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SUMMARY RECORD OF THE SECOND 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)
Mrs. REGAZZOLI (Argentina)
Mrs. SINEGIORGIS (Ethiopia)

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* The summary record of the first part (closed) of the meeting appears as document E/CN.4/1990/SR.26. The record of the continuation of the meeting appears as document E/CN.4/1990/SR.26/Add.1 and Add.2.

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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, 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)

1. Mr. WAGNER (International Human Rights Law Group) said that his organization, which was addressing the Commission on Human Rights for the first time, was composed of a non-partisan group of lawyers committed to promoting civil and political rights through the application of international human rights law. Article 9 of the Universal Declaration of Human Rights provided that no one should be subjected to arbitrary arrest, detention or exile. Article 9 of the International Covenant on Civil and Political Rights also provided for the same protection whereas article 10 provided that all persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person. Those provisions also included a ban on torture, which often occurred during arbitrary detention. However, arbitrary arrests and detentions had not ceased. The Covenant had not been universally ratified and the provisions against arbitrary arrest and detention were not among the non-derogable rights.

2. The General Assembly, in its resolution 43/173 of December 1988, had therefore adopted a Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, which could serve as a standard and as Mr. Kooijmans had noted in his report, compliance with them would make torture during detention or imprisonment virtually impossible. The Body of Principles was not, however, universally applied. Under the martial law imposed by the authorities of the People's Republic of China, in 1989, the police and army had arrested and held hundreds of Tibetans in detention for months, without any charge, for peaceful participation in independence activities, demonstrations and distributing pamphlets. While the Group took no position on the question of Tibetan independence, it condemned the pattern of arbitrary detention by China, which, although not a party to the International Covenant on Civil and Political Rights, should at least respect articles 10 and 11 of the Body of Principles, which provided that anyone arrested should be promptly informed of the charges against him and heard by a judicial or other authority; martial law could not justify derogation from those provisions. Although principle No. 6 prohibited torture in all circumstances, Tibetan detainees were allegedly frequent victims of various forms of torture, that sometimes caused death as the marks visible on the bodies collected by families showed.

3. In Sudan, the military coup of 30 June 1989, had been followed by a suspension of the Constitution and the imposition of a state of emergency. Three hundred persons had been arrested immediately, many of whom were still in detention without charge. Journalists, trade-unionists and doctors had been imprisoned. One doctor had been sentenced to death by a military court

after having been tortured. Sudan had, however, signed the International Covenant on Civil and Political Rights but it had respected neither the Covenant nor the Body of Principles under which a state of emergency could not be used to justify arbitrary detentions, detainees were to be allowed to have legal counsel, and any form of detention or imprisonment had to be ordered by some judicial or other independent authority. In July 1989, however, military courts had been established with jurisdiction over civilians. In August, 57 judges who had protested were dismissed from their posts and at least 20 were detained. The execution of civilians and combatants in military custody without any judicial process proved that there was no effectively independent judiciary.

4. The Group requested the Commission to give particular attention to the systematic use of arbitrary procedures and, believing that the Body of Principles could be a valuable instrument in providing protection against arbitrary arrest and detention which often accompanied the use of torture, requested the Commission to authorize a study on the means of educating States and individuals regarding the United Nations Body of Principles and of assuring its universal application.

5. Mrs. Sinegiorgis (Ethiopia) took the Chair.

6. Mrs. BECK-HENRY (World Movement of Mothers) recalled that her organization had no particular party alignment, was independent of any régime and encompassed associations of mothers from many countries in the world, from all social strata and beliefs and that its members, irrespective of where they lived, had the same problems, encountered the same human rights violations, shared the same suffering and were seeking the same solutions. On their behalf, she called for an end to the strife that created suffering, brought death and sorrow and demanded once again that wars and guerrilla fighting should cease and that political prisoners should be released. She encouraged all women to unite and pool their energies in the service of justice and peace.

7. Mrs. GRAFF (International League for the Rights and Liberation of Peoples) said that the deteriorating human rights situation in the Philippines furnished little evidence of the passion for democracy claimed by the President of that country. The Philippines, in 1988, was the most dangerous place for human rights monitors and it was said that there had been more arrests in the first three years of the Aquino Government than during the last three years of the Marcos régime. Those arrests, of which only 2.5 per cent were legal, were admittedly for only a short time but the victims none the less ran the risk of being tortured, especially during the initial period, or of being summarily executed. Some 190 persons had been victims of summary executions. Although Mrs. Aquino had claimed that torture had no place in a democracy and its use could not be justified in counter-insurgency, and although the Philippines had ratified the Convention against Torture, a systematic pattern of torture by the military and paramilitary forces was reported to have been re-emerging, since 1987, and with 427 cases in 1989. Since March 1966, 20 per cent of the persons arbitrarily arrested and detained were allegedly tortured and many had died.

8. Carlito Jintalan, a suspected member of the New People's Army (NPA), was allegedly tortured after he and three other members of the army had been arrested and taken to the camp in Sorsogon. Although the military had denied his arrest they had themselves deposited his body in the hospital where it was

located. The Medical Action Group - Philippine Action against Torture (MAG-PACT) reported that, on 15 March 1989, 10 people had been arrested in Nueva Ecila and 7 of them had been tortured. Out of the 25 persons that that Group examined on 31 July 1989, 15 showed signs of torture. In the paragraphs on the Philippines in his report, Mr. Kooijmans noted the arrest in Metro Manila on 12 September 1989 of 25 persons who were still being detained without any charges being brought against them in the camp at Bagong Diwa, Bicutan, and who had been subjected to various kinds of torture and ill-treatment to make them confess to membership in the New People's Army. In 1988, the incidence of enforced disappearance rose to unprecedented levels and in 1989, despite a mild slackening, it continued, mainly affecting members of human rights defence groups, whom the military often branded as communists. Thus, trade unionists had disappeared after participating in a rally in Manila on 1 May 1989.

9. The Philippines had, in fact, invited members of the Working Group to visit the country and the Government of the Philippines had expressed its determination to defend human rights. However, the Constitution and the laws were not sufficient; they had also to be applied and those found violating them punished. However, no member of the army, the police or the paramilitary forces had been found guilty even in such flagrant cases as the Lupao massacre where Mrs. Aquino herself had met the survivors and witnesses, or the Mendiola massacre which had taken place less than a kilometre away from the presidential palace.

10. In Sri Lanka, the cases of torture, detention and disappearance deserved the attention of the Commission which had debated it under various items of its agenda since 1983. The adoption of a resolution by the Commission in 1987, the Indo-Sri Lanka Peace Accord in 1987, the arrival of the Indian Peace-Keeping Force, the devolution of political power to the Tamils in the north-east were expected to halt the deterioration of the human rights situation. On the contrary, the number of extra-judicial killings, mass arrests, detentions, torture and disappearances had grown. Detainees were often beaten by members of the Indian Peace-Keeping Force and the Sri Lankan authorities, people were tortured during interrogation and many forms of ill-treatment had been reported. Many of those found dead along roads and rivers had been tortured or had died in detention.

11. In the north, the former Indian Minister of Defence had admitted that the Indian Peace-Keeping Force continued to keep people in detention and to arrest Tamils in large numbers. In 1989, thousands of Tamil youths had been forcibly conscripted in order to fight the LITE guerrilla group. The situation had worsened even more in 1989, particularly in the south, and the Tamils had also been subjected to ill-treatment at the hands of their own activists. From 5,000 to 8,000 Tamil youths were reportedly detained in the south, many of whom had allegedly been tortured. In 1988 and 1989, Amnesty International reported 72 cases of disappearances at the hands of the Indian Peace-Keeping Force and the Sri Lankan forces. The latter denied those figures. For example, Mr. Fernando had been arrested by a man wearing Sri Lankan uniforms on 27 August 1989, and Mr. Layanaracheni had been abducted by unknown persons on 25 August. The police later admitted that the latter had been detained by the police in Tangalle. He was reportedly brought subsequently before an inspector of the Colombo Counter-Terrorism Unit who noticed external injuries. He reportedly told the inspector that they were the result of

police torture and he died on 2 September in Colombo General Hospital. Other cases of torture had been reported for example, by David Honsego in The Financial Times on 18 January 1990.

12. In conclusion, she urged the Commission to investigate those human rights violations, in particular, cases of detention, torture and involuntary disappearances and to ask India to expedite the withdrawal of its Peace-Keeping Force and the Sri Lankan Government to lift the state of emergency and repeal the repressive laws.

13. Mrs. BARNES DE CARLOTTO (International Movement for Fraternal Union among Races and Peoples), speaking in her capacity as Chairman of the Association of the Grandmothers of the Plaza de Maio, drew the Commission's attention to the tragedy of the children who disappeared between 1976 and 1983 during the Argentinian military dictatorship. A democratic régime had replaced the dictatorship and everyone hoped that it would overcome the serious economic difficulties it was facing. However, there could be no real democracy without justice. In the meanwhile, the plethora of iniquitous measures was continuing and, after the previous Government had enacted the Finality Act and the Due Obedience Act, which was tantamount to granting amnesty to known torturers, the present Government had promulgated five decrees in 1989, granting a pardon to hundreds of members of the armed forces charged with particularly serious violations of human rights. Such behaviour constituted a flagrant violation of the Constitution under which pardon could not be granted to condemned persons. Furthermore, there was some question of pardoning senior officials of the Military Junta who had been responsible for State terrorism and had been tried and sentenced by the civil courts. An attempt was thus being made, in fact, to justify or to deny the disappearances, torture, murders, concentration camps and abduction of children which on top of being a denial of justice was a threat to an emergent democracy.

14. As a result of international pressure, court cases involving the search for missing children had not been affected by the provisions of the laws of immunity but, in actual fact, justice was not being done and hundreds of children were still living with the families that had abducted them. The Argentine Government had taken no political decision regarding them and no one knew whether any specific measures were being contemplated to address that tragic problem.

15. In 12 years of unremitting struggle, the Grandmothers of the Plaza de Maio and the families of the abducted children had succeeded in finding only 49 children and the last one had been dead. Those families, which knew the whereabouts of particular children encountered formidable difficulties in having the children restored to them through legal channels. The Judiciary sometimes unduly favoured families that had taken the children away illegally. Courts also refused to order the necessary measures, such as blood tests, to enable positive identification of the children. Lastly, some of the children were abroad, where they had been deprived of the freedom of their rights.

16. It should be noted that on 5 September 1989, the Supreme Court of Justice had delivered a ruling making grandparents ineligible to be parties in cases involving the search for children, thus denying them any right to act on behalf of their grandchildren.

17. The Grandmothers of the Plaza de Maio appealed to the Commission to recommend to the Argentine Government the adoption of prompt and effective measures for recovering the hundreds of children who were still missing. It should call upon the President of the Republic of Argentina to use the powers vested in him by article 86, paragraph 1 of the Constitution, and to ascertain why the Argentine judicial system did not defend the children who had been abducted and why it sought to equate families that abducted children with legal adoptive families. In addition, the Argentine Government should be reminded of the commitments it had made in ratifying the two International Covenants on Human Rights, which prohibited any decision granting immunity to persons guilty of crimes against humanity. The Commission should recommend to the General Assembly that it should expedite the drafting of a declaration on enforced or involuntary disappearances, the international convention on the prevention of disappearances and the convention on the rights of the child with a view to making them binding instruments, to prevent the recurrence of such violations of human rights.

18. Mr. SANIDAD (Regional Council on Human Rights in Asia) deeply regretted the continued violations of fundamental human rights in the countries of South-East Asia during the past year. In Singapore, under the internal Security Act, the Government was authorized to arrest without a warrant and keep in detention for a period of up to 30 days anyone who had acted or was likely to act in any manner prejudicial to the security of Singapore. If the authorities subsequently released him, they could restrict his freedom of speech, movement and association as well as employment and place of residence for a period of up to two years. They could also issue a detention order of up to two years against him, which was renewable and not subject to any judicial review.

19. Similarly, in Malaysia, under its Internal Security Act, the Government had unrestricted powers of search and arrest in respect of anyone suspected of any action prejudicial to the security of the State. Suspects could be arbitrarily arrested and detained without a warrant; they could be imprisoned and detained for periods of up to two years on the mere issuance of warrants, which were not subject to any judicial review and which could be renewed and extended indefinitely.

20. In the Philippines, although the Government had committed itself to restoring democratic rights, supposedly protected by the new Constitution, an alarming number of persons had been arbitrarily arrested and placed in detention or had disappeared during the past year. On 26 April 1989, Nonna Santa Clara and Angelina Llenaresa had been abducted by military and intelligence services personnel and had not been seen since. Their cases were still pending before the Supreme Court. Victor Lanta Matias and his father had been abducted from their home on 27 October 1989 by members of the military and paramilitary forces. The father, who was subsequently released, said that they had been beaten and that he understood that his son had been taken to the camp at San Isidro and at Tambo, but he had had no news of him. On 25 April 1989, Ben Allorque, co-Chairman of the Justice and Peace Commission of the Association of Major Religious Superiors in the Philippines was chased and arrested without a warrant by the military and police personnel in Manila while leaving a social service centre for released political prisoners. He had been released subsequently. On 16 November 1989, Eric Torres, the chairman of one of the teachers' organizations had been

abducted following demonstrations by teachers who were demanding an increase in salary. Only after charges of sedition had been filed against him did the police acknowledge having him in custody. Most of the persons subjected to arbitrary arrest, detention and enforced disappearances were critics of the Government or leaders of peoples' organizations. In contrast, after the failure of the coup by members of the armed forces of the Philippines, the mutineers who had killed several civilians and damaged property were allowed to return to their barracks fully armed. The Regional Council called upon the Government of the Philippines to honour its commitments under the International Covenant on Civil and Political Rights and other international human rights instruments.

21. Mr. WADLOW (International Fellowship of Reconciliation) urged international bodies and non-governmental organizations to pay special attention to the issue of states of emergency with three aspects in mind: first, a critical analysis, which the NGOs were able to carry out with the necessary objectivity, of the political, economic and strategic conditions that led a Government to impose martial law; second, an analysis of the characteristics of states of emergency, the consequences of martial law and in particular, the violations of fundamental human rights, which constituted the bulk of the Special Rapporteur's work; third, to study the means by which a Government, which found itself in an impasse as a result of its past policies, could end a state of emergency with the assistance of the world community. The last and most important aspect flowed directly from the first two.

22. In Tibet, the Government of China had established martial law on 7 March 1989 in Lhasa and other regions, following demonstrations calling for autonomy, the safeguarding of Tibetan cultural identity and better economic conditions. Those demonstrations, which enjoyed wide popular support, were rooted in a situation of long standing, namely 40 years of repression and mismanagement, deliberate efforts to destroy Buddhist culture, the exploitation of natural resources and the inflow of Chinese settlers. The Chinese authorities could maintain the present socio-economic system only by the threat of the use of force, a threat not justified by any likelihood of violence on the part of the Tibetan population since the vast majority was Buddhist and non-violent. The Chinese authorities had imposed a repressive policy under the cloak of the martial law, instead of regarding the non-violent demonstrations as symptomatic of a crisis which they should have settled by negotiation.

23. The introduction of the state of emergency went hand in hand with death threats and the risk of torture. There had been reports of executions in the prisons or military camps, but it was impossible to ascertain whether those reports were accurate. The police and the military had arrested non-violent opponents who had called for democracy and self-government, had written to the United Nations or had participated in ill-defined counter-revolutionary activities. Those who were arrested were held incommunicado, without being charged, and sent to labour camps, without trial. A climate of terror had been deliberately created.

24. The measures taken under the cover of martial law would make a lasting impact especially in the economic area. The domination exercised by the Chinese settlers had reduced the standard of living of the Tibetans, who were not allowed to take part in the decision-making process. His organization urged the Chinese Government to lift martial law, to allow visits by diplomats

and representatives of NGOs and the peaceful expression of the political, social and cultural opinions on the future of Tibet. As the Special Rapporteur had said in his report, the state of emergency should be considered as a warning. His recommendation of allocating more resources for the studies of states of emergency by the Centre for Human Rights should therefore be followed.

25. Mrs. de LEON ESCALER (Philippines) commenting on the reports by Mr. Kooijmans (E/CN.4/1990/17 and Add.1) and Mr. Tosevski (E/CN.4/1990/13), explained that the Constitution of the Philippines prohibited the infliction of cruel, degrading or inhuman treatment, physical or psychological punishment on, as well as the use of torture, force, violence or threats against persons under investigation, detainees or prisoners. The Constitution made provision for compensation for victims of torture or similar abuses. Police and military personnel received special training in human rights.

26. Mr. Kooijmans had in fact emphasized that allegations of torture made against Governments were not always borne out by the facts, that their number was not always the outcome of the human rights situation in those countries and that it was easier to collect information about the internal situation in a country which had a more open society than in others. The press in the Philippines, which was the freest in the world, reported on anything newsworthy not only in the urban centres but in the smallest hamlets and whereas it had been controlled and manipulated under the Marcos régime, the pendulum had swung perhaps too far in the opposite direction, at a time when transparency was the order of the day. Various accusations of systematic and continual violations of human rights had thus been distorted. The Philippines had always recognized that objective non-governmental, national and international organizations played an important role in protecting human rights and the Philippine Commission on Human Rights had established links with some of them in human rights education and in reporting violations. Unfortunately, some NGOs continued to level accusations against the Philippines which they did not substantiate and refused the Commission's offer to exchange information on them. They also refused to make their reports available to the Government of the Philippines in a spirit of reciprocity and to exhaust all domestic remedies before submitting them to various international authorities. One therefore suspected that their information and their statistics were inaccurate or that those organizations had hidden motives.

27. The Government of the Philippines was aware that simply enacting laws would not by itself stop human rights violations and that lapses continued to occur, but magnifying those lapses was of no help to the victims. The lapses even spurred on the Philippine Government to strengthen its defence of human rights as guaranteed by the Constitution and the law as well as by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

28. Taking up the specific cases mentioned in Mr. Kooijmans' report, she said that Belen Tabamo had been arrested on 10 February 1989 after a military encounter and had been charged with attempted murder and illegal possession of firearms. The court had dismissed the first charge but tried her on the second one and acquitted her. She was released on 12 September 1989. The Commission on Human Rights had visited her and had found no trace of physical

torture. Her case was closed. Rafael Olite had been arrested on 8 June 1989 by the intelligence services and accused of urban terrorism. He claimed to have been tortured in prison. He was currently on trial for illegal possession of firearms and he was represented by a lawyer. Investigators of the Philippine Commission on Human Rights had visited him in prison and found no evidence of torture; furthermore, he was unable to identify the persons who allegedly tortured him. The Medical Action Group which claimed that Mr. Olite had been tortured submitted no evidence of such torture and the case was still under investigation pending new developments. With regard to Mr. Bustamante, Mr. Kooijmans' report (paras. 125 and 126) reflected the situation fairly. However, Mr. Bustamante seemed to be more interested in waging a propaganda campaign in Europe against the Philippine Government than in presenting himself before the examining judge. Preliminary investigation of the charges against his two alleged torturers would be dismissed if he or other witnesses failed to identify them.

29. According to paragraph 121 of the report (E/CN.4/1990/17), Mr. Samuel Sabadallas had filed a complaint with the Philippine Commission on Human Rights that he had been arrested, detained and tortured by the military authorities. On 23 December 1988, a petition for habeas corpus had been filed in a court, which had released him on 26 December 1988 into the custody of his brother. Mr. Sabadallas, was unable to substantiate the claim that he had been ill-treated. On 27 July 1988, Charles Reyes and 24 other persons were allegedly arrested by members of the paramilitary forces. The Quick Reaction Team of the Philippine Commission on Human Rights, composed of lawyers and investigators on call 24 hours a day, had confirmed that those persons had been taken to Camp Bagong Diwa, Bicutan, where they had been interrogated. Only nine of them had been detained and formally charged with violation of the Anti-Subversion Act. The others had been released. The Quick Reaction Team was currently gathering information on a considerable number of torture allegations and the Philippine Commission on Human Rights expected to conclude its investigations shortly. The Philippine Government saw to it that all complaints concerning torture were thoroughly investigated but the parties were required to produce even a modicum of evidence, especially in cases where no traces of torture were visible. The airing of completely unfounded allegations of systematic torture for propaganda purposes was regrettable. The Government of the Philippines had invited Mr. Kooijmans to visit the Philippines and he was scheduled to visit the country during the course of the year.

30. According to Mr. Tosevski's report on enforced or involuntary disappearances there had been 36 cases of disappearances in 1989, which brought the total in the Philippines to 456. Those figures, however, included the 371 cases that had occurred during the Marcos régime, 6 of which had previously been clarified. Some dated back to 1970 and the present Government could no longer locate the whereabouts of the disappeared persons, because of the absence of witnesses or because of apathy on the part of the relatives. Despite everything, on 13 December 1988, Mrs. Aquino had created a special Human Rights Committee composed of representatives of the Government and of private human rights groups to deal with those disappearances. As one of the lead agencies comprising the Committee, the Philippine Commission on Human Rights had established investigating teams, which by the middle of 1989 had dealt with 83 cases. In 70 of those, the investigations had yielded negative results, either because no witnesses were available or because the families

had resigned themselves to the death of the disappeared persons. In four cases, the bodies of the missing persons had been found and identified by the relatives and, in six other cases, the missing persons had been found alive.

31. With respect to the disappearances that occurred in 1989, Carlos Vina, who was reported to have been abducted by armed men on 13 April 1989, had been found alive by investigators of the Philippine Commission on Human Rights and was currently staying with his nephew. Similarly, Luisita Uy and her husband Erlinda Escudero Uy were in Camp Lucban in Samar province, and they had told an official of the Commission that they wished to remain there for fear of reprisals by their former comrades in the rebel movement. They had also said that they were willing to co-operate with the military authorities in the anti-insurgency campaign. The Philippine Government regretted that the Working Group on Disappearances had postponed its visit and hoped that it would be able to visit the country during the present year. The Government offered its full co-operation, in a climate of openness and transparency, and hoped to demonstrate that its commitment to human rights was not mere lip service.

32. Lastly, she noted that the decision to declare a state of emergency after the abortive coup on 1 December 1989 had been taken by the Government, under the Constitution, in order to combat speculation and the manipulation of basic commodity prices. The Philippine Congress had authorized the President to take over privately-owned utilities or businesses in the public interest, to control prices, protect the population against speculators and take other economic measures. None of the fundamental human rights had been suspended and the duration of the state of emergency was limited; it was neither a prelude to nor a declaration of martial law. Her delegation reserved the right to reply at a later stage to any comments made on the subject by non-governmental organizations.

33. Mr. NAUMOVSKI (Yugoslavia) said that Mr. Kooijmans' methodology of collecting allegations and processing them directly with Governments was a commendable one. The further strengthening of the co-operation between Governments and the Special Rapporteur appeared to be crucial and his delegation would support any efforts by the latter to extend and increase his contacts with them.

34. The systematic practice of torture and other cruel, inhuman or degrading treatment throughout the world called for organized action by the international community. His country thought that the comments and findings in the report (E/CN.4/1990/17 and Add.1) were instructive with a view to eliminating the sources of violations and his delegation supported the recommendations, particularly those on education. Education should be emphasized and even the Commission's deliberations might be regarded as contributing to the educational process. It should always be borne in mind that the Commission should deal with the practices of government agencies rather than with legal provisions. The Special Rapporteur should be able to assist Governments in bringing the law and practice into line. In that connection, the link between the Judiciary and the police was crucial and the Special Rapporteur had rightly stressed the importance of the Body of Principles for the protection of prisoners. Yugoslavia had already signed the Convention against Torture and begun the ratification procedure. It had

undertaken to reassess its criminal and other legislation in order to bring it in line with the broader democratic reforms taking place in society and to abolish the death penalty.

35. Regarding the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1990/L.13), it was obvious that the Working Group had extended its scope for dealing with the problem, one of the most important elements being the co-operation by Governments. However, since the problem of disappearances had not diminished, the Working Group would have to develop new more effective approaches to Governments and new forms of co-operation with them. In conclusion, his delegation supported the extension of the mandates of the Special Rapporteurs.

36. Mr. SCHERK (Austria) recalled that the international community had taken many measures to combat torture and other cruel, inhuman or degrading treatment or punishment, such as the inclusion of the question of the human rights of all persons subjected to any form of detention and imprisonment, on the Commission's agenda, for the seventh time, the adoption of a Declaration and a Convention against Torture, a Code of Conduct for Law Enforcement Officials and of a Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. However, torture remained a common phenomenon which called for constant vigilance. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment had been ratified in 1989 by nine additional States but only one third of the States Members of the United Nations were parties to it. He hoped that the number of parties would increase rapidly and that more States would recognize the competence of the Committee against Torture to consider communications, whether from individuals or from States. The Secretary-General should include a list of the States that did not recognize the Committee's competence in his annual report on the status of the Convention.

37. At its two sessions in 1989, the Committee against Torture had considered an impressive number of reports. The Committee had an important role to play, provided that the Convention was widely ratified and Governments complied with their obligations. A committee had been established under the European Convention for the Prevention of Torture whose members could visit any place where persons were deprived of their freedom, without the prior permission of the Government involved. It would be a good idea if the Commission could discuss the idea of such preventive and periodic visits world wide, on the basis of the proposal submitted by Costa Rica in 1980.

38. Although Mr. Kooijmans had noted in his excellent report that there had been hopeful developments in a considerable number of countries over the past few years, he also observed that, in 1989, he had been in contact with 48 Governments with respect to cases of torture and that there was an alarming number of cases involving children and juveniles. His visits to Guatemala, Honduras and Zaire at the invitation of those Governments should be noted and he hoped that Mr. Kooijmans' recommendations would provide guidelines for improving the legal framework in those countries as well as its practical implementation. His delegation appreciated the fact that the Governments of the Republic of Korea and of Turkey had informed the Special Rapporteur of the measures they had taken to implement his recommendations. The fruitful co-operation between the Special Rapporteur and the Committee against Torture should be supported. Austria made regular contributions, which it hoped to

increase, to the United Nations Voluntary Fund for Victims of Torture and in order to complement the struggle against torture by assisting victims and their families.

39. Austria had recently been accused by a non-governmental organization of condoning police brutality. The allegations had been brought by the Austrian Ombudsman to the attention of the Government and had been discussed in Parliament. The Ministry of the Interior had said that cases of ill-treatment whatever their number, were unacceptable and must be investigated by an independent judge and that if the cases were substantiated, the perpetrators would be brought to justice. He had also announced a series of legislative and other measures designed to prevent the recurrence of such cases, such as a revision of the penal procedure, improved training of police officers, unannounced visits to police stations, informing every detainee about his rights, etc. The Government of Austria firmly believed that the dignity of the human being must be respected and was determined not to condone any acts incompatible with its human rights commitments.

40. Austria endorsed the conclusions of the Working Group on Enforced or Involuntary Disappearances that enforced disappearances warranted the Commission's unstinting attention. The Working Group had published an excellent report and it had sought to clarify the cases brought to its attention - some 700 cases in 1989, compared with 400 in 1988 was alarming. Cases of disappearance were concentrated mainly in a few countries, especially Peru. The Working Group examined cases promptly and directly and insisted that all cases should be investigated and that those responsible should be prosecuted to the full extent of the law. The delegation of Austria fully endorsed such measures. In view of the fact that prevention was important, in that area as in others, the country-specific recommendations of the Working Group should be followed up and the Group should therefore be given the necessary human and financial resources.

41. His delegation continued to attach considerable importance to the administration of justice, an area in which there was a large number of international standards, albeit insufficiently implemented at the national or individual level. Assistance measures to transform those standards into national legislation might therefore be timely. Austria, which had long opposed capital punishment, welcomed the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights. It hoped that a large number of States, would accede to it and thus move closer to the abolition of the death penalty.

42. Mrs. EZZ (Observer for Egypt) said that her country established a close link between the issues discussed under agenda item 10, namely, protection of justice and protection of human rights. The Egyptian Constitution safeguarded human rights, especially section 3 on the freedoms, rights and obligations of citizens, and articles 40 and 41 which established the equality of all citizens before the law and protected individual freedoms. Furthermore, Egypt had made a point of acceding to the international instruments and covenants that defended human rights. Her country had been one of the first to ratify the Convention against Torture, without reservation in 1986; the Convention had therefore acquired the force of internal law and it complemented national legislation prohibiting torture. In its first report submitted in April 1989, Egypt had explained the measures it had taken to enforce the Convention. She appealed to all countries in the international community to contribute to the

United Nations Voluntary Fund for Victims of Torture. In order to provide emergency assistance and medical care to the victims, the Fund should have permanent and regular resources and should not depend solely on voluntary contributions.

43. The considerable importance that Egypt attached to the independence of the judiciary was reflected in section 4 of the Constitution. Consequently, Egypt approved the draft declaration on the independence and impartiality of the judiciary, juries and assessors and independence of lawyers, which appeared in document E/CN.4/Sub.2/1988/20/Add.1. It associated itself with those who requested that model legislation should be drafted to ensure the effective application of standards for the administration of justice. Such laws which would help to guarantee the protection of human rights nationally and they could also be the subject of expert services programmes and in training programmes for national executives.

44. She welcomed the two reports submitted to the Commission, and noted with satisfaction that Mr. Mazilu was present and requested the international community to ensure the protection of international civil servants. She approved the draft declaration on the protection of all persons against enforced or involuntary disappearance and urged all States to accede to the Convention against Torture, to discharge their obligations under that Convention and provide the Committee against Torture with the necessary financial resources to enable it to carry out its mandate.

45. Mr. NAZIH (Observer for Lebanon) considered that the section on Lebanon in the Report of the Working Group on Enforced or Involuntary Disappearances came as no surprise, in that a state of war was an abnormal situation during which tragedies were bound to occur. The Government of Lebanon, especially the Ministry of Justice, had taken the report very seriously. Lebanon was trying to fulfil its obligations, like other States, notwithstanding the situation in the country; it was profoundly devoted to humanitarian values and had respected them from time immemorial.

46. In the past a land of civilization, a country which had taken part in drawing up the Universal Declaration of Human Rights, where over 12 different communities had always coexisted in peace and harmony and had been an example of tolerance and brotherhood in a democracy that respected fundamental freedoms, Lebanon had today become a land of death and suffering because, like its Arab brothers, it had been confronted with the aftermath of colonialism and its most dangerous legacy, the State of Israel. Before 1948, Israel had not existed but there had been Palestine and its people. The do-gooders who presided at the birth of Israel were not concerned about the rights of the Palestinian people in exile. The contemporary tragedies and the violations of human rights occurring in Lebanon were a direct result of the deliberate decision to ignore the root cause of the problem, the violation of the historic rights of the Palestinian people. The NGOs that came to the Commission and levelled accusations against the Arab States and their leaders overlooked the fact that there would have been no tragedy today if there had not been first the tragedy of the Palestinians and if Palestine had remained a land of peace. He reminded the NGOs that the former Israeli Prime Minister, a Nobel Peace Prize winner, the current Prime Minister and others, had been terrorists and he recounted the long list of Palestinians who had been murdered. If the leaders of Islam were being called upon to condemn terrorism, the leaders of Judaism should be required to do the same.

47. The Government of Lebanon, which had repeatedly expressed its regret at the deaths of foreign or Lebanese civilians on its territory, considered that the hostage problem could not be separated from the wider tragedy. The international community should give the question of Lebanese detainees in Israel the importance it deserved if it did not wish the violence to escalate even more. The Government of Lebanon had sent many notes to the Centre for Human Rights, on 4 and 28 July, 8 November, 16 and 20 December 1988 and 7 August 1989 about the abductions and detentions. The problem of the hostages and detainees could only be resolved by allowing the legal authority in Lebanon to regain its sovereignty and enforce law and order throughout all of Lebanon. Lastly, he recalled that Israel had handed over a Lebanese national, Mrs. Bechara, to the army in South Lebanon, which was keeping her in prison at the risk of her life, despite requests for her release by the Centre for Human Rights.

48. Mr. FLACHE (World Federation for Mental Health) drew attention to the flagrant violations of human rights of thousands of inmates in psychiatric hospitals in Greece, including the one on the island of Leros. The Federation, the Commission of the European Communities and numerous visitors and experts had alerted the Greek authorities and public to the situation and a group of experts set up by the Commission of the Communities had submitted a report, in which it proposed a series of reforms to take place over a period of four years in each of the 10 Greek psychiatric hospitals concerned. The cost of that reform, which was ECU 60 million, was expected to be financed half by the Commission and half by the Government of Greece. At the end of 1988, only one third of that amount had been committed and spent but no significant progress had been observed. The situation remained deplorable in most Greek psychiatric hospitals. Further information would be submitted to the Commission in writing for discussion under agenda item 14. However, the Federation requested the Commission to make representations forthwith as a matter of urgency to the Greek authorities.

49. Mr. STEEL (United Kingdom) said that he would deal with three matters only under agenda item 10, namely, torture, disappearances and freedom of expression.

50. With respect to torture, others had described what it was like to be tortured. It would be comforting to think that a practice, so universally detested and so generally recognized as degrading for those who inflicted it, was becoming a thing of the past. But the factual, systematic and sober report by Mr. Kooijmans showed that the reality was wholly different and that torture still remained a common phenomenon in today's world. Among the particularly horrifying details noted by the Special Rapporteur was the fact that children and juveniles were being tortured; such an idea was mind-boggling because those events were taking place at about the same time as the adoption by the international community of the Convention on the Rights of the Child. The previous year, the Commission had approved the activities of the Special Rapporteur whose tasks included dealing with urgent action cases. He had thought it right to take up 51 cases for immediate action with the Governments concerned; 13 of those Governments had replied and 3 of them were members of the Commission. Other less urgent cases had been submitted to 42 countries, 17 of which had not replied by December 1989 and which included 5 members of the Commission. Those States owed the Commission an explanation.

51. The Working Group on Enforced or Involuntary Disappearances had submitted an excellent report (E/CN.4/1990/13), but he wished to draw special attention to its conclusions. In paragraph 338, for example, it was reported that those "disappearances constitute the most comprehensive denial of human rights of our time ... (and) should continue to warrant the unstinting attention of the international community and in particular that of the Commission on Human Rights". The Working Group had also made some very interesting observations on the different approaches which different Governments had chosen in replying to the Working Group's communications. Although only a few countries had never replied, even a few was too many. His delegation endorsed the Working Group's suggestion that the Commission should accord priority at its current session, to the follow-up action taken by Governments on the Working Group's recommendations.

52. Finally, on the topic of freedom of expression, he found Mr. Türk's succinct report (E/CN.4/Sub.2/1989/26) as well as his very lucid explanation of the relation between the Sub-Commission and the Commission very useful. Mr. Türk had demonstrated the centrality of the right to freedom of expression to all other political and civil rights - freedom of thought, conscience and religion, freedom of assembly and association and the right to take part in government - and also its centrality to economic, social and cultural rights and the right of peoples to self-determination. He also showed that the right to freedom of opinion and expression and the political processes in society were closely intertwined. His delegation had also always been of the opinion that the exercise and full enjoyment of all human rights necessarily depended on freedom of expression. Conversely, if full freedom of expression existed in a society, the absence of other human rights could not be long maintained. Freedom of expression was the key to all the endeavours of the Commission.

53. Mr. LEMINE (Observer for Mauritania), speaking in exercise of the right of reply, said that torture was a violation of Mauritanian criminal law and that, on the whole, Mauritanian legislation conformed to international human rights standards. No one could be detained without good reason and in conformity with the procedures established by Mauritanian law and its supervisory mechanisms, which ensured the strict application of the rules and investigated any allegations acknowledged to be justified. Anyone living on Mauritanian territory could assert those rights, and, a fortiori, Mauritanian citizens who benefited without any distinction, from equal protection under the law. The reference to colour was not a relevant argument because Mauritanian society was very mixed and imbued with the absolute values of unlimited tolerance and equality. Those values constituted the very quintessence of Islam which was the religion of all Mauritanians.

54. While Mauritanian law recognized and guaranteed freedom, security and dignity of the person, it was also designed to ensure the promotion and protection of human rights. Quite recently, that concern had been seen when a prisoner was pardoned and the decision was taken to accede to International Covenants on Human Rights. The Optional Protocol to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Mauritania also co-operated with the Centre for Human Rights. For example, in its reply of 17 January 1990, it had given the Special Rapporteur on torture all the necessary explanations and Mauritania was also willing to co-operate with all those who were working objectively and constructively to promote human rights.

55. Mr. BENHIMA (Morocco), speaking in exercise of the right to reply, noted that paragraphs 218 to 221, and especially paragraph 219 of the Report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1990/13) did not reflect the tenor of the two letters addressed by the Chairman of the Group to the Mission of Morocco on 22 and 27 December 1989 and that confusion and misunderstandings could arise. In a preliminary reply dated 26 January 1990 addressed to the Chairman of the Working Group, through the Centre for Human Rights, Morocco had provided specific information about the alleged disappearances. It had always co-operated with the existing human rights mechanisms and spared no effort to provide clarifications and information, which were verified by the competent authorities, in respect of any allegations brought to its attention. He referred, in particular, to its reply of 11 November 1986, initially considered unconvincing by the Working Group, which had subsequently advised that the case had been clarified. His delegation was ready to furnish the Chairman of the Working Group with any further information it might wish.

56. Some NGOs had spoken of violation of the freedom of expression and opinion, in the case of students, as if there had been deliberate action on the part of the Moroccan Government. Those NGOs had distorted the incidents which had occurred as a result of the extreme behaviour of a minority of students towards their colleagues. There had been clashes, restrictions on individual freedom, damage to school buildings, attacks on the physical integrity of the students and staff of institutions and of anyone who tried to separate the opponents and restore law and order. The events had occurred too recently for any comment to be made on the legal decisions without influencing the normal course of events. The persons involved should, for example, exhaust all the remedies offered by the Moroccan criminal procedure. Morocco was a country that respected the principles of freedom, of conscience and of opinion guaranteed by the Moroccan Constitution and therefore, could not allow any elements to take it upon themselves to sow disorder in schools and universities by trying to impose their opinion on others by violence.

57. The same NGOs had complained about the situation of some detainees who had gone on hunger strike and about the practice of ill-treatment. In fact, three or four detainees who had been tried and sentenced had gone on a hunger strike but there was the broader problem of the management of the prison population that was being faced by prison administrations the world over. The problem was one that needed to be studied very carefully, in order to avoid calling the sentence into question: a detainee could not be released on purely medical grounds or because he was on strike. The prison administration was required to assure physical and mental integrity and to provide them with the medical care his state of health necessitated. It was to preserve the right to life of those three or four detainees and to guarantee their physical and intellectual integrity that the medical services were supervising their food and health. As far as the allegations of ill-treatment were concerned, they were at most isolated acts or unfortunate mistakes. There could not have been any systematic practice as some NGOs claimed. The Moroccan Criminal Code severely punished acts of torture, illegal imprisonment or abuse of authority committed by law enforcement agents very severely; only recently, two agents had been sentenced for illegal detention and cruelty. The prison administration was striving to improve the conditions in detention of the entire prison population in Morocco.

58. Lastly, in answer to the representative of the Centre Europe Tiers Monde (CETIM), that hireling who would say anything, he referred her to the interview given to the magazine Jeune Afrique by Mr. Omar Hadrami, the ideologist and head of military security of the POLISARIO Front who had returned to Morocco last August, and also to the recent press conference given by six members of POLISARIO, who had fled from the POLISARIO camps and had appealed to humanitarian organizations to look into the systematic violations of human rights by the POLISARIO Front against any of their hostages who expressed a desire to return to their province of origin.

The meeting rose at 9.10 p.m.