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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fortieth session

SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 23 August 1988, at 10 a.m.

Chairman: Mr. BHANDARE

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GE.88-12969/7471G

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

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (agenda item 9) (continued)

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT (E/CN.4/Sub.2/1988/13, 14, 15, 16; E/CN.4/Sub.2/1988/NGO/10; E/CN.4/1988/15, 17 and Add.1, 22 and Add.1 and 2; E/CN.4/1988/NGO/51; E/CN.4/Sub.2/1987/15, 16, 19/Rev.1 and Add.1 and 2, 20; Sub-Commission resolution 1987/25 and A/Res.13/42/103)

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY (E/CN.4/Sub.2/1988/18 and Add.1)

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES (E/CN.4/Sub.2/1988/19)

1. Mrs. DOMMEN (Pax Christi International) said that her organization had read with interest Mr. van Boven's clear and concise report (E/CN.4/Sub.2/1988/19) on children who had disappeared in Argentina, some of whom had been found in Paraguay. She welcomed the close co-operation of the Argentine authorities with Mr. van Boven and regretted the fact that the authorities of Paraguay had not authorized him to visit the country. It was to be hoped that the recommendation contained in paragraph 56 of the report would be followed.

2. Mr. Bossuyt's study on the abolition of the death penalty (E/CN.4/Sub.2/1987/20) should be transmitted to the Commission on Human Rights for it to prepare a draft second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Such a protocol would strengthen the position of the countries that did away with the death penalty yet would not impose any binding measures on those that wished to retain it. She hoped that the Sub-Commission would decide to submit the Special Rapporteur's excellent preliminary work to the Commission.

3. The study on administrative detention was of major importance. The Special Rapporteur, Mr. Joinet, had submitted a preliminary report (E/CN.4/Sub.2/1988/12) which stressed the need for developing criteria and guidelines for a better definition of cases in which States might resort to administrative detention measures, and therefore for avoiding abuses. She trusted that the Special Rapporteur's mandate would be extended.

4. Administrative detention gave rise to numerous abuses, on which several human rights organizations had submitted detailed information. Her own organization fully endorsed the statements made under the agenda item in question by Amnesty International and by the International Commission of Jurists in connection with Malaysia and Singapore. In addition, like the International Commission of Jurists, it was concerned about the situation in Fiji, where a recent decree allowed administrative detention for two years without charge or trial. Such a procedure was all the more dangerous in that Fiji's legal system was currently in a state of complete chaos. According to the Fiji Law Society, no civil cases had been heard from September 1987 to August 1988. Some observers feared that when the new constitution was adopted the ordinary citizen would no longer enjoy any human rights at all.

5. Torture, enforced disappearances and summary executions were all too common in many countries. In that respect, the most tragic situation in Latin America was in Colombia, where every day dozens of persons were abducted, tortured horribly and murdered and nothing was done to end the massacre. In March 1988, 17 non-governmental organizations had placed evidence before the Commission on Human Rights, but no measures had been taken. The international community's silence on that matter was turning into a veritable complicity. Although the civil authorities obviously wanted to act, it was clear they were no longer in control of the situation. In the circumstances, urgent measures must be taken, and it was to be hoped that the Sub-Commission would adopt a resolution on the subject.

6. The People's Republic of China maintained that its legal system incorporated provisions prohibiting and providing punishment for arbitrary executions, administrative detention and torture. However, those laws had to be applied in specific cases. The latest report by Asia Watch on Tibet indicated deep concern at the systematic violations of the civil and political rights of Tibetan nationals and the danger involved in keeping silent on that issue.

7. Non-governmental organizations, like Member States, had observer status in the Sub-Commission. The NGOs, however, could not exercise the right of reply, and, although they had generally shown restraint and objectivity at the present session, some observers for Member States had abused their right in order to discredit the NGOs, in terms that were incompatible with United Nations usage. For example, her organization had been violently challenged by several Government observers, in particular those for Indonesia and Ethiopia. It therefore wished to say that it was quite familiar with the situation in East Timor. For several years, it had been transmitting accurate and proven information on that territory. Together with other human rights organizations, it had calculated that, in 1985 and 1986, 8 Timorese out of every 1,000 had been subjected to serious human rights violations, and, as it had said as far back as 1983, more than one third of the population had been reported missing. Such disturbing figures had been confirmed by a number of Governments, which probably explained why the Indonesian authorities were seeking to discredit Pax Christi.

8. The Ethiopian reply had been extremely violent, and the Ethiopian delegation had refused to supply her organization with the text of its statement, despite the fact that the text could be distributed to the Sub-Commission on the basis of the stenographic notes. She hoped that the Ethiopian delegation would understand that her organization was motivated by humanitarian and not political reasons.

9. Mr. ALKHEIRI (Union of Arab Lawyers), speaking of the problem of detention in Israel, said that the Palestinian people, under foreign occupation, were being deprived of a great number of their rights and freedoms. Hence it was no surprise that Palestinians were making every effort to recover their rights and aspiring to live in an independent State after 40 years of Israeli occupation and 20 years of Israeli annexation. The Israeli Government did not accept the just hopes of the Palestinian people and its reaction was to make innumerable arrests. The number of detainees was so high that the Israeli authorities had transformed hospitals and schools into

concentration camps. Four hundred Palestinians had been killed, more than 10,000 wounded and 3,500 would remain seriously disabled. He himself had been arrested a number of times, had spent a total of 16 years in prison and in that time had been the victim of torture and ill-treatment, like thousands of other detainees.

10. Between 1967 and 1988, nearly 94 Palestinians whose names were on record with the ICRC had died in detention. Thousands of others had been imprisoned or expelled without charge or trial. He himself had been the victim of expulsion on 13 January 1988: together with three other militants, he had been bound hand and foot and taken to Lebanon by force. The number of expulsions had been rising for some time, a trend that would continue since a new decree had just been adopted authorizing the most despicable practices by the Israeli authorities. His organization appealed to the Sub-Commission and all competent international organizations to act to halt that repressive and inhuman policy and secure an end to the occupation of the Palestinian territories. It also called on them to help the Palestinian people recover their rights, in particular their right to return to their country and to an independent State. The Israeli practices had been repeatedly condemned, in particular by the Security Council in resolutions 607 and 608 (1988). The entire international community must bring the necessary pressure to bear to ensure that United Nations decisions were respected.

11. Mr. LITTMAN (World Union for Progressive Judaism) said that his organization wished again to evoke a major scourge of modern times, one which came under agenda item 9 (a) in "Other questions".

12. Hostage-taking could not be condemned enough, particularly when it was linked to politically-motivated blackmail. Resolution 1988/38, adopted by the Commission on Human Rights at its forty-fourth session, strongly condemned hostage-taking. Nevertheless, to avoid offending the susceptibilities of certain Governments, one crucial aspect of the problem was being obfuscated, namely the obvious absence of an unconditional universal condemnation, not only of the odious crime itself or of the mercenaries who were prepared to carry it out, but also of the endorsement - on religious, ideological or political grounds - of those vile acts and the glorification, as heroes or martyrs, of the despicable thugs who committed them.

13. In the past six months, several foreign hostages had been released in Lebanon. However, the American commander of the United Nations Truce Supervision Organization (UNTSO) was still being tortured by his gaolers. Commission on Human Rights resolution 1988/41, concerning staff members of the United Nations and specialized agencies in detention, was certainly applicable to that officer's situation, as it was to Mr. Mazilu and all the other United Nations personnel held captive elsewhere in the world. The last three French journalists had finally been set free by the Hezbollah just before the French elections and it was to be hoped that the recent truce between Iran and Iraq, under the aegis of the United Nations, would soon lead to the release of Terry Waite and the 20 odd foreign hostages by the "Party of Allah" surrogate groups, which were dependent on Iran. It was also to be hoped that the remaining Jewish hostages, 9 or perhaps 10 of whom had been assassinated by fanatics calling themselves the "Organization of the Oppressed on Earth", would be released at the same time.

14. Another equally murderous organization whose feats of war primarily involved indiscrimate carnage, terrorism, hijacking and hostage-taking was to be found in Abu Nidal's PLO Fatah groups, which, among other things, had kidnapped a family of holidaymakers at sea, massacred 23 Jewish worshippers in an Istanbul synagogue and committed scores of other atrocities in European cities and airports in previous years. The most recent of those ignominious acts had been the slaughter aboard the Greek tourist cruiser City of Poros on 11 July, which had shown the Greek Government along with other European States that complacency towards international terrorist groups would never pay off. Abu Nidal had been in Algiers at the latest meeting of the Palestine National Council, and no one had deemed it appropriate to condemn his murderous acts. What was more, Mohammad Abbas, a member of the PLO Executive Committee and close associate of Arafat, who had masterminded the hijacking of the Italian passenger liner Achille Lauro on 7 October 1985, had been rewarded with more public responsibilities. International terrorism, in all its forms, must be eliminated if civilization itself was not to fall hostage to barbarism and bestiality. To that end, it was high time for complacency and complicity to yield to determination and to effective resolutions.

15. Over the past two decades, enough had been said about the dictatorial Syrian régime for concerned members of the international community to have no possible doubts as to its nature. Damascus had always been Abu Nidal's preferred headquarters, and the Syrian régime protected the notorious Nazi war criminal Aloïs Brunner. According to Amnesty International's 45-page report of October 1987, Syria was a country where torture was a regular experience for thousands of political prisoners, and such ordeals were not inflicted on that particular category of detainees alone. Yet Syria was a party to numerous international conventions and had announced in March 1988 that it intended to accede to the Convention against Torture. Amnesty International, the International Federation of Human Rights and the Minority Rights Group had all drawn attention to the precarious situation of Jews in Syria. Mention might also be made of the continued tragedy of the 250 Jewish spinsters in Syria, the statements made by Jacques Chirac, the French Prime Minister, on 3 November 1987, those of Alan Poher, President of the French Senate over the past 20 years, or of Secretary-General U Thant, in 1969. The question of the Jews of Syria was not a new one. They numbered 5,000 and were subjected to a form of collective confinement and, periodically, to individual detention. They had become a hostage community. It was a cruel and intolerable situation that could no longer be ignored by the Commission or the Sub-Commission.

16. Mr. RAIANI (International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD)) expressed appreciation for the courageous position of members of the Sub-Commission, notably Mrs. Palley, Mr. Khalifa and Mr. Eide, in discussing agenda item 6.

17. With reference to item 9, his organization would none the less point out that it was high time for someone to speak out about the detention without trial, for renewable periods of six months, of more than 5,000 Palestinians accused by the Israeli authorities of being a security risk. Those who followed the day-to-day situation in the occupied territories were aware of the gravity of a situation in which the entire Palestinian population seemed to be under permanent detention in one way or another. The number of cases of administrative detention had increased considerably since December 1987 as a

result of the common Israeli practice of arresting any potential Palestinian activists, even if they had not committed any offence. Such arrests had become much easier since a military order now allowed local military commanders to issue the arrest orders. Common criminals had to be released to make room for new political prisoners. Administrative detainees included trade unionists, lawyers, journalists, civil rights activists, teachers and students. The detainees were held in what could be called concentration camps, such as "ANSAR 3", where their human rights were violated and they had no access to the outside world, not even to lawyers, or any knowledge of any charges against them. The Israeli authorities also violated international law by transferring prisoners from the occupied territories to detention camps in southern Israel. The International Committee of the Red Cross had declared only a week ago that it had repeatedly drawn the attention of the Israeli authorities to that point.

18. One might well wonder, as a journalist had done the week before in The Guardian Weekly, what the international reaction would be if the Government of an Arab country did to Jews what the Israeli Government was doing to Palestinians, if there were an "ANSAR 3" in Syria, in which 2,000 Israeli Jews were being held without trial.

19. As to human rights violations in Africa, it was his hope that some day Africans would be able to come before the Sub-Commission to denounce the violations in their countries and then be able to return home. Most African Governments did not allow NGOs to criticize them on any matter, particularly human rights. For example, when his own and other organizations had brought before the Commission examples of human rights violations committed by the Ethiopian régime in Eritrea, the representative of Ethiopia had launched into a diatribe against those organizations instead of refuting the charges.

20. Mr. YIMER, speaking on a point of order, pointed out that, under the rules of procedure, non-governmental organizations could not exercise the right of reply, and he therefore asked the speaker not to continue using a right he did not possess.

21. The CHAIRMAN asked observers for NGOs to keep strictly to the rules of procedure and to limit their statements to the agenda item under consideration.

22. Mr. RAIANI (International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD)), continuing his statement, called on African Governments to let the NGOs do their job, to listen to criticism and verify the charges brought against them in the Sub-Commission. The NGOs needed their co-operation. He agreed with Mr. Eide that the military were often like a snake that was waiting to grab power. That snake was slithering throughout most of Africa, strangling freedom in Ethiopia and trying to swallow Eritrea.

23. Mr. YIMER, speaking on a point of order, said that the speaker was seeking to use his right to make a statement on one agenda item in order to attack a sovereign Government on another item, consideration of which had concluded. He was not unaware that a number of NGOs had grievances against Governments, but they must keep to the rules of procedure and speak only on the item under consideration. He would continue to interrupt unless the speaker kept to the item.

24. Mr. RAIANI (International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD)) said that, despite the harassment and intimidation by certain Government officials present in the Sub-Commission, NGOs would continue to denounce human rights violations wherever they took place, whether in Palestine, in South Africa or even in Ethiopia.

25. Mr. van BOVEN said that it was not his intention to prevent non-governmental organizations from speaking. However, he did believe it was important to maintain some order in the work of the Sub-Commission. The NGOs that had criticisms to make of certain Governments should do so under agenda item 6; otherwise, each item would afford an opportunity for making criticisms, to which the observers for Member States would reply, and the debate would go on indefinitely. The Sub-Commission would do well to look into the problem and organize the work in a more rational manner.

26. The CHAIRMAN pointed out that 32 NGOs had been able to say what they wished under agenda item 6. Therefore, as Mr. Yimer and Mr. van Boven had said, the NGOs could not now use agenda item 9 to deal with questions not relevant to that item and simply employ the word detention from time to time so as to avoid being called to order.

27. Mr. APARICIO (National Aboriginal and Islander Legal Services Secretariat) said he wished to take the floor so that the basic rights of the people of East Timor would not be relegated to eternal silence. Indonesia's military presence crushed any possibility for the people of East Timor to exercise their rights.

28. Mr. AL-KHASAWNEH, speaking on a point of order, said that, despite the Chairman's comments, a representative of a non-governmental organization was again speaking on human rights violations in general, and not on the specific item under consideration.

29. The CHAIRMAN reminded the non-governmental organizations that they should keep to the Sub-Commission's rules.

30. Mr. APARICIO (National Aboriginal and Islander Legal Services Secretariat) said that he wished to speak about what was happening in his country with regard to conditions of detention and the administration of justice. There were prisons throughout the territory, and some were already sadly famous for the ill-treatment meted out to the victims. Some had been visited by the ICRC. But most of the prisons were in the interior of the country, under the authority of the "red berets" or in military garrisons at the district and sub-district level, and the ICRC had never obtained authorization to visit them. Before being sent to the official prisons, Timorese were tortured in military detention centres. Those who did not disappear without a trace or who were not murdered were again subjected to interrogation, threats or ill-treatment in their new prisons. Women prisoners were raped by Indonesian soldiers and officers and also underwent physical and mental torture. He was personally familiar with the case of one woman detainee who had become pregnant after being raped by Indonesian military personnel at Komarca Prison. Such cases were not at all rare.

31. There were two types of detainees in East Timor: those who were never tried and those who were. The detainees who were tried made up the minority. The first trial had not taken place until 1984, or nine years after the

Indonesian invasion and after one third of the inhabitants, nearly 200,000 people, had already been killed. In order to obtain evidence, the police in charge of the pre-trial interrogations threatened the detainees to make them sign confessions in which they sometimes accused one another. Everyone who had appeared before a court had been convicted, but only one had appealed, for the detainees knew nothing about judicial procedure. In any event knowing about procedure would not help, since the defence lawyers were always the same three women with practices in Kupang (Indonesian Timor), who were appointed by the court and knew nothing about the persons they were supposed to "defend", since they only met them in the court room.

32. In recent months the Indonesian authorities had released most of the detainees in Dili Prison and warned them not to tell anyone what they had undergone during their detention. The released detainees were also forced to report to the district or sub-district military authorities for years on end, every week or every month, because they were supposed to become spies in the service of the occupying forces. Every time they reported, they were supposed to describe anything suspicious they had noticed.

33. Lastly, there was the problem of prisoners of war who were captured in the fighting and were tortured to death. Those who were hospitalized were kept alive until the military considered that they had no more valuable information to provide. They were then abandoned and died in the greatest of suffering. Much more could be said about the suffering and human rights violations to which the Timorese people were subjected.

34. Mr. ILKAHANAF, speaking on a point of order, said that the representative of a non-governmental organization was continuing to speak of human rights violations in general, without limiting himself, as he had been asked, to the question of the administration of justice and the rights of detainees.

35. Mr. APARICIO (National Aboriginal Islander and Legal Services Secretariat) said that, in his own experience, all the inhabitants of East Timor were actually in the situation of prisoners who were never tried. Every day brought the fear of being interrogated, ill-treated, imprisoned. He urged the Sub-Commission to listen to the appeal of his people, who wanted justice.

36. Mr. ASSOUMA said that, despite comments by Mr. Yimer, Mr. van Boven, Mr. Ilkahanaf and Mr. Al-Khasawneh, there still appeared to be some confusion in the minds of representatives of non-governmental organizations between questions falling under agenda item 9 and those under item 6.

37. The CHAIRMAN said that everything was perfectly clear, and that he would not hesitate in the future to interrupt any non-governmental organization that made remarks falling outside of the framework of agenda item 9.

38. Mrs. KSENTINI said that the Sub-Commission should none the less display some flexibility. The question of detention was certainly a human rights problem.

39. Mrs. MBONU said that she, too, believed that agenda item 6 and agenda item 9 sometimes overlapped and that some flexibility should be maintained.

40. Mr. YIMER said he disagreed. Non-governmental organizations should confine their comments to the question under consideration, namely human rights violations in the case of detainees. They should not be speaking about human rights problems in general.

41. Mrs. du GALLETTE (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that her organization was concerned with a specific group of detainees: persons who disappeared during detention in secret prisons. Enforced disappearance was a new form of repression. It was not known who the detainees were, on whose orders they had been arrested, where they were, who was trying them or what their living conditions were. Everything was done in the utmost secrecy and the persons concerned became ghosts who knew nothing about the world and about whom the world knew nothing. The testimony of some of them had revealed a practice that was an ethical and moral perversion, in a sense the sum total of all human rights violations.

42. It was a method that left nothing to fate, and there was a secret action plan in existence to which those responsible were trying to give a semblance of legality and plausibility. Thus there were two parallel systems for the administration of justice: a normal system and a secret system on which the lives, liberty and very identity of certain detainees depended and to which judges or officials lent their complicity, more particularly by manipulating the habeas corpus procedure. The secrecy was obviously aimed at guaranteeing that the guilty parties would not be punished. Some countries where oppression was rampant had embarked on a process already experienced by countries where a transitional democracy had been instituted. Particular mention might be made of Peru, Colombia, Haiti, the Dominican Republic and also Ecuador.

43. Eminent Sub-Commission experts had analysed the human rights violations of detainees, but it was the presence of former victims that it had been possible to complete the work and had led to improved conditions of detention in some cases. The families of the thousands of disappeared detainees wanted investigations into secret imprisonment so as to eliminate it and punish the culprits. In order to put an end to the disappearances, the measures taken must leave no one unpunished. Epxerience had shown that peoples grew stronger if crimes were equitably punished, rather than overlooked. In the case of disappeared persons, therefore, legal instruments should be adopted to prevent and punish what was truly a crime against humanity.

44. The countries of Latin America had no legal instruments for combating the 120,000 disappearances, and even when constitutions did contain adequate provisions, Governments could ignore them - especially dictatorships and authoritarian régimes in general. In the transitional democracies, pressures were such that, far from taking specific steps, Governments had allowed the doctrine of "due obedience" to be invoked to proclaim amnesty measures for those guilty of proven criminal acts. Situations that were anti-constitutional and indefensible from the moral point of view had thus arisen and people had become disillusioned and distrustful of the judiciary. However, in the case of Manfredo Velásquez, the Inter-American Court of Human Rights had found the State of Honduras guilty of his disappearance. In the draft convention it had submitted on disappearances in 1983, her organization had stated that enforced disappearances were a specific crime and punishment

required the drafting of specific penal instruments. For example, in several countries that practice was considered the same as unlawful deprivation of liberty. In Argentina, the crime was punishable by a maximum prison term of six years, and in the case of Astiz, who had been found guilty, the statutory limit had expired. In those circumstances, her organization could not agree that, at the international level, the "crime of disappearance" should be covered by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The legal scope of a convention explicitly on disappearances would be much broader. Thus, as she had stated earlier, five years previously her organization had submitted such a draft convention to the United Nations, so that international legislation to end the practice would be adopted. The text declared enforced disappearance to be a crime against humanity and an international crime. She hoped that the United Nations would soon adopt that universally recognized concept, one which involved a number of legal provisions whereby the crime could be punished and the judiciary could take action. Under the draft, disappearances were not political crimes, but crimes under ordinary law: extradition would apply, as would the principle of universal jurisdiction. The crime, for which there could be no pardon or amnesty, would not be subject to statutory limitations, and the guilty would not be able to obtain political asylum. Obviously, the proposed convention would not be an absolute guarantee of success, but it would certainly foster awareness and act as a check on States.

45. The international community had set itself three major objectives: peace, development and respect for human rights. She hoped that the Sub-Commission and the Commission on Human Rights would help the General Assembly to adopt a convention on enforced disappearances that would ensure respect for human rights.

46. Mrs. KIRCHER (Amnesty International) said that in his January report, the United Nations Special Rapporteur on the question of human rights and states of emergency had noted that the Sub-Commission had first been moved to study the issue because of the apparent close correlation between the existence of states of emergency and serious and systematic violations of the rights of detainees, particularly rights which did not allow of any derogation, such as the right to life and the prohibition of torture.

47. Amnesty International believed that the correlation was illustrated by the present situation in Peru, where widespread violations of those inalienable rights were reported, almost exclusively from zones under a declared state of emergency. The states of emergency in force in some 30 provinces had been imposed in the context of armed conflict between the armed forces and the left-wing guerrilla groups Sendero Luminoso and the Movimiento Revolucionario Tupac Amaru (MRTA). Amnesty International had been informed of very serious abuses - torture and execution of prisoners - committed by both groups. However, in dealing with such abuses, Governments were still under the obligation to respect the right to life and the right not to be tortured. Yet it was precisely those rights that were being systematically violated in the areas where the armed forces were engaged in counter-insurgency operations. The vast majority of victims of such abuses, however, were peasant farmers with no apparent links to the guerrilla groups.

48. The cases of torture, disappearance and extrajudicial execution had consistently been concentrated in emergency zones. The law regulating the role of the armed forces in those zones provided for the exercise of

extraordinary powers, which the armed forces frequently exceeded. After a significant decline in 1985 and 1986, the number of disappearances again seemed to be on the increase in the emergency zones. Most disappearances took place after arrests carried out by military personnel in the presence of witnesses. More than 3,200 were estimated to have disappeared in the Ayacucho emergency zone alone since 1982, and only a fraction had re-appeared, sometimes as victims of apparent extrajudicial executions. Disappearances and extrajudicial executions had also been reported from newly designated emergency zones, in particular in the Department of San Martín, where 15 persons were still reported missing since November 1987. Others who had been released or whose detention had been acknowledged claimed to have been subjected to severe torture. Confessions extracted under torture were often reported to be used as the basis for prosecutions on charges of terrorism.

49. In contravention of Peruvian law, arrests by military personnel in the emergency zones were generally carried out without a warrant and without formal notification either to relatives or to representatives of the judiciary or the Public Prosecutor's Department, who had frequently complained of being denied access to detention facilities administered by the political-military command. Detainees were held incommunicado and their detention was often unacknowledged, or explicitly denied.

50. In zones under military control, there had been reports of civilians being seized and killed by troops and of the killing of combatants after surrender. Following an incident in May 1988 in which at least 29 villagers in Cayara in Ayacucho, had been killed during a counter-insurgency operation, the army authorities had prevented officials of the Public Prosecutor's Department and members of the press from entering the area until a week after the killings. When the investigating team had finally been allowed to inspect graves where some victims had reportedly been buried, they had found that the bodies had been removed.

51. Her organization welcomed the attention the Sub-Commission paid to states of emergency, which it believed might give rise to the type of serious human rights violations mentioned. It hoped that the Sub-Commission would encourage the Special Rapporteur to continue his scrutiny of such situations.

52. Burma had recently declared a state of emergency and imposed martial law. Her organization had already drawn the attention of the Working Group on Indigenous Populations to the tragedy of Burma's rural, ethnic minorities. There had been allegations that security forces acting under the state of emergency had dealt with civil unrest in urban areas, especially Rangoon, by committing similarly serious human rights violations. Between March and July 1988, there had been at times violent student-led demonstrations in various Burmese towns against alleged police human rights abuses and restrictions on civil liberties. On 3 August a state of emergency had been declared and martial law imposed in Rangoon. According to the authorities, the students had been delivering speeches to crowds, pasting up propaganda posters and papers and staging protest marches. On 8 August, more than 100,000 overwhelmingly peaceful demonstrators had marched in Rangoon and other cities demanding political and economic changes and respect for human rights. Towards midnight, the military command had reportedly announced that the demonstrations must stop or the security forces would open fire and, if there was bloodshed, the Government would not be responsible. Soldiers had then

opened fire on the demonstrators, including women and children. The authorities had announced a curfew and outlawed public meetings of more than five people, but the demonstrations had continued.

53. From 9 August, soldiers had reportedly been authorized to open fire on demonstrators and apparently had stopped trying to use non-lethal crowd control methods. They had fired directly into crowds of peaceful demonstrators as well as protestors who had resorted to violence. On 10 August, soldiers had allegedly opened fire on people who had lined up to give blood at Rangoon General Hospital and on medical staff pleading for an end to the shooting because they were no longer able to treat the wounded. Several were said to have been killed. On 12 August, following the resignation of President U Sein Lwin, unrest had abated to some extent. The Government of Burma admitted that 112 demonstrators had been killed but publicly denied any wrongdoing by the security forces. Reliable reports said that soldiers had killed 1,000 to 3,000 people, and that almost all the victims had been unarmed, peaceful demonstrators. It seemed clear that the soldiers had ignored the standards contained in the Code of Conduct for Law Enforcement Officials and used unreasonable and unnecessary force. The emergency remained in effect, and there were no clear indications of government action to prevent further unlawful killings if demonstrations recurred.

54. Mrs. WARZAZI, referring to agenda item 9 (c), said that the mandate the Sub-Commission had assigned to the Special Rapporteur consisted in establishing as a matter of urgency contacts with the Argentine and Paraguayan Governments to seek a solution to the problem of children who had disappeared in Argentina and turned up in Paraguay. He had therefore had to fulfil a difficult and delicate task. To find the children, he would have first had to address himself to the Paraguayan authorities, but they had refused to help him and he had therefore focused his study on Argentina, which had agreed to assist him in his task. However, the children were no longer in Argentine territory. It was unacceptable that, in view of the established United Nations system of priorities, whereby preference was always given to Member States, the Secretariat had not first devoted a separate paragraph of the report (E/CN.4/Sub.2/1988/19) to the Special Rapporteur's meetings with the Argentine authorities, and in particular the Head of State.

55. What was more, the study stressed the contacts established with non-governmental organizations and the information they had furnished. In her opinion it was not the best way to thank the Argentine Government for its co-operation; other Governments might well use that as a pretext to refuse to co-operate with special rapporteurs.

56. Furthermore, paragraphs 33, 34 and 35 of the report gave the impression of penalizing the present Argentine Government by comparing it to the previous military government, without taking into account the considerable efforts it had been making despite the difficulties it faced. Again, the conclusions contained in paragraphs 52 and 53, while unfair towards the Argentine authorities, clearly indicated that the Sub-Commission's goal had not been reached. The Sub-Commission would therefore have to wait until the Paraguayan Government had revealed its intentions in order to adopt a position towards the findings in the study, for the Paraguayan Government alone was in a position to help the Sub-Commission resolve the problem of the disappeared children.

57. As to the preparation of a draft optional protocol, she was not in favour of the abolition of the death penalty, a position that was confirmed by the horrible crimes perpetrated in the modern world, particularly in the developed countries, and the killing of entire societies through the drug traffic. There could be no pardon for those who deliberately killed or for those who, for sordid gain, doomed thousands of young people to degeneration and destruction.

58. For those reasons, some countries that had abolished the death penalty were now considering re-establishing it, if only to protect the members of society. The Special Rapporteur, aware that more than 130 countries, and not the least among them, provided for the death penalty in their legislation, had shown great caution in explaining, in paragraph 186 of his study (E/CN.4/Sub.2/1987/20): "It is evident that no State should - or could - be forced to accept such an international undertaking" as abolishing the death penalty. She was prepared to believe that a second protocol would help the abolitionist countries to work together and engage in dialogue, but did not feel that instrument would be useful. If countries had abolished the death penalty, it was not very clear what the point of a second protocol would be in a reputedly ideal situation. On the other hand, if those countries really found that text to be indispensable, there was no reason why they should be prevented from formally expressing their opinion. Hence she had no objection to transmitting Mr. Bossuyt's study to the Commission on Human Rights, but would add, however, that those praiseworthy efforts might come to nothing in the General Assembly.

59. Mrs. BAUTISTA said it was only right that the Sub-Commission should pay special attention to the plight of children. Children were always the main victims of human rights violations and the conflicts taking place throughout the world, which left an indelible imprint on them if they survived. The Sub-Commission should condemn the abduction and imprisonment of pregnant women and of the children of those who opposed the established Government. To begin with, it should call for international co-operation in the repatriation to Argentina of the children who were now in Paraguay in the custody of their captors. The question whether those children should again be taken away from the families that had raised them should not enter into consideration, for those who had abducted them were bound by law to return them to their natural parents or their grandparents in Argentina.

60. She supported Mrs. Flore's call for the Paraguayan courts or authorities to extradite the persons who had kidnapped those children and had found refuge in Paraguay. But that was not enough. It was most important for the Paraguayan Government to co-operate with the Argentine Government and make sure the children returned to Argentina. The Sub-Commission should therefore recommend that the Commission on Human Rights should adopt a resolution to that effect. She also hoped that Mr. van Boven, whose report (E/CN.4/Sub.2/1988/19) had been very helpful, would have the necessary support from the Commission to continue his work, and that the Government of Paraguay would now be prepared to co-operate with the Commission.

61. She congratulated Mr. Bossuyt on his report on the question of the elaboration of a second optional protocol, aiming at the abolition of the death penalty (E/CN.4/Sub.2/1987/20), which was most instructive. Admittedly, not all countries could be expected to abolish the death penalty in the near future. The right to life was a right from which no derogation was permitted

for any reason, but that argument lost much of its validity when weighed against the fact that the penalty was to be imposed on people who showed arrogant disregard for the lives of innocent bystanders. The draft optional protocol should include provisions for the establishment of minimum standards guaranteeing full respect for human rights, in particular the right to a fair trial before enforcing the death penalty, which should be imposed only for extremely serious crimes. Anything that might appear to legalize arbitrary executions in any way should be avoided and the right to amnesty, pardon or commutation of sentence should be guaranteed. Such minimum standards should, in particular, include the right of every person to be informed of the reasons for the charge against him, to assistance from counsel, if necessary chosen by the representative of his Government, to a public trial, to a defence and to present witnesses, to review and appeal or commutation or amnesty. Lastly the death penalty must not be imposed on pregnant women or minors.

62. Mrs. GARDNER (Women's International League for Peace and Freedom) said that her organization worked towards improving the position of women suffering under systems that lacked basic human rights.

63. In Guatemala, women were directly victimized by a situation that caused them much emotional and economic suffering. Many non-governmental organizations had stated before the Commission on Human Rights in February 1988 that the situation in Guatemala since the civilian Government had come to power in 1985 had not improved. The 2,879 cases of unresolved disappearances still had to be investigated and paramilitary forces continued to threaten, detain and murder people and cause disappearances. The military themselves forced peasants to join the "Civil Defence Patrols"; when people refused, their lives and property were threatened. The newspapers El Gráfico and Prensa Libre had reported that, during July 1988, 51 persons had been assassinated and 27 kidnapped, including 12 children. It would be remembered from the forty-fourth session of the Commission on Human Rights that the Guatemalan Ambassador had issued an invitation to representatives of the Guatemalan opposition to participate in talks; however, on 18 April 1988, two representatives, Rigoberta Menchu and Roland Castillo, had been arrested on arriving in the country. Her organization supported the call of the Guatemalan opposition for the re-appointment of a United Nations special investigator on Guatemala and for consideration of the situation in Guatemala to be switched back to item 12 of the Commission's agenda.

64. In El Salvador a general amnesty had been declared in November 1987, but the Government was in fact taking advantage of the amnesty to stop recognizing that there were political prisoners. The Federation of Committees of Mothers and Relatives of the Disappeared and the Assassinated in El Salvador (FECMAFAM) had in 1988 conducted inquiries at prison centres in an attempt to trace missing political prisoners. As at 24 July, they had listed 47 political prisoners in 10 different prisons. FECMAFAM and other organizations such as Tutela Legal of the Archdiocese claimed that physical and mental torture continued to be used against political prisoners. On 18 December 1987, Gerardo Hernández Torres, a political prisoner, had died under torture. Prisons lacked medical facilities and detainees were prey to infectious diseases. Political prisoners were subject to attacks by the ordinary prisoners or held in isolation and arbitrary transfers made visits by relatives virtually impossible. The Sub-Commission is to conduct a study on the subject.

65. Finally, the injustice perpetrated against Puerto Ricans warranted discussion. Alejandrina Torres, a wife and mother with a long history of activism, had been arrested and incarcerated in the Lexington High Security Unit for Women in Kentucky in the United States of America. In the High Security Unit, the cells had no ventilation or natural light, and visits, medical attention, reading material and entertainment were severely restricted. All conversations were recorded, and all movements were watched by monitoring devices, even in the showers. Further, the women transferred to that unit had no administrative hearing to determine that their cases met the criteria for incarceration established by the Federal Bureau of Prisons. The Sub-Commission should issue condemnation of the High Security Unit for Women at Lexington Prison and call for the immediate transfer of all women there to a regular prison.

66. The CHAIRMAN invited Mr. Singhvi, who would have to leave next day, to submit the draft declaration he had prepared on the independence and impartiality of the judiciary, judges and assessors and the independence of lawyers, a question covered by agenda item 10.

DRAFT DECLARATION ON THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 10) (E/CN.4/Sub.2/1988/20 and Add.1, 39; E/CN.4/Sub.2/18 and Add.1-4, Add.5/Rev.1 and Add.6; E/CN/4/Sub.2/1987/17)

67. Mr. SINGHVI said that the Sub-Commission had been looking into the question of the independence of the judiciary for several years. As far back as 1963 it had suggested that norms and principles on that issue should be established, in the form of a declaration. Mr. Abu Rannat had been entrusted with conducting a study on equality in the administration of justice. In the study, published in 1972 (E/CN.4/Sub.2/296/Rev.1), Mr. Abu Rannat had proposed 29 principles which had been well received at the time and adopted by the General Assembly in its resolution 3144 (XXVIII). For those who felt that draft principles were sufficient and that it was not necessary to elaborate a draft declaration, he would point out that, in its resolution, the General Assembly stated that the draft principles might be regarded as setting forth valuable norms, with a view to arriving at an elaboration of an appropriate international declaration or instrument. That was what had led the Sub-Commission to propose that a special rapporteur should be appointed to conduct a study on the establishment of a draft declaration. Such was the background against which the Special Rapporteur's mandate should be considered, which explained why the topic of the independence of the judiciary had reappeared in 1980 in an Economic and Social Council resolution and various Sub-Commission recommendations. In that connection he would also like to stress the excellent work done by the Sub-Commission regarding the elaboration of a Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which was currently being considered by the General Assembly.

68. The mandate assigned to him in 1980 consisted in conducting a study on the independence and impartiality of the judiciary and the independence of lawyers, pre-requisites on the one hand to avoid any discrimination in the administration of justice, and on the other to ensure the greatest possible respect for human rights and fundamental freedoms.

69. Since 1980, worldwide consultations had been taking place to prepare a universal declaration on the independence of justice. In particular, the question had been discussed at meetings held at Syracuse, Paris, New Delhi and Montreal, with the participation of numerous governmental agencies and non-governmental organizations. The Sub-Commission had invited its members to submit suggestions on the draft declaration. Subsequently, it had requested the text of the draft to be circulated and Member States to submit written suggestions. His report, which was now before the Sub-Commission (E/CN.4/Sub.2/1988/20 and Add.1), had therefore been drafted in the light of the written suggestions he had received. He had also amended the draft contained in the report to take the meetings and consultations into consideration.

70. Describing in detail his report and citing examples of the comments from Member States that he had borne in mind, he said that Portugal's comments had not yet been translated, since they had been received quite late; however, they coincided with those from other countries, and it might be said that they had been taken into consideration in that way. It should be noted that Portugal was in favour of adopting a declaration. Comments received quite recently from the Netherlands had already been incorporated in the same way, indirectly. In particular, the Netherlands had referred to the Milan session of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which had examined guidelines based precisely on Mr. Abu Rannat's proposals. He wished to stress that there were no contradictions between the Guidelines of the Milan Congress and the draft Universal Declaration on the Independence of Justice which he was submitting. In fact, both sets of principles derived from the General Assembly resolution he had mentioned previously. The difference was that the Milan principles had been in a way more limited. Since then, he believed he had continued to elaborate those principles with the humility that came from his conviction that an international document of the type he was proposing could be perfected only through consensus.

71. Paragraph 11 of the report (E/CN.4/sub.2/1988/20) contained a reference to a comment by Mexico on article 1 (a) of the Draft Declaration. Mexico had objected that the expression "irrespective of parties" was not justified, for the courts applied the law independently of any other power, influence or pressure. In fact, the concept in article 1 (a) already figured in a number of constitutions and legal systems. However, he was prepared to give up the expression. Paragraph 12 mentioned a comment by the Chief Justice of the Supreme Court of the Philippines on article 3. To take it into account, along with the comment by Hungary, he was planning to amplify article 3 with a sentence with the wording shown at the end of paragraph 12.

72. Article 5 (a) had been the subject of a number of comments that reflected differences between legal systems. He had felt that the best course was to allow each country to resolve such delicate questions in the framework of its own legal system. As to article 5 (b), Mexico had not found the word "normally" satisfactory, for it appeared to indicate that special courts might be formed on an exceptional basis. He agreed that the word "normally" might be deleted. Concerning paragraph (c), Spain had proposed an amendment which he had reproduced with a slight change, as indicated in paragraph 16 of the report, so to say "with all due expedition and without undue delay". In connection with the comments on article 5 (d) mentioned in paragraph 17 of the report, he would refer to article 4 of the International Covenant on Civil and Political Rights, and particularly to the derogations permitted during a state

of emergency. Article 5 (d) and article 5 (e) could not be permitted to depart from the basic human rights instruments. Having been the Rapporteur at the Preparatory Meeting for the Milan Congress, he was in a position to state that paragraphs (d) and (e) corresponded to Congress Guidelines Nos. 11 and 12.

73. Several comments on article 11 (c) of the draft declaration had led him to propose a consolidated text, which appeared at the end of paragraph 23 of the report. Paragraph 26 also mentioned comments by a number of Member States on article 20. It should be emphasized that he had worded the article as it appeared in document E/CN.4/Sub.2/1988/20/Add.1 precisely to take account of the differences between legal systems. Paragraph 29 also indicated, with respect to former article 23, which no longer appeared in document E/CN.4/Sub.2/1988/20/Add.1, differences between legal systems; he had at first introduced into the article a concept suggested by the Philippines, but in view of objections from Norway and Sweden had decided purely and simply to delete the article. Paragraph 31 noted that he could not accept the comments by Finland and Norway concerning article 25 (24 in Add.1); for that reason the initial text had been maintained in the draft declaration.

74. Various comments of a semantic nature had also been made on certain points. He had modified article 43 (42 in Add.1) to take into account comments by Hungary and the Soviet Union concerning assessors which were mentioned in paragraph 42 of the report. In response to those comments, he proposed new articles, which, after the deletion of article 23, had been renumbered 42A and 42G. As to comments on the articles of the draft declaration relating to lawyers, he wished to stress that he had followed the Sub-Commission's mandate and sought to elaborate a complete framework around which a consensus might be reached. Some provisions that might be regarded as superfluous should be viewed from that standpoint.

75. Paragraphs 57 to 61 of the report indicated how he had changed some definitions to take account of the comments received. Particular attention should be drawn to the modified definitions of the terms "lawyer" and "bar association" found in paragraph 58 of the report, and to the changes he had made in former article 76 (article 82 in Add.1) at the suggestion of Morocco. He would like to conclude by quoting a comment from the Byelorussian Soviet Socialist Republic, mentioned in paragraph 7 of the report, that a Universal Declaration would be a major step towards strengthening the democratic principles of judicial organization and procedure and would create the conditions for increased international co-operation in the field of justice. The Soviet Union had also expressed a wish, quoted in the same paragraph, for "speedy adoption of the Declaration". In the Draft Declaration, he had generally tried to reflect a consensus and thanked the Sub-Commission for giving him an excellent opportunity to contribute to the strengthening of the protection of human rights in the field of justice.

76. Mrs. WARZAZI said she regretted the fact that Mr. Singhvi's report (E/CN.4/Sub.2/1988/20) was not yet available in French.

77. The CHAIRMAN said that he would speak to the Secretariat about correcting that situation. In any event, a solution would have to be found in order to examine the report under the best possible conditions, since the Sub-Commission would have to transmit it at the present session.

The meeting rose at 1.05 p.m.