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COMMISSION ON HUMAN RIGHTS

Forty-ninth session

SUMMARY RECORD OF THE 30th MEETING

Held at the Palais des Nations, Geneva,  
on Monday, 22 February 1993, at 10 a.m.

Chairman: Mr. ENNACEUR (Tunisia)

later: Mr. GARRETON (Chile)

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The meeting was called to order at 10.15 a.m.

STATEMENT BY MR. OSCAR DE LA PUENTE RAYGADA, PRESIDENT OF THE COUNCIL OF MINISTERS AND MINISTER FOR FOREIGN AFFAIRS OF PERU

1. Mr. de la PUENTA RAYGADA (President of the Council of Ministers and Minister for Foreign Affairs of Peru) said that the changes that had recently taken place in his country constituted a first step towards eliminating terrorist violence and building a democratic and peaceful society.
2. In recent years, Latin America had often engaged the attention of the Commission on Human Rights. However, now that Governments had been elected by the people and that democracy was being consolidated, the human rights situation in the region should be looked at in a different way, in a broader spirit of cooperation. The problem now was to eliminate authoritarian habits and at the same time to make up for 10 lost years in respect of economic and social development.
3. In 1992, after the previous session of the Commission, President Fujimori had had to take emergency measures to ensure the security and the future of Peru. Peru had become ungovernable, mainly because of the institutionalized corruption within the bureaucratic machinery. Subsequently, on 22 November 1992, the people of Peru, convened by the Emergency and National Reconstruction Government, had elected its representatives to the Constituent Assembly. In the course of those elections, at which international observers had been present, the people of Peru had clearly rejected the enemies of democracy. Peru had therefore become governable again and dialogue was once more playing a preponderant role in consolidating democracy and bringing about the development of a human rights culture. At the present time, the Government was in a position to formulate a programme of measures to redress situations that had been criticized by the international community. In that context, President Fujimori had stated a few days before that the International Committee of the Red Cross and other international humanitarian bodies would have free access to Peruvian detention centres, in order to monitor whether detainees were being treated in accordance with the standards prescribed by international law.
4. Moreover, Peru had applied for technical assistance from the Director of the Centre for Human Rights, in order to arrange human rights information and training courses and seminars; to establish an intersectoral bureau with responsibility for preparing the periodic reports that Peru was required to submit under the International Covenants on Human Rights to which it was a signatory; to assist the country in holding the courses on human rights that the Government had decided to include in the school curriculum and in training and refresher course programmes for the army and the police.
5. In a spirit of cooperation with the United Nations system and the inter-American system for the promotion and defence of human rights, Peru would shortly be inviting the Inter-American Commission on Human Rights to visit the country. Similarly, the Peruvian Government had invited the Special Rapporteur on extrajudicial, summary or arbitrary executions to come to Peru during the first half of 1993.

6. The importance of the legal arrangements aimed at improving the protection of human rights in Peru should also be stressed. There was for example the legislative decree defining the offence of "enforced disappearance" and punishing it severely. In addition, in the context of prevention, to which the Peruvian Government was deeply committed, a national register of detainees had been established which was open for consultation by governmental organizations and interested persons.

7. There had also been some encouraging results in the Peruvian Government's anti-terrorism campaign. In September 1992, Abimael Guzman, leader of the Shining Path terrorist movement, had been arrested, together with his main associates. Despite the threat posed to the lives and security of the Peruvian people by Abimael Guzman and his group, the Government had undertaken to give the accused persons a fair trial, with all the safeguards laid down by law. As well as Abimael Guzman and his men, the leader of the Tupac Amaru revolutionary movement and several of his accomplices had also been arrested. At present, 90 per cent of the leaders of those two terrorist organizations were in prison and over 100 of them had already been tried and sentenced to life imprisonment. Where terrorism was concerned, international solidarity was of prime importance. The Governments of many countries had indicated that they would make a very careful study of the question of asylum granted to terrorists, so as to prevent their territories from becoming safe havens for such criminals in the future. It was a matter of concern that those groups were increasingly taking part in public activities outside Peru, in which they dishonestly invoked respect for the rights and lives of persons convicted of terrorism. In that connection, it should be recalled that three years ago the Commission had recognized the right of democratic Governments to defend themselves against armed groups that sowed terror. There was no doubt that terrorist violence in Peru had provoked a kind of negative response among those fighting it, and that there had been cases in which members of the forces of law and order had been implicated in violations of human rights. The Peruvian authorities had adopted a very firm position and had decided to consider complaints and punish violations. The Peruvian Government considered that the legitimacy of its struggle against terrorism did not exempt it from its responsibilities in respect of human rights.

8. In the context of the celebration of the International Year of the World's Indigenous People, he wished to pay the respects of Peru, a country of very mixed races, with deep indigenous roots, to Mrs. Rigoberta Menchú, Nobel Peace Prize and United Nations roving ambassadress.

9. The Peruvian Constitution gave full recognition to the individual and collective rights of the indigenous communities. Although those communities already played an active part in the democratic life of the country, a bill was before the Peruvian Congress that would allow the leading members of rural and indigenous communities to exercise certain responsibilities relating to customary law, with the proviso that human rights would not be prejudiced.

10. The World Conference on Human Rights, to be held in Vienna in June 1993 would allow an evaluation to be made of what had been done thus far to enable all human beings to exercise their fundamental rights and freedoms. To take account of new situations in the world, new instruments and machinery must be

designed for the effective promotion of the exercise of those rights and freedoms, with due regard to the problems that had arisen in the quarter-century since the Tehran Conference.

11. He wished to pay a tribute to the Commission on Human Rights and the Centre for Human Rights, which helped to alert the world's conscience, to broadcast the profoundly human message of the provisions of the Covenants and to mobilize international solidarity. Peru's unshakeable attachment to full respect for human rights was reflected in article 1 of the new Constitution approved by the Constituent Assembly, which established respect for and defence of human dignity as the ultimate aim of society. Peru was no longer ungovernable; it had embarked on a new stage in which priority was given to dialogue with the institutions of the country's civil society and with the international community. But its efforts to attain genuine democracy and a human rights culture would not succeed without the help of the international community.

STATEMENT BY MR. ARIAS SANCHEZ, FORMER PRESIDENT OF COSTA RICA AND 1987 NOBEL PEACE PRIZE

12. The CHAIRMAN said that Mr. Arias Sanchez would address the Commission on Human Rights on behalf of the six Nobel Peace Prize laureates who wished to convey a message to it and, generally speaking, to endorse the cause of human rights. The other members of the Nobel Peace Prize delegation also present were Mr. Adolfo Perez Esquivel (Argentina), 1980 Nobel Prize; Mrs. Mairead Corrigan Maguire (Ireland), 1976 Nobel Prize; Mrs. Betty Williams (Ireland), 1976 Nobel Prize; Mrs. Rigoberta Menchú (Guatemala), 1992 Nobel Prize and Mr. Elie Wiesel (United States), 1986 Nobel Prize.

13. Mr. ARIAS SANCHEZ (Former President of Costa Rica and 1987 Nobel Peace Prize) said that he would not dwell on the plight of the countries of Central America, which he nevertheless knew so well, and which had been subjected to conflict and oppression for so many years. Mrs. Rigoberta Menchú, an exceptional woman, had already done so. He was addressing the Commission for the first time to say that despite all the results achieved recently, the years were passing without the end of injustice, oppression, war and violence being in sight. Injustice should be understood to mean anything that stood in the way of happiness and undermined the spiritual integrity of the human person and increased his suffering. Any political system not founded on democratic principles was oppressive. Oppression was the negation of the most sacred of rights, namely freedom; the fact of not being able to elect one's rulers and to decide one's future with the participation of all, and the lack of freedom of expression and information. By ending war and violence, a large proportion of mankind would be delivered from fear and destruction. All human beings had to have the right not to have their lives and property threatened.

14. It was hard to understand that after so many years of evolution towards a higher stage of civilization, injustice, oppression, war and violence were still so widespread, and that so many peoples were unable to exercise their freedoms. It was unforgivable that throughout the world, nations, ethnic groups and individuals should be persecuted, expelled from their homes, starved and tortured. It was intolerable that hatred and destruction should

so persist and that an incalculable number of human beings should lose their lives or their dignity because their most basic rights were flouted and because of the failure to understand that the only way to reconcile opposing views was through dialogue and not violence.

15. Unfortunately it seemed that the history of mankind would for a long time to come reflect the ignominy and not the grandeur of the human spirit. The exploiter, the tyrant and the executioner still existed, as did opportunism, cowardice, indifference and ignorance. While agreeing that there had been progress, it was one's duty to be impatient in the name of subjugated peoples and persecuted human beings. How could one be content with the barely perceptible satisfaction of sporadic success? Those who constantly suffered from oppression could not wait, and had no reason for satisfaction. The thousands of people at present imprisoned and tortured found no encouragement at all in meagre victories. In many countries, entire generations had been born, lived and died without having been able to exercise their rights to choice or to difference, and even without having had the possibility of emigrating, in a word without having known freedom. He had been lucky enough to live in freedom in a society that 100 years ago had been able to opt once and for all for democracy. Because of that society he felt bound to speak out on behalf of the oppressed.

16. He wished to speak in particular of the suffering of the Burmese people. Everyone was familiar with the recent tragic history of Burma. That former jewel of the Orient had been reduced to a poverty-stricken nation - except as far as its spiritual values were concerned - by a brutal regime that paid little heed to the most basic principles of justice. In May 1990, after two years of tumultuous unrest arising from a popular movement, the military regime had ended by accepting the people's desire by holding free, if not fair, elections. The National League for Democracy had been able to win more than 80 per cent of the 485 parliamentary seats although its leader, Aung San Suu Kyi, was imprisoned. Although that vote of confidence in democracy should have ended in the military regime being replaced by a civilian authority, the terror continued.

17. Although the Burmese people had chosen democracy more than three years before, power had not changed hands, the leaders of democratic movements were imprisoned or tortured, or had disappeared, and a people whose only desire was to choose its representatives freely was still subjected to fear and deprived of all its civil, political and social rights.

18. Among the persons deprived of their liberty was Aung San Suu Kyi, 1991 Nobel Peace Prize laureate. She had refused to choose exile and to abandon the struggle against the repressive regime of her country and had remained faithful to her principles and the cause that she defended despite the discouraging isolation that denied her any contact with her friends. In the dark hours experienced by the people of Burma, she was a beacon of hope and inspiration, and the silence imposed upon her had become her greatest strength.

19. In the view of the Nobel Peace Prize laureates, that silence had, however, gone on too long, and they demanded that Aung San Suu Kyi should be freed and allowed to speak once again.

20. The Commission on Human Rights had taken the lead in the international movement that condemned the actions of that shameful regime in Burma and had called for the restoration of democracy to the country, but the Burmese authorities had turned a deaf ear to the calls of the United Nations and the efforts of many Governments. The Nobel Peace Prize laureates had joined together to obtain Aung San Suu Kyi's release and to remind the world of the atrocities that totalitarian regimes could perpetrate. They believed that although moral force could be marginalized it could not be ignored, especially when it was rooted in faith in the cause of freedom and democracy. Their mission had three aims: to obtain the immediate and unconditional release of Aung San Suu Kyi who for three years had been forbidden to leave her home; to persuade the State Law and Order Restoration Council (SLORC) to release the thousands of political prisoners at present deprived of liberty, and to restore and safeguard the fundamental rights of the Burmese people; lastly, to ensure that Burmese citizens lived in a democratic society, for they had paid for that right with the blood of their leaders and had been deprived of it by one of the most repressive of unlawful military regimes.

21. What the Nobel Peace Prize laureates asked of the Burmese authorities - to enter into contact with senior government officials and to be able to meet their imprisoned sister - had been refused them, for where terror reigned leaders were afraid. The Nobel Peace Prize laureates had therefore applied to Thailand and had been able to meet the King, the Prime Minister, senior officials, some activists and representatives of non-governmental organizations, as well as refugees who had been presented in Burma. Their meeting with the latter had been particularly moving, for they heard the direct testimony of men and women obliged to flee their own country in order to escape from the brutality of the military regime, forced labour and the unspeakable suffering of torture and widespread barbarity. He asked how could all that suffering and humiliation be possible and what could be done. The answer was just to speak out on behalf of all those victims so that they could be heard.

22. On their return from Thailand, the Nobel Peace Prize laureates had set themselves two clear objectives to be attained as a matter of urgency: to mobilize the moral and political forces of the international community so as to put an end to the barbarian actions of SLORC and to obtain the immediate and unconditional freeing of Aung San Suu Kyi and all the political prisoners. They also demanded that SLORC should take note of the results of the 1990 elections and immediately enter into a dialogue with the freely-elected leaders, with a view to re-establishing democracy. They asserted unequivocally that Aung San Suu Kyi must take part in that dialogue.

23. They urged participants at the ongoing session of the Commission to intervene, individually and collectively, to bring the tyranny in Burma to an end.

24. The Nobel Peace Prize laureates were also submitting recommendations to the Commission, the United Nations and the international community.

25. Convinced that the actions of SLORC against its own people were a source of instability in the region and constituted an increasing threat to regional security, they recommended first and foremost that the United Nations Security Council should examine the current situation in Burma without delay.

26. Secondly, they recommended that the Commission on Human Rights at its current session should adopt a resolution strongly condemning the present regime in Burma for its incessant violations of human rights.

27. Horrified at the ease with which Burma induced the nations of the North and the South to continue selling it the weapons with which it persecuted its own people, and particularly disturbed by the fact that the previous year the People's Republic of China had sold that country weapons costing \$1.2 billion, the Nobel Peace Prize laureates also recommended that the United Nations should impose an immediate worldwide embargo on arms for Burma.

28. Fourthly, the Nobel Peace Prize laureates recommended that the United Nations and the international community should impose a boycott involving sections on trade and investment, and they urged Governments to remind companies registered in their countries that foreign investments, regrettably, lent an oppressive regime a semblance of legitimacy.

29. Fifthly, they recommended that any bilateral multilateral assistance granted to the Burmese regime should be solely and exclusively of a humanitarian nature.

30. Sixthly, they recommended that the democratic Governments of the international community should recognize the movements of opposition to the SLORC regime and give them political and humanitarian assistance. They urged all political forces to enter into a dialogue aimed at peacefully overcoming the difficulties with which the Burmese people was confronted.

31. Seventhly, they recommended that the countries of the Association of South-East Asian Nations should use their great influence to persuade SLORC to restore democracy to its people.

32. Lastly, mindful of the concerns expressed and the recommendations made in previous United Nations resolutions concerning Burma, which the country's authorities had refused to heed, the Nobel Peace Prize laureates urged that measures should be taken to strip Burma of its membership of the United Nations until such time as the Government of the country had released Aung San Suu Kyi and all political prisoners and democracy had been restored.

33. The Nobel Peace Prize laureates were convinced that all those measures would enable those who had been reduced to silence to make themselves heard once again. The persons they had encountered and the thousands of others on whose behalf they spoke deserved no less.

34. He thanked the peoples of Canada, Costa Rica, Switzerland and Thailand, the Association Suisse-Birmanie, Mr. Edward Broadbent and the International Centre for Human Rights and Democratic Development for their assistance to the Nobel Peace Prize laureates. Recalling the words of Aung San Suu Kyi, "Those



who are to build a nation must free their minds of apathy and fear", he urged participants to work for her release, so that she and her compatriots could rebuild the Burmese nation.

35. The CHAIRMAN paid a tribute to the humane tenor of the speech by Mr. Arias Sánchez. He, too, stressed that while significant progress had been made in the field of human rights, much remained to be done; and assured the delegation of Nobel Peace Prize laureates that the Commission would continue to work alongside activists in the promotion of human rights.

36. U TIN KYAW HLAING (Observer for Myanmar), speaking in exercise of the right of reply, assured the Commission that Myanmar cherished peace and that peace reigned in that country. There could be no peace, democracy or respect for human rights where anarchy and the law of the jungle prevailed.

37. Myanmar was currently holding a National Convention to lay down the basic principles to be set forth in a new Constitution based on a multipartite democratic system. At the same time, the Government was taking steps to create an atmosphere conducive to the establishment of a democratic system. Those measures included the suspension of all offensive military operations in Kayin State and other parts of the country with a view to consolidating national solidarity and unity; the release from detention and the lifting of restrictions on individuals who no longer posed a threat to the security of the State; and the announcement by the Government of the commutation and remission of death sentences and sentences to transportation for life, in commemoration of the convening of the National Convention. Certain individuals had indeed been placed under restraint; not, however, for their political activities, but for infringement of the laws of the land; for every Government had the responsibility to uphold the rule of law. The Government of Myanmar had repeatedly intimated to those individuals that they must not incite the people, directly or indirectly, to acts of violence, or make seditious statements to cause division between the armed forces and the people, who had hitherto been united. In fact, much sterner legal action could have been taken against those individuals under the existing criminal laws. People in Myanmar believed that the Union must be resolutely defended from disintegration, that national sovereignty must be safeguarded, and that individual interests must be subordinated to the larger interest of the country. Furthermore, while peace and security reigned in the streets, workplaces and homes of Myanmar, the tragic situations unfolding not so far from the venue of the Commission's session underscored the need for an orderly transition from one system to another.

38. On behalf of the Government of the Union of Myanmar, he categorically rejected the proposals made by the previous speaker, which were detrimental to the interest of the Union. Furthermore, those proposals went beyond the mandate of the Commission. To transgress a mandate conferred by the higher bodies of the United Nations would be to create a dangerous precedent. The attempt being made to use the Commission for that purpose was a politicizing manoeuvre applied by the few in an attempt to impose their political will on a member State.

39. After comparing the peace and tranquillity currently enjoyed by the citizens of Myanmar with the anarchy that had prevailed in the latter part of 1988, he called upon the apostles of peace to devote their energies to the alleviation of human suffering in places where people were dying of starvation, where innocent people were being killed and maimed, and where the honour of women was flouted.

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.4/1993/4, E/CN.4/1993/20, E/CN.4/1993/21\*, E/CN.4/1993/22, E/CN.4/1993/23 and Add. 1 and 2, E/CN.4/1993/24, E/CN.4/1993/25 and Add.1, E/CN.4/1993/26, E/CN.4/1993/27, E/CN.4/1993/28, E/CN.4/1993/86; E/CN.4/1993/NGO/7, E/CN.4/1993/NGO/9, E/CN.4/1993/NGO/10, E/CN.4/1993/NGO/18, E/CN.4/1993/NGO/19, E/CN.4/1993/NGO/20, E/CN.4/1993/NGO/22; E/CN.4/1992/17 and Add.1, E/CN.4/1992/18 and Add.1, E/CN.4/1992/20; E/CN.4/Sub.2/1992/9 and Add.1, E/CN.4/Sub.2/1992/17, E/CN.4/Sub.2/1992/19, E/CN.4/Sub.2/1992/22, E/CN.4/Sub.2/1992/23/Rev.1, E/CN.4/Sub.2/1992/24 and Add.1 to 3; A/47/662; A/RES/47/109)

40. The CHAIRMAN invited members to continue their consideration of agenda item 10.

41. Mr. RODRIGUEZ (Costa Rica) said that the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment proposed to introduce a system of periodic visits to places of detention in order to strengthen protection of detainees against such practices. That mechanism, which would be extremely valuable for the protection of human rights, must be founded on the principles of cooperation between States parties to the Convention, confidentiality, independence, impartiality and effectiveness. It was not a matter of looking into particular cases, or of condemning States parties, but rather of establishing a preventive mechanism on the basis of which conditions of detention could be evaluated and recommendations made on ways of improving practices and the places of detention themselves.

42. The Working Group on the Draft Optional Protocol had met for two weeks in October 1992, but had reached no final conclusions and had not begun the actual drafting of the optional protocol. During its deliberations, it had decided that it needed to continue its work of analysis. The Costa Rican delegation would thus be presenting a draft resolution which, inter alia, requested a further meeting of the Working Group in 1993, at which it could continue its work before the fiftieth session of the Commission.

43. With regard to the question of enforced or involuntary disappearances, his delegation welcomed the adoption by the General Assembly, at its forty-seventh session, of the Declaration on the Protection of All Persons from Enforced Disappearances (resolution 47/133), which contained provisions to combat impunity in such cases. His delegation was extremely concerned at the large number of enforced disappearances currently taking place in various countries of Africa and Asia, in some countries of Latin America and in the territory of the former Yugoslavia, as could be seen from document E/CN.4/1992/18. His delegation hoped that enforced disappearance would very soon come to be regarded as a crime against humanity.

44. Lastly, with regard to the administration of justice and human rights, his delegation wished once again to stress the need to strengthen mechanisms for the administration of justice, an essential prerequisite for effective protection of human rights. It was imperative that every society should be able to guarantee the impartiality and independence of its judges and the security of lawyers. Consequently, the Costa Rican delegation called upon the international community to endorse the recommendations of the Committee on Crime Prevention and Control.

45. Mr. JOINET Chairman-Rapporteur of the Working Group on Arbitrary Detention, introducing the second report of the Working Group (E/CN.4/1993/24), said that the first report - with which the Commission had declared itself satisfied in its resolution 1992/28 - had been devoted mainly to establishing the Group's methods of work.

46. While continuing to consider ways of improving its methods, the Working Group had recently been taking decisions on specific cases, either by means of deliberations, where a question of principle independent of a particular case was at issue (for example, the circumstances in which an order for house arrest might have an arbitrary character), or by means of decisions, where specific allegations of arbitrary detention were involved. The Working Group had structured its activities around four priorities: cooperation, coordination, prevention and improvement of methods of work.

47. In order to encourage cooperation, chiefly with the Governments concerned, the Working Group had decided, first of all, not to take decisions on particular cases without having first submitted the allegations to the Government concerned. That adversary procedure also applied to the source, to which the reply by the Government was communicated for information and comments where appropriate, and to which the decision taken might subsequently be communicated.

48. Additionally, except in exceptional circumstances, when a person was freed (as had happened in 107 of the 220 cases of which the Working Group had concluded its consideration), the case was filed, with no further attempt made to determine whether the deprivation of freedom had an arbitrary character; for the Working Group considered that its mandate was to secure the freedom of the persons concerned by means of cooperation, rather than to take decisions on possible violations.

49. Lastly, the Working Group had made itself available to the permanent missions for hearings. It was particularly grateful to the Cuban authorities, who had enabled it to engage in dialogue with a high-level delegation that had come specially from Cuba, and who had also submitted two particularly well argued memoranda, so that the Group might take decisions regarding questions of principle (see the report, deliberations 02 and 03). That was all the more commendable in view of the fact that Cuba might be regarded as having been subjected to a selective approach: for almost all of the first batch of cases transmitted to the Working Group related to Cuba (27 proceedings concerning 70 persons, 50 of whose cases had finally not been admitted - 33 on the grounds of their release, and 17 for lack of evidence; in one case, the person in question did not exist). The Working Group regretted that situation, which was beyond its control. During the debates preceding the adoption by the Commission of its resolution 1991/42, which had defined the Group's mandate, some States had objected to the Group having the power to consider situations on its own initiative, although that was the only effective means of restoring a balance. Consequently, the Working Group had been unable to take decisions regarding other extremely serious situations, such as the question of arbitrary detention in the occupied territories. In order to avoid any recurrence of such situations in the future, the Working Group should be authorized forthwith to consider cases on its own initiative.

50. In order to strengthen coordination (the second priority), the Working Group was taking account of initiatives already taken. To that end, it was systematically ascertaining whether the country concerned was already being studied by a country rapporteur or a thematic rapporteur, so that that fact might be taken into consideration in its assessment of the case and in the decision taken. In parallel, it was seeking to communicate effectively to the rapporteurs information gathered by itself concerning allegations with which the rapporteurs were more competent to deal. Through the secretariat, it was working in consultation with the treaty bodies, and in particular with the Human Rights Committee, in order to avoid divergent legal interpretations; and in that connection the Working Group would be called upon to take a decision on whether or not to declare admissible cases submitted to it, when other mechanisms had already taken them up. Lastly, the Working Group was participating in outside missions decided on by the Commission; in that context, he himself had participated in two missions to the former Yugoslavia, at the request of Mr. Mazowiecki, the Special Rapporteur on the situation in the former Yugoslavia.

51. Turning to the third priority, prevention, he said that, in using the deliberations procedure - in other words, by not confining itself to consideration of particular cases in the form of decisions - the Working Group had wished to give Governments advance warning of the decision that might be taken, always supposing that the allegations were well-founded, if other situations of the same type were submitted to it. Such was the tenor of deliberations 01, on house arrest, and 04, on rehabilitation through labour.

52. With regard to the fourth priority, improvement of methods of work, efforts had focused on three issues, the first of which was improving the rules of procedure, starting with a clarification of the Group's position in the form of deliberations, involving an in-depth legal consideration of the questions of exhaustion of local remedies, the importance accorded to the

national as compared to the international standard, the possibility of the Group's referring to instruments of a purely declaratory nature, the competence of the Working Group to consider communications, the improvement of the quality of information, the deadline for replies by States, and finally, criteria for recourse to the "urgent action" procedure (deliberations 02-A to 03-D).

53. The second issue on which efforts had focused was the form in which decisions were drafted. The Working Group wished to simplify the reading and documentary processing of the decisions it took. As for the third issue, the Group had adopted a revised version of the document entitled "Methods of Work" (annex IV). The following innovations were introduced: implementation of the adversary procedure was simplified; the Working Group also considered that, once the person had been released, it could assess whether or not the detention was arbitrary only on an exceptional basis, after corporate consideration; furthermore, if the Group decided that it did not have enough information, it could then file the case without further action, with a view to dissuading certain sources from making over-hasty submissions, in which case it would no longer be obliged to request additional information (Cf. Annex IV, paras. 9, 14 (a), 14 (c) and 14 (d)).

54. Since the completion of the report on 18 December 1992, replies had been received from the Governments of Tunisia and the United States of America, which had informed the Group that the persons whose cases had been submitted had been released. In the case of the United States, the release had also been confirmed by the source from which the information had been received. The Government of Bhutan had sent supplementary information concerning the cases that had been brought to its attention in October 1991. Some Governments had already reacted to the decisions taken by the Group. In addition to the Governments of Malawi and the Sudan, whose reactions were reflected in the report, the Government of Burundi (which had not replied to the first letter addressed to it by the Group) had reacted to decision No. 48/1992 concerning it. The Government of Tunisia (which had replied to the first letter from the Group before the 90-day deadline) had reacted to decision No. 51/1992 concerning it. The content of those reactions would be reflected in the next report of the Working Group.

55. Furthermore, certain persons to whose cases attention had been drawn had been released since the completion of the report. In the case of Nigeria, which had not replied to the first letter from the Group, in January 1993 the source of the information had notified the Group that the person in question had been released. In the case of Cameroon, which had not yet replied to the first letter from the Group sent in December 1992, the source had informed the Group that the persons concerned had been released. In the case of Malawi, the Group had received a press release issued by the Government, announcing the release of one of the persons in question.

56. In its conclusions and recommendations, the Working Group considered that the examination of the cases submitted to it showed that the concern of the Commission about cases of arbitrary detention was justified. With regard to situations that increased the risk of arbitrary deprivation of freedom and the measures to be taken, it should first be pointed out that, contrary to the initial hypothesis, arbitrary deprivation of freedom was not confined to

administrative detention. It had thus been wise to extend the Working Group's mandate to all forms of deprivation of freedom. The United Nations General Assembly, too, had followed the same line of reasoning when adopting the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment. Moreover, Governments should bring their laws more closely into line with the principles set forth in the relevant international instruments, particularly in certain situations of risk, such as states of emergency (including the principle of proportionality between the danger to be prevented or reduced and the measures taken), recourse to emergency courts, including military courts, and recourse to offences described in vague terms. The need to strengthen habeas corpus must also be stressed. Another important observation was that, for the most part, cases of recourse to arbitrary deprivation of freedom related to exercise of the rights of freedom of opinion and expression (90 per cent of cases, 20 per cent of them concerning the right of assembly, and 15 per cent freedom of association).

57. To improve further methods of work and ensure follow-up to decisions acknowledging the arbitrary character of the deprivation of liberty, the Commission might propose that Governments should inform the Working Group of such decisions within four months. It might also assign to the Working Group the power to consider situations on its own initiative; that would permit a better geopolitical balance of the cases reported to it. At the same time and in accordance with its mandate, the Working Group might, during its third year of existence, carry out its first mission in the field, giving priority to the approach based on advisory services and at all times encouraging cooperation and prevention.

58. Lastly, the resources available to the Working Group should be significantly increased, in view of the steadily growing number of requests, as the Working Group might otherwise be unable to cope with them and might have to file cases deserving of consideration. He hoped that it would not become necessary to envisage in the Group's methods of work a new category of procedure entitled "filed due to the lack of resources". In conclusion, he noted that annex III of the report contains statistical information on the Working Group's activities.

59. Mr. DUFEK (Czech Republic) said that, in international humanitarian law, the prohibition of torture and other forms of ill-treatment was an absolute and immediate obligation for any State, and that all civilized nations recognized that there could be no derogation from it. The sad truth, however, was that torture had by no means been eliminated. It was mainly used by totalitarian regimes which endeavoured to contain the growth of democratic forces by intimidating the partisans of democracy, thus maintaining themselves longer in power. While instances of inhuman treatment, ranging from the most primitive to the most sophisticated, occurred in all regions of the world, they had only one aim: to humiliate the individual, to destroy his personality, and to break his will.

60. The Government of the Czech Republic was deeply concerned at reports of increasingly numerous cases of torture; it considered it particularly important, as a first step, that such cases should be reported. It therefore welcomed the proposal of Costa Rica to prepare a draft protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, and also welcomed the initial results presented by the Working Group. His Government firmly believed that, when put into effect, the Costa Rica proposal would significantly increase levels of protection. It had already ratified the European Convention against Torture and Inhuman or Degrading Treatment. However, it was important to strengthen the prohibition of all forms of torture throughout the world, particularly in places where such phenomena were most likely to occur.

61. His delegation stressed the preventive nature of the future optional protocol. Indeed, it involved an evaluation of current conditions of detention, as well as recommendations on how practices and facilities should be improved, rather than a condemnation of specific States parties. Cooperation should also play an important role, for example, between the Committee Against Torture and other competent bodies. The new mechanism should enhance protection against the scourge of torture by filling existing gaps and avoiding duplication of activities among the various competent bodies. The ways of achieving such objectives should be made clear in the initial drafting stages.

62. The situation of United Nations staff members who were in detention or missing was another matter of concern to his Government. There was a long list of such persons whom the United Nations system had not been able to protect. It was particularly alarming that there had been an increasing number of fatalities among staff members while on duty, as in the case of the three experts killed near Djelalabad in Afghanistan. It was his Government's firm conviction that primary responsibility for such matters rested with the host Government. Where that responsibility was established, the United Nations should be permitted to respond more effectively vis-à-vis the Government concerned. In that respect, his Government fully supported the proposals made by the Special Rapporteur in the Secretary-General's most recent report on the matter (E/CN.4/1993/22). As the Special Rapporteur had stated, the issue was closely connected with the very functioning of the United Nations system and should not be neglected. His delegation supported the suggestion contained in resolution VI drawn up by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities at its forty-fourth session that the Secretary-General should present an annual report on the implementation of protection measures to the Third Committee of the General Assembly. Lastly, he commended the Working Group on Arbitrary Detention on its efforts and its report (E/CN.4/1993/24), which proved how necessary and justified the decision to establish the new "thematic" procedure had been.

63. Mr. BLACKWELL (United States of America) said that torture was among the gravest human rights violations in the world today and that his country was determined to work towards its eradication. He urged all members of the Commission to make the same commitment, without regard for the political views of the Governments or the victims involved. The battle was one against an evil which was still an instrument of policy for some Governments, while others could not or would not check the brutality of their security forces. Impunity for torturers made it more likely that torture would continue, and the means to bring torturers to justice must therefore be sought. Governments that had established a clear policy against the use of torture might benefit from advisory services to train police, military and prison personnel, for

torture destroyed not just those who were its victims and their families, but also corrupted the Governments which practised or allowed it. It was an evil which negated the concepts of morality and human rights, but which none the less remained too common. The Commission was preparing to discuss the appalling practice of rape as a policy of war. Rape was a bestial practice of physical and psychological torture which warranted the description of crime against humanity. The Commission must state loudly and clearly its respect for the vital work being done by the Special Rapporteur on torture. Every delegation should endorse his report and seek ways of supporting him in his work.

64. He was pleased to note that a growing number of States had acceded to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, although many other States had still not yet done so. The United States had been a major contributor since 1985 to the United Nations Voluntary Fund for Victims of Torture.

65. The United States urged the strengthening of the Special Rapporteur's role by the following procedures: his reports should continue to be examined in detail as the foundation for possible follow-up resolutions; all countries should cooperate fully to ensure his independence and facilitate his access to information from human rights activists and abuse victims, with effective protection of those sources; and country specific resolutions should request the Special Rapporteur on torture to examine allegations of torture in addition to the role of the country-specific rapporteur or expert.

66. Mr. CUI Zhikun (China), recalling that China was a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, said that the principles of the Convention were fully expressed in the legal provisions and judicial practices of his country. The basic principle of the prohibition of torture was provided in the Constitution, which stated, inter alia that the personal dignity of the citizens of the People's Republic of China was inviolable. Arbitrary arrest and detention, as well as unlawful deprivation or restriction of freedom of the person were prohibited. Substantive and procedural laws also prohibited and punished the crime of torture. For example, law enforcement officials were strictly forbidden to extort confessions by torture or to collect evidence by threat, deceit or other unlawful means. Moreover, the Government was constantly striving to improve the application of the law. The National People's Congress and local people's congresses had increased their supervision of the law enforcement process and the machinery for punishing violations of the Constitution and laws. Nationwide information campaigns were also conducted to make citizens aware of the principles of the Constitution and the importance of the rule of law. The judicial organs were required to adopt concrete measures to ensure necessary discipline among law enforcement personnel.

67. China was opposed on principle to all forms of torture. It was prepared to join with other countries with a view to eliminating torture throughout the world. It had always actively participated in the work of formulating human rights instruments in the United Nations and had been among the 40 countries which had participated in the first session of the Working Group on the drafting of the optional protocol to the Convention against Torture. At the



same time, it considered that the formulation of human rights instruments should be guided by the principles and purposes of the Charter of the United Nations, respect the unity and integrity of sovereign States, and take account of the importance of universal acceptance and applicability of the instruments. The positive experiences or practices in the protection of human rights in a given country might be drawn upon as a point of reference, but they should not be copied mechanically. His Government could not agree to the incorporation of regional human rights instruments into the United Nations system in disregard of differences and historical, geographical and cultural particularities. Moreover, while the role of the United Nations in the field of promotion and protection of human rights should indeed be strengthened, the responsibility and functions of sovereign States must not be ignored or eroded. In the context of the procedure for visits to countries envisaged in the optional protocol, therefore, the sovereignty of States must in no way be impeded.

68. On the question of enforced or involuntary disappearances, his Government, which had taken a serious and positive approach to the work of the Working Group, had provided detailed information on the 46 cases transmitted to it, and would continue to cooperate with the Working Group in the future. It noted with pleasure that in the past year many countries had adopted a more positive approach to the issue; for instance, the Government of Sri Lanka had been commended by the Working Group for its cooperation. China hoped that such cooperation would be maintained with the Working Group and the Commission and that the former would further define the term "disappearance" in order to focus its work better.

69. Mr. ZUZUL (Observer for Croatia) drew the attention of the Commission to the dramatic problems of disappearances in Croatia and, in particular, to the tragedy of the Croatian town of Vukovar in November 1991, where 5,000 persons had disappeared in three days. While it was now known that some of those persons were dead, no trace had been found of some 2,600 others. He was speaking on behalf of the mothers of Vukovar, who in their grief, had addressed, in most cases in vain, all those entities which might be in a position to help them - embassies, foreign Governments and associations and all people of good will.

70. On 27 November 1991, an agreement had been concluded, in the presence of the International Committee of the Red Cross, between the Republic of Croatia, the Yugoslav army, the Government of "Yugoslavia" and Serbia, to set up a joint Commission for Missing Persons and Mortal Remains. Unfortunately, the Commission had managed to resolve only a few cases before the Yugoslav party had proposed that it should be abolished; the Croatian Government had thus been left without any choice, although it was still committed to trace the 2,600 persons from Vukovar, many of whom, as evidence and witness showed, had been killed and thrown into mass graves. Expressing his country's immense gratitude to the members of the International Committee of the Red Cross, he pointed out that even that body had now decided to withdraw from the joint Commission and, in particular, the Ad Hoc Commission on Vukovar, as the Yugoslav party had been deliberately obstructing their work.

71. The case of Vukovar was a particularly dramatic example of aggression by one State against another. Despite all the agreements signed and despite the international conventions, Yugoslavia had refused to cooperate. Most of the cases of missing persons could, however, have been resolved if the identification had been allowed of bodies of hundreds and hundreds of persons found dead near Vukovar and other locations.

72. Furthermore, a large number of persons evicted from their homes had been seen in the prisons of the Serbian paramilitary forces and those run by the military forces in Bosnia and Herzegovina. By determining responsibilities, it would be possible to obtain further data and to make progress in elucidating cases of disappearances. The Commission on Human Rights and the Security Council should, by firm resolutions demand that the cases of missing persons were elucidated. Might it be possible, to begin with at least, to determine the fate of the 295 persons evicted by force or of some of the 85 children who had disappeared during those few days of indescribable horror near Vukovar?

73. The Croatian Government had done its utmost to obtain information on the the missing persons, but it had now reached the limits of its possibilities. That tragic problem had to be addressed by the international community. There were 14,000 persons reported missing in Croatia and perhaps more than 100,000 in Bosnia and Herzegovina!

74. He recalled that the Working Group on Enforced or Involuntary Disappearances was awaiting the Commission's instructions in respect of the cases of missing persons on the territory of former Yugoslavia. It was the duty of the United Nations to try to resolve that serious humanitarian problem and to set up, if need be, a new mechanism for tracing missing persons. The existing procedure consisting of filling out forms and sending them to the Red Cross societies of the country concerned - in the current case, the former Yugoslavia - would not lead to any meaningful results. Moreover, it must be borne in mind that the disappearances had occurred on the territory of two sovereign States - the Republic of Croatia and the Republic of Bosnia and Herzegovina.

75. The cases of the missing persons from Croatia and from Bosnia and Herzegovina required special attention on the part of the United Nations. Specific instructions should therefore be given to the Special Rapporteur on the situation of human rights in the territory of former Yugoslavia and to the Working Group on Enforced or Involuntary Disappearances, and the Security Council needed to remain constantly vigilant vis-à-vis the issue. The consideration of the problem of missing persons was a prerequisite for the resolution of the humanitarian crisis and the restoration of peace to the territory of former Yugoslavia.

76. Mr. REYN (Observer for Belgium) noted that the network of international legal instruments prohibiting the use of torture had not brought yet an end to that inhuman practice. It had to be stated unequivocally that many Governments were not respecting their international obligations in that respect. The international community must remain vigilant in order to be able to react as promptly as possible to the cries of suffering and anguish of the victims of torture, who were often women and children.

77. The Special Rapporteur on torture, Mr. Kooijmans, had been trying for eight years to react as speedily as possible to the cases of torture transmitted to him. He should be thanked and congratulated on the way in which he had carried out his mandate; indeed, his objectivity and impartiality had encouraged an increasing number of Governments to offer him their full cooperation. The role of the Special Rapporteur was particularly important as other monitoring mechanisms set up under international instruments prohibiting the use of torture were not yet universally applicable. Indeed, only 71 countries were parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and even fewer countries had recognized the competence of the Committee against Torture to receive communications transmitted by States or individuals.

78. The Special Rapporteur could also play a preventive role by means of on-the-spot visits. It was encouraging to note that an increasing number of Governments were becoming more amenable to such visits, which were advisory in nature or related to specific cases of torture. The Belgian Government could only encourage such a procedure, which promoted dialogue with the competent national authorities and made it possible to acquire objective information, preventing Governments from becoming victims of slander campaigns.

79. In a number of countries, the structures of society and the institutional legal framework were not yet sufficiently developed to react effectively to the ignominious practice of torture. The legal authorities had a significant role to play not only in punishing, but also in preventing that practice. The programmes of the advisory and technical assistance services of the Centre for Human Rights could offer real assistance to Governments to enable them to comply with international standards. The attributions of the existing supervisory mechanisms should be strengthened; his delegation supported the idea of organizing a system of periodic visits by independent experts to places of detention or imprisonment. The adoption of an optional protocol to the Convention against Torture which would institute such a system would indeed unquestionably be a step towards preventing torture; it would be desirable for the drafting of the optional protocol to be completed as soon as possible. Finally, his delegation urged the members of the Commission to approve the draft resolution on torture.

80. Mr. BANYIYEZAKO (Burundi), speaking in exercise of the right of reply, said that he wished to respond to the unfounded charges made against his country by the representative of the Commission of the Churches on International Affairs of the World Council of Churches (29th meeting of the Commission), who had called into question the policy of national unity pursued by the authorities of Burundi for over five years and had challenged the good faith of the Government of Burundi in ratifying human rights instruments. He had gone so far as to say that individuals were being persecuted because of their ethnic origins and tortured, and had asked the Commission to follow the situation attentively.

81. His delegation was willing that the Commission should pay all due attention to Burundi, and he invited the representative of the Commission of the Churches on International Affairs to go and see the situation for himself. True, imperfections might and no doubt did exist but, as the Under-Secretary-General had said, quoting Victor Hugo, in human rights there

was more promised land than ground gained. He referred the representative of the Commission of the Churches to the statement by the representative of Burundi to the Commission on 11 February, which described how the Government followed up the unfortunate episode of violent events in November 1991.

82. The representative of Amnesty International had also made serious accusations against Burundi. He recalled in that connection that in November 1991, Burundi had been the victim of homicidal aggressions aimed at sabotaging the process of national unity, democratization and the voluntary repatriation of refugees. Tribal and terrorist extremism had sought to kindle a fire which the ethnic groups would transform into a blaze. Fortunately, the people of Burundi as a whole had rejected ethnic violence, and the logic of unity had prevailed. It had thus rejected that marginal fraction which claimed to be the so-called liberators of the Hutu ethnic group by means of the systematic elimination of the Tutsi ethnic group. The Government had handled that crisis with moderation, and had condemned the excesses of a few isolated elements of the armed forces. The policy of voluntary repatriation and resettlement of refugees had been described as exemplary at the Summit Organization of African Unity. Those persons who so wished, had had the assistance of a lawyer at their trial, thanks to the cooperation of the human rights leagues and the bar association of Burundi. Finally, as far as the general situation in regard to the respect of human rights was concerned, neutral witnesses on the spot, such as the diplomatic missions and non-governmental organizations, had acknowledged the efforts made by the Republic of Burundi to defend human rights.

The meeting rose at 1.05 p.m.