnesty International pointed out that treatment equivalent to torture had been frequent in that country during the state of emergency (page 3). The organization in question mentioned the torture, in particular by electric shocks, inflicted on a person who had been held in Rio Blanco Prison (page 28). Noting that torture was closely linked with disappearances, he pointed out that Ramon Ordoñez Ramírez, aged 16, had disappeared after having been seen in prison in a terrible state. The Nicaraguan authorities claimed that he had never been detained.

37. According to the latest report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1990/13), it had transmitted to Governments, during its mandate, 18,425 cases of disappearances, of which 12,972 concerned Latin America and 5,916 Central America, with only Costa Rica, an oasis of respect for human rights, not involved in that calamity. The great number of cases and their persistence made it necessary for the peoples and Governments of the countries affected to adopt urgent measures with the collaboration of the international community.

38. It should be noted, however, that the Central American countries in particular were holding the attention of world public opinion and that the number of cases submitted to the Working Group and other United Nations bodies was governed by the sometimes selective zeal of some international bodies, not part of the United Nations system, which gave detailed accounts of the cases of disappearances reported in Guatemala, Honduras, and El Salvador, but said nothing about those that had taken place in Nicaragua. Such "disinformation by omission" must cease for, although it was not connected with the United Nations, the practice distorted the information made available to Member States and could affect the resolutions they adopted.

39. The problem of torture and disappearances should no longer form the subject of political manipulation, and only the interests of the victims and their families should be taken into consideration. In that regard, a distinction should be made between the responsibility of the actual or moral perpetrators of disappearances, that borne by the existing Government and that of the State. While the responsibility of the last was permanent, it was neither serious nor permissible, from a political, legal and ethnical standpoint, to accuse a Government of the crimes committed by Governments which had preceded it and under which those currently governing had themselves been the victims of persecution.

40. Furthermore, modern means of communication and technical progress made it possible to maintain an up-to-date record of prisoners and arrests, including the name of the detainee, that of the arresting official and the place where the arrest took place. Apart from exceptional cases, his organization found it unacceptable in the current day and age that a Government should be unable to give, within a relatively brief period, a breakdown of all the prisoners detained in its territory.

41. One of the prerogatives of the State was to defend itself against any attempt at destabilization, but it should entrust that task to police or intelligence units that were under the constant supervision of external authorities. Countries which had, whether officially or unofficially, a political police force or repressive security units should take measures to disband them promptly and to replace them by modern bodies whose officials would not violate fundamental human rights on the pretext of ensuring national security.

42. The Guatemalan Government had been the first in Central America to invite the Working Group, which had, in fact, visited that country in 1988. His organization had taken note of the invitation extended by the Government of Nicaragua and hoped that the Working Group would be able to visit that country in the near future, whatever the outcome of the elections. It called on the Salvadorian and Honduran Governments to take similar initiatives, which would make it possible to clarify a large number of cases of disappearances and prevent the occurrence of new cases.

43. His organization, recognizing the common destiny of the peoples of Central America, had encouraged the process of peace and reconciliation as soon as a proposal for a Central American parliament had been presented by President Cerezo. At a later stage, it had expressed its support at the time of the signing of the Esquipulas Agreements, which were to lead to the Tela and San Isidro de Coronado summit meetings. Without prejudice to other existing machinery, it wished to propose that the Central American countries

be provided, under United Nations patronage, with an evaluation mechanism that would make it possible to ensure, in all the countries of the region, continuous monitoring of the staff of prisons, including those under the control of the security organs of the respective countries, guaranteeing access to those establishments by independent national or international humanitarian organizations.

44. Mr. GRAVES (International Commission of Health Professionals for Health and Human Rights) said that one of the purposes of his organization (ICHP), which had been founded in 1985, was to protect medical, nursing and paramedical personnel who, throughout the world, worked in favour of human rights and acted in accordance with the internationally accepted Declarations and codes of conduct.

45. Over the years, his organization had had to deal with many cases of harassment of health workers who treated their patients without regard for their race or religion, refused to sign certificates of natural death when there was suspicion or evidence of torture or to give confidential information about their patients despite administrative measures or threats of torture or other forms of pressure from the law enforcement units of some countries, and who were prepared to denounce torture and challenge those who committed other human rights violations. On several occasions, ICHP had intervened on behalf of professionals in danger and protested to Governments which did not respect medical professional integrity. On the basis of a number of disquieting reports from many countries, it seemed that the problems in that field existed internationally on a large scale.

46. The National Medical and Dental Association of South Africa (NAMDA), which was affiliated to ICHP, had informed it of the deaths of two detained physicians in addition to that of Steve Biko, a medical student, in 1977. Several physicians in that country were also reported to have suffered from various forms of harassment by the security forces. The offices of NAMDA itself had been searched on several occasions by the security police.

47. In the Sudan, a large number of health professionals had been detained at Khartoum, following a strike called by physicians on 26 November 1989 to protest against the dismissal and arrest of several of their colleagues after the military coup on 30 June 1989. The President of the Medical Association of the Sudan, Dr. Maamoon Mohammed Hussein had been sentenced to death for participating in the strike and one of his colleagues to 15 years' imprisonment, while several others had been arrested and tortured. Many non-governmental organizations had called on the Government of the Sudan to stop its oppression of health professionals and to allow them to express their convictions. World public opinion had been shocked by those death sentences and arrests and ICHP had recently received confusing information indicating that the Sudanese Government had released the prisoners, but the President of the Medical Association was still threatened and many of his colleagues were still imprisoned.

48. In the Philippines, where President Aquino was trying to promote respect for human rights, paramilitary groups had prevented health professionals from exercising their rights. ICHP called upon the Government of the Philippines to strengthen its control over those groups and to ensure respect for the rights of health professionals. An ICHP affiliate in the Netherlands was currently engaged in an investigatory mission in the Philippines in order to

verify reports that the Government was not providing sufficient protection for health professionals. ICHP was awaiting the results of that mission in order to submit information to the Commission on Human Rights.

49. In the People's Republic of China, during the June 1989 events in Tiananmen Square, when the Chinese Government itself had committed human rights violations, health professionals had been prevented from caring for the wounded, and some had even been beaten, arrested or wounded when trying to do so. Troops entrusted with the task of ensuring compliance with martial law had entered hospitals, disconnected life-support systems and arrested wounded civilians.

50. Those few examples led to the conclusion that the United Nations should do more to impose respect for the declarations and codes of conduct it had promulgated, including the Universal Declaration of Human Rights, the Principles of Medical Ethics (1982), the Declaration against Torture (1975), the Standard Minimum Rules for the Treatment of Prisoners (1977) and related recommendations, and the Code of Conduct for Law Enforcement Officials (1979).

51. Health professionals were morally and legally bound by those various instruments. One essential provision in that regard was Principle 6 of the Principles of Medical Ethics stating that there could be no derogation from the foregoing five principles on any ground whatsoever, including public emergency. Hospitals and clinics had become part of the battlefield of war with doctors and nurses being forced, sometimes at gunpoint, to give confidential information, patients being arrested or killed, and their files seized by force. The families of health workers were sometimes threatened, their homes set on fire and illegally searched, and their consultations illicitly overheard; in addition, some of their organizations had been forbidden. If all those factors were taken into account, it was clear that Principle 6 was very difficult to live with.

52. ICPH therefore requested the Commission to develop instruments to support the health professionals who were acting in accordance with the declarations and standards adopted unanimously by the General Assembly.

53. Ms. SIERRA (Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM)) said that, at its ninth regular congress, held at Lima in November 1988, FEDEFAM had noted with great concern that the number of disappeared detainees continued to increase. At the time of the organization's foundation in 1981, the families that reported disappearances of persons had usually lived in countries under a dictatorship. It was regrettable that, despite the advent of a democratic form of government in a number of Latin American countries, the situation had not improved. Moreover, cases of torture of other practices typical of what might be described as outrages against humanity formerly infrequent had become commonplace. Having no other response to social conflicts than to carry out waves of repression, States counted on the complicity of the Judicial Power and refused to undertake investigations to punish the guilty parties. In most of the countries with a constitutional Government, the judiciary, which was supposed to be independent, was subordinated to the other branches of power. That was the case in Argentina, where missing children who had been found were sometimes returned, upon the judgement of higher courts, to the very families that had abducted them, so that such children were kidnapped for a second time.

54. Democratic in appearance, the Governments of the countries of Latin America and the Andean region were actually very repressive. The large numbers of disappearances, political assassinations and mass murders, indicative of the militarist policy and the action of paramilitary groups, were often carried out under the pretext of combating drug trafficking or ensuring national security. Other countries that had recently become democratic had introduced the principle of impunity for past crimes, so that a parody of reconciliation could take place. Such total impunity had been reaffirmed in Argentina with the amnesty decrees of President Menem. The commander-in-chief of the army had publicly called for the release of high officers and their return to office and honours, and a "just and legitimate struggle" had been invoked in order to cover up all past events.

55. The economic, political and social crisis that was raging in the countries of Latin America was accompanied by an increasing number of arrests, disappearances and murders. The cases of disappearances were punished even less frequently than other crimes, because that offence usually did not appear in the penal code, the military code covered up certain instances of injustice and investigations were perfunctory. There were also cases of enforced or involuntary disappearances in Asia, in the Philippines under the Marcos régime, and in Africa, involving 800 Saharan citizens in Morocco. The Governments were accomplices in those violations, and in no way whatsoever did they manifest the political will to remedy them. In Chile, the FEDEFAM hoped that the crimes committed during the Pinochet dictatorship would not go unpunished.

56. Such a situation must not be allowed to continue to spread to more and more countries. The international community must be alerted, and the Working Group must continue to discharge its mandate by urging the Governments of the countries visited to inquire into the fate of persons who had been arrested or who had disappeared. In those Latin American and other countries in which impunity was granted by law, it was important to emphasize that no law prevented investigating the fate of the thousands of persons still languishing in obscure prisons.

57. In particular, a declaration must be adopted as soon as possible on enforced disappearances, a crime that was inconsistent with all United Nations principles concerning the protection of persons. Such a declaration, which must be adopted by the General Assembly, should classify that practice as a crime against humanity and thus an offence under international law which was extraditable and not subject to statutory limitation and had no political or military significance. Persons perpetrating such crimes must not be eligible for amnesty or other measures of clemency that could prevent investigation of the facts and punishment of the guilty parties. Such individuals must not be granted political asylum and must not have the right to claim that they had been following orders or that the circumstances had been exceptional.

58. FEDEFAM urged the Member States to commit themselves to preventing and punishing that offence, to investigating cases of disappeared persons and to providing the necessary support to national and international human rights organizations so that they could carry out their work. Member States must also carry out, as a matter of urgency, the requisite studies for preparing a draft international convention on the question so as to strengthen international prevention and establish the legal framework for punishing that offence as a crime under international law.

59. Ms. PERREGAUX (Centre Europe-Tiers Monde (CETIM)) said that, at the Commission's forty-fifth session, CETIM had voiced concern about the Saharan civilians in the areas of Western Sahara occupied by the Moroccan army and administration, adding that it had great expectations of the meeting, in January 1989, between King Hassan II and officials of the Frente POLISARIO. Unfortunately, that dialogue had been broken off despite the military truce at the beginning of 1989 and the decision, taken in May 1989, to release 200 prisoners of war, some of whom had been held for more than 10 years and who were often in poor health or had reached an age that had justified a humanitarian gesture in their favour. According to one of the members of the CETIM who had met with them recently, those persons were desperately awaiting a settlement after the Moroccan Government had initially refused to receive them, stating that such a gesture did not form part of the peace proposals accepted by the two parties. It was common knowledge, however, that only a responsible attitude, in keeping with resolution 104 of the Organization of African Unity and General Assembly resolution 40/50, would make it possible to put an end to human rights violations in that part of the world.

60. The occupied areas of Western Sahara had also seen other tragic situations of that nature, which CETIM was duty-bound to denounce in order to break the silence maintained by too many countries, in particular certain States in Europe, so as not to reveal the true face of a country that resorted to repression at home and colonial war abroad, with all the cases of imprisonment, torture and enforced disappearance that that entailed.

61. It was important in particular to draw attention to the cases of many Saharan families whose relatives had been arrested for having asserted their identity and who had since disappeared. The few persons released had told of horrible tortures inflicted in prison that were unworthy of any Government that respected the human person. Established in August 1989, Association of Relatives of Saharan Prisoners and Missing Detainees had compiled a list of 857 cases of disappearances. Three of its members had testified at Geneva in December 1989, and the report of the Working Group on Enforced or Involuntary Disappearances reflected the whole extent of the tragedy. One hundred and twenty further disappearances had taken place since the visit of the technical omission of the United Nations in November 1987. On 10 January 1990, 3 persons aged 16 to 30, sent by force like hundreds of other young people to Moroccan cities, where they had to find work and means of subsistence, had been arrested near Zagora while attempting to flee. CETIM had received irrefutable accounts of attempts that had been made to rid Western Sahara of all human presence, to distort the results of the referendum that was to be held and to force the assimilation of potential resistance fighters. Despite the benefits offered to those youths, many of them sought to escape from Morocco. Those who had succeeded reported new cases of disappearances and the non-return of prisoners. The courts continued to take no action, and torture was frequent. As for their relatives, they had no means of recourse, since lawyers refused to defend them.

62. CETIM called upon the Commission to consider very seriously the situation in the occupied areas of Western Sahara and reminded the Moroccan Government of the commitments it had made in signing the Fourth Geneva Convention of 12 August 1949. It hoped that the dialogue between the Moroccan Government and the Frente POLISARIO would be resumed and that the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on questions relevant to torture would consider, as a matter of priority, the violations of human rights in Western Sahara.

63. Mr. TEITELBAUM (American Association of Jurists) said he would like to see the Sub-Commission's Working Group on Detention put the finishing touches to the draft declaration on the protection of all persons from enforced or involuntary disappearances so that it could be submitted to the Sub-Commission at its August 1990 session. The discussions of the Working Group, the numerous observations communicated by Governments, non-governmental organizations and the Working Group on Enforced or Involuntary Disappearances and the draft convention prepared by the Inter-American Commission on Human Rights could provide a sufficient basis for producing a definitive draft.

64. It was encouraging to note that 49 countries had adhered to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; unfortunately, however, only 23 countries had made the declaration provided for in articles 21 and 22 of that Convention. In any event, his organization considered that the fight against torture would not take on its true dimension until States opened wide their doors to the Committee against Torture and the Commission's Special Rapporteur.

65. In Argentina, a group of relatives of persons who had disappeared between 1976 and 1983 had, in December 1989, filed suit against the State before a federal judge to have the court declare that the State had not respected its obligation to give missing persons and their relatives effective means of recourse, had not made the files available to individuals and courts and had not provided true, detailed and documented information about how it had dealt with cases of missing persons. The plaintiffs had also asked that the State be ordered to surrender all documents concerning disappeared persons that were kept on the premises of the army, the police or the Ministry of the Interior, including those concerning the decision taken by the army general staff in November 1983, on the eve of the coming to power of a constitutional government, to destroy documents regarding so-called anti-subversive operations, and in particular the list of documents destroyed. The plaintiffs also asked that the State be ordered to provide detailed information on the material, administrative and legal treatment of cases of missing persons by all its bodies and civil servants, without exception.

66. A series of measures undertaken by the State following the disappearances, in particular the devices employed to delay legal proceedings, the destruction or non-communication of documents, the fabrication of false information and the drafting of a number of specific laws, seriously interfered with the efforts to shed light on the fates of virtually all the missing persons. The decree granting amnesty to the last members of the armed forces being prosecuted had also deprived the relatives of the missing persons of the sole remaining possibility of obtaining information of official origin, i.e. information that the legal proceedings would have brought to light. Those relatives had thus been deprived of their rights under article 25 of the American Convention on Human Rights and article 10 of the Universal Declaration of Human Rights.

67. The case of Argentina was a typical one. The arrest, torture and murder of thousands of citizens under the dictatorship had been followed, after restoration of the constitutional order by trials that, while exemplary in many respects, had still been subject to restrictions, as admitted by the courts themselves in their verdicts, by increasing pressure brought to bear by the armed forces to obtain impunity for virtually all those responsible and by what appeared to be complete uncertainty regarding the fate of the missing

persons. The granting of amnesty or of a measure of clemency to persons suspected of having committed abductions or torture was a flagrant violation of the provisions of article 4, paragraph 2, of the Convention against Torture. He also referred to paragraphs 181 and 184 of the judgements by the Inter-American Court of Human Rights, 29 July 1988, in the case of VelásquezRodríguez versus Honduras, concerning missing persons. According to paragraph 181, the obligation to investigate the facts continued to apply as long as uncertainty persisted about the fate of the missing person. According to paragraph 184, the principle of international law that affirmed the identity and continuity of the State meant that responsibility continued to obtain regardless of any change of Government that might have taken place. Those provisions should be borne in mind by the Governments of many countries in which disappearances had occurred.

68. His organization had received from the Association of Relatives of Saharan Prisoners and Missing Detainees a list containing detailed information on 120 persons who had disappeared from 1987 to January 1990 in Western Sahara and Morocco. That list was available to the delegation of Morocco, and he hoped that the authorities of that country would provide information on what had become of the persons concerned.

69. Humanitarian organizations in Guatemala had also notified his organization of three recent cases of disappearances in that country: Jorge Arturo Pérez Jacinto, 54 years old; Oscar Armando Pietrasanta García, 24 years old, a law student abducted on 6 February 1990; and Dr. Carmen Valenzuela, paediatrician, university teacher and president of the Association of Women Doctors, abducted on 10 February 1990. His organization had also been informed of the disappearance in Peru, in December 1989, of Javier Antonio Alarcón Guzmán. The American Association of Jurists called upon the Commission to express its concern as soon as possible to the authorities in Guatemala and Peru in connection with those disappearances.

The summary record of the third part of the meeting appears as document E/CN.4/1990/SR.26/Add.2.
