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COMMISSION ON HUMAN RIGHTS

Forty-eighth session

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

Held at the Palais des Nations, Geneva,
on Thursday, 13 February 1992, at 3 p.m.

Chairman: Mr. SOLT (Hungary)
later: Mr. NASSERI (Iran)

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* The summary record of the second part of the meeting appears as document E/CN.4/1992/SR.26/Add.1.

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The meeting was called to order at 3.15 p.m.

STATEMENT BY MR. GROS ESPIEL, MINISTER FOR FOREIGN AFFAIRS OF URUGUAY

1. Mr. GROS ESPIEL (Minister for Foreign Affairs of Uruguay) expressed gratification at the fact that the establishment of genuine democracy in his country had made possible Uruguay's return to membership of the Commission on Human Rights after many years' absence. It might be remembered that he had himself served as special representative, rapporteur and expert on the Commission and also as special rapporteur to the Sub-Commission.

2. Uruguay was now ruled by a free Government, resulting from free elections and firmly committed to full compliance with the Constitution and with national and international law. Democracy was established there not only de jure but also de facto, and all Uruguayan citizens had untrammelled enjoyment of their fundamental freedoms. That respect for human rights had its legal basis in a regulatory framework determined by international law and by domestic law. The international conventions on human rights ratified by Uruguay were directly applicable by the country's courts, as was also the Inter-American Convention on Human Rights to which Uruguay naturally adhered. Respect for human rights was, of course, conditional upon respect for civil and political rights, but also on full respect for economic, social and cultural rights, which were the indispensable basis for the effective application of all the principles concerned.

3. Human rights were not simply a matter for the internal jurisdiction of States and the concept of sovereignty could no longer be invoked as a bar to their international protection and promotion. Every measure implemented to guarantee peace and security was necessarily conditioned by respect for human rights, since massive and flagrant violations of those rights constituted a threat to worldwide stability. Respect for human rights was also a sine qua non for the establishment of genuine democracy, which in turn was the only means of guaranteeing citizens the full enjoyment of their rights. Moreover, the right to self-determination could not be truly fulfilled without the free and legitimate expression of a people's will.

4. When reference was made at the present time to the serious world ecological situation and to the World Conference shortly to be held on the environment and development, the connections that existed between those problems and human rights issues could not be ignored. There was an inherent and necessary relationship between the right to life and the right to a healthy and balanced environment. The latter - which constituted a projection of the right to life - was a new right in the sense that its legal recognition resulted from new human needs engendered by the changes in man's natural, political, social and cultural environment. The relationship between right to life and right to environment had implications for all other rights and at every level of international legislation on human rights.

5. The disappearance of the Soviet State was irrefutable evidence that a political regime which was not based upon respect for human rights was doomed to perish in the shorter or longer run. Only democracy, born of the people's will and founded upon respect for human dignity, was compatible with the establishment, in a context of pluralism stemming from ideological and

political tolerance, of a stable and lasting regime capable of ensuring economic progress and, accordingly, conducive to full enjoyment of the fundamental rights, whether economic, social or cultural, of humankind.

6. The business of the Commission, which was neither a court of law nor a jurisdictional body, was to represent without exception the entire international community in everything that concerned problems of human rights. It must be the mirror of the world's conscience while never attempting to impose a particular ideological concept or overstep the limits of the principles enshrined in the United Nations Charter, in the Universal Declaration of Human Rights and in the two International Covenants. Its function was to constitute a forum for the conduct, uninfluenced by any political objectives and through dialogue, of a global, objective and non-discriminatory analysis of human rights issues and for the exposure, where appropriate, of given situations, whereas actual supervision and, if necessary, sanctions in cases of specific violations of human rights must result from the deliberations of competent bodies and be applied according to methods of a jurisdictional or quasi-jurisdictional type (as was the case with the Human Rights Committee established by the International Covenant on Civil and Political Rights).

7. The World Conference on Human Rights, to be held in 1993, was an event of exceptional importance inasmuch as it would provide an opportunity, 20 years after the Tehran Conference, for a global evaluation of the human rights situation in a completely new political, ideological, social, cultural and legal context. It should contribute, moreover, to a truly universal awakening of consciousness and stimulate renewed ardour for the promotion and protection of human rights. If the Conference was to be a success, the deliberations must reflect the interests and concerns of humanity in its entirety and in all its diversity. It must bear witness to the efforts put forth by all peoples to advance along the sometimes difficult road of democracy, development and respect for human rights; and, in a world where ugly manifestations of xenophobia, hatred and discrimination were reappearing, its role would be to preach tolerance, understanding, solidarity and fraternity within the human family. Uruguay, for its part, reaffirmed its will to help make the World Conference on Human Rights an unqualified success.

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

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (agenda item 10) (continued)

(E/CN.4/1992/13-16, 17 and Add.1, 18 and Corr.1 and Add.1, 19/Rev.1, 62 and 63; E/CN.4/Sub.2/1991/28/Rev.1; A/C.5/46/4; E/CN.4/1992/NGO/4 and 9; E/CN.4/1991/17, 20 and Add.1 and 66; E/CN.4/1991/NGO/22; E/CN.4/Sub.2/1991/9, 26, 29 and 30 and Add.1-4; A/46/46, 618 and Corr.1, and 703; A/RES/S/46/110)

8. Mr. ALFONSO MARTINEZ (Cuba) said that the big increase in the prison population all over the world was due firstly to the disparities in the distribution of wealth in the so-called developed market-economy countries and secondly to the stepping up of repression in certain countries in face of intractable social problems. The failure, in the practical and moral spheres alike, and the eminently discriminatory nature of policies geared to "law and order" in societies strongly characterized by social injustice, violence and repression were strikingly illustrated by the situation currently prevailing in the United States where, according to recent figures, over a million people were in prison. The United States thus had the melancholy distinction of being the country with the world's highest detention rate. It was noteworthy, moreover, that the majority of those detained were Blacks, among whom were also represented nearly half the 2,356 persons condemned to death and awaiting execution.

9. With regard to the activities of the Working Group on Arbitrary Detention set up under resolution 1991/42 of the Commission, he stressed that the Cuban Government had been among the first to receive communications from the Group, to which it had replied without delay. On that occasion it had also put questions to the Working Group on the methods of work it intended to apply in discharging its functions. He could not but note, on perusing the initial report submitted by the Working Group to the Commission (E/CN.4/1992/20) that some of the concepts and criteria on which it proposed to base its activities did not appear very sound. Thus, it was indicated in paragraph 10 of the report that the Group would in certain cases have to consider whether the law of the country concerned conformed to international standards, without its being stated that the standards in question were those enunciated in the relevant international legal instruments accepted by the States concerned in pursuance of paragraph 2 of resolution 1991/42 establishing the Working Group's mandate. Similarly, when it listed among the principles applicable in the consideration of cases submitted to it (Annex I of the report) deprivation of freedom for reasons connected with the exercise of the rights and freedoms protected by certain articles of the International Covenant on Civil and Political Rights, it was also forgetting that certain Member States of the United Nations, including Cuba, were not parties to that instrument and could therefore not be required to discharge obligations to which they had not committed themselves. It failed, moreover, to mention that limitations could be imposed upon the exercise of all the rights for the reasons stipulated in article 29 of the Universal Declaration; that was a serious technical shortcoming which would need to be remedied. It was also astonishing that, in order to assess the arbitrariness or otherwise of deprivation of freedom, which was the question dealt with in the third principle set out in Annex I to the report, the Working Group should take into consideration not only a whole series of articles of the International Covenant on Civil and Political Rights but also a great number of the items contained in the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment adopted by the General Assembly in its resolution 43/173. It could not be overstressed that the resolutions of the General Assembly were incontrovertibly in the nature of mere recommendations and that it would be an error to claim that they possessed binding force for States. What was more, the Working Group did not explain why the exhaustion of internal rights of appeal in each specific case did not feature among

the criteria for determining the receivability of any complaint that was transmitted to it, as was the case with other mechanisms for examining communications. That would provide a means of sparing the Working Group unnecessary proceedings and discouraging any improper recourse to the new machinery.

10. The Cuban delegation had further remarks to present concerning the questionnaire featuring in Annex II to the report, the contradictory nature of the procedure the Group was proposing to follow, the characteristics and final objective of the "urgent action" procedure envisaged, and the justification for the decision already taken concerning cases transmitted to one country, but it would address them in writing to the Working Group. It hoped that the latter would accord them due attention since they bore witness, in fact, to the Cuban Government's interest in the activities of the Working Group and its desire to help the Group and improve its functioning.

11. The Cuban delegation was gratified that the Working Group entrusted with the preparation of the draft declaration on Protection of All Persons against Enforced or Involuntary Disappearance had completed its work. Its task had certainly not been easy and it was therefore not surprising that the compromise text drawn up should not completely satisfy all those who had taken part in its drafting. The Cuban delegation was nevertheless confident that, once adopted by the Commission and subsequently by the General Assembly, that declaration would constitute a powerful weapon in the common fight to eliminate the horrible crime of enforced disappearance of individuals. It paid tribute in that connection to Mrs. Le Fraper du Hellen, who had shown great skill in guiding the deliberations of the Working Group, and congratulated the Group on its excellent report. He also noted with satisfaction the progress achieved by the Sub-Commission in studying the question of the privatization of prisons and hoped that an exhaustive report on that subject would soon be submitted both to the Sub-Commission and to the Commission. Finally, with regard to the question of preparation of model legislation in various spheres such as the administration of justice and emergency regulations, he must issue a warning against any initiative that did not take into account the existence in the contemporary world of widely differing legal systems and cultural traditions and would therefore be doomed to failure. Any attempt to impose such models in disregard of those realities would run counter to the principle of the sovereign equality of States.

12. Mr. NASSERI (Iran) took the Chair.

13. Mr. SENE (Senegal) observed that over 15 years had passed since the international community had mobilized against the phenomenon of torture by adopting in 1973 the Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, followed in 1984 by the Convention on the same subject. Yet, in order to make their views prevail, people were ready, on the eve of the twenty-first century, to take their stand upon racial, ethnic, religious or ideological superiority as a justification for resort to the cruellest and most humiliating treatments. Accordingly, the application of the Convention against Torture provided a valuable indicator for assessing and determining

the degree of enjoyment of basic civil and political freedoms. But first it was essential that the Convention should be ratified by a larger number of States than had so far done so - a need to which the Special Rapporteur, Mr. Kooijmans, drew the attention of the international community in his report (E/CN.4/1992/17). Senegal, for its part, had been one of the first African countries to ratify the Convention, on 21 August 1986, and its promptness in doing so bore witness to its intense concern for the eradication of such an odious and barbaric practice as torture.

14. Nevertheless, to ratify an international legal instrument was one thing and to apply it another. Its application brought into play the responsibility of the State Party for fulfilling its commitments and highlighted the importance of independent and impartial administration of justice, for clearly the rights proclaimed in the Convention could not be put into effect when the judiciary was subordinated to the will of the political authorities. There was also, particularly in the developing countries, the problem of the lack of competence and inadequate training of the magistrates and of others responsible for applying the laws and maintaining public safety. He therefore welcomed the report by Mr. Louis Joinet on the subject (E/CN.4/Sub.2/1991/30), which recommended, among other things, closer coordination between United Nations bodies to ensure cost-effective utilization of advisory services. The role of the Centre for Human Rights should also be strengthened in regard to the dissemination of the rules and principles of humanitarian law, in particular through the development of cooperation with the programme of work of the United Nations in crime prevention and criminal justice, at Vienna.

15. The Senegalese delegation welcomed the establishment of the Working Group on arbitrary detention and approved its methods of work, set out in its report (E/CN.4/1992/20), particularly those designed to facilitate prompt action in an emergency. It also paid tribute to the Working Group entrusted with preparing a draft declaration on the protection of all persons from enforced or involuntary disappearance and in particular to its Chairman, Mrs. Le Fraper du Hellen, and was very hopeful that the draft declaration would be endorsed by the Commission. His delegation also wished to congratulate those experts on the Sub-Commission who had been called upon to draw up a report on the thorny question of freedom of opinion and expression in the context of the struggle against racism (E/CN.4/Sub.2/1991/9). That theme had become of particular importance in view of the upsurge of intolerance, xenophobia, and every kind of extremism occurring in contemporary societies. Clearly, limitations on freedom of opinion and expression were justified if they were aimed at combating violence and racial discrimination. It must be borne in mind that all the States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination, which had come into force on 4 January 1969, had undertaken to "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred [or] incitement to racial discrimination". It was essential that all States should take in concrete form the appropriate legislative steps to eliminate any possibility of incitement to racial hatred in their own territories. The adoption of specific penal sanctions in case of infringement of the law would strengthen the educational and preventive role that the Third Decade to Combat Racism and Racial Discrimination should be performing. It must be hoped that model legislation could be quickly worked out in order to assist States in enacting new laws to curb such offences. It was interesting

to note that the International Law Commission had adopted at the first reading a draft code on crimes against the peace and security of humanity, among which featured torture, inhuman, cruel or degrading treatment, enforced or involuntary disappearances, arbitrary detention and summary execution, alongside apartheid, slavery, racial discrimination, aggression, terrorism and war crimes, including serious depredations caused to the environment. The draft code provided for the setting-up of an international criminal court before which would be brought persons presumed to be guilty of such crimes.

16. In conclusion, he reaffirmed his delegation's complete confidence in Mr. Kooijmans, Mrs. Le Fraper du Hellen and Mr. Joinet, and encouraged them to continue their assigned task in accordance with their mandate.

17. Mr. BISLEY (Observer for New Zealand) commended the Special Rapporteur on torture, Mr. Kooijmans, for his exhaustive report, which was thought-provoking in that it showed that, despite some progress, torture was continuing in prisons and in interrogation rooms. That meant that States were failing to honour their commitment to applying at the national level the international instruments banning torture to which they were party, such as the International Covenant on Civil and Political Rights, the United Nations Convention against Torture, and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment. Noting with gratification that over the past year an increasing number of Governments had cooperated with the Special Rapporteur, his delegation commended in particular all those who had made serious efforts to investigate cases of torture brought to their attention. Nevertheless, States' responsibilities did not end there: they must also take effective measures to put an end to torture. In particular, the New Zealand delegation urged the Indonesian Government, which had facilitated the Special Rapporteur's visit to Indonesia in 1991, to give effect to each and every one of his recommendations. Over the years, Mr. Kooijmans had provided in his annual reports extensive guidance to Governments on the steps they must take to eradicate torture, while constantly reminding them that nothing could justify it and that it must remain prohibited even under a state of emergency. In his latest report the Special Rapporteur emphasized the vital role that an independent judiciary could play in safeguarding human rights in general and the right to be free from torture in particular. In that regard, the New Zealand delegation was following with close interest the progress of the Sub-Commission in elaborating model legislation drawn from United Nations standards on the administration of justice, and also its work on the importance of maintaining habeas corpus procedures, including during states of emergency.

18. Until such time as the phenomenon of torture was eliminated for good, it was essential to help all those who had suffered from it to continue living. New Zealand was contributing to the United Nations Voluntary Fund for Victims of Torture and suggested to any Governments that had not yet done so that they should also help to provide it with funds.

19. On the question of enforced or involuntary disappearances, his delegation deplored the fact that the political changes which had occurred in latter years in many regions of the world had not been accompanied, as might have been hoped, by a reduction in cases of disappearance. According to the report

of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1992/18 and Add.1), that phenomenon showed a marked resurgence in certain countries, notably Sri Lanka where the situation was especially disturbing. His delegation nevertheless took note of the cooperation afforded by the Sri Lankan Government to the Working Group and the steps it had already taken to address the problem. The New Zealand delegation urged all Governments to help the Working Group in its task by responding quickly to its communications and, most important, by implementing its recommendations so that further violations of that kind did not occur. New Zealand was satisfied with the draft declaration on the protection of all persons from enforced or involuntary disappearance and would support its adoption by the international community.

20. It was evident from the initial report of the Working Group on Arbitrary Detention (E/CN.4/1992/20) that the Group had already made progress in determining its methods of work. New Zealand would await with interest its first substantive report. There was a clear linkage between arbitrary detention, torture and disappearances, and such a new control mechanism could make a real contribution to United Nations work on those crucial issues.

21. The changes that had occurred in the world should facilitate progress along the road towards the establishment of a "universal culture" of human rights. The thematic mechanisms played a special role in promoting better understanding of the nature and causes of some specific forms of violation and thus helped the international community in its efforts to ensure respect for human rights.

22. Mr. HJELDE (Observer for Norway) said that his delegation had studied with interest the seventh report of the Special Rapporteur on torture (E/CN.4/1992/17) and the twelfth report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1992/18). The content of those reports bore witness to the soundness of the fact-finding and monitoring mechanisms and even to the need for a broadening of the respective mandates, which should make possible systematic recourse to the urgent action procedure and an increase in the number of visits and inspections.

23. The Special Rapporteur on torture and the Working Group on Enforced or Involuntary Disappearances had submitted a series of very valuable recommendations. It would be well if the Centre for Human Rights were to issue a fact sheet setting out those recommendations in detail, which would facilitate their implementation by Governments. His delegation also welcomed the fact that the Special Rapporteur had visited a number of countries including, most recently, Indonesia and East Timor (E/CN.4/1992/17/Add.1). It hoped that the Special Rapporteur would continue to set out his findings on certain countries in addenda to the reports and that he would provide information on the steps taken by Governments to improve the human rights situation until such time as it seemed to him satisfactory. The report on torture and other cruel, inhuman or degrading treatment confirmed the need to continue giving high priority to that issue. Governments that joined campaigns against torture at the international level often practised it or condoned its use as a political tool at the national level. Norway would continue, as the Special Rapporteur advised, to maintain and intensify international pressure on the guilty Governments. The elimination of such

practices was a moral and legal duty for the international community. Among the Special Rapporteur's many recommendations, emphasis should be laid on the need to declare illegal the practice of incommunicado detention, which could facilitate recourse to torture. The institution of a system of periodic visits to places of detention as a preventive measure against torture would also be desirable. The Norwegian delegation was in favour of the proposal for the establishment of an open-ended working group to explore the idea of an optional protocol to the Convention against Torture. It also hoped that the informal contacts that had taken place between the Special Rapporteur and the Committee against Torture, the United Nations Voluntary Fund for Victims of Torture and the European Committee for the Prevention of Torture would continue so as to enhance the effectiveness of the mechanisms and competent bodies in that sphere.

24. The Norwegian delegation was gratified that a draft declaration on the protection of all persons from enforced disappearance had been placed before the Commission (E/CN.4/1992/19). Norway, which had participated in the deliberations of the Working Group on the question, urged the Commission to adopt the draft declaration without a vote and hoped that the same procedure would be applied at the forthcoming session of the General Assembly. Speedy adoption of the declaration was all the more essential in that the number of cases reported to the Working Group in 1991 showed an unexpected resurgence of disappearances in some countries. It was gratifying in that connection that the Working Group had taken steps to examine the question of impunity, thought to be the most important factor contributing to the phenomenon of disappearances. It remained, however, true that a long-term solution to the problem lay, at the national level, in the easing of social tensions and the settlement of armed conflicts. His delegation had noted the Working Group's remarks on the activities of death squads. It was with the Governments concerned that the primary responsibility lay for taking effective measures to rid themselves of those evil bands.

25. The Norwegian delegation had also carefully studied the Working Group's report on the situation in Sri Lanka (E/CN.4/1992/18/Add.1), which remained very perturbing. Though disappearances had been less frequent in 1991 than in prior years, their number remained very high. Credit was due for the openness of its attitude to the Government of Sri Lanka, which had taken further measures to try and improve the human rights situation. His delegation urged the Government of Sri Lanka to continue on that course and authorize the Working Group to make another visit to the country.

26. Among the major accomplishments of the Commission's 1991 session had been the creation of the Working Group on Arbitrary Detention, whose methods seemed altogether suited to the supervision of individual abuses.

27. His delegation strongly favoured the renewal of the mandates of the working groups and special rapporteurs with a view to improving the protection of human rights at the international level. It called on the Secretary-General to increase the material and human resources available to those performing that essential task.

28. Mr. ALANIZ PINELL (Observer for Nicaragua) noted that the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1992/18) listed 101 outstanding cases in Nicaragua. Although those cases had occurred under the previous regime, he wished to stress that the present Government was continuing to search for the missing persons and to make it clear that, if the Nicaraguan authorities had not asked to testify before the Working Group in 1991, it was because it had not yet had any definite information on the subject. It must, however, be realized that between 1979 and 1990 considerable population movement had occurred both within the country and to and from other countries, making the situation still more confused. Information provided by the National Reconciliation Programme indicated that some 354,000 persons had fled from the war in 1989 and about 68,000 of them had been repatriated to Nicaragua between 1989 and October 1990. Tens of thousands of Nicaraguans who had emigrated in the 1980s had, however, still not returned. It should be pointed out that a large percentage of the emigrants had left the country clandestinely and resided abroad illegally for years. Entire families and sometimes villages had emigrated, maintaining little or no contact with their home country. Recently the national press had reported the case of two persons whom their families had believed dead for years. To that must be added the lack of historical records and civil registers, making any kind of verification very difficult. Nevertheless, the Government was continuing its investigations, in which it was to be assisted by the special bureau for human rights that was to be established in the Government Procurator's office and would form part of a commission comprising other government bodies.

29. The Working Group also referred in its report to the amnesty law that had been enacted in Nicaragua and wrongly concluded that an atmosphere of impunity prevailed in the country. First he must point out that the Government had enacted the amnesty in April 1990, not March as the Working Group stated. It applied to all Nicaraguans who had committed political offences. Without it it would not have been possible to reduce the size of the army, which had gone from 79,737 men to 28,434, in accordance with the Esquipulas Peace Agreements. Nor could the Nicaraguan resistance have been demobilized, enabling 90,300 persons - soldiers and members of their families - to return to Nicaragua. The amnesty had been enacted by a Government whose primary concern had been and remained reconciliation. That policy of reconciliation had been approved by the Nicaraguan population, as also by the international agencies and States that had participated in the peace process. The Nicaraguan Government recognized that the perpetrators of human rights violations must not remain unpunished, but its prime objective was to pacify the country and obviate further outbreaks of violence. If it had opted for judicial rigour and a punitive campaign, its actions would have fomented hatred and resentment and led to an outburst of violence that might have become uncontrollable, and the prisons would again be filled with political prisoners.

30. Finally, he deplored the fact that the Working Group had voiced political judgements concerning the Nicaraguan Government. By featuring in its report the political opinions of two non-governmental organizations, the Working Group implicitly endorsed them, thus exceeding its mandate. He hoped it had acted inadvertently and would be more circumspect in future.

31. In reply to the representative of the Commission for the Defence of Human Rights in Central America (CODEHUCA), who asserted that the Government was doing nothing about cases of disappearance for which the Nicaraguan resistance was allegedly responsible, he expressed surprise that that body had never submitted to the Working Group any specific cases or official complaints. Moreover, if it had any evidence concerning those cases of disappearance, it should submit it to the competent authorities in Nicaragua. Apparently the members of that Committee were still at war and conducting political propaganda. They must be made to understand that the war was over and that they would do better to join the ranks of those who were trying to build peace and democracy.

32. Mr. GUIDETTI (Observer for Switzerland) said his delegation had read with great interest the report of the Working Group on Arbitrary Detention (E/CN.4/1992/20). It attached great importance to the Group's endeavours, inasmuch as they were aimed at guaranteeing the right to a fair and open trial before a competent, independent, impartial and legally constituted court. It hoped that the Group would succeed in making that right an absolute one from which there could be no derogation under article 4 of the International Covenant on Civil and Political Rights. As Mr. Joinet had said in his introductory statement, the Working Group had interpreted its mandate somewhat broadly in order to ensure better protection for the individual against arbitrary detention. For its part, the Swiss delegation considered that the Working Group had not stepped beyond the limits of its mandate, which was to investigate cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned. His delegation also hoped that the Working Group would be able to invoke the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted by consensus on 8 December 1988 by the General Assembly, and apply it effectively under the terms of its mandate. In cases of alleged arbitrary detention, the Working Group considered whether the domestic law allowing a person to be deprived of his freedom was in conformity with international standards. If such was not the case, the Swiss delegation urged the Working Group to remind the State concerned, and stress in its report to the Commission, the primacy of international law over national legislation. It approved the principles applicable in the consideration of cases of arbitrary detention and the establishment of an "urgent action" procedure. It noted that the Working Group had already conducted specific activities which boded well for the effectiveness of those procedures. As the success of the Group's activities depended on the cooperation of the States concerned, the Swiss delegation urged the States that had not yet replied to the Working Group's requests for information on cases of arbitrary detention (China, Iran, Laos, Libya, Malawi, Morocco, Myanmar, Peru, Sudan, Tanzania and Turkey) to do so.

33. Turning to the report of the Special Rapporteur on torture (E/CN.4/1992/17), he observed that, though the international standards prohibiting it were universally accepted, the despicable practice of torture persisted in a great many countries. That contradiction showed that action must be brought to bear on the two weak points in protection against torture: the power of the judiciary and prevention. Confessions obtained under torture or in violation of the accepted standards with regard to detention should be

systematically declared inadmissible and judges should take a more courageous attitude in face of pressure by the Executive. As the Special Rapporteur stressed, an effective and peremptory preventive mechanism should also be instituted. A step had been taken in that direction with the submission to the Commission at its forty-seventh session of a draft optional protocol providing for the establishment of a committee of experts to make inspection visits to States Parties' places of detention and if necessary make recommendations to the authorities concerned. Such a preventive system had the support of the main non-governmental organizations and of a number of States, including Switzerland, which felt that the time had come to consider the draft protocol, through the mechanism of a working group of the interested States and non-governmental organizations. He considered, further, that States should comply with the recommendations put forward by the Special Rapporteur on torture, in particular those concerning the illegality of incommunicado detention and the inadmissibility of confessions extorted at non-official detention centres. The Special Rapporteur's mandate should be renewed for a three-year period. He also wished to inform the Commission that in 1992 Switzerland would be increasing its contribution to the United Nations Voluntary Fund for Victims of Torture.

34. Alongside the problem of torture, the Working Group on Enforced or Involuntary Disappearances raised one of the most distressing problems of human rights violation. The number of communications transmitted to the Working Group in 1991 sufficed to indicate how widespread it was. In its report (E/CN.4/1992/18), the Working Group again expressed its concern at the limitations imposed on the use of habeas corpus in many countries and the impunity often enjoyed by those responsible for disappearances. It was also concerned at the fact that few States had taken measures to put a stop to the activities of the death squads which operated in their territories and to which most cases of disappearance were attributable. The Swiss delegation shared the Working Group's concern in that regard.

35. The report following up the Working Group's visit to Sri Lanka showed that the situation there remained very worrying. While the action taken by the Sri Lankan authorities was welcome, they should be asked to invite the Working Group again and to apply the recommendations put forward in its report. His delegation welcomed the adoption by the special Working Group of the draft declaration on the protection of all persons from enforced disappearance. It was the first international instrument to define the measures that must be taken by the administrative, judicial and military authorities to prevent and elucidate cases of disappearance. His delegation considered that the text of the draft declaration would be a powerful stimulus to the efforts undertaken to eradicate the phenomenon. It would like to see the Working Group's mandate extended for three years.

36. Mr. KEDZIA (Observer for Poland) considered that the inclusion of the question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the agenda for the Commission's forty-eighth session was a major step forward. The United Nations had already adopted a large number of standards and developed numerous supervisory procedures for combating torture, for example by setting up the Committee against Torture, which considered the periodic reports of the States Parties to the Convention and communications from individuals and could

institute confidential inquiries in States where torture was systematically practised, or the Special Rapporteur on torture, who brought to the attention of a large number of States hundreds of alleged cases of torture, or again the Human Rights Committee, which often took cognizance of violations of the ban on such practices, as also did the Special Rapporteurs for countries and the Commission, in application of the confidential procedure provided for in resolution 1503 (XLVIII), of the Economic and Social Council. He none the less wondered whether those procedures were really of any help to the victims of torture, whether they discouraged the torturers and whether they prevented systematic resort to torture. He did not wish to call in question the supervisory procedures, but he was convinced that punitive measures against the perpetrators of acts of torture and retrospective inquiries must be supplemented by preventive measures. Like Mr. Tomuschat, who had said that field visits were far more effective than evaluating the situation in the prisons from a conference room, he too considered that torture was too serious a violation of the dignity of the human individual for it to be enough to apply, in the case in point, the traditional methods for protecting human rights. It was from the same viewpoint that Jean-Jacques Gautier had put forward, 15 years ago, the idea of a system of preventive visits to places of detention. The Commission had had such a system officially placed before it in 1980, but had not considered it, giving precedence to the preparation of a Convention against Torture. In the meantime, the Council of Europe had taken up the idea and adopted in 1987 the European Convention for the Prevention of Torture, which had come into force in 1989. The first preventive visits carried out by the European Committee for the Prevention of Torture had given very encouraging results. The time had now come for the United Nations in its turn to consider such a means of action. Assisted by the International Commission of Jurists, Amnesty International and other non-governmental organizations, the Costa Rican and Venezuelan Governments had proposed in 1991 a draft revised optional protocol to the Convention against Torture, providing for the coexistence of a worldwide system and regional systems of visits. Its rationale was essentially preventive, aimed at establishing a climate of confidence. In support of that initiative, the Polish delegation called upon the Commission to set up an open-ended intersessional working group mandated to study the draft protocol and report on its findings to the next session of the Commission. He was sure that such a system of preventive visits to places of detention would constitute a great step forward in the struggle to eliminate systematic resort to torture.

37. Turning to the report on enforced disappearances (E/CN.4/1992/18), he congratulated the Working Group, which had succeeded in initiating effective cooperation with the States concerned. On the problem of civil defence addressed in the report, he observed that, while self-defence was in theory an undeniable right, as a method it tended to raise serious problems. One might wonder what were its limits, what was its legal basis and, accordingly, its legitimacy, and how to distinguish what was legally allowed from what constituted an abuse of power. It was therefore not surprising that, while recognizing that the creation of civil defence units was necessary when public forces were unable to ensure protection of citizens' lives and property, the Working Group should link civil defence units with death squads. It might indeed be difficult to differentiate between the two phenomena if the activities of the civil defence units were not strictly regulated. He therefore felt that the Commission should consider the adoption of a

resolution espousing the Working Group's ideas on the subject and recommending to the competent bodies and agencies that they should take appropriate measures to apply them. His delegation commended the Working Group on Enforced and Involuntary Disappearances for having successfully discharged its mandate and adopted by consensus the draft declaration on the protection of all persons from enforced disappearance. That document effectively supplemented the mechanisms for protection of human rights and therefore deserved the Commission's support.

38. Ms. ABEYSEKAVA (Women's International League for Peace and Freedom) wished to focus the Commission's attention on the situation in Sri Lanka, particularly as the visit by the Working Group on Enforced and Involuntary Disappearances to that country was the subject of one of the documents distributed (E/CN.4/1992/18/Add.1). That report showed that, despite the commendable efforts exerted by the Sri Lankan Government to cooperate with the United Nations agencies and non-governmental organizations working in the sphere of human rights, the battle for the restoration of peace and dignity to the Sri Lankan people was far from won. The mechanisms and institutions which had permitted the occurrence of disappearances, arbitrary arrests and torture continued to exist. She need only cite the state of emergency and the Prevention of Terrorism Act, which were still in force despite repeated appeals for their abrogation.

39. Moreover, although the "Indemnity Act" which ensured impunity for officials and members of the security forces for excesses committed "in good faith" had been formally repealed in 1988, the dangerous precedent it created gave members of the security forces the feeling that they were free to violate the civil and democratic rights of the Sri Lankan people, and that feeling could not but be bolstered by recent promotions in the police force (including those of certain officers supposedly implicated in human rights violations). The Women's International League for Peace and Freedom was, furthermore, deeply concerned at the increasing militarization of Sri Lanka. It condemned both the Sri Lankan Government and the Tamil militant group known as the Liberation Tigers of Tamil Eelam (LTTE) who, blatantly rejecting all humanitarian principles, were violating the basic rights of the civil populations under their control. Since June 1990 it was estimated that about 1,000 civilians had been killed and over 1,700,000 persons driven from their homes. Those displaced persons had been living for over 18 months in deplorable conditions, below subsistence level. In addition, the political violence that had swamped the south of the island from 1987 to 1989 had left 20,000 widows utterly destitute. The Sri Lankan Government had not yet taken the smallest concrete measure to have those people provided with basic necessities. The League asked the Commission on Human Rights to take adequate measures to ensure that the recommendations of the Working Group were implemented by the Sri Lankan Government and approve the necessary mechanisms for the purpose, including a second visit by the Working Group to Sri Lanka during 1992.

40. Mr. VLAMING (World University Service) said his statement would be focused on countries where students and members of the academic community had been victims of disappearances, arbitrary detention or torture. In Indonesia, for example, students had been arrested for participating in informal study groups or for the possession or distribution of banned literature. It was

clear from the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment that among the victims of torture in Indonesia there were many students and teachers. In that connection the World University Service was particularly concerned about the fate of two students who had protested at the Dili massacre and had been accused of subversion, making them liable to the death penalty. In Myanmar, hundreds of students and academics had become victims of arbitrary arrest and detention, disappearances and torture after demonstrating against the detention of the Nobel Peace Prize winner Aung San Suu Kyi. After several days of demonstrations in Rangoon, in December of the previous year, the authorities had closed down all the universities. With regard to the situation in Bhutan, the World University Service had received information to the effect that students who had written and disseminated information about human rights violations in the country had disappeared or been arbitrarily arrested. Finally, in Haiti, about 100 students had been arrested in 1991 after organizing a meeting on the university's role vis-à-vis the political crisis in the country. According to reports, 40 students were still being detained. Those examples showed beyond any doubt that in many countries the academic and intellectual community was one of the prime targets for human violations.

41. Ms. BALAN SYCIP (World Student Christian Federation) stated that violations of civil and political rights were continuing in the Philippines. In 1991, 1,053 persons had been victims of arbitrary detention or arrest, 135 persons of torture, and 9 persons of enforced or involuntary disappearance. In their reports, both the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20/Add.1) and the Special Rapporteur on torture (E/CN.4/1991/17) had made a series of recommendations aimed at preventing the recurrence of such violations. The Government of the Philippines had in effect taken legislative action on three points: prosecution in the civil courts of military or police personnel responsible for human rights violations; protection of witnesses; and civilian control of the police force. In the event, none of those three measures had yet proved its effectiveness. Secondly, the problem of impunity, emphasized in the Working Group's report, was of particular concern in the Philippines. Owing, among other things, to obstruction by the security forces and lack of political will on the part of the Government, the courts had returned verdicts in only a few cases of enforced disappearance, torture or politically-motivated killing. The World Student Christian Federation called the attention of the Commission and of the Philippine Government to the recommendations of the Working Group and the Special Rapporteur which had yet to be implemented: firstly, the disbanding of the paramilitary groups; secondly, the cessation of the practice, current among the military, of "red-labelling" individuals or organizations, leading to intimidation, harassment and human rights violations; thirdly, the establishment of regional and central registers to facilitate the search for missing persons; fourthly, a thorough overhaul of the law and practice of habeas corpus; fifthly, a review of the method of work of the Philippine Commission on Human Rights so that it could win the confidence of the public; sixthly, arrangements for lawyers and doctors to be able to visit detainees immediately after their arrest and at regular intervals during their detention; and, seventhly and lastly, the bringing to trial and severe punishment of persons accused of having practised torture.

42. Unfortunately, the present trend in Supreme Court decisions was contributing to the deterioration of the human rights situation. It was evident that the sole purpose of those decisions was to back up the Government in its counter-insurgency programme. The World Student Christian Federation could not but conclude that, despite the change of Government and the holding of elections, the human rights situation in the Philippines had not really changed and that the military were continuing, in that country, to flout human rights.

43. Mr. EYA NCHAMA (African Association of Education for Development) welcomed the draft declaration on enforced or involuntary disappearances and strongly urged the Commission to adopt it. However, that declaration could be no more than a first step towards the adoption by the United Nations General Assembly of a convention on the protection of all persons from enforced disappearance.

44. The African Asssociation of Education for Development commended the new Ethiopian Government for having liberated the previous May two staff members of the United Nations system. The list of detained, missing or dead international officials none the less remained very long and the African Association of Education for Development therefore urged the Commission to continue its endeavours to secure the liberation of international officials held in detention.

45. Secondly, the Association strongly supported the draft optional protocol to the Convention against Torture submitted by the Government of Costa Rica. The system of visits to prisons would constitute an effective mechanism for prevention. The international community must strive to ensure that all States adopted legislation to promote and protect the human rights of detainees. The guarantees provided by habeas corpus and writ of amparo could strengthen in that respect the basis for the protection of their rights.

46. Mr. GONZALEZ (Christian Democratic International) noted that in some of the published reports on the human rights situation in the Philippines the plight of missing persons had been isolated from the country's rather complex overall context, with the result that the Philippine Government had been wrongly charged with a sort of complicity in or tolerance of such violations. It must not be forgotten, as had been pointed out by Mrs. Bautista, Chairman of the Philippine Commission on Human Rights, at a press conference in Brussels, that the Philippine Government had at present both to fight against ferocious Marxist guerrilla forces and cope with periodic attempts at a coup d'état by right-wing forces. Christian Democratic International was gratified that the report of the Working Group on Enforced or Involuntary Disappearances recognized the changes for the better that had occurred in the Philippines, particularly since the promulgation of Act No. 7055 of the Republic restoring the jurisdiction of the civil courts in cases of human rights violations by the military.

47. The fact must be faced that democracy did not automatically entail absolute respect for human rights, especially in countries where it took over from a dictatorship that had been guilty of serious violations of those rights and which were harried by guerrilla forces at whose door must be laid

tortures, executions, disappearances and various kinds of atrocity. It nevertheless remained true that, for all its limitations, democracy was unquestionably the sole political system which offered the means whereby respect for human rights could be fully guaranteed. Consequently the international community must, while pointing out any shortcomings, support and help democratic regimes that were trying to avoid being overturned.

48. That was why Christian Democratic International had always supported the democratic rulers of various countries of Latin America in their efforts to bring armed conflicts to an end, curb human rights violations and achieve national reconciliation. El Salvador, now that a peace agreement had been signed, must take up the difficult challenge of national reconciliation and the reform and strengthening of its institutions. The agreements signed provided for the creation of a "Truth Committee" whose task would be to elucidate the hundreds of cases of human rights violations (torture, executions, disappearances) and find those responsible for them. That provision was a step in the right direction and it had already been applied with good results in Argentina and Chile.

49. Nicaragua was a special phenomenon on the human rights scene. When the Sandinista Front had been in power, an international chorus of admirers had conducted ceaseless campaigns denigrating the victims and praising the torturers to the skies. Those mendacious campaigns of disinformation had been brought to the very rostrum of the Commission on Human Rights by mouthpieces that paraded under the same ideological colours as the Sandinista Front. Christian Democratic International had been one of the few organizations to denounce from the start the abuses committed in Nicaragua and bring them to the notice of the competent United Nations bodies. Those complaints had unfortunately proved well-founded following the inquiries over the past two years by Nicaraguan agencies which had located about a dozen mass graves where the remains of prisoners or missing persons had been identified. Those responsible were known: the Nicaraguan Human Rights Association and the Standing Human Rights Committee of Nicaragua had published detailed lists indicating their names and the crimes they were charged with, and adding that the military personnel involved were still occupying their posts.

50. It was a matter for very serious concern that, with a few exceptions, none of those responsible had been brought to book either by the Sandinista Government or by its successors, and that those who had been put on trial had been acquitted or given absurdly light sentences or else reinstated in their posts. That thorny problem had therefore rightly been addressed by the Working Group in its report on disappearances (E/CN.4/1992/18). Christian Democratic International respectfully urged the Government of Nicaragua to follow the example of other Latin American countries that had managed to combine justice, reconciliation and truth. A committee of Nicaraguans of repute should be established without delay to make a searching inquiry into the crimes committed under the previous regime, including those blamed upon the Contras. Institutions must also be established and effective procedures introduced to prevent human rights violations in Nicaragua.

51. Mr. PONRAJAH (Liberation) referred to the arbitrary arrests and detention and the disappearances that continued to occur in Sri Lanka, while the Government refused to admit its responsibility in most of the human rights

violations committed by the security forces, home guards and other non-military groups armed and trained by it. The disappearances took place under cover of the emergency regulations and anti-terrorist legislation and an arrested person could be kept in detention without trial indefinitely. In the south of the country over 60,000 persons had disappeared during recent years through the action of the security forces and groups armed by the Government. Three Sinhalese youths, for example, had disappeared in October 1991 after being kept in a detention camp. The scenario was familiar: they had been abducted the night after their discharge by the same people who had released them but had changed into plain clothes, and three unidentified charred bodies had later been found in the jungle. Over 25,000 persons were being kept incommunicado at the Boosa, Punani, Pelwatta, Thelavala and other detention camps where living conditions were deplorable. Over 3,000 Tamils had disappeared in the government-controlled areas, apart from the massacres in which more than 10,000 people had died since June 1990. After the Government forces had taken control of the small island in the Jaffna peninsula, 210 Tamils had disappeared and 365 persons had been massacred. Death by torture in prisons was common in Sri Lanka. If those human rights violations were to cease, the Sri Lankan Government must rescind the Emergency Regulation and Prevention of Terrorism Act and also the Act shielding the perpetrators of violations from prosecution, establish an independent commission to inquire into cases of disappearance that had occurred since 1983, and ratify the Optional Protocol to the International Covenant on Civil and Political Rights and the Convention against Torture.

52. Mr. LIN Li (Liberation), speaking on behalf of the same organization and referring to the situation in China, said he wished to fill the gaps in the statement of the Chinese delegation on item 10 of the agenda. The Chinese delegation had not said that its country's legislation was designed to protect the socialist system and the communist party leaders, and that when the objectives of the Chinese legal system were in conflict with the legislation protecting the rights of individuals, it was the interests of the party which prevailed over those of the individual. What had happened to one of the organizers of a peasant protest movement in a county of the province of Henan was a case in point. In 1990 the County Council had decided to raise to 25 per cent the total tax charge on the average income, which was about US$ 70. Since most of the peasants were unable to pay the tax, they decided, despite the threats of the County Council, to protest to the authorities at the highest level, which meant going to Beijing. An inquiry was conducted into the matter and resulted, four months later, in the production of a report which had not been communicated to the peasants, against whom in the meanwhile the local authorities had taken retaliatory measures (arrests, public humiliation, imprisonment, etc.). On 15 May 1991 one of the leading organizers of the protest movement, Hu Hai, had been arrested and he had been held for two weeks without being charged. He had been publicly humiliated during mass demonstrations organized by the Government, brought to trial, found guilty and sentenced on 6 November 1991, after a three-hour hearing, to three years' imprisonment for having refused to accept the findings of the report on the inquiry, disturbed social stability and the functioning of the Government, and committed the crime of disrupting public order. His appeal to a higher court had been dismissed and his son, a law school graduate, discharged from his job. Article 41 of the Chinese Constitution and the Government White Paper on Human Rights in China clearly

stipulated that every citizen had the right to report to State bodies the administrative faults committed by their officials. Such cases were frequent in China, where human rights were constantly violated. The pro-democracy movement of 1989 would be remembered. Not only were international standards not observed, but the laws of the Republic themselves were also ignored when the interests of the party leaders so dictated. The organization "Liberation" requested the Commission to monitor closely the situation in China and encourage the Chinese Government to enter into a dialogue with the international community on human rights questions and take measures to improve the situation.

53. The CHAIRMAN gave the floor to several delegations that wished to exercise their right of reply.

54. Mr. CUESTAS (Observer for Guatemala) stated that his Government, formed as a result of free and fair elections in which all the political forces representative of the country had taken part, rejected the detestable practice of torture and spared no effort to combat any manifestation of it. He also affirmed his Government's commitment to democratic pluralism and the rule of law, as shown by its ratification of the Inter-American Convention to Prevent and Punish Torture, the withdrawal of the reservation entered to article 8 of that Convention, and its ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

55. The Guatemalan delegation had asked to speak in reply to the statements made by certain non-governmental organizations for the transparent political purpose of harming Guatemala by showing it in an unfavourable light. Those statements called for clarification. References had been made to the events of Santiago Atitlán, to the discovery of several corpses on the southern coast of the country, and to tortures inflicted on members of the "banda del ciclista" (cyclists' gang). In connection with each of those occurrencies, civilians and military personnel had been arrested and prosecuted. Those responsible for the Santiago Atitlán incidents had been sentenced to prison terms. The upshot of the cyclists' gang affair had been the dismissal of the national police chief and the perpetrators themselves had been brought to trial. That clearly showed that Guatemala was resolved to take a firm stand against impunity and against any act contrary to international standards in regard to human rights.

56. Finally, the Guatemalan delegation offered thanks on behalf of its Government to the non-governmental organizations which took a genuine interest in human rights and in its country, and assured them that that interest was shared. It hoped that the purpose of their interventions was to promote peace and repudiate violence, terrorism and sabotage and appealed for solidarity with a democratic Government striving for peace and national reconciliation.

57. Mr. SANTA-CLARA (Portugal) regretted that the representative of Indonesia had seen fit to cast doubt on the motives behind the Portuguese delegation's statement concerning the problems of East Timor, to which Portugal laid no territorial or material claim. Portugal was merely responding to a historical, legal and moral duty: the duty to ensure that the decolonization of the territory was completed with due consideration for the wishes and for the legitimate rights and interests of the people of East Timor. As the

Special Rapporteur stated in his report (E/CN.4/1992/17/Add.1, para. 46), the United Nations had "never recognized Indonesia's sovereignty over the territory". Portugal could therefore not be accused of politicizing the debate by raising the question of self-determination in the Commission on Human Rights, since that right was recognized in the Universal Declaration and in the two International Covenants as a basic human right.

58. Portugal had noted in the Indonesian delegation's statement the admission that torture was a widespread phenomenon in Indonesia and East Timor. It hoped that that first recognition of the shortcomings which marred Indonesian practices would be followed by the adoption of all the measures stipulated in the Special Rapporteur's report. His delegation also wished to record its astonishment at hearing the representative of Indonesia affirm that all the individuals involved in the Dili massacre had been brought to court because, to its knowledge, only the victims had been blamed, only the innocent had been jailed - when they had not been executed - and not one of the perpetrators of the massacre had so far been charged or sentenced.

59. At all events the Portuguese delegation welcomed the change in the attitude of the Indonesian delegation, which in previous years had confined itself to bluntly denying all the reports of gross human rights violations conveyed to the Commission by the Portuguese delegation or deriving from many other sources. Perhaps that new attitude was due to the outcry and criticism triggered by the Dili massacre, which, it must be remembered, was not an isolated event in East Timor. Portugal hoped that the Indonesian Government would maintain that attitude, cooperating with all the mechanisms of the Commission to improve the human rights situation in East Timor and complying with all the relevant United Nations resolutions.

60. Mr. LOPES DA CRUZ (Indonesia) answered that it was ridiculous for a country that had the worst record in the history of colonialism to come and preach about the right to self-determination and respect for human rights. The question of the right to self-determination of the people of East Timor would not be solved in Lisbon or Jakarta, nor for that matter in New York or Geneva. Portugal had run away from its responsibilities on 25 August 1975 - long before integration - and had therefore forefeited any legal or moral claim over East Timor. It was in the territory itself that the population had exercised its right to self-determination by proclaiming integration with Indonesia on 30 November 1975, through the agency of the four then existing political parties, UDT, Apodeti, Kota and Trabalista, which represented the overwhelming majority of the population and which had combined forces to resist the reign of terror of the Fretilin minority. He himself could witness to those events.

61. The incident of 12 November (see E/CN.4/1992/SR.24 and E/CN.4/1992/17/Add.1, paras. 53 to 64) therefore had nothing to do with the right to self-determination. The procession in question had not been a peaceful one as some journalists had tried to depict it. Moreover, those who had come to address the Commission claiming to be journalists had entered Indonesia as tourists, i.e. without visas. By declaring after the event that they were journalists were they not testifying that they had violated their own deontological code? What mattered was that Indonesia, as a responsible Government, had taken the necessary steps to redress the situation and

continue to improve the well-being of the Timorese, in the human rights as well as other spheres. The leaders and people of his country of 180 million inhabitants had expressed their regret at the tragic event and were determined that it should not recur. They needed neither condemnation nor condonation, which moreover would be liable to hamper the effective application of the corrective measures taken by the Government.

62. Mrs. LIMJUCO (Philippines) said her country appreciated the efforts made by certain non-governmental organizations to call attention to the specific human rights violations that occurred in countries. The Philippine Government had a very open attitude on the matter, going as far as to invite special rapporteurs to the Philippines to observe the situation, and it had shown its cooperative attitude, as indeed had been indicated in speakers' statements, by adopting legislation to eliminate the problems that might persist.

63. It must nevertheless be clearly understood that the initiatives of the Philippine Government, particularly on the legislative front, had not been taken merely as a follow-up to the Special Rapporteur's visits or recommendations by the Commission. The Government unremittingly strove to enhance the protection and promotion of human rights, and in framing its recommendations the Working Group ought to have acknowledged what had been done inter alia to further the adoption of legislation for the protection of witnesses.

64. It must be borne in mind, too, that the implementation of the measures took time and called for very considerable logistic means in a country which was an archipelago. Lastly, it must be reported that the Geographical Units of the armed forces had been disbanded and that proposed promotions in the military had to be submitted to the Philippine Commission on Human Rights for approval. In conclusion, the Philippine delegation reiterated that only through fair and honest reporting of events would it be possible to establish harmonious and cooperative relations between governments and non-governmental organizations.

65. Mr. SANTA-CLARA (Portugal), replying for the second time to the Indonesian delegation, said that it was never ridiculous to exercise a right or perform a duty. With regard to the Dili massacre, Portugal noted that those who had witnessed it and brought it to the knowledge of the outside world were also guilty persons in the eyes of the Indonesian delegation and must therefore take their place alongside the victims. The Commission would draw its own conclusions from that.

66. Mr. WIRAYUDA (Indonesia), also exercising his right of reply for the second time, said that the controversy in which the Portuguese delegation sought to engage clearly showed that Portugal was less interested in solving the problem than in the problem itself as a tool for its political advantage.

67. The CHAIRMAN stated that the Commission had completed its consideration of item 10 of the agenda, which it would take up again when it came to adopt the draft resolutions.
