UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1991/SR.26
19 February 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Forty-seventh session

SUMMARY RECORD OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 14 February 1991, at 3.30 p.m.

Chairman: Mr. BERNALES BALLESTEROS (Peru)

CONTENTS

GE.91-10626/2881B

The meeting was called to order at 4.05 p.m.

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

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(agenda item 10) (continued) (E/CN.4/1991/15, 16, 19, 20 and Add.1, 49 and 66; E/CN.4/1991/NGO/4, 17, 19-22 and 24; A/45/590 and 633; A/RES/45/142 and 143; E/CN.4/Sub.2/1990/11, 27, 29 and Add.1, 32, 33 and Add.1 and Add.2 and 34; E/CN.4/Sub.2/1989/30/Rev.2)

1. Mr. CROOK (United States of America) said that agenda item 10 concerned issues that should be at the very core of the Commission's work, yet they had received only two days on the agenda. There could be no greater assault on a person's dignity and human rights than torture or murder carried out by the State.

2. The Commission, together with other United Nations human rights bodies, could play a vital role in protecting lives, both through its Special Rapporteur on torture and the Working Group on Disappearances and through setting such international standards as the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both of which had stemmed from the work of the Commission.

3. His Government regarded torture and related abuses committed against persons in detention to be among the gravest human rights violations, and it was determined to eradicate them. His delegation urged all the members of the Commission to make the same commitment, regardless of the political views of the Governments or individuals involved.

4. For some Governments, torture was all too often an instrument of policy. Others could not or would not check the brutality of their security forces. However, torture corrupted the Governments that practised or allowed it. The Commission would, at a later date, discuss the appalling practices of the Government of Iraq both in Kuwait and within its own territory, where all kinds of physical and psychological torture were widespread. Torture also occurred in too many other countries, though on a smaller scale.

5. His Government supported the vital work of the Special Rapporteur and urged delegations to seek ways to enhance their co-operation with him. It welcomed the growing acceptance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, although it was still far short of universal acceptance. His delegation was pleased to report that the United States Senate had ratified the Convention in 1990, subject to certain reservations, understandings and declarations, and the United States expected to become party to that vital treaty in the near future.

6. Another grave abuse inflicted upon detained persons by some Governments was the practice of enforced disappearance, which was all too often followed by torture and extrajudicial killings. The report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20 and Add.1) suggested that cases of disappearance might have become somewhat less common. If so, it was, perhaps, the welcome result of the decline in the number of authoritarian régimes. The practice nevertheless continued, the Working Group having transmitted 962 cases to Governments in 1990, more than half of which were alleged to have occurred in the same year.

7. The conduct of some Governments in that regard was chilling. During 1990, the Working Group had transmitted to the Government of Iraq information regarding 464 additional reported cases of disappearance, and it currently listed 3,420 unresolved cases in that country.

8. His Government commended the Working Group on the work it had done in identifying and combating that evil. It also noted that the Sub-Commission on Prevention of Discrimination and Protection of Minorities was preparing a draft declaration on protection of persons from enforced or involuntary disappearance. Governments should be given reasonable time to study and comment on the draft, and an appropriate opportunity was then needed to refine it in the light of the views of Governments prior to its adoption.

9. Important work was under way on the question of the rights of persons in detention, which had grown out of the report by Mr. Joinet (E/CN.4/Sub.2/1990/29 and Add.1) which contained proposals for a special rapporteur or working group to address the problem.

10. Too many dissidents, political opponents, writers and human rights advocates continued to be arrested and detained solely for the peaceful expression of their views. It was time for the Commission to come to their defence. Every possible effort should be made to focus international attention on the violation of the human rights of such prisoners, regardless of whether they had been placed in administrative detention or had been arrested on the basis of a judicial order. Such practices were contrary to the provisions of the Universal Declaration of Human Rights.

11. The delegation of the United States was committed to working with other delegations to produce a mandate for a rapporteur who would enhance the protection of persons punished for activities which the Universal Declaration of Human Rights sought to protect. In challenging those violations, an endeavour must also be made to intervene in cases of individuals who, for political reasons, were detained or incarcerated on trumped-up charges or were being subjected to unduly harsh treatment and punishment.

12. The rapporteur should focus on cases of individuals detained or incarcerated in contravention of the guarantees embodied in the Universal Declaration of Human Rights, in particular article 9, prohibiting arbitrary arrest, detention or exile, article 19 on freedom of expression and article 20 on peaceful assembly and association, regardless of whether such detention had occurred as a result of administrative action or judicial proceedings.

13. Another area where further work might be necessary concerned acts of reprisal by some Governments against those who assisted the work of the Commission by giving testimony or otherwise. Such practices were an insult to the Commission and to the United Nations, and they should not be tolerated.

14. The Commission must send forth the message that there was no place in a civilized world for Governments that engaged in or allowed the abuse, torture or murder of those they imprisoned.

15. Mr. RHENAN SEGURA (Observer for Costa Rica) said that, on 6 March 1980, his Government had submitted to the Commission a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1409), which had then been under consideration. The basic idea of the draft protocol was a very simple one: since torture was practised in secret, the best way to combat it was to have access to places of detention in order to determine whether or not it was occurring there. Drawing upon the system currently employed by the International Committee of the Red Cross for prisoners of war, which afforded an effective protection against torture, his delegation had suggested creating a similar system of visits to all persons deprived of their liberty.

16. For Governments to accept such a system of visits to places of detention by an independent international body, confidentiality was required. The system would not be designed to denounce Governments that engaged in torture, but rather to make recommendations to the States concerned in order to prevent such practices. If the State concerned did not respond to the recommendations, a public statement could then be made.

17. When his Government had submitted the draft to the Commission in 1980, it had specifically requested that its examination should be deferred until after the Convention against Torture had been adopted. Since then, a system of visits similar to the one proposed by his delegation had been adopted by the Council of Europe under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

18. In 1990, leading international experts from 20 countries had met at Geneva to draft a new text of the Costa Rican proposal, which his Government was currently submitting to the Commission (E/CN.4/1991/66). The Special Rapporteur on torture strongly supported the Costa Rican proposal in his report to the Commission (E/CN.4/1991/17).

19. The Costa Rican proposal took account of new developments since 1980 and did not overlap with the Convention against Torture itself: article 20 of the Convention provided for a system of visits to States parties, but only if the Committee against Torture had received reliable information which appeared to it to contain well-founded indications that torture was being systematically practised. Thus, the Convention allowed for an *a posteriori* control which, although essential, was not effective. The draft optional protocol was designed to play a preventive role, in that visits could be made in the absence of any suspicion that torture was being practised.

20. The decision in 1989 to consider the optional protocol at the forty-seventh session had assumed that other regional systems would be prepared outside the United Nations but unfortunately, that was out of the question for the moment. The Costa Rican proposal provided for the possibility of a system of visits at universal level that would coexist with regional systems.

21. The draft protocol proposed the establishment of a sub-committee for the prevention of torture and other cruel, inhuman or degrading treatment. As soon as 10 States had ratified the protocol, the Committee against Torture would set up the sub-committee and elect its members. The members of the sub-committee would serve in their individual capacities and be chosen from among persons of high moral character, with proven professional experience in the field of prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of the international protection of human rights.

22. The sub-committee would be responsible for organizing missions to the territory of States parties in order to visit places of detention. By ratifying the protocol, States would agree to permit such visits to any place within their jurisdiction where persons were held for any reason whatsoever by a public authority, or at the instigation or with the consent or acquiescence of a public authority. The missions would be carried out by a delegation consisting of members of the sub-committee and experts. They would be entitled to visit any place of detention within the territory of a State party and to see any person deprived of his liberty.

23. After the mission, the sub-committee would draft a report of the findings of the delegation and submit it together with recommendations, if necessary, to the State party concerned. The report and the consultations with the State party would remain confidential unless the Committee against Torture, at the request of the sub-committee, subsequently decided to make a public statement or to publish the report, because the State party concerned had failed to co-operate or refused to improve the situation.

24. The proposed system of preventive visits was based on the principle of co-operation. The purpose of the sub-committee would not be to condemn States, but to seek improvements, if necessary, in the protection of persons deprived of their liberty. The sub-committee would not be entitled to perform any judicial functions; it would not have to decide whether violations of relevant international instruments prohibiting torture and inhuman or degrading treatment or punishment had been committed. Its task would be an entirely preventive one, namely to carry out fact-finding missions and, if necessary, to make recommendations on the basis of the information so obtained.

25. As Governments had not had time to analyse the draft optional protocol in detail, his delegation suggested that an ad hoc working group be established at the forty-eighth session to consider the proposed text of the draft protocol (E/CN.4/1991/66).

26. Mr. STEEL (Observer for the United Kingdom) said he would have liked to say a few words about several of the topics under agenda item 10 but was unable to do so because of the non-availability or the failure to appear in good time of many of the relevant reports and other documentation. In those circumstances, while reserving his delegation's right to revert to other topics under the item when a suitable opportunity occurred, he would confine his remarks to the question of enforced or involuntary disappearances, as the report of the Working Group on the subject (E/CN.4/1991/20 and Add.1) had been issued in good time.

27. The report reflected the discretion which the Working Group brought to its sensitive task and showed how that discretion coupled with the Working

Group's continued emphasis on humanitarian objectives and on the establishment of a dialogue with Governments, was producing solid and valuable results.

28. Praise was due to those Governments which had co-operated with the Working Group. In that connection, his delegation welcomed the projected visit by the Group to Sri Lanka, where the problem of disappearances had unfortunately been acute. His delegation looked forward to the report on that visit which the Working Group would submit to the Commission at its next session.

29. It was deplorable that not all the Governments concerned responded to the Working Group's request for co-operation. Of the 46 countries referred to in the report, 15 had failed even to reply to the Group's inquiries. It was true that out of the 15, 2 had recently changed Governments and there might be understandable reasons in one or two other cases for some delay in replying. However, even in the 31 cases where some sort of reply was made, by no means all of them were satisfactory.

30. He joined with other delegations in urging Governments to regard it as their elementary duty to extend to the Working Group every assistance that it needed for its task. The Group did not purport to sit in judgment on Governments. Its role was purely humanitarian and its focus was always on the victim. It was not to any Government's credit to refuse or fail to give to the Working Group the fullest co-operation possible.

31. His delegation endorsed the Working Group's three propositions in paragraphs 403 and 404 of the report: first, that the Commission's action against disappearances since 1980 was apparently paying dividends; secondly, that the Commission should nevertheless not relax its vigilance; and, thirdly, that the phenomenon of disappearances should be treated as persisting until the last outstanding case had been clarified and that the Commission must therefore continue to give the matter its closest attention.

32. His delegation welcomed the way in which, in response to Commission resolution 1990/76, the Group had improved its methods of work by devising a "prompt intervention" procedure. There could be no doubt that it constituted a solid, practical measure which must contribute in a concrete way to the protection of the human rights of numerous persons in many countries.

33. Ms. AL-ABDUL-RAZZAQ (Observer for Kuwait) commended the Working Group on Enforced or Involuntary Disappearances on its report (E/CN.4/1991/20 and Add.1), but regretted that it contained nothing on the situation in occupied Kuwait despite the fact that vast amounts of information were available on the detention and disappearance of thousands of Kuwaiti citizens and others.

34. The report of the Special Rapporteur on torture, referred to the case of only six Kuwaitis who had been detained and tortured by Iraqi authorities (E/CN.4/1991/17, para. 88), although the Iraqi forces in Kuwait had subjected thousands of individuals to torture and other cruel, inhuman and degrading treatment. She asked the Special Rapporteur to include any information he received on cases of torture in Kuwait as an addendum to his original report.

35. Since the early hours of the iniquitous invasion of Kuwait by Iraq on 2 August 1990, the Iraqi forces had carried out a campaign of aggression, arresting Kuwait citizens in the street and dragging them from their homes and

work places. The Iraqi forces practiced all forms of torture and violence against the Kuwaiti population. Virtually all the provisions of the Fourth Geneva Convention of 1949 had been violated by the Iraqi authorities in occupied Kuwait. More than 20,000 persons had disappeared since the invasion and, while a few had been released, the whereabouts of the others was still unknown.

36. Her delegation had no precise statistics on the number and fate of the thousands of civilian and military detainees in Kuwait, because of the communications blackout imposed by the Iraqi authorities there. Iraq gave no information on the names and numbers of detainees and their physical and psychological condition, in violation of the provisions of the Geneva Conventions. Furthermore, the Iraqi authorities did not allow international humanitarian organizations to contact the detainees in order to ascertain the conditions in which they were held.

37. The Iraqi authorities made no distinction between age and sex in their barbaric treatment of Kuwaitis. Iraqi soldiers engaged in collective punishment in order to terrorize Kuwaiti citizens. They arrested whole families and tortured their members in order to learn the whereabouts of persons they were seeking. Perhaps the most heinous of the crimes committed by the Iraqis had been the deliberate murder of 300 newborn babies, who had been thrown out of their incubators so that the incubators could be stolen and taken to hospitals in Iraq.

38. Many Kuwaiti citizens had been killed merely because they waved the Kuwaiti flag or displayed the picture of the Emir of Kuwait. However, the acts of repression committed by the Iraqi forces had not achieved their objective, because the Kuwaiti people remained steadfast in the face of Iraqi terrorism.

39. The only consolation for the repressed Kuwaiti people was the fact that the Commission was taking into account the tragedy of Kuwait. They looked forward to the condemnation by the Commission of the brutal acts committed by the Iraqi forces in occupied Kuwait.

40. The CHAIRMAN said that due note had been taken of the Observer for Kuwait's request to the Special Rapporteur on torture.

41. Mr. VO VAN AI (International Federation of Human Rights) said that the Federation and its affiliate, the Vietnamese Committee for the Defense of Human Rights, were extremely concerned at the abusive and systematic detentions and the cases of torture and enforced disappearances which continued to be committed in Viet Nam since early 1990. The situation had recently worsened in the major cities. In November and December 1990, hundreds of intellectuals, including journalists, writers and poets had been arbitrarily and unexpectedly arrested. In that regard, he read out the names of the best known of those arrested.

42. He recalled that, at the forty-second session of the Sub-Commission, his delegation had expressed concern at the violations of human rights in Viet Nam and given the names of persons who had recently been arrested. The Vietnamese delegation had replied that there were no political prisoners in Viet Nam and that those whose names had been mentioned were free. A few days later, the Vietnamese press agency had announced that, on the occasion of the national

holiday of 2 September, the authorities were going to release 700 political prisoners. However, the persons whom his delegation had mentioned at that time were still under house arrest and being subjected to intense psychological pressure.

43. Religious personalities of the Unified Buddhist Church of Viet Nam had been treated as criminals and some had been placed under house arrest, while others had been sentenced to long prison terms. Furthermore, abuses committed by the security forces were never punished even when the official press referred to them and denounced those responsible. In his organization's opinion a mission should be sent to Viet Nam, and it called on the Commission to do everything possible to deal with the situation of human rights violations there.

44. With regard to the right to a fair trial, his organization welcomed the work already done by Mr. Chernichenko and Mr. Treat (E/CN.4/Sub.2/1990/34). The subject was, however, a vast one. In the case of China, for example, Chinese courts had, for several weeks, been sentencing many persons including some who had been detained for more than a year and others who had been arrested in June and July 1990 on the occasion of the repression of the Beijing spring. Those persons had been sentenced to prison terms for propaganda offences and counter-revolutionary activity. The trials had been held without publicity and foreign journalists had not been able to attend.

45. There was, therefore, ample cause for concern. It appeared, in the light of the detentions and trials in progress, that the Chinese Code of Criminal Procedure was being systematically violated, particularly its articles 43, 48, 92 and 97. Those articles provided that cases must be submitted to the Public Prosecutor's Department within three days of the arrest, that the Public Prosecutor must issue a decision with regard to detention or release within six weeks of the referral and that the pre-trial detention period must not exceed two months, with an additional month in certain cases. However, most of the persons on trial had been detained without charge for more than three months and their families had not been informed of their whereabouts.

46. Accordingly, his organization had officially notified the Chinese authorities in January 1991 that it wished to send an international mission to Beijing in January or February to discuss the fate of the detainees and the question of a fair trial with the judicial, police and penitentiary authorities. At the beginning of February, the Chinese Ambassador in Paris had stated that his Government objected to the presence of any foreign delegation and regarded his organization's mission as interference in China's internal affairs.

47. He asked that the rapporteurs on the right to a fair trial should give special attention to the legal proceedings currently under way in China in view of the secrecy surrounding them. He also requested that a report should be prepared on the human rights situation in China.

48. His organization remained greatly concerned at the human rights situation in Western Sahara. During a mission to that territory in April 1990, inquiries had been made as to the fate of 16 of the 900 persons, officially counted as missing by the Working Group on Enforced or Involuntary Disappearances, whose families had received no information about them since their arrest in 1976.

49. Because of that situation, and many others like it, he welcomed the draft declaration on the protection of all persons against enforced or involuntary disappearances which, he hoped, would be adopted without delay.

50. As for the situation in Morocco, hasty trials had been held following the events of December 1990, leading to many violations: for example, some prisoners with bullet wounds had appeared in court without having received any medical treatment, while others showed signs of torture inflicted during administrative detention. Basic rights, including the right to a defence, had not been observed during those trials.

51. With regard to arbitrary or abusive detention, including administrative detention, he welcomed the rapporteur's revised recommendations (E/CN.4/Sub.2/1990/29/Add.1) and urged the Commission to act upon one of the options proposed.

52. Mr. TARDU (International Centre of Sociological, Penal and Penitentiary Research and Studies) said that it was in the area of human rights in the administration of justice that the greatest number of international mechanisms existed. Within the United Nations human rights programme alone, at least 12 procedures were provided for in the International Covenant on Civil and Political Rights, the Optional Protocols thereto and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

53. Furthermore, the Committee on Crime Prevention and Control, which met every second year at Vienna, had established at least 15 periodic reporting procedures on the implementation of the Basic Principles on the Independence of the Judiciary. He therefore disagreed with the Special Rapporteur's conclusion that the Committee had no mandate to set up verification machinery (E/CN.4/Sub.2/1990/29/Add.1, para. 87).

54. The proliferation of procedures, at both the regional and international levels, entailed the risk of contradictory decisions being taken. Accordingly, he did not feel that additional implementation mechanisms were needed and disagreed with the Special Rapporteur's recommendations in that regard. In his view, the key concept was co-ordination, a task which could not be accomplished either by the Commission or by the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

55. It might, perhaps, be entrusted to a body made up of representatives of the different organs concerned, such as the periodic meetings of persons chairing the human rights treaty bodies. Those meetings could be enlarged to include representatives of the Committee on Crime Prevention and Control and of non-governmental organizations. The co-ordinating body could periodically review the functioning of the various international mechanisms in order to promote harmonization with regard to substantive decisions and avoid duplication of efforts.

56. His organization supported all efforts to eliminate the plague of enforced or involuntary disappearances and commended the Working Group on its innovative methods and increased number of country visits. It also supported the draft declaration on the protection of all persons against enforced or involuntary disappearances, while wishing that the text could be made more forceful in certain respects; for example, it should be made clear that arrests should be monitored by an agency independent of the Executive Power

and that it was a serious crime for any Government even to tolerate enforced disappearances. It welcomed the emphasis placed in the draft declaration on the question of police training, since it had done a great deal of work in that area.

57. The efforts to protect staff members of the United Nations and specialized agencies in detention (E/CN.4/1991/18) anywhere in the world should also be pursued.

58. The draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, proposed by Costa Rica (E/CN.4/1991/66), which provided for a system of visits to places of detention, should be carefully considered, and the views of the non-governmental organizations should be solicited in that regard.

59. Mr. BRODY (International Commission of Jurists) said that, while some of the worst situations of enforced or involuntary disappearances had abated, new ones had appeared and the phenomenon continued to be widespread. The Working Group on Enforced or Involuntary Disappearances reported that, in 1990, it had transmitted 962 new cases to Governments in all parts of the world.

60. While such disappearances violated practically all the basic human rights, there was no international instrument which specifically outlawed the practice of disappearances and prescribed what mechanisms should be established by States to prevent disappearances from occurring.

61. The draft declaration on the protection of all persons against enforced or involuntary disappearances represented a realistic and rigorous approach to the phenomenon. The International Commission of Jurists, which had organized an expert meeting in March 1990 to consider in detail all the provisions of the draft declaration, joined the Working Group in recommending it for adoption by the Commission.

62. He supported the proposal that the Commission should appoint a rapporteur or working group to examine questions relating to arbitrary detention. As noted by the rapporteur (E/CN.4/Sub.2/1990/29/Add.1, para. 85), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment applied to administrative detention as well as judicial detention, and it was thus no longer necessary to treat the two phenomena separately. It was, however, necessary to deal with the question of wrongful detention in its entirety, since thousands of women and men were languishing in prisons in violation of their procedural and substantive rights.

63. Such a mechanism would not examine questions relating to conditions of detention, for that was the province of the Special Rapporteur on torture. Rather, the rapporteur or group would deal with the abuse of all forms of detention, including prolonged administrative detention, unauthorized detention and detention contrary to national and international law, thus covering the last remaining area of individual rights subject to widespread abuse.

64. Fundamental human rights could be preserved only in a society where the legal profession and the judiciary enjoyed freedom from political interference and pressure. For that reason, his organization had, in 1978, created a Centre for the Independence of Judges and Lawyers with the aim of promoting an independent judiciary and legal profession in all parts of the world.

65. The report of the rapporteur on the independence of the judiciary (E/CN.4/Sub.2/1990/35), correctly, noted that the Commission adopted a dual approach to the question. Standard-setting had been entrusted to the Committee on Crime Prevention and Control, while the task of monitoring had been assigned to the Sub-Commission. The urgent need for the Sub-Commission to monitor the protection of judges and lawyers had been illustrated by a report which his organization had submitted to that body. The report, covering the previous 12 months, described the cases of 430 judges and lawyers who had been killed, detained or harassed in 44 countries.

66. Ms. COOK (Amnesty International) said that the draft declaration on the protection of all persons against enforced or involuntary disappearances had long been awaited by the victims of that phenomenon, their relatives and the international community. "Disappearances" violated some of the most fundamental human rights protected under international law, and an instrument which specifically prohibited that practice and set out the steps which should be taken by States to punish it and prevent its occurrence was urgently needed.

67. Enforced disappearances continued to be widely used or tolerated by some Governments as a means of eliminating dissent and terrorizing the community. In 1990 alone, the Working Group on Enforced or Involuntary Disappearances had transmitted 962 new cases to 20 Governments.

68. The practice of "disappearances" was no longer associated primarily with military dictatorships. On the contrary, in her organization's experience, "disappearances" were increasingly prevalent in countries with elected civilian governments where a wide range of legal remedies were theoretically available to victims and relatives. Yet legal mechanisms had rarely proved effective against a practice specifically designed to flout the rule of law and to ensure the impunity of the perpetrators.

69. The impunity enjoyed by security forces and other perpetrators was a typical feature of "disappearances" and constituted perhaps the single most important factor contributing to the phenomenon. When Governments turned a blind eye, when investigations were not pursued, when State institutions did not function effectively and when those responsible for such violations were not brought to justice, it was inevitable that "disappearances" would continue to occur in ever-increasing numbers.

70. When "disappearances" occurred in the context of counter-insurgency operations, impunity became almost endemic. She knew of almost no cases of perpetrators being brought to justice under those circumstances. The response of Governments to the violent action of armed opposition groups could never constitute a pretext for a State to evade its responsibility of preventing human rights violations and bringing the violators to account.

71. She drew the Commission's attention to the continuing practice of "disappearances" in six countries. Of those, five had held national elections in the past five years and had legal remedies in place that should have offered protection against "disappearance". Five of those six countries had, in recent years, established institutions specifically mandated to deal with human rights issues. In addition, all those States were parties to one or more of the main international or regional human rights instruments.

72. Although habeas corpus was one of the most important safeguards for the protection of those unlawfully deprived of their liberty, it was all too often undermined or ignored in cases of "disappearance". The Working Group on Enforced or Involuntary Disappearances had thus rightly recommended that affected Governments should engage in a systematic revision of habeas corpus procedures, repairing their deficiencies (E/CN.4/1991/20, para. 409).

73. Amnesty International had received reports of over 3,500 cases of disappearance in Peru since 1983. One such case was that of Ernesto Rafael Castillo Paez, arrested in Lima by the police. His relatives had presented a habeas corpus petition, and a judge had taken steps to secure his release, but important evidence had been concealed or tampered with by the police, who had failed to comply with the release order. A higher court had then ordered his release and initiated proceedings to determine police responsibility, but the Supreme Court, in a later controversial decision, had annulled the earlier decisions, and the fate of the missing person had not been clarified.

74. In the Philippines, victims had often been members of lawful non-governmental organizations. Two such cases were those of Maria Nonna Santa Clara and Angelina Llenaresas, who had apparently been detained by the military in April 1989. Although a regional trial court had ruled in favour of habeas corpus petitioners, the Supreme Court had referred the case to the Government's Human Rights Commission, without giving reasons. Nothing further had been heard about the women's whereabouts, but relatives, lawyers and witnesses had reportedly received death threats.

75. In Sri Lanka, Kumaraguru Kugamoorthy, a Tamil civil rights activist, had been detained by armed men in September 1990. Despite efforts by his relatives, including letters to the President of Sri Lanka and the Defence Minister, his whereabouts remained unknown.

76. In Guatemala, where "disappearances" were endemic, Maria Tiu Tojin and her 30-day-old baby Josefa remained "disappeared" following arrest by military personnel during a counter-insurgency operation in August 1990.

77. In Colombia, where at least 200 persons had "disappeared" over the past year, Alirio de Jesús Pedraza Becerra, a lawyer, had been abducted in Bogotá in July 1990 by men who identified themselves as security personnel, in front of police officers who had done nothing to prevent the abduction. A refusal to identify the police witnesses was one of the reported obstructions to investigations.

78. In Mauritania, where government operations since mid-1989, directed against black African villages of the "Halpulaar" group, had resulted in hundreds of arrests, many had been reported "disappeared", their fate remained unknown, and friends and relatives feared arrest likewise if they attempted to draw attention to such cases.

79. Despite the Working Group's efforts, the vast majority of the cases it transmitted to Governments remained unclarified, while many other cases did not even come to the attention of the international community, which had an urgent responsibility to do its utmost to end the practice of "disappearances". Adoption of the draft declaration would give substance to the world community's frequent affirmations that such an abhorrent phenomenon

must be discontinued. The Commission was urged, therefore, to give the draft serious consideration with a view to its early submission to the General Assembly.

80. Ms. FARHI (International Council of Jewish Women) said that freedom was the most vital of all conditions and was fundamental to progress; but it entailed duties and responsibilities, lest its unbridled exercise should have adverse effects on human rights. In that connection, article 20 of the International Covenant on Civil and Political Rights stated that any propaganda for war, and any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence, should be prohibited by law.

81. It was common, however, to hear of calls, throughout the world, for mass demonstrations and violence against some enemy, more often than not imaginary; and it was astonishing that, in many cases, such calls were tolerated or even encouraged by the authorities in the name of freedom of opinion and expression. The Universal Declaration of Human Rights stated (art. 29, para. 3) that no human rights might be exercised contrary to the purposes and principles of the United Nations; and the lack of effective international machinery to ensure the compliance by States parties with their treaty obligations was regrettable.

82. It might be of interest, however, to look more closely at the causes often invoked to justify failure to observe the obligations imposed by the Charter and the human rights instruments. For example, national or religious movements could become totalitarian and thus suppress the voicing of divergent views within their ranks. There was a further danger that such movements could promote the sort of polarization which led to simplistic divisions such as the West against the third world, Islam against Christianity, and North against South - approaches based on ignorance and often resulting in hatred and senseless conflict.

83. Likewise harmful was propagation of the notion that one region or another was the cradle of world civilization and culture, or that colonialism, for example, was the practice of only one group of nations. The human rights proclaimed in the eighteenth century in France - which at that time could have been described as a third-world country - had been addressed not to one class, one race or one nation, but to all mankind. The achievements of all great civilizations were surely the heritage of the entire world.

84. An international community which had succeeded, after great toil, in producing a body of texts on basic human needs must take care to prevent any cause or ideology, no matter how allegedly sacrosanct, from hampering observance of the international obligations set forth therein.

85. Particularly alarming, in that regard, was the way in which the resurgence of nationalist or populist movements, in Europe and the East, often involved the incitement of children to violent demonstrations for goals they could not possibly understand. Such incitement violated the Universal Declaration and the International Covenants on Human Rights, the Convention on the Rights of the Child and other instruments. Children thus taught to hate would form part of tomorrow's society; it was vital, therefore, that all who cherished human rights should give that matter the important attention it deserved.

86. Mr. MADHOUR (Iraq), speaking in exercise of the right of reply, said that the speaker who claimed to represent the people of Kuwait had uttered false information which had clearly been manufactured, doubtless at huge expense, by some United States publicity agency. False allegations of that sort, which had also been made in the United States Congress and elsewhere, were part of the methods used by the United States and the Al-Sabah family and its allies in an attempt to justify the attacks against Iraq.

87. The sons of Kuwait, who were the brothers of all other Iraqis, formed part of Iraq; Islamic law and morality forbade barbarous fratricidal acts of the sort alleged. As for the real perpetrators of such deeds, his delegation would speak later about the Al-Sabah family's rule in Kuwait.

88. With regard to the remarks made by the United States representative, it had to be asked why, if that country was so concerned about the suffering of civilians in wartime, it had waged so much cruel warfare in many parts of the world. As for the placing of the aggressors' nationals in strategic places, the record of those countries had obliged Iraq to take such measures in order to deter their Governments from criminal acts; sadly, the large-scale killing of Iraqi civilians had confirmed his Government's fears. Despite the situation, nationals of those countries had been allowed to reside in Iraq. In that connection, the United States Government's treatment of Japanese residents in that country during the Second World War should be recalled.

89. History would also eventually show that the Security Council resolutions quoted as a justification for the attempts to demolish Iraq had been adopted under United States pressure.

90. With regard to Iraq's attack against the Zionist entity, everyone knew that the latter had declared war on Iraq in 1981 by attacking Iraq's nuclear reactor, and Zionists' statements had long shown that they supported warfare against Iraq.

91. Despite allegations which were clearly attempts to raise human rights issues for political ends, there had been no cases of disappearances in Iraq since the end of the war with the Islamic Republic of Iran in 1988; the representative of the United States should consult the relevant Ad Hoc Working Group's report in that regard instead of heeding his nation's media. However, the Iraqi authorities would study any allegations presented in detail, and his delegation would, if necessary, speak later on the matter.

92. Mr. WANG Xuexian (China), speaking in exercise of the right of reply, said that the Chinese authorities' actions referred to by certain previous speakers had been legal proceedings against lawbreakers, and thus an internal affair of a sovereign State, concerning which no outside interference could be justified; it was, of course, utterly wrong for any person or organization to fabricate allegations in that regard. His delegation would make a formal statement, at the appropriate time, on the subject.

The meeting rose at 6.05 p.m.