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Forty-seventh session

SUMMARY RECORD OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 15 February 1991, at 10 a.m.

Chairman: Mr. BERNALES BALLESTEROS (Peru)

later: Mr. AMOO-GOTTFREID (Ghana)

CONTENTS

GE.91-10635/3094B

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

STATEMENT BY HIS EXCELLENCY MR. SYLVESTRE NSANZIMANA, MINISTER OF JUSTICE OF RWANDA

1. Mr. NSANZIMANA (Minister of Justice of Rwanda) said that he wished to use the opportunity given him to address the Commission to speak on the question of respect for human rights in Rwanda. The subject was constantly being referred to in the press, particularly since 1 October 1990, the date on which the country had been the target of armed aggression prepared and supported from abroad.

2. The army that had launched the attack had styled itself "Inkotanyi" which spoke volumes about the kind of war it had planned to wage against Rwanda. In military parlance the word meant "gallant, fierce and indomitable warriors". However, the Inkotanyi were waging war against their own country. They were constantly sowing terror, devastation, grief and death among the people on the eastern and northern borders of the country, even using the most sophisticated weapons from the arsenal of the NRA, namely, the regular Ugandan army, to which most of its fighters had and indeed still belonged and, furthermore, in violation of the OAU Convention governing the Specific Aspects of Refugee Problems in Africa.

3. That OAU Convention which had been adopted on 10 September 1969 in Addis Ababa, and which Rwanda and Uganda had signed on the same day and ratified on 19 November 1969 and 24 July 1987, respectively, stated that a refugee had obligations towards the host country, including the obligation to abide by its existing laws and regulations, to comply with any measures it took to maintain law and order and to refrain from any subversive activities against an OAU member State.

4. The States signatories to the Convention undertook to forbid refugees residing in their respective territories from attacking any OAU member State in any way that might create tension between member States, in particular by means of weapons, the press and radio broadcasts.

5. The Inkotanyi had been attacking Rwanda from Uganda, using the weapons and uniforms of the regular Ugandan army, which continued to equip them and supply their support bases. They were trying to destabilize Rwanda by infiltrating into the interior of the country, where their accomplices hid their weapons for them. On several occasions their attacks had almost plunged the country into a blood bath. For example, while a part of the Rwandese army had rushed off to help the Gabiro garrison in the north-eastern part of the country in order to repel the attackers, the accomplices of the latter who had infiltrated or were resident in the capital had attacked strategic positions in Kigali, the capital, in the night of 4-5 October 1990. The nightmarish experiences and anguish of the population of the town had been indescribable. The Rwandese army had immediately counter-attacked but in the Mutara, it had taken it at least four weeks of fighting to drive the enemy out of national territory.

6. Since that incident, the attackers had fallen back to positions in Ugandan territory. Some of the rebels whose retreat to Uganda, their usual place of refuge, had been cut off had disappeared into the Akagera National Park. The area had been combed by the military while those who had retreated

to Uganda had continued to launch attacks along the Rwandese-Ugandan border. There had been many incidents of that kind accompanied by acts of vandalism and terrorism.

7. Although the Rwandese army and population had always been successful in repelling the repeated attacks of the Inyenzi-Inkotanyi, untold damage had been caused. Rwanda was a landlocked, over-populated country and the economic crisis it had been experiencing for over a decade had been aggravated by steadily declining coffee prices, its only source of foreign exchange. When an army of over 10,000 men had swept into the country, massacring and carrying off thousands of people, and cutting the main transport and communication routes over which more than 80 per cent of the goods shipped to or from the Kenyan port of Mombasa were carried, the country's economy had almost been stifled.

8. The war had also disrupted virtually all the country's social and educational programmes. Worse still, it had conjured up the spectre of inter-ethnic tension, which more than 20 years of peace and national harmony appeared to have relegated forever to oblivion. Furthermore, while the whole world was concerned with protecting and preserving the environment, two national parks that the international community had designated as part of the heritage of mankind, namely, the Akagera Park and Volcanoes Park, had been almost completely destroyed by the Inkotanyi.

9. The least that could be said about that war was that it had completely disrupted the economic, cultural, political and social development of the country. Had it not been for the vigilance, courage and determination of the head of State, Major-General Habyarimana Juvenal, who was constantly urging the people to remain calm while at the same time doing his utmost to restore lasting peace and national harmony, the tension prevailing in the country might well have degenerated into acts of violence and disregard for law and for human rights in particular.

10. Since regaining its independence, Rwanda had always attached the greatest importance to respect for human rights both in theory and in practice. It had acceded to various international instruments, such as the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights as well as the African Charter on Human and Peoples' Rights of 1981, which it had ratified in 1983. The Constitution of Rwanda, which dated from 20 December 1978, contained 22 articles which dealt exclusively with individual freedoms and human rights; articles 12, 13 and 14, for example, corresponded to articles 9 to 11 of the Universal Declaration of Human Rights and to article 9 of the International Covenant on Civil and Political Rights. Article 13 of the Constitution, moreover, contained a specific guarantee in connection with the imposition of security measures which was designed to protect citizens against possible abuses by the civil, military, administrative or judicial authorities.

11. What individual freedoms and human rights had then been violated by the Rwandese Government according to certain newspapers? Certainly not the right to life guaranteed by article 12 of the Constitution, because the only deaths since and attributable to the unfortunate events of October 1990 had occurred either as a result of armed clashes provoked by the aggressors, the need to defend the territorial integrity of the country and restore order, or for other reasons for which the Government could not be blamed. As far as the

infringement of individual freedoms was concerned, in other words, arrests and pre-trial detention, they could be explained by the panic and insecurity that had suddenly gripped the population which had been justified in fearing that the country's aggressors would gain the upper hand and establish an authoritarian régime.

12. Unusual circumstances often produced unfortunate results, due to mass popular movements that the Government was not always able to control; that fact had been amply demonstrated by events during the immediate post-war period. Besides, the Rwandese Government could not be accused of failing to act because it had lost no time in taking steps to protect persons who had been arrested against any kind of abuse or ill-treatment and to ensure that their right to life was respected. In that regard, he stressed that the Minister of Justice had invited a commission consisting of diplomats and foreign journalists to visit and talk freely with the inmates of Kigali prison, and that the International Committee of the Red Cross had also been allowed to visit the detainees without let or hindrance; that alone constituted a guarantee of respect for individual freedoms. Moreover, as a result of the investigation carried out by the competent authorities, several persons had been released, and others accused of minor offences had been released on bail. The only persons still being held were therefore those having to answer serious charges. The courts had already ruled in some cases, but the sentences had not yet been carried out because they had been appealed.

13. He pointed out, furthermore, that no disappearances had been ascertained so far, as could be attested by the foreign embassies accredited to Kigali and various other public or private agencies, and particularly by the delegation of the International Committee of the Red Cross, which received all complaints in such matters. As for the allegations that the property of persons involved in the unfortunate events that had occurred in Rwanda since 1 October 1990 had been confiscated, he said that the only seizures effected had been carried out in order to pay off large debts and after certain bankruptcies had been adjudged by the competent authorities.

14. Those were the only so-called violations of human rights for which the Rwandese Government could be held responsible, according to the media, and especially the European press, radio and television. Why had those media never denounced or even referred to the exactions of the Inkotanyi aggressors? The latter had not hesitated to recruit 12 to 14 year old children to swell their ranks, to use women and children captured or abducted by force as human shields against the Rwandese armed forces, to execute old men, rape young girls, attack hospitals, set fire to houses and pillage schools. All those acts revealed the extent of their disregard for human rights and explained why the Rwandese people had been living in terror since the war had started. Those unspeakable acts were just as much violations of human rights and even of the laws of war, since armed terrorists could be regarded as combatants and therefore treated according to the laws of war. Consequently, Rwanda felt it was entitled to expect the media to disseminate only reliable information and to display a minimum amount of objectivity in reporting events instead of giving a one-sided version of them - the one that was obligingly provided by the aggressors' spokesman and that blinded foreign public opinion to the fact that it was Rwanda which was being savagely attacked from outside, that civilians were the victims of the Inkotanyi, and that it was Rwanda's heritage that was being devastated.

15. The problem of Rwandese refugees was another serious one that had been of concern to Rwanda for over 30 years and required a speedy and permanent solution. As long ago as in 1966, the Rwandese Government had appealed to the refugees to return home and had made arrangements to facilitate their reintegration. Under the Second Republic, the Government had considerably increased contacts with neighbouring countries that had given asylum to many Rwandese refugees, beginning with Uganda. At the last two meetings between the Ugandan and Rwandese authorities at the ministerial level, held in Kampala in November 1989 and Kigali in July 1990, a number of resolutions had been adopted providing for the voluntary repatriation of all Rwandese refugees who so wished to return, their voluntary naturalization in the host countries and authorization to settle in the host countries if the latter so agreed, with the possibility of retaining Rwandese nationality. That programme was to have been implemented by a quadripartite commission consisting of members of the Rwandese-Ugandan Ministerial Committee and representatives of UNHCR and OAU but had been abruptly interrupted by the armed aggression against Rwanda by rebels from Ugandan territory.

16. However, Rwanda was still prepared, and indeed quite determined, to do its best to solve that problem once and for all, and to that end it had participated actively in all the attempts at reconciliation and more recently in the regional meeting on the problem of Rwandese refugees held under OAU auspices in Kinshasa, in preparation for the Regional Summit Conference on the problem of Rwandese refugees which was to be held in Arusha (United Republic of Tanzania) by the end of the current month. Rwanda expected much from that Conference because it was time for the reconciliation of all Rwandese so that they could participate in the social, economic, cultural and political development of their country, that beautiful jewel of the Great Lakes. But if that project was to be successful, the war must first cease.

17. All those who contributed to ending the war, whether Rwandese or foreigners, would render an invaluable service to that noble cause of national reconciliation and harmony. Rwanda, for its part, would spare no effort to attain that goal, but given its limited means, it counted a great deal on the active, practical and conscientious support of friendly countries, Governments and non-governmental organizations throughout the world and of the entire international community in seeking a satisfactory, comprehensive and permanent solution that might perhaps serve as a model for all those who were convinced that today's world was but one big village, where the human race was obliged to live in close brotherhood.

STATEMENT BY HIS EXCELLENCY MR. ADRIAN NASTASE, MINISTER FOR FOREIGN AFFAIRS OF ROMANIA

18. Mr. NASTASE (Minister for Foreign Affairs of Romania) said he wished to outline some of the characteristic features of the democratic process initiated by the December 1989 revolution in Romania in so far as it affected the promotion and protection of human rights.

19. For half a century, the Romanian nation had been subjected to one totalitarian experiment after another: the royal dictatorship of 1938, the fascist dictatorship of 1940, the military dictatorship during the Second World War and, lastly, the communist dictatorship which had been one of the

most repressive in Eastern Europe. That explained the nature of the Romanian revolution which at one fell swoop had swept away the single party and all the power structures of the communist totalitarian State.

20. The positive aspect of that fundamental change in Romanian society had doubtless been the opportunity it offered to rebuild all political institutions from scratch, but its negative aspect was that it had created a political vacuum too suddenly, thereby upsetting the balance in some areas of society and even inducing far-reaching political and social changes and sometimes causing mistakes such as those made during the events in Bucharest from 13 to 15 June 1990. Fortunately, it appeared that at present, the forces that had initially threatened to breed violence were being gradually diverted into competitive channels and opposition was beginning to take the form of a free-ranging confrontation of ideas and opinions.

21. The Romanian authorities were also pleased to note that the distrust and suspicion evident both inside and outside the country that the establishment of democracy and a State subject to the rule of law in Romania might be reversible had begun to be dispelled. Romanian society was experiencing a radical transformation. The thought processes of the Romanian people which had been cruelly distorted by the Communist dictatorship were being geared once again to the eternal values of democracy. The international standards of a State governed by the rule of law and respect for human rights were being gradually accepted and applied by both rulers and ruled. The Government hoped that, as that process gradually gained momentum it would overcome the reluctance that had prevented Romania from exploiting fully the opportunities to cooperate with countries where for decades, indeed perhaps centuries, democracy was the natural order of society.

22. Following the free elections of 20 May 1990, which had been monitored by many foreign observers, the Romanian Government had set itself the goal of ensuring social stability, which was vital if the enormous difficulties that hampered the transition to a market economy were to be overcome.

23. During the relatively short period since the revolution, and especially since the May 1990 elections, a democratic society and a State governed by the rule of law had already begun to take shape in Romania. The underlying principles of the new Constitution, formulated with the help of many foreign experts, had already been submitted for public debate and reflected both what had already been achieved and a programme of action for the future.

24. Political pluralism, which had been introduced by law during the first few days of the revolution, functioned as it did in any other democratic country. The political parties which had gained strong support during the elections were represented in Parliament, and they and NGOs were allowed to express themselves in public both in Romania and abroad. With respect to the legitimate aspirations of minorities to be represented in Parliament, the Government had authorized the formation of political parties based on ethnic criteria. Those parties had participated in the elections on the same footing as all the others, and the Hungarian ethnic party, for example, had won 41 seats, which roughly corresponded to its importance in the country as a whole, and it was in fact the second largest political group in Parliament. Those minorities whose parties had not gained a sufficient number of votes were automatically allowed to be represented in Parliament by a representative of their choice, who enjoyed all the rights enjoyed by elected representatives.

25. From the economic standpoint, the laws aready passed constituted the basis of a reform that would bring about substantial changes in property titles by guaranteeing private ownership in industry and agriculture. The application of those laws had resulted in the extensive decentralization of the Romanian economy's public sectors through the creation of autonomous bodies and commercial companies.

26. The principle of the separation of powers embodied in the electoral law, which had been passed before the elections of 20 May 1990, already applied to national institutions. The local elections scheduled to take place during the current year would no doubt lead to the widespread application of that essential principle of democracy and of the State governed by the rule of law.

27. With regard to respect for and protection of human rights, the death penalty had been abolished and the Government had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The fundamental principles of criminal law had been reformulated and developed in accordance with international standards. For example, the right to defence for the duration of the trial and to appeal to a judicial authority against a measure of pre-trial detention was guaranteed and the previous practice according to which criminal investigations were carried out by the State security agencies had been abolished. All persons persecuted for political reasons under the dictatorship or arrested, detained or sentenced illegally had been rehabilitated. The exercise by citizens of the right to travel freely within the country and abroad had been guaranteed. As for freedom of conscience, steps had been taken among other things, to recognize the Greek Orthodox Church and to normalize relations with the Catholic Church in general.

28. The social and political climate that had prevailed since the revolution had resulted in the unrestricted freedom of opinion and expression, as was obvious from the existence of over 1,500 publications. Measures had been taken to enable persons belonging to ethnic minorities to enjoy their own culture, to profess and practise their religion and use their mother tongue. With respect to education and culture in the mother tongue, about two-thirds of the school population belonging to the Magyar and German minorities had studied in their mother tongue during the past school year. Ethnic minorities had their own theatres and folk groups, their own television and radio broadcasts and their own newspapers.

29. From the institutional standpoint, each chamber of Parliament had its own commission on human rights, sects and minorities, and a law had recently been passed, on the proposal of the Ministry of Foreign Affairs, establishing the Romanian Human Rights Institute. In that connection, he thanked the many foreign experts, in particular those from the Centre for Human Rights, who had assisted the Romanian Government with their advice and experience in submitting to Parliament a proposal for the establishment of a viable institution that could contribute effectively to the protection and promotion of human rights.

30. In the same vein, the Romanian Government was at present proposing the creation in Bucharest of a European institute of comparative studies on ethnic problems to promote the rights of persons belonging to ethnic minorities

throughout Europe. As in other democratic countries, there had recently been a veritable explosion in the number of non-governmental organizations in Romania dealing with various aspects of human rights.

31. In that way, the basis of an institutional framework had been established in Romania capable of promoting and protecting human rights in accordance with current needs. Nevertheless, the Romanian Government was fully aware that, as Mr. Voyaume had stated in his report, much remained to be done in terms of the practical application of legislation and the use of the institutional framework that had been established. In that area, radical changes were more difficult to put into effect because they required time and patience, a change in the thinking of citizens, the assistance of experts and proper training of those responsible for the administration of justice.

32. Another condition, and not the least important, on which depended the success of those changes was that all citizens should become aware of their rights and freedoms through widespread education in human rights. He appreciated the attention that the Commission and the Centre for Human Rights had paid to that question as well as the efforts made to provide logistical support for teaching human rights in countries where those rights had been embodied in the law but were being violated every day.

33. The completely new spirit in which the Romanian Government was dealing with human rights problems was also evident in its new approach to cooperation with other States and with relevant international bodies, and in particular the Commission on Human Rights. The Romanian authorities had adopted an attitude of frank cooperation with United Nations bodies dealing with the promotion of and respect for human rights. The dialogue that had been established with them, as well as the assistance they had provided, had helped the Government to identify and to include in the laws passed or pending modern and coherent solutions which had been tried and tested by countries with a democratic tradition. He paid tribute to the fairness of Mr. Voyaume, Special Rapporteur of the Commission, who had endeavoured to understand and to describe as objectively as possible certain aspects and particular features of Romanian society. His task had not been an easy one because some of the events he had studied, in particular those of March 1990 in Tîrgu Mures and of June in Bucharest were so complex that even the Romanian Parliamentary Commissions of Inquiry had been unable to clarify them fully.

34. While there were admittedly many events and negative situations which could also be attributed to the mistakes of the executive and to the errors of the political opposition, the good faith of the institutions elected by the people on 20 May 1990 should not be called in question. Despite the events in question, which significantly changed Romania's image, it was undeniable that real progress towards democratization and the establishment of a State governed by the rule of law had been made.

35. The recent decision by the Parliamentary Assembly of the Council of Europe to grant Romania special guest status had indeed acknowledged that progress. The Government regarded it as a symbol of the confidence which the Community of European countries had in the strength of the democratic aspirations of the Romanian people, who had paid too high a price for their freedom to allow themselves to be robbed of it again.

36. The Romanian people were determined to belong fully to the democratic world. The Romanian Government was determined to do its best to respond to that aspiration and hoped to receive the Commission's help in carrying that noble enterprise through to a successful conclusion.

37. Mr. Amoo-Gottfried (Ghana) took the Chair.

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

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

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

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES (agenda item 10) (continued) (E/CN.4/1991/15, 16, 17, 19, 20 and Add.1, 49, 66; E/CN.4/1991/NGO/4, 17, 19, 20, 21, 22, 24, 33; A/45/590; A/45/633; A/RES/45/142; A/RES/45/143; E/CN.4/Sub.2/1990/11, 27, 29 and Add.1, 32, 33 and Add.1 and 2, 34, 30/Rev.2).

38. Ms. CHAVEZ (International Committee of the Red Cross) said that questions connected with detention were of particular importance to the International Committee of the Red Cross (ICRC), which acted in accordance with the Geneva Conventions of 12 August 1949 in protecting and assisting civilian and military victims of armed conflict, and in conformity with the Statutes of the International Red Cross and Red Crescent movement, in situations not covered by the Conventions, with the consent of the Governments concerned.

39. Under the Geneva Conventions of 1949 and their Additional Protocols of 1977, it was ICRC's mandate, in the event of international armed conflict, to visit prisoners of war and civilian detainees in their places of detention or internment. In the case of domestic armed conflicts, the Committee was required in each specific case, to negotiate and obtain the agreement of the parties to the conflict before visiting prisoners. ICRC could also act in cases of what were called internal disturbances and tension.

40. Because ICRC was anxious to earn the confidence of everyone through its neutrality, it steered clear of political problems and never expressed any opinion on the grounds for detention. The nature of the offence and the legitimacy of the laws under which the arrest or detention was made were matters outside its competence. The purpose of its activities was to combat torture and disappearances and to achieve a general improvement in the material or psychological conditions of detention of detainees. To that end, ICRC requested the authorities holding detainees to agree to its procedures and made no visits unless that condition was met.

41. ICRC always insisted on access to all prisoners in whom it was interested regardless of the status assigned to them by the authorities and the category to which they belonged. Access to the detainee was not automatic and had to be negotiated, especially if ICRC was acting in a context not covered by the Conventions. It also requested access to all places of detention where the prisoners in whom it was interested were held in order to monitor the actual number of detainees and to find persons whom the authorities might try to conceal from it from one visit to the next.

42. Lastly, ICRC asked to be allowed to interview prisoners freely and without witnesses. The interview without witness was more than just a condition of the visit; it was a procedural principle of the ICRC delegate in places of detention because he should be free to talk to the detainees of his choice in a place that in his view guaranteed privacy and, within reason, for an unlimited time.

43. Whenever it visited a place of detention, ICRC invariably asked for permission to visit again, for experience had shown that a single visit had little positive long-term effect and did not allow the development of protection activities. It also asked the authorities for a list of the prisoners or for permission to make its own list during the visit in order to be in a postiion to identify the prisoners it saw even if it did not interview each one privately. It needed to know exactly which persons it was visiting and which ones it should follow up throughout the period of their detention. Lastly, it should be able to offer the prisoners material assistance if necessary.

44. In return for the facilities granted by the detaining authority, the ICRC pledged not to disclose anything it observed in the places of detention. That confidentiality could often be summed up by the phrase "The ICRC says what it does, but not what it sees". The detaining authorities, on their part, had to respect the same rules of confidentiality. It was only in cases where the authorities themselves broke those rules that ICRC could consider that it was not bound to observe them.

45. On the basis of the three sources of information, namely, dialogue with the authorities in charge of places of detention, interviews with the prisoners without witnesses and the observations of the delegates themselves, ICRC usually transmitted reports of visits to the authorities in charge. In conjunction with other elements, those confidential reports constituted the basic elements of the dialogue and the work relations which were eventually established between ICRC and the authorities concerned. In fact, the authorities, by accepting a procedure for ICRC visits to the places of detention for which they were responsible, undertook, at least morally, to begin and to continue a dialogue on all the humanitarian issues that ICRC raised in its conclusions. On the whole, the visits had positive results. No State had complained to ICRC that they had jeopardized its security and that fact deserved to be highlighted considering that ICRC had visited over half a million detainees in some 100 countries since 1918.

46. ICRC's visits helped to combat disappearances, torture and other forms of ill-treatment and to improve the material and psychological conditions of detention. It was that contribution which had been recognized the previous year by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders when it adopted a resolution on the Activities of the International Committee of the Red Cross with regard to detention.

47. Ms. WESTERCAMP (International Federation of Action of Christians for the Abolition of Torture) said that the world was suffering from a serious disease, namely, the systematic and institutionalized torture, and that a real policy was urgently needed to prevent it from continuing. In 1990, the Federation had intervened in 90 countries to assist 2,377 individuals and 79 groups who had actually experienced torture or had been directly threatened

with it. The violation of article 5 of the Universal Declaration of Human Rights and of articles 4 and 7 of the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was unfortunately not an exception.

48. World public opinion expected to see significant progress in many areas. Firstly, an optional protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should be drafted and adopted. A draft protocol of that nature had been submitted to the international community over 10 years previously and was the test of the international community's real determination to eliminate torture. The implementation of such a protocol would admittedly entail additional costs, but those costs should be compared with the human, moral, economic and political prejudices that bred torture. In his report, the Special Rapporteur to examine questions relevant to torture had recommended that a prevention mechanism of that type should be discussed. The Federation emphasized that the Special Rapporteur's task was decisive and irreplacable and felt that the draft optional protocol, which was intended to be preventive would not in any way duplicate the work assigned to the Special Rapporteur. The Federation urged the Commission to decide that the draft optional protocol should be examined as a matter of priority at its forty-eighth session.

49. Secondly, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment should be applied in order to prevent the torture of detainees. Information had reached the Federation from many countries that common law prisoners were regularly ill-treated. It was unrealistic to hope to abolish torture unless places of detention were subjected to greater scrutiny. Every society should incorporate more of the Body of Principles into its national legislation in order to improve it.

50. She drew the Commssion's attention in particular to the serious developments in Turkey, Romania, Rwanda, the Central African Republic, Mauritania and Brazil, and hoped that it would follow to the letter the recommendations addressed to it in the report on that question and that henceforth the various international institutions, and in particular the Special Rapporteurs, would do more to make the Body of Principles more widely known by ascertaining, during their missions, whether it was being respected.

51. Thirdly, the Declaration on the Protection of All Persons from Enforced or Involuntary Disappearance should be adopted, for it was the result of sustained and thorough work. During 1990, the Federation had had to intervene in various countries on more than 80 occasions. Compared with previous years, it was clear that the number of disappearances had increased considerably. Colombia, Guatemala, Peru, Philippines, Sri Lanka and Indonesia (East Timor) had been among the countries in which the Federation had had to intervene. The practice of making people disappear endangered not only the integrity and security of individuals but also upset the balance of society as a whole. The Government's responsibility and, consequently, the confidence of the citizens in the authorities and institutions of the country were called in question. Disappearances were indeed "a crime against humanity", as stated in article 1 of the draft declaration. Consequently, the Federation considered that the prompt adoption of the draft declaration on the protection of all persons from enforced or involuntary disappearance would mark an important step towards respect for human rights and provide an effective tool for the prevention of torture.

52. Fourthly, the Federation attached great importance to the question of the trial and punishment of persons responsible for acts of torture. States which condemned torture should be urged to ratify all existing instruments on the subject and to draw on them in drafting their national legislation. Several countries had courageously rid themselves of dictatorship and totalitarianism, but in some of them the de jure and de facto inpunity granted to torturers mortgaged any social and political progress. The trial of torturers and the certainty that they would be tried constituted an effective means of prevention. No country was above the temptation of using torture and therefore steps should be taken urgently to prevent it. She urged the Commission to pay particular attention to the matter.

53. Mr. KOVALEV (Union of Soviet Socialist Republics) felt that the question being dealt with under agenda item 10 was of paramount importance for the realization of human rights and fundamental freedoms. A society should consider itself doomed if its citizens did not feel that they were fully protected from any arbitrary arrest or detention and if they could not be sure that the principle of the presumption of innocence would be fully applied. In recent years, considerable efforts had been made in the USSR to bring national legislation into line with the relevant international standards. Constitutional control over administrative and judicial organs was to be strengthened because the USSR believed in the principle of a State governed by the rule of law, in other words, a society governed by law.

54. One of the most recent achievements of the international community had been the entry into force of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Torture, in fact, constituted one of the most abhorrent aspects of world history; it was a violation of civilization, human dignity and culture and its continuance in the twentieth century was abnormal. The Soviet delegation, therefore, once again urged all the States which had not already done so to ratify the Convention. It directed that appeal in particular to those States which thought that they did not have to accede to that instrument since they were already fighting the scourge at the national level, because even in countries where democracy prevailed and where a high level of civilization had been attained, the return to a state of savagery could never be completely ruled out.

55. There was no doubt whatever that the mechanism established to monitor the application of the Convention was an efficient one, namely, the Committee against Torture and the General Assembly itself had emphasized that fact. One might therefore question the usefulness of the parallel mechanism of the Special Rapporteur of the Commission on Human Rights on questions relating to torture, whose mandate the Commission had decided to extend at its last session. It should not be forgotten that the Special Rapporteur had been appointed at a time when the Convention had not yet come into force, specifically to fill that gap. His mandate was undoubtedly important, especially since the mechanism established under the Convention was not yet universally applied. It might be necessary to amend it at a later date, however, or to adapt it in light of the exchanges and contacts which the Special Rapporteur would have had with the Committee against Torture. Perhaps it would be better to discuss the subject in greater detail when the problems posed by the application of existing mechanisms in respect of human rights, both under the Convention and outside of it, were better understood.

56. His delegation had closely followed the work of the Working Group on Enforced or Involuntary Disappearances and found the draft declaration adopted by the Sub-Commission on the question very interesting (E/CN.4/Sub.2/1990/32, annex), particularly in respect of solitary confinement and related violations of human rights, especially the right to life. His delegation was convinced that work on codifying provisions and principles in that area should continue. It also thought that Mr. Singhvi's study on the Independence and Impartiality of the Judiciary, Jurors and Assessors, and the Independence of Lawyers (E/CN.4/Sub.2/1985/18 and Adds.1 to 6) and the Working Paper prepared by Mr. Joinet on the subject (E/CN.4/Sub.2/1990/35) should help to ensure respect for the independence of the judiciary. Considering how much standard-setting work the international organizations had already done, it was vital that each State should endeavour to improve its judicial system so as to guarantee and safeguard the rights and freedoms of citizens, taking into account the international norms already prepared on the subject and the experience gained by other States. Lastly, his delegation welcomed the progress report on the right to a fair trial which had been prepared by two experts of the Sub-Commission (E/CN.4/Sub.2/1990/34).

57. The Soviet Government knew how important it was for the provisions of criminal legislation, penitentiary law and norms and guarantees relating to justice in general to conform to international standards. Legislators at the republic and Union level had already started work along those lines and a series of bills on the prison system was being prepared by the Supreme Soviet of the Russian Republic. A radical reform of the judicial system was therefore being discussed and its outline had been submitted in the draft constitution of the Russian Republic; among other things it provided for stricter control over the prison administration.

58. Unfortunately, the present economic situation in the country prevented very poor sanitary conditions in the prisons from being improved quickly enough. The rule providing that each detainee should be allowed two square metres was not being observed and the incidence of tuberculosis was increasing. Conditions of detention as well as the status of prison warders and prison security staff should be improved.

59. In addition, important rehabilitation measures were being introduced at the republic and Union level to assist persons who had experienced political repression in the past. Those measures were, however, not sufficient and there were some criminal cases that required prompt review.

60. The Soviet authorities were keenly interested in international experience in the rehabilitation of persons who had suffered political injustice and therefore wished to establish closer contacts with agencies such as the United Nations Voluntary Fund for Victims of Torture, as well as a number of non-governmental organizations. The Soviet authorities had decided to make amends to citizens whose rights had been violated and was determined to discharge its duty in respect of human rights in general.

61. Ms. BECK-HENRY (World Movement of Mothers) said that her movement, which was apolitical, was composed of associations of mothers from regions all over the world and did not stop at denouncing the arbitrary acts of many men in power who sought to demonstrate and impose their power by violent and inhuman means. Mothers, who transmitted life and had been given the responsibility of protecting and nurturing it, knew the price of it better than anyone else.

The World Movement of Mothers represented all races and all beliefs and was animated by the desire to settle the conflicts, which were tearing the world apart, in ways other than by force.

62. The mothers were directly affected by anything that violated the integrity of the individual and the family and wished to play a bigger role in shaping the destiny of countries; they wished to root out the prejudices which they suffered and which prevented them from shouldering major responsibilities. They proposed that, at all political levels, the human element should be given paramount consideration and they were appealing earnestly for justice, peace and respect for the conventions on human rights.

63. The World Movement of Mothers intended to make its contribution to the struggle against all forms of cruel detention, torture, enforced disappearances and degrading treatment in whatever countries those violations occurred. Society was currently defending itself and taking its revenge through actions that were unworthy of the conventions. The mothers wanted emphasis to be placed above all on preventive measures such as education, so that political and religious fanaticism would be swept away and that people would learn to respect life, support the family, share their wealth - not only material but also cultural and spiritual wealth. The mothers' desire was to work for justice and peace everywhere.

64. Ms. BARNES de CARLOTTO (International Movement for Fraternal Union among Races and Peoples) said that the Movement she represented was going to refer again to the tragic situation of hundreds of children whom the military dictatorship had made to disappear in Argentina between 1976 and 1983. The Argentine State to which democracy had been restored had taken only a few measures to enable some children to recover their identity and find their families again, whereas it had enacted laws and decrees granting amnesty to those who had abducted, tortured and murdered 30,000 people. The Government had recently even taken the final step in granting impunity: despite the opposition of the Argentine people, President Carlos Menem had, on 29 December 1990, signed decrees granting pardon to the ringleaders of the genocide in Argentina, criminal members of the armed forces who had been condemned by the Argentine courts in 1985 and who were now free. The chief one, General Jorge Rafael Videla, had been sentenced to life imprisonment, relieved of his duties and stripped of all his powers. So had the admirals, generals and one civilian, Alfredo Martinez de Hoz, who had been accused of pursuing an economic policy that impoverished the country and of having supported political repression. As for General Ramón Camps, who had been sentenced to 25 years' imprisonment for repeated acts of torture, in 1983 he had told a Spanish newspaper: "I personally have killed no children. All I did was to hand some of them to charitable organizations to find them new parents. Subversive parents teach their children to be subversive and that is what must be prevented".

65. Despite everything, beginning with the danger of repression and then the indecisiveness and tardiness of the democratic Governments, the Plaza de Mayo Grandmothers had not relaxed their efforts. So far, they had succeeded in tracking down 50 children. The last of them had been found in 1990. He had disappeared in Buenos Aires in 1980, with his father, his pregnant mother and a younger sister. Marcelo was now 14 years old and had been brought up by an

honest family and would continue to live with his adoptive parents but he was surrounded by his real family and had recovered his identity and his past. His biological parents were still reported missing.

66. The Plaza de Mayo Grandmothers had also clarified the disappearance and murder of a young doctor aged 27, Maria Adelia Garin de Angelis, who had been abducted on 13 January 1977 when she was two months' pregnant. On 6 January 1991, it had been announced that her body had been found in a common grave along with 180 others in a cemetery in Greater Buenos Aires. She had been killed by bullets fired into her head at close range; that crime was attributed to Generals Videla, Camps, Harguindeguy and Saint Jean who were all free today. She died after giving birth prematurely and the child born during its mother's captivity should now be found.

67. The most serious aspect of the case was the way in which justice was administered, because it prevented children from exercising their right to recover their names and to be themselves, or at least it made the job more difficult for them. They grew up, became adolescents who had not been told the truth about themselves, with a name, a family and a past that were not theirs, whereas their grandmothers and close relatives were demanding those things for them. Their prolonged appropriation by other families constituted a continuing and permanent violation of human rights. The Plaza de Mayo Grandmothers movement could cite other pathetic cases which had already been submitted to the Commission and still many more with which the files and dockets of the Argentine courts were crammed.

68. The Convention on the Rights of the Child had been ratified by Argentina, and the Argentine Parliament had adopted it by virtue of Law No. 23849, promulgated on 16 October 1990. Under article 31 of the Constitution, as an international treaty it took precedence over national legislation. However, under article 8 of the Convention, States parties undertook to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. Where a child was illegally deprived of some or all the elements of his or her identity, States parties should provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

69. In the light of the above, her organization was asking the Commission to recommend to the Argentine Government that it should apply the Convention on the Rights of the Child, in particular article 8, by taking urgent measures to restore the right of hundreds of children who, for political motives, had been stripped of their identity, their family and their history; that it should request the President, by virtue of the powers vested in him, to demand an explanation from the Argentine courts for the arbitrary, slow and unfair way in which they dealt with the matter, which was proof of the impunity characteristic of all the cases of children who had disappeared; that it should call upon the Government of Paraguay to extradite Major Norberto Atilio Bianco, a doctor in the Argentine army who had fled to Paraguay with two children he had kidnapped. An order for his extradition issued in April 1989 by the Supreme Court of Justice of Paraguay had been suspended by the illegal decision of a judge. That judge was currently being prosecuted; in 1990, the Argentine courts had again demanded the execution of the extradition order against him but had received no reply. Paraguay had ratified the Convention on the Rights of the Child, according to which (art. 11) States parties should take measures to combat the illicit transfer

and non-return of children abroad and to that end should promote the conclusion of bilaterial or multilateral agreements or accession to existing agreements. Lastly, her Movement called upon the Commission to adopt the draft Declaration on the Protection of All Persons from Enforced or Involuntary Disappearance recommended by the Sub-Commission and transmitted to the General Assembly for adoption.

70. Mr. VILLARROEL (Philippines), referring to the observations of the Special Rapporteur to examine questions relevant to torture (E/CN.4/1991/SR.25), on the one hand, and of the Chairman of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/SR.25), on the other, said he gathered that, as guests of the Philippine Government, they had both found their visits useful and instructive. The Philippines hoped that by opening its doors to observers from the Commission it had indicated the right course for other Governments to follow in cooperating with the Commission.

71. However, those Governments would certainly be anxious to know what the Philippines had gained from their visits and the lessons to be learned from them. Consequently, the delegation of the Philippines had read the Report of the Working Group on Enforced or Involuntary Disappearances on its recent visit (E/CN.4/1991/20/Add.1) with the greatest care and had concluded that although the report presented information it did not clarify the human rights situation in the country. His delegation recognized that, despite some inaccuracies which it would correct in writing, the report succeeded in depicting the context of violence in which disappearances were taking place in the Philippines. However, its analysis of that violence was disappointing because it was portrayed as a social conflict (para. 157), and as a result the military handling of it was faulted as excessive. That analysis was appalling because it turned the truth upside down: it was true that poverty and injustice had given rise to social conflict, but it was the handling of that social conflict by the dissidents, who had resorted to violence instead of using peaceful means to bring about change, that had transformed the social conflict into an armed one.

72. The report alluded to the atrocities committed by the death squads of the National People's Army (E/CN.4/1991/20/Add.1, paras. 17 to 24 and 158), who killed members of the police and the military in broad daylight and with complete impunity, no doubt to strike fear and terror in the hearts of the population. But their share of the responsibility for the violence resulting from their terrorist activities was passed over in silence. When the Government took action to end the violence, it was faulted for enforcing law and order. His delegation was at a loss to understand the logic of that view.

73. The report's other contention that the armed conflict had blocked political development and prevented political parties from taking root was absurd. The armed conflict had not stopped 120 political parties from proliferating since democracy was restored in 1986. And politics had developed in such proportions that the people had been complaining. Indeed, Ferdinand Marcos had succeeded in imposing his dictatorial rule in 1972 because the Filipino people had grown weary of the politics which were paralysing the Government.

74. On the other hand, it was true that the armed conflict, including the counter-insurgency policy pursued by the Government to quell the resistance, were factors that contributed to the continuation of human rights violations. The report dwelled at length on that point but it did not highlight the fact that the whole government machinery was constantly engaged in reviewing its human rights policy, which was a decisive element in understanding the determination of the Philippine Government to strengthen respect for human rights where it was weak. The visit of the Working Group was part of that process but nowhere in its report had any mention been made of it and that omission revealed its bias. The silence of the report on that crucial point indicated that the Working Group had visited the Philippines not to engage in dialogue with the Government and help it to strengthen its system for protecting human rights, but to confirm its worst suspicions.

75. Nor was anything said about the dilemma, again crucial in understanding the human rights situation in the Philippines, faced by Governments like his own, caught in a vortex of internal violence. How could one reconcile the primordial right of Governments to defend themselves when their existence was threatened with the equally primordial claim of their citizens that their human rights be respected even if some of them sought to destroy them? Because the report did not address that issue, including the disturbing fact that the victims of that situation were Filipinos, whose suffering and sometimes inevitable deaths could not but weaken the whole body politic, the Government was portrayed as being insensitive to the plight of the rebels, whereas their reintegration into the national stream of life was one of its major concerns.

76. For that reason, when the Working Group had visited President Aquino, she had expressed regret that they had not met some rebel returnees who, after renouncing violence and communism had returned to the fold and were leading useful and productive lives, in line with the Government's rehabilitation programme. According to the report, the Group unfortunately had no time to see those persons. His delegation could only conclude that the Working Group did not find it relevant to their quest for the truth. On the other hand, the Group reported that President Aquino had acknowledged to it (para. 171) that grave human rights problems persisted in the Philippines and had dwelt at length on the negative aspects of the human rights situation.

77. Without disputing the validity of the Working Group's analysis of the root causes of insurgency in the Philippines, he wished to invite it to read an article by Mr. Tom Marks which had appeared in the 25 October 1990 issue of the Far Eastern Economic Review entitled "Insurgency Redefined". The article, which would enable it to have a better appreciation of the insurgency movement in the Philippines, examined a number of analytical fallacies, and in particular, the link between land reform and insurgency, which the Working Group had, unfortunately, repeated to explain the conflict.

78. On the other hand, the report on the Philippines prepared by the Special Rapporteur to examine questions relevant to torture (E/CN.4/1991/17) was closer to the truth. His Government had taken a wise decision to invite both the Working Group and the Special Rapporteur to visit the country at the same time. Like the Working Group, the Special Rapporteur had analysed the background to the armed conflict as well as the strategy adopted by the Government to deal with it (paras. 208 to 220). The violence and abuses

resulting from that confrontation were highlighted, while the national institutions created to promote and protect human rights, including their defects and weaknesses, were criticized. The Special Rapporteur on Torture had arrived at the same conclusion and prescribed the same remedies as the Working Group.

79. Yet, when the two reports were compared, the report of the Special Rapporteur revealed a better understanding of the complexity of the situation than that of the Working Group. Admittedly, both reports recognized the immense difficulties besetting the Government in instituting a genuine human rights régime, but whereas the Special Rapporteur viewed continuing human rights violations and the slow pace of reforms in the context of those difficulties, the Working Group had brushed those impediments aside as if they did not matter. The Working Group had therefore created the impression that the Government was not going to any great lengths to bring about change, whereas it was in fact undertaking reforms, as evidenced by the fact that several of the recommendations suggested in both reports were actually being implemented. Furthermore, the Special Rapporteur, in his recommendations, recognized that the reforms he had proposed had in fact already been considered by the Philippine Government. The Working Group, on the other hand, did not even have the courtesy to acknowledge that fact. But more importantly, the Special Rapporteur did not at any moment cast any doubt on the sincerity of the Philippine Government and its genuine commitment to promoting and protecting human rights. That was not the case with the Working Group.

80. In any event, in the Philippines, the national police had been severed from the army as recommended (E/CN.4/1991/20/Add.1, para. 168 and E/CN.4/1991/17, para. 274) and was at present under the direct control of the Department of the Interior and Local Government. At the same time, various legislative measures were before Congress, including a bill providing for the protection of witnesses, and it was hoped that Presidential Decree 1850 would shortly be repealed.

81. As for the civilian defence forces (CAFGUs) of the armed forces, his delegation would again enjoin the Working Group to read Mr. Marks' article, which described them as being a far cry from the cult-based groups so often portrayed in press reports. According to Mr. Marks, the members of the CAFGUs whom he had interviewed were all peasants and roughly a quarter were former members of the Communist movement. Their reasons for joining were similar: they could no longer endure the taxes and killings of the Communist party in the Philippines. For all their abuses, the CAFGUs had been effective in countering the violent insurgency movement. Nevertheless, the office of the Peace Commission was currently studying proposals to disband them.

82. Lastly, both reports expressed doubts about the credibility of the Philippine Commission on Human Rights (E/CN.4/1991/20/Add.1, para. 169 and E/CN.4/1991/17, para. 222). His delegation was willing to admit that that Commission had its weak points, but lack of credibility was not one of them. One should be wary of those who were ready to question the credibility of democratic institutions of the Philippines, because those who were so easily led to abandon their faith would quickly open the door to violence. Similarly, his delegation wished to strike a note of caution against prescriptions for

reform. By being over-zealous in wishing to "clean up" governments in order to make them responsible by western standards, the Commission on Human Rights ran the risk of undermining the very democracies it wished to support.

83. At the seventy-fifth International Labour Conference, held in Geneva in 1988, President Aquino had said that violations of human rights were continuing, even in democratic States that were the most determined to protect them. The attraction of democracy was also its weakness, because it was obliged to accord the same constitutional safeguards to the perpetrators as well as to the victims of human rights abuses, with the result that in the islands of freedom created by democracy, evil was going about its work sometimes more efficiently than good. That was a weakness that conferred great honour on the Philippine democracy; the Special Rapporteur to examine questions relevant to torture had recognized it but the Working Group had missed the point altogether.

84. Mr. LESTOURNEAUD (International Union of Lawyers) drew attention to resolution 1990/33, in which the Commission stated that it was disturbed at the continued harassment and persecution of judges and lawyers in many countries and called upon Governments to respect the independence of the judiciary and ensure the protection of practising lawyers, prosecutors and judges against undue restrictions and pressures in the exercise of their functions. The International Union of Lawyers was convinced that the right to defence was a decisive condition for a more effective defence of freedoms.

85. Several years ago his organization had, in order to deal with the sharp increase in human rights violations, created a commission from among its members with special responsibility for ensuring the application of certain fundamental principles as they applied to lawyers. The Commission, which was called "The Defence of Defence Commission", had a dual purpose: to intervene, with the competent authorities of the countries concerned, on behalf of any lawyers or judges who were persecuted because of their professional activities and to engage in thinking on standard-setting within regional or universal bodies.

86. With respect to its first aim, The Defence of Defence Commission had, since 1 January 1990, intervened in 25 countries, either in an attempt to put an end to individual violations of the rights of lawyers in the exercise of their duties or to curb the action of certain countries which had not hesitated to take collective measures against lawyers, by for example, ordering the arrest of the officers of national bar associations. On that subject, that Commission had recalled the report submitted in 1990 to the Sub-Commission by the Centre for the Independence of Judges and Lawyers, which stated that, between 1 July 1989 and 30 June 1990, 430 jurists from 44 countries had been persecuted.

87. With respect to the matter of drafting rules for the protection of lawyers, his organization attached great importance to the conclusions of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana. The International Union of Lawyers, which comprised the bar associations of over 60 countries, had adopted an instrument for worldwide application entitled "The International Charter of the Right to Defence" at

its Congress in Quebec in 1987. It drew particular attention to the principles set forth in that instrument, which had been drafted after wide-ranging consultations among 100 national bar associations throughout the world.

88. In conclusion, the International Union of Lawyers hoped that the Commission would pay special attention to violations of the right to defence, which impeded the effective application of national and international provisions to ensure the protection of human rights. It also hoped that the instruments being drafted by the United Nations would provide for more frequent visits and official inquiries whenever the freedom to defend or the freedom to judge was threatened in a Member State. Lastly, it hoped that the Commission would approve the Sub-Commission's decision to instruct its expert, Mr. Louis Joinet, to prepare a report on the independence of the judiciary and the protection of lawyers.

89. The CHAIRMAN, in accordance with rule 45 of the rules of procedure, acceded to the request of the delegation of Kuwait to exercise the right of reply.

90. Ms. AL-ABDUL-RAZZAQ (Observer for Kuwait) said that following her statement about what the Iraqi occupying forces had done in Kuwait - torture and imprisonment in particular - the representative of Iraq, having found no other means of refuting those accusations, had stooped to the shabby device of trying to minimize the extent of their activities; he had claimed that the delegation of Kuwait had read out a statement drafted by a specialized United States agency. Since the statement had been drafted by a Kuwaiti woman, she took that remark as a compliment.

91. The representative of Iraq had said that the Iraqi authorities were treating Kuwaiti citizens like Iraqi citizens. As the Iraqi régime was a dictatorial, terrorist and bloody régime, it was not surprising that Kuwaitis preferred to leave their country, their homes, their work and their families, to escape inhuman and barbaric treatment at the hands of the Iraqi forces. She herself had had to flee the hell that life had become in her country, because her life, the lives of her children and her husband had been threatened. She had been threatened personally by the Iraqi secret services with having her tongue cut off and her eyes gouged out. For two months she had experienced the nightmare of the Iraqi occupation and had witnessed the daily reign of terror in the country. If the representative of Iraq was really sincere in his claim that the Kuwaitis were being treated humanely, she challenged him to tell the Commission that his country was ready to allow humanitarian organizations such as the ICRC to visit Kuwait and investigate what was taking place there.

The meeting rose at 1.05 p.m.