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COMMISSION ON HUMAN RIGHTS

Forty-sixth session

SUMMARY RECORD OF THE 29th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 February 1990, at 10 a.m.

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

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The meeting was called to order at 10.25 a.m.

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (agenda item 9) (continued) (E/CN.4/1990/L.5, L.7, L.8 and L.14)

1. The CHAIRMAN invited the members of the Commission to consider draft resolutions E/CN.4/1990/L.5, L.7, L.8 and L.14. The suggested procedure was that the Commission would first hear any general comments to be made on the draft resolutions before it; it would then vote on the individual draft resolutions, or parts thereof if necessary, after hearing any explanations of vote before the vote on individual texts. Once the voting on all texts had been completed, it would hear explanations of vote after the vote.
2. She invited the members of the Commission to take a decision on draft resolution E/CN.4/1990/L.5, on which the United States delegation had requested a vote.
3. At the request of the representative of Canada, a separate vote was taken by roll-call on operative paragraph 1 of draft resolution E/CN.4/1990/L.5.
4. Botswana, having been drawn by lot by the Chairman, was called upon to vote first.
 - In favour: Argentina, Bangladesh, Botswana, Brazil, China, Colombia, Cuba, Cyprus, Ethiopia, Gambia, Hungary, India, Iraq, Madagascar, Mexico, Morocco, Nigeria, Pakistan, Panama, Peru, Philippines, Sao Tome and Principe, Senegal, Somalia, Sri Lanka, Swaziland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia.
 - Against: Belgium, Canada, Germany, Federal Republic of, Italy, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.
 - Abstaining: Bulgaria, France, Japan, Portugal, Spain.
5. Operative paragraph 1 of draft resolution E/CN.4/1990/L.5 was adopted by 30 votes to 7, with 5 abstentions.
6. The CHAIRMAN invited the members of the Commission to vote, by a show of hands, on draft resolution E/CN.4/1990/L.5 as a whole.
7. Draft resolution E/CN.4/1990/L.5 was adopted by 30 votes to 1, with 10 abstentions.
8. The CHAIRMAN invited the members of the Commission to consider draft resolution E/CN.4/1990/L.7. She drew attention to operative paragraph 11, which should be corrected, the words "governmental organizations" being replaced by "Governments, intergovernmental and non-governmental organizations".
9. Mr. NYAMEKYE (Deputy Director, Centre for Human Rights) read out, pursuant to rule 28 of the rules of procedure, the financial implications of

the Commission's adoption of draft resolution E/CN.4/1990/L.7. Costs would arise from the decision, in operative paragraph 8, to extend the Special Rapporteur's mandate for two years.

10. It was envisaged that, in order to carry out his mandate, the Special Rapporteur would visit Geneva in May/June 1990 and May/June 1991 for a period of five working days on each occasion for consultations at the Centre for Human Rights and to plan his work. He would also visit Geneva for a period of five working days in August/September 1990 and again in August/September 1991 in order to prepare his interim reports to the General Assembly, and make other visits to Geneva at the end of 1990 and end of 1991 to prepare his final reports to the Commission.

11. In October 1990 and October 1991, he would visit New York to present interim reports to the Assembly, and in February/March 1991 and February/March 1992 he would visit Geneva for a period of five working days on each occasion to report to the Commission. In response to Government invitations, he would undertake a maximum of six field missions, accompanied by at least three staff members, during the period 1990 to 1992.

12. The relevant costs to be financed under section 23 (Human Rights) were estimated at \$95,900 for 1990, \$101,700 for 1991 and \$26,800 for 1992. The cost of salary, travel and subsistence of interpreters, should they be required during the field missions, was estimated at \$4,500 for each mission, to be financed under section 29 B (Conference Services Division, Geneva). Full details would appear in a document to be issued shortly.

13. The draft resolution was considered to be within the scope of perennial activities; the costs would therefore be met from the existing provision for the Economic and Social Council mandate under section 23, thus making unnecessary any additional appropriation or recourse to the Contingency Fund.

14. The CHAIRMAN invited the Commission to vote by a show of hands, at the request of the representative of Canada, on draft resolution E/CN.4/1990/L.7.

15. Draft resolution E/CN.4/1990/L.7 was adopted by 31 votes to 10, with 1 abstention.

16. The CHAIRMAN invited the members of the Commission to take a decision on draft resolution E/CN.4/1990/L.8.

17. At the request of the representative of the Federal Republic of Germany, a separate vote was taken by roll-call on operative paragraph 9 of draft resolution E/CN.4/1990/L.8.

18. Botswana, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Botswana, Brazil, Bulgaria, China, Colombia, Cuba, Cyprus, Ethiopia, Gambia, Ghana, India, Iraq, Madagascar, Mexico, Morocco, Nigeria, Pakistan, Panama, Peru, Philippines, Sao Tome and Principe, Senegal, Somalia, Sri Lanka, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia.

Against: Belgium, Canada, France, Germany, Federal Republic of, Italy, Japan, Portugal, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Hungary, Swaziland.

19. Operative paragraph 9 of draft resolution E/CN.4/1990/L.8 was adopted by 31 votes to 10, with 2 abstentions.

20. The CHAIRMAN invited the Commission to vote on draft resolution E/CN.4/1990/L.8 as a whole.

21. At the request of the representative of the United States of America, the vote was taken by roll-call.

22. China, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Botswana, Brazil, Bulgaria, China, Colombia, Cuba, Cyprus, Ethiopia, Gambia, Ghana, Hungary, India, Iraq, Madagascar, Mexico, Morocco, Nigeria, Pakistan, Panama, Peru, Philippines, Sao Tome and Principe, Senegal, Somalia, Sri Lanka, Swaziland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia.

Against: United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Belgium, Canada, France, Germany, Federal Republic of, Italy, Japan, Portugal, Spain, Sweden.

23. Draft resolution E/CN.4/1990/L.8 was adopted by 32 votes to 2, with 9 abstentions.

24. The CHAIRMAN invited the Commission to consider draft resolution E/CN.4/1990/L.14.

25. Mrs. GONZALEZ MARTINEZ (Mexico), speaking in explanation of vote before the vote, said that her delegation had requested a separate vote on the fourteenth preambular paragraph of draft resolution E/CN.4/1990/L.14 because it did not think that the Commission could endorse agreements, conclusions or any other sort of understanding arrived at by the Security Council's permanent members acting on their own. The Charter made no provision for meetings attended by the permanent members of the Security Council to the exclusion of the other members of the Security Council.

26. While her delegation welcomed the interest shown by the five permanent members in the resolution of the Cambodian conflict, that issue, like all others, should be discussed in a properly constituted forum. Her delegation would thus abstain during a separate vote on the relevant preambular paragraph.

27. At the request of the representative of Mexico, a vote was taken by roll-call on the fourteenth preambular paragraph of draft resolution E/CN.4/1990/L.14.

28. Swaziland, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Belgium, Botswana, Canada, China, Colombia, Cyprus, France, Gambia, Germany, Federal Republic of, Ghana, Italy, Japan, Morocco, Pakistan, Panama, Philippines, Portugal, Senegal, Somalia, Spain, Swaziland, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia.

Against: Cuba.

Abstaining: Brazil, Bulgaria, Ethiopia, Hungary, India, Iraq, Madagascar, Mexico, Nigeria, Peru, Sri Lanka.

29. The fourteenth preambular paragraph of draft resolution E/CN.4/1990/L.14 was adopted by 28 votes to 1, with 11 abstentions.

30. Mr. MALGINOV (Union of Soviet Socialist Republics), speaking in explanation of vote, said that decisions taken by the Commission should reflect the reality of the situation and promote the process of achieving political settlements. The past few months had seen a radical change in the Cambodian situation: foreign troops had been withdrawn, a basis of dialogue between the parties to the conflict had been created, constructive proposals had been put forward, and the Security Council's permanent members had agreed on a basis for a political settlement, the chief elements of which were a dialogue involving all parties, the cessation of military assistance from outside and an enhanced United Nations role in the holding of free, democratic elections.

31. Some of the new factors were reflected, to some extent, in draft resolution E/CN.4/1990/L.14, e.g. the reference to the efforts by the Security Council's permanent members. Nevertheless, the text as a whole hardly differed from the one-sided resolutions the Commission had adopted a few years previously in an entirely different climate. His delegation regretted that the sponsors of draft resolution E/CN.4/1990/L.14 had failed to seize the opportunity presented by the current situation to achieve a consensus. It had decided, therefore, to vote against the text as a whole and not to participate in any vote on separate parts of it.

32. The CHAIRMAN invited the Commission to vote on draft resolution E/CN.4/1990/L.14 as a whole.

33. At the request of the representatives of Mexico and the Union of Soviet Socialist Republics, the vote was taken by roll-call.

34. Italy, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Botswana, Brazil, China, Colombia, Cyprus, France, Gambia, Germany, Federal Republic of, Ghana, Italy, Japan, Mexico, Morocco, Nigeria, Pakistan, Panama, Peru, Philippines, Portugal, Sao Tome and Principe, Senegal, Somalia, Spain, Sri Lanka, Swaziland, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia.

Against: Cuba, Ethiopia, India, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Belgium, Canada, Hungary, Iraq, Madagascar, Sweden.

35. Draft resolution E/CN.4/1990/L.14 as a whole was adopted by 31 votes to 5, with 6 abstentions.

36. Mr. MEZZALAMA (Italy), speaking in explanation of vote on behalf of the States members of the European Community, said that, in their opinion, draft resolution E/CN.4/1990/L.14 did not address all of the issues which must be taken into account in the search for a political solution to the problem of Cambodia. The position of the Twelve in that regard was well known. They sought a comprehensive, political settlement which must ensure the independence, sovereignty, territorial integrity and neutrality of Cambodia, as well as the fundamental right of Cambodians to choose their own Government in free, fair and internationally supervised elections.

37. They totally rejected once again the genocidal policies of the Khmers Rouges, who were responsible for the extermination of hundreds of thousands of Cambodians. Their non-return to power remained an essential element of the policy of the Twelve concerning Cambodia.

38. As the draft resolution did not fully reflect those concerns or take account of recent developments since the latest session of the General Assembly, the Twelve had not been able to act as sponsors.

39. Ms. ANDREYCHUCK (Canada) said, with regard to draft resolution E/CN.4/1990/L.7 and in particular its operative paragraph 6, that her delegation noted with satisfaction the adoption of the International Covenant against the Recruitment, Use, Financing and Training of Mercenaries after a decade of negotiations. However, it regretted that the new approach represented by the Convention had not penetrated into the draft resolution.

40. With regard to draft resolution E/CN.4/1990/L.8, it was most unfortunate that the Commission, which tried to highlight the positive as well as negative developments in human rights, had not been able to adopt a resolution on Namibia's exemplary exercise in self-determination in November 1989. Her delegation also believed that recent events should have been incorporated into the current resolution.

41. Her delegation was dissatisfied with draft resolution E/CN.4/1990/L.14 for a number of reasons. It had noted significant improving trends in the observance of human rights in Cambodia in the past few years. However, it was

also concerned at the evidence of consistent gross and flagrant human rights violations in camps controlled by certain resistance groups. Those occurrences were not recognized in the draft resolution and, consequently, the language in operative paragraph 1 was unbalanced.

42. Referring to the tenth preambular paragraph, she pointed out that the Vietnamese and other ethnic populations had co-existed in Cambodia for decades without constituting a threat to Cambodian society and culture. In her delegation's opinion, such language could be used by a future Cambodian Government to justify ethnic purges. For all those reasons, her delegation had abstained in the vote on draft resolution E/CN.4/1990/L.14.

43. Mr. NISHIBAYASHI (Japan) said that his delegation had abstained from the vote on draft resolution E/CN.4/1990/L.8 for the following reason. It recognized with appreciation the new paragraph added to the previous year's resolution on the same subject, in view of the recent developments in South Africa. However, the text still contained paragraphs which his delegation had difficulty in accepting. His delegation's vote should not be construed as indicating any lack of understanding of the purpose and spirit of the draft.

44. Mr. GANDHI (India) said that his delegation would have preferred that agreement had been reached to adopt draft resolution E/CN.4/1990/L.14 by consensus. Unfortunately, despite intensive informal consultations, that had not proved possible. While the draft contained some positive references, it also retained certain elements which might not help to encourage the ongoing process leading to a comprehensive settlement of the situation in Cambodia. Consequently, his delegation had been obliged to vote against the draft resolution.

45. Mr. SELEPENG (Botswana) said that his delegation had voted in favour of draft resolution E/CN.4/1990/L.8 because it was strongly opposed to apartheid, the root cause of all the problems it faced in southern Africa. It wished, however, to enter a reservation with regard to paragraph 9 which called for the imposition of mandatory and comprehensive sanctions. His country lacked the capacity to implement the action called for in that regard, but it would not place any obstacle in the way of those in a position to implement such measures.

46. Mr. JOHNSON (United States of America) said that his delegation had voted against draft resolution E/CN.4/1990/L.7 for several reasons. First, it considered it inappropriate for the Commission to deal with the subject of mercenaries, which was not a human rights question but rather a matter relating to international peace and security that should be discussed in other United Nations bodies such as the General Assembly.

47. Secondly, as the text itself noted, the General Assembly had recently adopted by consensus an International Convention against the Recruitment, Use, Financing and Training of Mercenaries, after many years of work under the auspices of the Sixth Committee. The focus should be on that Convention, and the mandate of the Special Rapporteur should be terminated. In his delegation's view, in fact, the mandate should never have been created, and the United Nations resources used to support the Special Rapporteur's activities would be far better spent on other projects, especially those

devoted to genuine human rights issues. The financial implications of \$200,000 were unconscionable, when there were so many pressing human rights problems for which no United Nations resources could be made available.

48. Lastly, his delegation had voted against the draft resolution because the matter had become unacceptably politicized. The Special Rapporteur had taken it upon himself to devise and utilize a definition of "mercenaries" that had no basis in international law or practice. Neither the most widely-accepted definition of "mercenaries" nor the similar approaches taken in the International Convention gave any support to the allegations concerning mercenary activities in some of the countries listed in the report of the Special Rapporteur and mentioned in operative paragraph 1 of the draft resolution.

49. Ms. LEADER (United States of America) said that her delegation had voted against draft resolution E/CN.4/1990/L.8, although it fully supported the right of all South Africans to participate in the government and administration of their territory on the basis of universal suffrage and secret ballot. Periodic free elections were the basis for genuine self-determination and, until the system of apartheid was dismantled and majority rule prevailed, there could be no self-determination for the people of South Africa.

50. The draft resolution could have enjoyed the fullest support of the United States delegation if it had focused on that fundamental basis of self-determination. Instead, it included many extraneous elements and used language which her Government had consistently opposed in the United Nations and elsewhere. Moreover, it failed to reflect the international consensus reached at the special session of the General Assembly two months previously on the need for negotiations to put an end to apartheid. It also failed to take account of the recent dramatic developments in southern Africa. Her delegation had thus had no choice but to vote against it.

51. Mr. DAHL (Sweden) said that his delegation had abstained from the vote on draft resolution E/CN.4/1990/L.5, although it supported the right of the Palestinian people to self-determination and to establish a State of their own.

52. His delegation had welcomed the declaration made by the Palestinian National Council in November 1988 and, in particular, had taken note of the recognition by the Palestine Liberation Organization of Israel's right to exist in peace within safe and recognized borders. It also welcomed that organization's acceptance of the relevant Security Council resolutions.

53. Regrettably, however, those important elements were not adequately reflected in the draft resolution, which had therefore become unbalanced, and the wording of some of its paragraphs were such that his delegation had had to abstain, despite its support for the general thrust of the draft resolution.

54. With regard to draft resolution E/CN.4/1990/L.8, his delegation had abstained not only because of legal and technical difficulties connected with certain paragraphs but also because the problems affecting human rights in southern Africa did not concern self-determination alone. In its opinion, the draft resolution should have focused on the gross violations of human rights caused by the system of apartheid.

55. His delegation had also abstained from the vote on draft resolution E/CN.4/1990/L.14, since it could not support a text which might be interpreted as opening the way for the return to power of those responsible for the genocidal atrocities committed in Cambodia. In that connection, it supported the recent endeavours to find an appropriate solution and welcomed, in particular, the suggestions made by the Government of Australia.

56. Mr. GROLIG (Federal Republic of Germany) said that, although his delegation had abstained from the vote on draft resolution E/CN.4/1990/L.8 as a whole, it had had to cast a negative vote with regard to operative paragraph 9. His Government had never concealed the fact that, for reasons of principle, it had always adopted a sceptical posture towards the use of economic sanctions for political purposes. It was not therefore in a position to accede to the far-reaching request to impose mandatory and comprehensive sanctions. It did not wish to resort to means which would affect the vital foundations of the whole population in southern Africa and jeopardize the fate of the entire region.

57. Miss BOZHKOVA (Bulgaria), referring to draft resolution E/CN.4/1990/L.14, said that her delegation had hoped that, in view of the positive developments occurring in Cambodia as a result of the withdrawal of foreign forces from that country and the chances of reaching a political solution to the problem of Cambodia as a result of the efforts made by the parties concerned and the five permanent members of the Security Council, the Commission would have been able to reflect that situation and contribute to the solution of the problem by adopting a consensus resolution.

58. She regretted that the draft resolution as a whole did not reflect the new situation concerning Cambodia and that, therefore, her delegation had not been able to support it. It was unbalanced and failed to take into account the positions of all the parties concerned; it did not acknowledge the welcome withdrawal of foreign forces from Cambodia; it did not contain specific provisions to exclude any possibility of a return of the genocidal régime; and some of its provisions contained strong and unacceptable language. Moreover, some of its formulations could be construed as one-sided and as prejudging the future leadership of the country. For those reasons, and in order to encourage a speedy political solution of the problem, her delegation had not participated in the vote on the draft resolution in question.

59. Mr. CABRAL (Portugal), referring to draft resolution E/CN.4/1990/L.8, said that, since operative paragraph 9 contained a demand for mandatory and comprehensive sanctions against South Africa, his delegation had been obliged to vote against it. However, if the part of the paragraph condemning acts of aggression against neighbouring States had been the object of a separate vote, his delegation would have voted in its favour.

60. Mr. TRAN HOAN (Observer for Viet Nam) said that it should be stressed once again that the true nature of the question of Cambodia as far as the Commission was concerned should be the problem of preventing and punishing the crime of genocide committed by the Pol Pot régime, universally condemned by world public opinion for having exterminated 3 million Cambodians.

61. The situation in Kampuchea had changed radically. The volunteer Vietnamese troops, having accomplished their noble international task of helping the Cambodian people to defend their country and prevent the return of

the genocidal régime to Kampuchea, had left the country entirely. The final withdrawal of those troops had been noted by observers from 20 countries and 6 international organizations as well as by many foreign journalists.

62. The current problem was to prevent the restoration of the genocidal régime by the Khmers Rouges, who were stepping up the civil war in order to achieve that objective. It was noteworthy that the leaders of various countries, world public opinion and a great number of delegates had objected strongly to the possibility of the genocidal régime of Pol Pot returning to power.

63. The situation was ripe for a comprehensive political solution, on the basis of respect for the right to self-determination of the Cambodian people, and the Government of the State of Cambodia was prepared to consider the Australian proposal concerning the role to be played by the United Nations. That had created an opportunity to overcome the remaining difficulties.

64. It was to be regretted that the ASEAN countries had put forward a draft resolution on the "situation in Cambodia" which did not reflect the facts and, in particular, deliberately ignored the primary problem to be resolved, namely, preventing the return of the genocidal régime, despite the fact that it was one of the two key problems of a political settlement of the situation in Cambodia mentioned in the conclusions of the Jakarta Informal Meetings, conclusions which had been accepted by the ASEAN countries. The International Conference on Cambodia held in Paris in July and August 1989 had also taken note of those two key problems.

65. The draft resolution repeated outdated provisions from former resolutions and included slanderous allegations such as those concerning "demographic changes imposed in Cambodia". In short, it in no way reflected the true situation in Kampuchea and would not assist in reaching an equitable and reasonable solution to the Cambodian problem.

66. Mr. NGO Hac Team (Observer for Cambodia) said his delegation was very grateful to the Commission for adopting draft resolution E/CN.4/1990/L.14 on the situation in Cambodia. He also thanked the countries belonging to the Association of South-East Asian Nations (ASEAN) for the exemplary solidarity they had shown with the Cambodian people during the 11-year period which had been critical to its survival.

67. The Cambodians were also extremely grateful for the international community's tireless efforts to find a comprehensive, just and lasting solution to the so-called Cambodia problem. If it was still impossible to re-establish peace and put an end to the inexpressible suffering of the Cambodian people, that was because of the continuation of the Vietnamese occupation.

68. If the Cambodian people was still unable to exercise its right to self-determination, that was because of the Hanoi régime's obstinate refusal to agree to the two key points of H.R.H. Prince Sihanouk's five-point peace plan, namely, the withdrawal of all Vietnamese forces from Cambodia under the supervision and control of the United Nations, and the national reconciliation of all Cambodians through the formation of a quadripartite provisional Government with all parties on an equal footing, under the leadership of Prince Sihanouk.

69. That Government would be responsible for holding free, fair and democratic elections in Cambodia under international supervision. If Hanoi truly had nothing to hide, there was no reason why it should reject those two logical and reasonable points. The Cambodian people demanded nothing which belonged to Viet Nam. It demanded only its right to self-determination.

70. The historic return of Cambodia to its traditional name, flag and national anthem reflected the strengthening of the unity and legitimacy of its national resistance under Prince Sihanouk's leadership.

71. Given the habitual duplicity, evasiveness and obstinacy of the occupiers, and their constant brandishing of the spectre of the Khmers Rouges despite all the realistic and reasonable measures advocated by Prince Sihanouk, his country had no alternative but to appeal to the peace-loving and justice-loving international community to redouble its efforts with a view to reaching a comprehensive, just and lasting settlement.

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)

72. Mr. SKWEYIYA (African National Congress) expressed his gratitude to the Commission and the international community, whose efforts had led to the unbanning of his organization and the release of Nelson Mandela. Mr. Mandela's release and the measures recently announced by F.W. de Klerk would help to create an atmosphere for freer political activity in South Africa. He hailed the struggling masses of South Africa, whose sacrifices and daring had made those developments possible.

73. However, the Pretoria régime had fallen far too short in meeting the fundamental requirements for free political activity and the abolition of torture. In particular, the maintenance of the essential aspects of the state of emergency and all repressive laws, the exclusion from amnesty of certain categories of political prisoners, including those on death row, the retention of the practice of detention without trial and the continuation of some media restrictions called into question de Klerk's intentions of moving towards a negotiated settlement in South Africa.

74. So long as laws like the Internal Security Act and Terrorism Act remained on the books of the apartheid State, the practice of torture would continue. The Internal Security Act provided that any detainee could be held indefinitely so long as the security police felt that he or she had not replied satisfactorily to all the questions asked during interrogation. Accordingly, the racist courts would continue to judge detainees on the basis of evidence extracted primarily through torture under the closed detention system.

75. The maintenance of the state of emergency meant that the use of torture as a method of interrogation would continue. Detainees would continue to be placed in solitary confinement and prevented from seeing lawyers of their choice. Violence and torture preceding deaths in detention would continue to be part of the apartheid system. Moreover, the activities of the death squads would persist, despite the recent announcement of the appointment of a judicial inquiry into those organizations.

76. The de Klerk régime still had a long way to go before it could claim that it had ended its repression of the national liberation forces. The troops had not been withdrawn from the black townships, where they continued to wreak havoc and intimidate the people. The Bantustans and the apartheid local government structures remained intact, as did the Group Areas Act and Population Registration Act, and there was no indication of any movement on those issues. Furthermore, the possibility of the return of exiles had not even been mentioned. Oliver Tambo, the President of his organization, remained a banned and listed person who could not be quoted in South African newspapers.

77. The struggle against apartheid must be further reinforced by putting pressure on the régime to release other political prisoners, especially those on death row, and to lift the state of emergency. The international community must continue to isolate the apartheid régime, especially by imposing comprehensive and mandatory sanctions.

78. He reaffirmed his organization's adherence to the Harare Declaration adopted by the Organization of African Unity and embodied in the United Nations Declaration of December 1989, which clearly called for discussions between the liberation movement and the South African Government, if and when the climate for negotiations had been created. It was obvious that the steps taken by the régime left much to be desired and fell far short of creating a climate for negotiations. He appealed to all democratic States, especially those in the West, which had influence on the apartheid State to nudge it to move forward. In the meantime, his organization and his people would continue to need the support of the Commission and democratic mankind in their struggle against the inhuman system of torture in South Africa.

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

80. Mr. VIGNY (Observer for Switzerland), having emphasized the important role of the Special Rapporteur on questions relevant to torture and urged the Commission to renew his mandate for more than two years, if possible, said that the functions of the Special Rapporteur and the Committee against Torture were different but complementary, and it was important to establish close co-operation between them. The information contained in the Special Rapporteur's report (E/CN.4/1990/17 and Add.1) should be taken into account by the Committee; likewise, the reports submitted to the Committee by States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should be transmitted to the Special Rapporteur.

81. It would also be useful if the Special Rapporteur, when visiting a country, were to encourage its authorities to ratify the Convention. His delegation took the view that the Special Rapporteur's mandate extended to all States, whether or not they were parties to the Convention, and that the

Special Rapporteur was competent to make not only general recommendations with a view to eliminating torture, but also recommendations bearing directly on a particular country, if he had been able to visit it. Moreover, if the State in question had not seen fit to invite the Special Rapporteur to visit its country, and if the situation with regard to the protection of persons deprived of their liberty so required, the Special Rapporteur should be able to make specific recommendations to that State also.

82. It was also important that Governments which invited the Special Rapporteur to visit their countries should give him access to certain places, such as prisons, or allow him to meet the representatives of local non-governmental organizations or any other persons whom he wished to meet. Adequate follow-up of the visit by the Governments concerned, including a second visit, if necessary, was also highly desirable.

83. It was unfortunate that far too many of the Governments contacted by the Special Rapporteur had not replied and that, of those which has replied, many had done no more than state that the allegation of torture had proved to be baseless. It was imperative that Governments should give the facts on which such conclusions rested; otherwise, the reply was merely a plea of not guilty which deceived no one.

84. He fully supported the conclusions and recommendations of the Special Rapporteur, particularly his detailed commentary on the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. While those principles were not binding under international law, they were none the less very important in that their observance by Governments would give greater protection against the torture of persons deprived of their freedom.

85. It would be desirable for a larger number of countries to become parties to the Convention against Torture, particularly those States, numbering about 20, which had signed but not yet ratified the Convention. It was noteworthy that only a few Asian States had ratified the Convention, whereas many of the allegations of torture transmitted by the Special Rapporteur concerned States in that region.

86. He especially hoped that, in view of the recent positive developments in the human rights situations in the German Democratic Republic and Chile, those two States, which had entered reservations to the Convention, would be able to withdraw them. He also hoped that the States which had entered reservations to article 20 of the Convention would also withdraw them, thereby indicating that they agreed to co-operate closely with inquiries conducted by the Committee in cases of well-founded allegations of torture. Likewise, it would be a welcome development if other States joined the 23 which had already agreed to individual communications within the meaning of article 22 of the Convention.

87. He drew attention to the draft optional protocol to the Convention against Torture submitted by the delegation of Costa Rica in 1980, which provided for a preventive system of visits to be carried out at any time and to any place of detention by an independent international committee. His Government was in favour of that proposal and believed that its feasibility should be carefully examined in the light of the entry into force of the

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which contained a similar provision, and the experience of the Committee established under that Convention since its inception in 1989.

88. The report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1990/13) was a model of its kind. He shared the conclusions of the Working Group, and believed that the draft declaration on enforced or involuntary disappearances being discussed by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities might provide new directions for the Group to take. In view of the statistics on enforced or involuntary disappearances contained in the report, it was absolutely essential that the Commission should renew the Group's mandate, for more than two years if possible.

89. Mr. BODDENS-HOSANG (Observer for the Netherlands) said that the tenth report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1990/13) was clearly a milestone for the Commission in more ways than one. In the course of a decade, the Commission had successfully nurtured a mechanism which allowed private individuals around the world to seek help promptly and directly from the United Nations. Though considered revolutionary and unorthodox 10 years previously, the modus operandi of the Working Group had since been applied to other areas of human rights concern.

90. The report of the Working Group was at once saddening and intriguing, in that it drew attention to a number of features of enforced or involuntary disappearances which were also common to other types of human rights violations. One of those was impunity, which fuelled not only the practice of disappearances but other human rights abuses as well. A related feature was the adjudication of military personnel by military courts in cases of human rights violations. As attested by both the Working Group and the Special Rapporteur on torture, that practice contributed to impunity.

91. In many cases, rather than carrying out impartial investigations and convicting members of the public security forces of human rights abuses, such authorities appeared to act as a shield for those officials. As a result, confidence among the public at large in the administration of justice was undermined, and a tendency for private individuals to act as both judge and executioner had been seen to develop in various countries.

92. The Commission might wish to share the ample information it had received in that regard with other United Nations forums which were, perhaps, better equipped to deal with it, such as the Eighth United Nations Congress on the Prevention of Crime and the Treatment of offenders.

93. Particularly shocking was the harassment of witnesses and relatives. The number of reports of threats and outright violence directed against persons looking for disappeared persons and against witnesses capable of providing information on disappearances had increased. Anyone who turned to the United Nations for help in the field of human rights should not be prevented from doing so for fear of intimidation or reprisal. The Organization had an obligation to ensure that non-governmental organizations or private individuals who sought to co-operate with it did not themselves become victims of human rights violations.

94. His delegation was particularly concerned over developments in Peru. For the third year in succession, Peru was listed by the Working Group as having the highest number of cases of disappearances, no less than 400. His delegation fully understood the difficult circumstances facing the Government of Peru, as a result of the heavy toll in human lives exacted by the Shining Path, a ruthless movement closely connected with drug trafficking, but it was precisely in trying times that Governments must make every effort to live up to their obligations to protect human rights.

95. Events in Sri Lanka were also distinctly worrying. That country was obviously facing a severe problem with disappearances, and the human rights situation in certain parts thereof was most unsatisfactory. According to the Working Group's report, the number of cases of missing persons might soon be nearing 1,000 but, according to his own informants, the figure was much higher. Fortunately, the Government of Sri Lanka had co-operated closely with the Working Group and had invited it to visit the country, a visit that would, it was hoped, take place in the course of 1990.

96. His delegation commended the Special Rapporteur on his outstanding report (E/CN.4/1990/17 and Add.1), which reflected the alarming situation in the world with regard to torture. He did not, however, make any mention of psychological torture, nor of the fact that children had increasingly become its victims.

97. In India, cases had been reported of children and youths, from 6 to 18 years of age suspected of theft who had been taken to a police station and beaten and tortured. Such allegations required clarification from the delegation of India. Allegations of a number of cases of severe torture in Mauritania had also been received. The urgent messages sent by the Special Rapporteur in that connection should not go unanswered. The urgent appeals directed to the Government of China in June and November 1989 should also be answered in full.

98. In the cases of Guatemala and Honduras, the Special Rapporteur's visits revealed that the institutional mechanisms for preventing human rights violations presented considerable deficiencies. In Guatemala, however, institutional improvements would not produce a solution if a climate of terror persisted in which judges, witnesses and citizens were intimidated. His delegation urgently appealed to the Guatemalan authorities to implement the Special Rapporteur's recommendations. It was important for Honduras to follow up the Special Rapporteur's suggestions on improving the structural weaknesses of its judicial system. It was to be hoped that the Government of Zaire would also take the Special Rapporteur's recommendations to heart.

99. The Working Group on Disappearances must be able to receive feedback on the implementation of its recommendations. The Commission must insist on responses in one form or another, adopting a more assertive attitude, to be reflected in the pertinent resolutions. The same held good for other thematic procedures.

100. He urged all Governments to make contributions to the United Nations Voluntary Fund for Victims of Torture, which provided assistance to torture victims on a purely humanitarian basis.

101. His delegation welcomed the decision by the Government of Hungary to withdraw its reservations to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to recognize the competence of the Committee Against Torture. It was to be hoped that other States parties, such as Chile and the German Democratic Republic, would soon do likewise.

102. His delegation underscored the importance of the work of the Committee Against Torture and welcomed the exchange of views between the Committee and the Special Rapporteur. It would be interested in hearing the views of the Committee on practical aspects of preventive measures to eradicate torture.

103. Large arrears in the financial contributions of States parties threatened the future work of the Committee Against Torture, and his Government urged all States parties to fulfil their obligations as soon as possible.

104. Mrs. NUNEZ de ESCORCIA (Observer for Nicaragua) said that the main principle guiding the prison system in her country was that it should enable men and women who had committed crimes to become useful members of society. As a result of a rehabilitation programme, 3,396 offenders had been pardoned in 1989. Despite the ongoing war and the continued kidnappings committed by counter-revolutionaries, her Government had again demonstrated its intention to pursue peace and to comply with its commitments in the context of the Esquipulas Agreements by pardoning 1,894 former members of Samozá's National Guard and 457 counter-revolutionaries. On 7 February 1990, the last 39 former members of the National Guard had been pardoned, as had the last 1,151 counter-revolutionaries, irrespective of the gravity of their crimes. Thus, despite the terrorist war of aggression and destabilization activities carried out against it, Nicaragua had released all its political prisoners.

105. Although the conflict had interfered with a more rapid development of legal institutions, her Government had taken concrete measures to consolidate the rule of law. In that context, her delegation was grateful to the Under-Secretary-General and the Centre for Human Rights for their co-operation in connection with the holding in May 1989, under the auspices of the International Commission of Jurists, of a seminar on the independence of the judiciary, the creation of an independent judiciary having been a constant concern of her Government.

106. With regard to forced or involuntary disappearances, her delegation wished to inform the Commission of the thousands of persons kidnapped by counter-revolutionaries and held in camps in Honduras. The main purpose of the kidnappings was to intimidate the civilian population and to obstruct the elections. The testimony of many persons who had managed to escape indicated that the detainees were being systematically tortured. The victims were not soldiers, but largely women and children.

107. Statistics showed that 9,000 persons had been kidnapped, their whereabouts being unknown. The contras had kidnapped 1,606 persons in 1989 alone, and 158 in January 1990. Although the abduction of civilians had continued for years, constituting a flagrant violation of their human rights, the Working Group had not seen fit to pay attention to the situation, and her delegation therefore called upon it to consider the question of protecting the lives and physical integrity of those Nicaraguans.

108. The report of the Working Group (E/CN.4/1990/13) still contained discrepancies with regard to the number of unclarified disappearances dating from the war of liberation, such cases having occurred in areas not yet under her Government's control or during particularly violent periods of the war. The practice of enforced disappearances did not exist in Nicaragua, as could be seen by the absence of a single reported case since 1987.

109. Her Government intended to continue co-operating with the Working Group. It was to be hoped that peace would soon be restored, when clarification of the few cases still cited in the report would be facilitated.

110. Mr. DUNA (Observer for Turkey) said that the Special Rapporteur was mandated to receive, seek and analyse credible and reliable information on specific cases of torture. Torture was, however, an issue that could easily be manipulated or turned against Governments. Circles that sought a political benefit in exploiting human rights problems were aware of the importance attached by Governments to the question, and attempted to take advantage of that situation by sending all sorts of allegations to the Special Rapporteur, in most cases not even hesitating to forward false or inadequate information. They were indifferent to the humanitarian aspect involved, their main objective being to use the report of the Special Rapporteur as a means of tarnishing the reputation of a particular country.

111. His delegation was confident that the Special Rapporteur was aware of that risk and was seeking credible and reliable information. His report should not be just a compilation of allegations and Government replies. He must also subject the information received to a thorough screening process, the establishment of which was essential for enhancing his credibility and efficiency. It was essential to draw a fine line between humanitarian co-operation to suppress torture and attempts to misuse human rights issues for purposes of political confrontation.

112. It was not difficult to pursue alleged cases of torture in open societies, where information was easily available and the electorate judged the performance of the Government on the basis of its human rights record. Unfortunately, many societies still remained closed to any kind of scrutiny. The lack of adequate information or the difficulty in obtaining it should not deter the Special Rapporteur from looking into the human rights situation in closed and mainly authoritarian societies. Lack of information or a refusal to co-operate by the Government concerned could not justify the scant attention given to a number of very grave situations. The Special Rapporteur must avoid selectivity in carrying out his mandate.

113. Turkey was an open and democratic society, and his Government had never attempted to deny the occurrence of isolated cases of police violence. On the contrary, it had always adopted a sincere and frank attitude on the issue and maintained a constructive dialogue with all those truly committed to the promotion of human rights. While remaining vigilant with regard to the exploitation of human rights issues for political purposes, his Government was committed to the eradication of torture and continued to take measures to that effect.

114. It was a party to international and European conventions against torture, and its full acceptance of the monitoring mechanisms established on the basis of those conventions was a clear indication that it was sincerely engaged in

the fight against torture. By accepting the right to file individual petitions with the European Commission of Human Rights, it had taken an essential step towards improving legislation on protecting the individual against human rights abuses, a decision that had been consolidated by the recent recognition of the jurisdiction of the European Court of Human Rights.

115. Action taken at the international level had been coupled with a further strengthening of domestic safeguards against torture. New legislation has substantially shortened the initial detention period. The access of lawyers to detainees had been fully ensured. All detained persons went through a medical examination performed by independent physicians both before and after interrogation. The education of public officials, meticulous scrutiny of allegations and severe penalties were also strong safeguards against torture. Steady improvement in prison conditions continued through the enactment of new regulations.

The meeting rose at 1 p.m.