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Forty-seventh session

SUMMARY RECORD OF THE 31st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 19 February 1991, at 10 a.m.

Chairman: Mr. VASSILENKO (Ukrainian SSR)

later: Mr. BERNALES BALLESTEROS (Peru)

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The meeting was called to order at 10.30 a.m.

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

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

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

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES (agenda item 10) (continued)

(E/CN.4/1991/15; E/CN.4/1991/16; E/CN.4/1991/17; E/CN.4/1991/19; E/CN.4/1991/20 and Add.1; E/CN.4/1991/49; E/CN.4/1991/66; E/CN.4/1991/NGO/4; E/CN.4/1991/NGO/17; E/CN.4/1991/NGO/19; E/CN.4/1991/NGO/20; E/CN.4/1991/NGO/21; E/CN.4/1991/NGO/22; E/CN.4/1991/NGO/24; E/CN.4/1991/NGO/33; A/45/590; A/45/633; A/RES/45/142; A/RES/45/143; E/CN.4/Sub.2/1990/11; E/CN.4/Sub.2/1990/27; E/CN.4/Sub.2/1990/29 and Add.1; E/CN.4/Sub.2/1990/32; E/CN.4/Sub.2/1990/33 and Adds.1 and 2; E/CN.4/Sub.2/1990/34; E/CN.4/Sub.2/1989/30/Rev.2)

1. Mr. ALFONSO MARTINEZ (Cuba) was of the view that action to put an end to torture should remain one of the international community's priorities in its efforts to ensure respect for human rights. International action taken in that field since the mid-1970s had assumed new dimensions as a result of the adoption of international instruments beginning with the Declaration on the Protection of all Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - in whose preparation Cuba had participated - and followed by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of which Cuba was a signatory. A number of instruments had also been adopted at the regional level.

2. His Government condemned the use of any form of torture which, in its view, constituted one of the most abominable violations of human rights and an infringement of the most precious achievement of the Cuban revolution, namely, human dignity. Indeed, the Cuban people itself had experienced that abomination during the final phase of its struggle. The Cuban revolution was proud of the fact that none of the insiduous acts of aggression directed against the Cuban people - who for over 30 years had been struggling against those who were trying to restore the previous contemptible régime - had succeeded in sapping the determination of the authorities not to engage in such practices, notwithstanding what was being said by persons who were fomenting anti-Cuban campaigns. Nevertheless, unfounded allegations of bad faith designed to tarnish the reputation of a country for political purposes constituted a very real danger, as was recognized by the Special Rapporteur on Torture in his report (E/CN.4/1991/17, para. 7). For that reason, any allegation of torture that was at variance with the policy pursued by a country in that respect should be examined very carefully by the Special Rapporteur to ensure that it was not used for purposes of political manipulation.

3. It was clear from the report of Mr Kooijmans, the communications received under the procedure laid down in Economic and Social Council resolution 1503 (XLVIII) and the statements of a large number of non-governmental organizations during the Commission's present session that torture was still practised in a great many countries. His delegation was in particular concerned by the fact that several Governments which were known to employ such practices failed to reply to communications addressed to them or made others responsible for their acts.

4. Referring to the question of enforced or involuntary disappearances, he said that his delegation attached particular importance to the draft declaration on the protection of all persons from enforced or involuntary disappearances that had been adopted in August 1990 by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/1991/49). His delegation wished to express gratitude to the many experts and various non-governmental organizations which had participated in the preparation of the draft, and considered that it should be approved by the Commission and transmitted to the Economic and Social Council and the General Assembly. Governments wishing to do so could formulate their comments at that time. The political impact of the draft's rapid adoption on the problem of disappearances should be regarded as a priority.

5. The question of the reprisals directed in many countries against groups or individuals endeavouring to ensure respect for their rights, as well as against their families, was a long-standing concern of the Commission which had adopted resolution 1990/76 on the subject the previous year. It was relevant in that connection to mention continuing United States activities directed against persons struggling for their human rights and fundamental freedoms, and in particular against indigenous peoples and ethnic minorities (black peoples and those of Latin American origin). Only too often had the United States used its intelligence services and courts to make out - for domestic consumption - that large numbers of political militants were common criminals and to have them sentenced to long prison terms. The Cuban delegation was also concerned by the reprisals taken against the children of the "Ohio Seven", whom the authorities had used as hostages to force their parents to cooperate. It called upon the Commission to establish machinery that could throw light on those very serious allegations.

6. His delegation was also concerned by the trend to privatize prisons in certain countries, in other words, to entrust their administration to entities driven by the profit motive in flagrant contradiction with what should be the basic social function of the administration of justice. It was gratified that the Sub-Commission had begun to tackle that question seriously.

7. Lastly, referring to the rights of minors who had been arrested or imprisoned, he considered that the Commission should invite the Sub-Commission to submit specific recommendations for the separation of minors who had been condemned or were awaiting trial from adults in the same situation, as well as for more adequate means of ensuring that minors who had been under 18 years of age at the time of their offence would not be sentenced to death or executed. Despite the existence of international standards on the subject, a large number of countries still failed to take them into account.

8. Mr. ERMACORA (Austria) observed that torture was prohibited by a number of international instruments, such as the Universal Declaration of Human Rights (art. 5) and the International Covenant on Civil and Political Rights (art. 7). He emphasized that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defined the term "torture" in article 1 and made a legal distinction between torture and inhuman or degrading treatment.

9. His delegation was grateful to Mr. Kooijmans for his excellent report and considered that his work was helping to monitor the occurrence of torture throughout the world, to clarify certain particularly serious cases, to alleviate the suffering of individuals, and to provide guidance to States and to the Commission on future steps that should be taken to strengthen the régime against torture, which had rightly been described in the report as the plague of the second half of the twentieth century.

10. Although it was gratifying to note that an increasing number of States were replying to the Special Rapporteur's requests for information, it was noteworthy that it was above all countries of the third world that were failing to respond, and that certain States were still not living up to their commitments. It agreed with the Special Rapporteur that the prohibition of torture was a part of jus cogens, and that such prohibition was therefore unconditional. It was up to Governments to enforce that prohibition at the national level. The international community should use all the means at its disposal to call to account any Governments that tolerated physical or mental torture or practiced it in order to obtain information or punish persons. His delegation considered that the Special Rapporteur on Torture as well as the other rapporteurs and working groups appointed by the Commission should cooperate closely in the interest of greater effectiveness, and in that respect was gratified by the dialogue that had been established between Mr. Kooijmans and the Committee against Torture.

11. In view of the importance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as an instrument in combating torture, his delegation wondered why only 55 States had ratified or acceded to it. Moreover, less than one-half of the States parties had made the declarations provided for in articles 21 and 22 of the Convention. It therefore urged those States which had not yet done so to ratify and accede to that instrument. It was gratified by the work accomplished by the Committee against Torture and hoped that the dialogue with Governments would be intensified.

12. The Austrian delegation supported the recommendations on measures to prevent torture contained in the report of Mr. Kooijmans (E/CN.4/1991/17). Austria was of the view that the victims of torture and their families should be assisted and was therefore contributing, together with other States, to the United Nations Voluntary Fund for Victims of Torture.

13. At the European level, the Committee established under the European Convention for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had embarked upon its work. That Committee, which was authorized to visit all places of detention in States parties had recently visited Austria. A similar system of visits had been proposed to the Commission in 1980 and a revised version of that proposal was contained in the

draft optional protocol to the Convention against Torture submitted to the Commission by Costa Rica (E/CN.4/1991/66). Since it would be of a preventive and universal nature and would complement existing instruments, his delegation considered that the proposal should be studied carefully in the light of the experience acquired by the Committee against Torture, the Special Rapporteur on Torture and the European Committee on Torture.

14. Turning to the question of enforced or involuntary disappearances, he congratulated the Working Group on its reports and its efforts to shed light on the many cases brought to its attention. However, he noted that the number of disappearances reported and the figures given in annex 1 to the Working Group's report (E/CN.4/1991/20) represented only a fraction of the number of disappearances throughout the world. For example, in paragraph 31 of that document, the Working Group had indicated that there were four cases of disappearances in Afghanistan whereas he was convinced that between 1979 and 1980 over 40,000 persons had disappeared in that country. He was also seriously concerned by the fact that approximately one-half of the disappearances reported by the Working Group had occurred in a single country, namely, Peru. His delegation urged all the Governments concerned to reply in detail to the inquiries they received from the Working Group. It shared the Working Group's concern about the countries visited that had failed to take any steps to implement the Group's recommendations, namely, Peru, Guatemala and Colombia. On the other hand, it had studied with interest the report on the mission of two members of the Working Group to the Philippines, and commended the Philippine Government on its invitation.

15. The Austrian delegation deplored the practice of intimidation, threats and other forms of reprisals against the families of disappeared persons and groups that were trying to trace them. It therefore welcomed the steps taken by the Working Group in accordance with Commission resolution 1990/76 to create a "prompt intervention" procedure that should be further elaborated and also applied by the Commission's other mechanisms.

16. The question of impunity, which was dealt with extensively in the Working Group's report, contributed to the phenomenon of disappearances and encouraged a wide range of other human rights violations. He was of the view that justice was flouted if perpetrators of human rights violations were not held responsible for their acts. In that connection, Mr. Joinet's study on amnesty laws and their role in safeguarding and promoting human rights that had been submitted to the Sub-Commission in 1985 had shed some light on certain aspects of impunity. His delegation supported the idea of appointing an expert of the Sub-Commission to prepare a study on the issue of impunity for the Commission.

17. The Austrian delegation had studied with interest the text of the draft declaration on the protection of all persons from enforced or involuntary disappearances and hoped it would be adopted as soon as possible.

18. Referring to the proposal concerning the practice of administrative detention submitted by the Sub-Commission (E/CN.4/Sub.2/1990/29 and Add.1), he stressed that, under article 9 of the International Covenant on Civil and Political Rights, anyone arrested or detained should be brought promptly before a judge and that preventive detention for an indefinite period, such as

practised in South Africa and with respect to the Palestinians, was contrary to international norms. Austria therefore firmly supported the Sub-Commission's proposal to set up machinery to deal with administrative or abusive detention.

19. The Austrian delegation attached great importance to the question of human rights in the administration of justice. The Committee on Crime Prevention and Control and the Commission on Human Rights had prepared a large number of international standards on the subject which had, however, not always been applied effectively at the national level and very often were insufficiently known to the authorities responsible for their implementation. The General Assembly, in resolution 45/166, requested the Commission on Human Rights to invite the Sub-Commission on Prevention of Discrimination and Protection of Minorities to study the implementation of United Nations norms and standards in that field and to identify problems that might constitute obstacles. Since the Sub-Commission had not found time to take any action on the requests of the General Assembly and the Commission, the Austrian delegation would once again submit a draft resolution on the administration of justice in order to provide, among other things, clear guidelines for the Sub-Commission in that field.

20. Mr. MARKIDES (Cyprus) said that United Nations work on the question of the human rights of all persons under any form of detention or imprisonment covered a wide spectrum of rights, and ranged from standard-setting to the establishment of machinery for monitoring the exercise of such rights.

21. Torture, whether mental or physical, was a flagrant violation of the inherent dignity of man, respect for which was recognized by the Universal Declaration of Human Rights. It was therefore regrettable that Mr. Kooijmans, the Special Rapporteur on the subject, should have reached the conclusion in his most recent report (E/CN.4/1991/17) that the scourge was continuing and that the rules in the matter remained paper formulas. The international community should intensify its efforts to achieve more concrete results and thereby eliminate that heinous practice.

22. The Special Rapporteur had nevertheless pointed out (para. 284) that the efforts made so far had not been in vain. The international campaign must now be implemented on the national level in cooperation with the Governments by which it had been endorsed in order to prevent the scourge of torture from entering the twenty-first century. A three-pronged attack should be mounted in order to promote cooperation between the international community and individual Governments, to remove the causes that were conducive to the use of torture and to adopt preventive measures in the framework of the recommendations submitted by the Special Rapporteur in his report.

23. Although the Working Group on Enforced or Involuntary Disappearances had, in its most recent report (E/CN.4/1991/20), stated that the disappearances trend was downward, it had added that statistics could be treacherous. The Commission should therefore remain vigilant and continue to provide the Working Group with all necessary support so as to enable it in future to protect individuals or groups who were the victims of reprisals because of their human rights activities (para. 411).

24. The purely humanitarian problem of missing persons in Cyprus should not be linked to the overall solution of the Cyprus problem. In its resolution 1987/50, the Commission had reaffirmed the basic human need of families to be informed "without further delay" about the fate of their missing relatives and called for the tracing of missing persons in Cyprus "without any further delay". Yet notwithstanding that and other resolutions of the United Nations, the Council of Europe, the European Parliament and other international bodies, the tragedy was continuing more than 16 years after the invasion of Cyprus, and it was disheartening that the Committee on Missing Persons in Cyprus which had been functioning since 1981 under the auspices of the United Nations had been unable to remedy the situation mainly because of the lack of sufficiently convincing evidence for the families concerned. That Committee, which constituted unique international machinery, should intensify its efforts with the support of all those concerned. The Government of Cyprus, for its part, would continue to cooperate with the Committee so that everything possible could be done to find the missing persons in accordance with General Assembly resolution 3220 (XXIX) on assistance and cooperation in accounting for persons who were missing or dead in armed conflicts.

25. Mr. SIBAL (India) noted that although administrative detention was in principle acceptable as a preventive measure, the international community should draw up norms and machinery to prevent any abuses.

26. The Special Rapporteur on Torture had rightly stated in his report (E/CN.4/1991/17) that it was impossible to justify torture, which occurred more often than not in cases of illegal administrative detention. Even when administrative detention was justified for specific reasons and was carried out in a legal manner, the detainee should be able, as in India, to have access to a court of law or an independent forum in order to impugn his detention. When the administrative detention was illegal, the detainee was never acquainted with the reasons for his arrest and was unable to appeal his detention. Torture and other forms of inhuman and degrading treatment were the inevitable consequences of that situation. For that reason, administrative detention should invariably take place in a legal framework, the detainee should be informed of the reasons for his arrest and should be able to appeal to an independent body; in the absence of such safeguards, torture would continue. The Special Rapporteur had mentioned in his report (para. 285) that torture was used to obtain information and to instil terror. Unfortunately it was also used to stifle opposition or insurgency, and was practised in prisons and detention centres when a person was deprived of his liberty.

27. The Working Group on Enforced or Involuntary Disappearances had stated in its latest report (E/CN.4/1991/20, para. 406) that impunity was perhaps the most important factor contributing to the phenomenon of disappearance. Regardless whether those entrusted with the application of the law were, under various legal systems, held responsible for their acts, it could be noted that in both cases they could carry out illegal arrests with impunity. The international community should establish safeguards so that such abuses could be dealt with promptly.

28. In India, the discovery of such abuses had the effect of launching administrative inquiries which sometimes led to dismissals. Moreover, the victims were entitled to seek compensation from the courts which, in certain cases, had of their own accord awarded damages to them.

29. It was often said that perpetrators of human rights violations, whether civilian or military, became all the more irresponsible if they were not held to account before a court of law. In India there was a code of conduct which the police were required to follow and in the light of which any abuse brought to the attention of the authorities was judged. Police officers were entitled to use only the amount of force absolutely necessary and administrative and judicial inquiries had been ordered when a person died in police custody. Moreover, the Government reminded police officers from time to time that they must refrain from using third-degree methods during investigations and that those guilty of using such methods could be liable to exemplary punishment.

30. Article 21 of the Indian Constitution stated that no person could be denied his right to life or personal liberty except in accordance with the procedure laid down by law; article 22 authorized Parliament to frame a law on preventive detention and specified the constitutional safeguards to be embodied in that law. In India, any person arrested under a preventive detention law must be informed of the grounds for his arrest. His detention had to be reviewed within a few weeks by an advisory board consisting of judges which could recommend to the Government that the detention of the person in question should be discontinued if it considered that it was not warranted by law. The opinion of the advisory board was binding on the authorities. The detainee could also apply for a writ of habeas corpus to the High Court or Supreme Court of India. The courts had ruled that, even though preventive detention was essentially subjective in nature, the constitutional safeguards embodied in article 22 of the Constitution must be strictly respected and that the order of detention could be quashed if the detention was found to be unwarranted. Such were the safeguards which in India ensured that no person could be detained illegally, or treated inhumanly or tortured during his detention.

31. The Indian Government had cooperated wholeheartedly with the Special Rapporteur on Torture and the Working Group on Involuntary or Enforced Disappearances, and had also investigated the cases referred to it properly and promptly. Even if it took a long time to obtain the information requested owing to the size of the country and its federal structure, all cases referred to the Indian authorities were accorded priority.

32. Mr. SENE (Senegal) said that the worst of the problems covered by item 10 was the odious practice of torture which had been prohibited by innumerable international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and People's Rights. Yet since the provisions they contained could not by themselves put an end to that practice, the international community had taken more forceful measures by adopting a Declaration and in particular a Convention against Torture which required States parties to take the necessary action. Senegal, which had signed the Convention on the very day it had been opened for signature in New York, namely, 4 February 1985, had been the first African country to ratify it on 21 August 1986.

33. In his report on the status of the Convention (E/CN.4/1991/15), the Secretary-General noted that by 1 January 1991, it had been ratified or acceded to by 55 States and signed by a further 19. Yet because those figures were still too low, the Commission should, at its forty-seventh session, once again appeal to all States that had not yet done so to become parties to the Convention as a matter of priority.

34. The excellent work done by the Committee against Torture was, moreover, to be commended. The General Assembly, in resolution 45/142, had welcomed the Committee's work on the development of an effective reporting system on implementation by States parties and especially its revision of its general guidelines for the submission of initial reports. In its initial report submitted to the Committee at its fourth session in April-May 1990, Senegal had described all the preventive and repressive measures taken under its legislation and at all stages of its legal procedure. The report had also provided details of Senegal's application of the provisions of articles 2 to 16 of the Convention. Lastly, the draft optional protocol to the Convention submitted by Costa Rica with a view to introducing a system of periodic visits to places of detention was an extremely interesting initiative but one which should be studied in greater detail by a working group for example.

35. Enforced or involuntary disappearances also constituted a serious infringement of human dignity. The Working Group which had been set up in 1980 for one year by the Commission under its resolution 20 (XXXVI), and whose mandate had been regularly renewed since that time, had so far referred some 20,000 cases to 45 Governments. Nevertheless, most of those cases had yet to be elucidated. For that reason, the draft declaration on the protection of all persons from enforced or involuntary disappearances that had been examined and adopted by the Working Group and that was at present before the Commission constituted significant progress in efforts to put an end to that other abomination.

36. With regard to the right to freedom of opinion and expression, his delegation shared the view expressed by the Special Rapporteurs, Mr. Joinet and Mr. Türk, in their preliminary report (E/CN.4/Sub.2/1990/11) that such freedoms constituted an essential condition for the effective exercise of and respect for democracy. Senegal, on achieving national sovereignty, had embodied those freedoms - together with the principle of a multi-party system which demonstrated their existence - in its fundamental law, and had above all ensured their effective exercise as was obvious from the existence in the country of 17 political parties and a completely free and independent press.

37. As for the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, there was no longer any question that fundamental rights and freedoms could be effectively protected only where the judiciary was independent and therefore not subject to any interference or pressure. Similarly, the Universal Declaration of Human Rights, the International Covenant on Civil and Political and other United Nations instruments stated that everyone was entitled to a fair and public hearing by a competent, independent and impartial tribunal. The independence of judges was therefore closely connected with that of lawyers and counsels, as had been noted by two of the Sub-Commission's experts, namely, Mr. Chernichenko and Mr. Treat, in their report on the right to a fair trial (E/CN.4/Sub.2/1990/34). In that connection he welcomed the draft declaration

on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers drawn up by Mr. Singhvi and the working paper prepared by Mr. Joinet on means in the area of monitoring by which the Sub-Commission could assist in ensuring respect for the independence of the judiciary and the protection of practising lawyers (E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1 and E/CN.4/Sub.2/1990/35, respectively).

38. It would therefore certainly be a good idea to explore new possibilities or develop existing ones in order to prevent torture and enforced or involuntary disappearances as effectively as possible. Senegal was as ever prepared to participate in any efforts made in areas affecting human dignity.

39. Mr. RODRIGUEZ CUADROS (Peru) noted that, as stated by Mr. Joinet in his report on the practice of administrative detention (E/CN.4/Sub.2/1990/29, para. 17), that such detention was not banned under international rules and was practised even in countries that regarded themselves as being among the most democratic. What was of concern to the Commission was not the principle underlying administrative detention but the way in which it was applied.

40. It was clear that, in cases of administrative detention, violations of human rights were due to the absence or inadequacy of safeguards provided for by national legislation, that although provisions protected detainees in a general manner, there were as yet no international standards relating specifically to administrative detention and that it was therefore vital to elaborate such standards and to ensure that the provisions of domestic legislation of States were brought into line with them. Innovation on the legal level as well as in the development of standards was therefore necessary. For that reason his delegation, which endorsed all the recommendations contained in Mr. Joinet's report, was of the view that the Commission should not simply set up machinery that facilitated the application of existing standards for the protection of persons subject to administrative detention, but that it should also engage in standard-setting so as to establish more precise rules of international law that would supplement those already embodied in the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment.

41. Administrative detention afforded enormous discretionary power to authorities which were not responsible to the judiciary and permitted large numbers of human rights violations in very varied contexts, ranging from breaches of the peace or violation of State security to states of exception or other situations calling for measures of a disciplinary nature.

42. For that reason and because administrative detention was practised in virtually all countries, Peru agreed with Mr. Joinet that the Commission should adopt a resolution setting up a working group expressly to study the matter. That group and the Commission could do useful work along those lines only if they used criteria of a strictly technical and legal nature and were animated by the desire to protect the human rights of persons under administrative detention.

43. Mrs. RUESTA (Venezuela) pointed out that the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights formed part of Venezuela's domestic legislation, that capital punishment and life imprisonment had been abolished, that citizens had

the remedy of amparo and habeas corpus, that an independent body, namely, the Fiscalía General de la República was responsible for ensuring respect of the rights of detainees and, lastly, that Venezuela's instrument of ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would shortly be deposited.

44. The Venezuelan delegation which was keenly interested in the work of Mr. Kooijmans, Special Rapporteur on Torture, and of the Working Group on Enforced or Involuntary Disappearances, considered it was most regrettable that the Spanish text of their respective reports (E/CN.4/1991/17 and E/CN.4/1991/20) had not only not been submitted in time to Governments but were not even available now that the Commission had begun its work; it hoped that the situation would be remedied. It had, however, taken note with the greatest interest of the conclusions and recommendations set out in Mr. Kooijmans' report, and would be in a position to endorse them definitively when the Spanish text of the document became available.

45. Referring to the draft optional protocol to the Convention against Torture proposed by Costa Rica in document E/CN.4/1991/66, she said that Venezuela endorsed the substance of the draft and would only have a few suggestions to make concerning the need to provide that a prisoner should receive several visits, since only one might not yield the desired results, or that the method of application should be studied carefully. Examination of the draft protocol could be embarked upon at the Commission's next session. Her delegation therefore supported the Costa Rican delegation's proposal that the corresponding draft decision should be adopted.

46. The report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20) was clear and precise. Her delegation's only objection concerned the translation into English of the term Fiscalía General de la República, which suggested that the body in question was a State organ. Her delegation would support the conclusions and recommendations set out in the report when the Spanish text was available.

47. She also endorsed the draft declaration on the protection of all persons from enforced or involuntary disappearances submitted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in view of the extent of that scourge, which was clearly illustrated in annexes I and II to document E/CN.4/1991/20. She was also prepared, in principle, to support the recommendations and conclusions contained in Mr. Joinet's report.

48. Mr. Bernales Ballesteros resumed the Chair.

49. Mr. KEDZIA (Observer for Poland) noted with concern that, although inhuman or degrading treatment had been universally condemned, torture was still practised in various countries with alarming frequency. The nature of that scourge called for something more than the mere application of the machinery provided for by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The time had come - now that the Convention against Torture had entered into force and that it was possible to evaluate the results of the application of the European Convention for the Prevention of Torture and Cruel, Inhuman and Degrading Punishment or Treatment - to flesh out the idea of a system of visits to places of detention, proposed by the Government of Costa Rica 12 years previously and developed in the draft optional protocol to the Convention against Torture.

50. A system of preventive visits could be particularly effective since it would create a psychological and organizational barrier for those who perpetrated or tolerated acts of violence and who, knowing that independent, impartial and competent experts could freely visit persons in prison, would increasingly hesitate to practise torture. It would, moreover, go further than article 20 of the Convention itself, which empowered the Committee against Torture to make inquiries on the territory of States parties but only in respect of States where torture was practised systematically. The new machinery provided by the optional protocol would function not only ex post facto but in a preventive manner and in all countries, regardless of their human rights situation.

51. He recalled the three principles on which the draft optional protocol was based, namely, the principle of impartiality guaranteed by the independence of the members of the proposed sub-committee and the experts appointed by it, the principle of confidentiality - public opinion being appealed to only in extreme cases, namely, if the State concerned had refused to cooperate with the sub-committee and to bring its legislation into line with the provisions of the Convention - and, lastly, the principle of cooperation with the authorities of the State, not to judge anyone but to ensure respect for the human dignity of persons deprived of liberty and to protect them from torture. Cooperation was the most effective means of achieving tangible results.

52. So far, the main concern, after the preparation of standards, had been to ensure that they were applied. Now steps must be taken to supplement - but certainly not to replace - monitoring and control instruments by others that would limit and eventually eliminate the danger of human rights violations. Prevention should play an increasingly important role in international machinery for the protection of human rights, and the proposed optional protocol would make a major contribution in that respect.

53. Mrs. RICO (Observer for Spain) congratulated Mr. Kooijmans on his report which offered an excellent basis for reflection about the problem of torture. It was all the more difficult for the Commission to remain indifferent in the face of that abominable practice - which was unfortunately still only too common - in view of the fact that the international community had at its disposal a broad range of instruments, such as the Convention against Torture, designed to combat it. It was regrettable that the Convention had been ratified by only 55 States, of which a mere 25, including Spain, had made the optional declarations provided for in articles 21 and 22 that allowed maximum use to be made of the Committee. It was therefore vital that the Convention should be ratified by a greater number of countries, which should cooperate sincerely with the Committee.

54. The Commission had also appointed a Special Rapporteur on Torture in order to put an end to the scourge. He had been entrusted with a particularly delicate task not only because torture constituted an extremely serious violation of human rights that was difficult to prove, but also because certain legitimate Governments acting in a completely legal manner were at times accused of practising torture in order to discredit them. Spain, for its part, would continue to cooperate with the Special Rapporteur.

55. Yet those two methods were not enough, and it was for that reason that Spain welcomed the draft optional protocol to the Convention against Torture proposed by Costa Rica that was designed to prevent torture - an approach whose effectiveness had been demonstrated on the regional level in Europe. It also made provision for coordination machinery between the sub-committee that would be set up and regional bodies which were already pursuing similar goals. Spain participated in the system of visits established under the European Convention for the Prevention of Torture and was convinced that the Commission would be able to provide the decisive impulse which would result in the adoption of the optional protocol.

56. The practice of arbitrary or abusive detention was another source of serious concern, since not only did it constitute a violation of the rights of citizens but often allowed authorities to infringe the dignity of the detainee with impunity. Arbitrary detention must not be permitted to replace the criminal justice system or to become a means of circumventing the safeguards offered by that system. Her delegation was convinced that in reaching a decision on Mr. Joinet's excellent recommendations, the Commission would equip itself with the means it needed to carry out its work.

57. The number of enforced or involuntary disappearances had admittedly declined in 1990, but there was no disregarding the terrible tragedy reflected by the more than 20,000 cases which had been recorded by the Working Group and which - as was obvious from the Group's report - had not yet been solved. The impunity enjoyed by those responsible, the shortcomings of judicial systems, the lack of independence of the judiciary and the privileges granted to the military all had the effect of increasing the number of disappearance and of providing de facto support to those who kidnapped, tortured and arranged the disappearance of political opponents. It was of the greatest urgency that States should be in a position to introduce systems for the protection of human rights guaranteed by an independent judiciary.

58. She hoped the Commission would call upon Governments to cooperate more closely with the Working Group, whose task was particularly difficult. The Commission should also reach a decision on the adoption of a new international instrument, namely, the draft declaration on the protection of all persons from enforced or involuntary disappearances, which was designed to fill an important gap in the international system for the protection of human rights.

59. Mrs. TEEKAMP (Observer for the Netherlands) noted with pleasure that the Working Group on Enforced or Involuntary Disappearances was at last providing the Commission with some good news, since the various graphs at the end of its report (E/CN.4/1991/20 and Add.1) revealed that in general the annual number of disappearances had declined. Her delegation shared the Working Group's view that that overall decline may be attributed to a decrease in authoritarian rule in the world. It also shared the view that the Commission should continue to remain watchful and give close attention to the question, since the scourge would be eliminated only when the last of the outstanding cases had been clarified. It was striking in that respect that the large number of disappearances recorded in 1983 was due for the most part to the wholesale disappearance of over 2,000 Barzani Kurds in Iraq which the Iraqi Government had never explained satisfactorily.

60. The human rights situation in Sri Lanka was also of continuing concern. It was particularly regrettable that the Sri Lankan Government, despite its cooperation with the Working Group, should have confiscated over 500 reports and photographs concerning disappearances which were to have been given to the Group. Although those various documents had been returned the act itself remained reprehensible and it was to be hoped that the Working Group's next visit to Sri Lanka during the summer of 1991 would not be marred by problems of that nature.

61. It was interesting to note that in 1991 the Philippines was the subject of two separate reports, one by the Working Group on Disappearances (E/CN.4/1991/20 and Add.1) and the other by Mr. Kooijmans, the Special Rapporteur on Torture (E/CN.4/1991/19), under the same agenda item. The recommendations made in the two reports were complementary and could provide a basis for the continuation of the dialogue between the Philippine Government and the various mechanisms set up by the Commission. Although they contained information that gave rise to concern, the reports were nevertheless encouraging since they reflected the extent to which the Philippine Government cooperated with the Commission. It was also noteworthy that the Working Group in its report emphasized the fact that the situation of the Philippines was not unique, and established a link between the persistence of poverty and social injustice and the escalation of violence in the country. The Commission might well bear that in mind when it examined human rights situations in other countries of the world.

62. Mr. Kooijmans' report revealed that torture continued to be practised on a large scale in all regions of the world. Although it was encouraging that more Governments were cooperating with the Special Rapporteur, it would be well if more of them also invited the Special Rapporteur to visit their countries in order to help them develop methods of preventing torture. Awareness that the prohibition of torture belonged to the rules of jus cogens had fortunately become universal, athough its implementation left much to be desired. The Commission, but also and above all Governments, should therefore follow up the Special Rapporteur's recommendations, for only Governments could ensure respect for the physical integrity of their citizens. The situation prevailing in that respect in a number of countries mentioned in Mr. Kooijmans' report was of particular concern.

63. For example, available information suggested that torture continued to be prevalent in Turkey, a country which had nevertheless undertaken at the international level to put an end to that scourge. Sudan had indicated a desire to cooperate with the Special Rapporteur but had failed to provide precise replies to the allegations of torture transmitted to it concerning about 80 persons, including trade union activists, doctors, lawyers and human rights activists at the end of 1989 and the beginning of 1990. The Government of the Republic of Korea, for its part, had denied all the allegations of torture concerning trade union activists, students and political dissidents under detention that had been brought to its attention, arguing that they were unacceptable because the investigation had revealed that the detainees were guilty - which appeared to indicate that in its opinion torture was justified in such cases. The Myanmar Government also had yet to reply to the urgent appeals addressed to it concerning the arrest and presumed torture of members of the opposition.

64. The Iraqi Government had also maintained that all allegations that Kuwaiti citizens had been tortured were unfounded, despite the existence of abundant evidence. In India, despite the fact that several complaints of ill-treatment had proved to be justified, nothing had been done to help the victims to obtain compensation or to punish those guilty. Lastly, although it was gratifying that the Chinese Government had agreed to respond to the urgent appeal addressed to it by the Special Rapporteur concerning Tseten Norgye, her delegation was unable to evaluate the information provided in paragraph 40 of the report and noted that another appeal concerning Sichoe Dorje from Lhasa had so far remained unanswered.

65. Both the Special Rapporteur on Torture as well as the Working Group on Enforced or Involuntary Disappearances emphasized in their respective reports the role played by the impunity enjoyed by those responsible for human rights violations in the deterioration of the situation in that respect and in the escalation of violence in certain countries. The conclusions that could be drawn were that Governments should, as a matter of priority, put an end to such impunity and that the Commission or Sub-Commission should examine the matter in a structured and comprehensive manner.

66. Mr. TOMIR (Observer for Chile) recognized that Chile owed a great deal to the Commission on Human Rights, as well as to the Inter-American Commission on Human Rights and to many non-governmental organizations which, during the many years when human rights had been systematically violated in his country, had spoken out on behalf of those who were unable to make their voices heard. On 11 March 1990 Chile had embarked upon a new stage in its history and had initiated a process of moral reconstruction and national reconciliation with a view to restoring its precious democratic tradition. Its painful experience had made it understand that only respect for human rights in the broad sense would enable it once again to find the path leading to peace and progress.

67. On the threshold of that new democratic stage, his delegation wished to declare that never again would human rights be violated in Chile and that never again would the country find itself in the dock. However, a non-governmental organization had stated before the Commission that 24 cases of torture had been recorded in Chile since March 1990. His delegation wished to reaffirm that the Chilean Government categorically rejected torture and had proved as much at the international and national levels.

68. In the first place, it had deposited the appropriate instruments withdrawing the reservations formulated by the previous Government with respect to the United Nations Convention against Torture and the Inter-American Convention to Prevent and Punish Torture. Moreover, it had recognized the competence of the Committee against Torture in accordance with article 21 of the United Nations Convention against Torture. It had also deposited instruments of ratification in respect of the optional protocol to the International Covenant on Civil and Political Rights and had made the declaration provided for in article 41 of that Convention. Lastly, it had acceded to the Inter-American Convention on Human Rights and recognized the competence of the Inter-American Court of Human Rights.

69. Secondly, at the national level, the Government had, on 14 February 1991, promulgated a law stating that all political offences would in future no longer be dealt with by military courts but by civil courts, and that detainees would be examined by an independent physician who would report to the court.

70. Thirdly, the Government had adopted a number of administrative and legal measures as a result of which the number of complaints of torture had declined considerably. His delegation pointed out to the non-governmental organization that had referred to the case of Marcial Moraga that he had lost an arm as a result not of torture but of the premature explosion of a bomb that he was about to set in connection with terrorist activities directed against the democratic system chosen by the Chilean people. Furthermore, 16 of the 24 cases of torture mentioned by that non-governmental organization were at present being looked into by Chilean courts which were completely independent of the Executive, in accordance with the Constitution. The other alleged cases would be investigated carefully. All allegations would be verified and the guilty parties, if any, would be punished. His delegation reaffirmed that the Chilean Government would do everything possible to guarantee all citizens access to all legal bodies responsible for defending and protecting their rights, and would not be an accomplice to any act contrary to its principles and the democratic will of the Chilean people.

71. Referring to the work of the Commission and Sub-Commission under agenda item 10, he said that his delegation wholeheartedly supported the draft declaration on the protection of all persons from enforced or involuntary disappearances because in Chile itself, after 10 long years of investigation, only 10 per cent of disappearances had been elucidated. As stated in the draft declaration, the crime should be punished at all stages in its preparation and perpetration and nothing could justify disappearances - not even states of exception which were often used as an excuse by the forces of repression to rid themselves of any moral or legal constraints. The Commission on Human Rights could certainly count Chile among its allies in its unceasing efforts to realize the ideals for which it had been set up.

72. Mrs. SYAHRVAAIN (Indonesia), speaking in exercise of the right of reply, categorically rejected the allegations made by certain persons concerning the human rights situation in Indonesia and particularly in Aceh and East Timor.

73. The allegations made concerning Aceh were completely unfounded and inspired by the so-called "Acheh/Sumatra National Liberation Front" separatist group. Between the end of 1989 and mid-1990, that group had sown terror in the region by attacking public transport vehicles, burning houses and schools in the villages and by killing innocent civilians after the local authorities had adopted stringent measures to eradicate cannabis cultivation. The Indonesian authorities had been forced to take action to restore public order and protect the safety of citizens. Certain organizations tended to blame the Government first instead of viewing the situation in a general context. The Commission on Human Rights had a mandate to promote and protect human rights and it should not be used as a political forum by those whose intention it was to destroy the national unity and territorial integrity of an independent and sovereign State. There was nothing new in the allegations that had been made and consistently refuted by the Indonesian Government, which had replied in

detail to all the questions put to it by the human rights monitoring bodies established by the Commission. The results of the proceedings of the Working Group on Communications which had also considered those questions were known to the members of the Commission.

74. With respect to East Timor, no proof had been submitted in support of the allegations of detention, torture and disappearances that had been made. The local law enforcement authorities had always respected the procedure laid down by the Indonesian Criminal Code in respect of the questioning, arrest and detention of suspects. Disciplinary action, including dismissal from the service, had been taken against the few officials who had failed to comply with that procedure. As for the demonstrations that had occurred in September and October 1990, they had been far from peaceful because police sergeants and passers-by had been attacked - acts that were punishable under criminal law. There again, the decision taken by the Working Group on Communications concerning the allegations of detention and torture it had examined was familiar to members of the Commission. Moreover, the Working Group on Enforced or Involuntary Disappearances had indicated clearly in its report that, during the period under review, no new cases of disappearances had been reported in Indonesia.

75. Lastly, the Indonesian delegation drew the Commission's attention to the fact that the members of an Australian parliamentary delegation who had visited East Timor had described as baseless all allegations that human rights and the political aspirations of the people were not being respected. Moreover, a representative of the World Council of Churches who had also visited the region had praised the Indian Government for its efforts to improve standards of living in East Timor and had stated that the situation in that region was very different from that described in foreign newspapers and magazines which lacked objectivity.

76. Mr. ENDREFFY (Hungary), speaking in exercise of the right of reply, said that Hungary wanted all civilians to be protected in time of war in accordance with the provisions of international humanitarian law. In wartime, however, civilian losses - however tragic - were inevitable. It was war itself that should be prevented, and it was for the Iraqi leaders to do everything in their power to avoid it in the same way as it was their duty to put an end to it in order to avoid further civilian losses. What the Hungarian delegation therefore wished to hear was not that the war was beyond the scope of Security Council resolutions but that the main provisions of those resolutions, namely, those calling for the immediate and unconditional withdrawal of Iraqi forces from Kuwait, would be applied.

77. Mr. SIBAL (India), speaking in exercise of the right of reply, regretted that the observer for the Netherlands had not expressed satisfaction at the speed with which Indian courts examined all complaints of ill-treatment referred to them. The fact that a legal inquiry had been ordered into the cases mentioned demonstrated that the courts were determined to punish those responsible. It should also be borne in mind that Indian courts had already in the past awarded compensation to victims of ill-treatment.

The meeting rose at 1 p.m.