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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-first session

SUMMARY RECORD OF THE 32nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 29 August 1989, at 10 a.m.

Chairman: Mr. YIMER

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

ORGANIZATION OF WORK (continued)

1. The CHAIRMAN said that the Bureau strongly recommended that, because of the critical lack of time, members of the Sub-Commission and observers should limit their statements on item 9 and on the remaining items of the agenda to 10 minutes.

2. The Bureau also considered that item 9 should not be used for a discussion by any participant of matters under item 6.

3. He said that if there was no objection, he would take it that the Sub-Commission agreed to that course.

4. It was so decided.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION AND IMPRISONMENT;

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES (agenda item 9) (continued)

(E/CN.4/Sub.2/1989/18, 20 and Add.1; E/CN.4/Sub.2/1989/21 and Add.1; E/CN.4/Sub.2/1989/22, 23 and 24 and Add.1-2; E/CN.4/Sub.2/1989/25, 27, 30 and Add.1 and Add.2/Rev.1; E/CN.4/Sub.2/1989/45 and 50; E/CN.4/Sub.2/1989/NGO/7 and 11; E/CN.4/1989/10, 15, 18 and Add.1; E/CN.4/1989/19; E/CN.4/Sub.2/1988/12, 18/Rev.1 and 28; E/1988/20; A/C.6/43/L.9; CCPR/C.2/Rev.2)

5. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that the rights of the individual and the protection of human dignity in connection with the exercise of State power through the administration of justice and in matters of detention had long been one of the most important aspects of international promotion and protection of human rights. The Universal Declaration, the International Covenant on Civil and Political Rights, and the various regional conventions all provided very detailed prescriptions regarding the treatment of detainees and the basic principles to be respected in the administration of justice.

6. Although detailed rules were laid down in international treaties, the General Assembly, the Commission on Human Rights, and the Sub-Commission had always felt it necessary to pay special attention to those matters. Experience had shown the continuing necessity, on the one hand, to review the actual situation concerning respect for those rights and, on the other, to provide additional international instruments in areas of particular concern. The Sub-Commission had in the past played a major role within the United Nations system in calling attention to abuses and situations requiring the attention of the Commission and the General Assembly, for example, with regard to enforced or involuntary disappearances. The Sub-Commission had also

initiated and drafted rules governing particular questions, such as the death penalty and the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment.

7. At the present session, the Sub-Commission would be called upon to continue that effort to promote respect for human dignity in connection with detention or the administration of justice. With regard to the annual review of the situation, the Sub-Commission had before it a number of documents prepared by the Secretary-General, as well as written statements by non-governmental organizations. In addition, both the members and non-governmental organizations would undoubtedly inform the Sub-Commission of recent developments in situations requiring particular concern and of standards which might need to be drafted.

8. In connection with standard-setting, the Sub-Commission, through its sessional Working Group, was considering the draft declaration on the protection of all persons from enforced or involuntary disappearances. A number of comments had been received on last year's draft. He understood that the Working Group had been focusing considerable attention on achieving a concrete and meaningful result. Its report would be introduced by its Chairman/Rapporteur.

9. Another important issue of a general nature before the Sub-Commission at its present session was the issue of administrative detention without charge or trial. At the Sub-Commission's request, Mr. Joinet had prepared and would introduce a report on that matter. The report dealt with a wide range of important subjects and the Sub-Commission might wish to consider it and the recommendations of the Special Rapporteur in the light of the most recent development in that field, namely the adoption in December 1988 by the General Assembly of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. The Sub-Commission had played a key role in the initial elaboration and in the most recent work on that important instrument.

10. Two other items on the Sub-Commission's agenda dealt with issues on which further international standards might be desirable: the question of investigation of cases of suspicious death in detention, and the matter of restraints on the use of force by law enforcement and military personnel.

11. The United Nations and its specialized agencies carried out extensive activities aimed at the promotion of peace, development, emergency relief, and humanitarian assistance in many parts of the world. The effectiveness of those activities depended in large measure upon the commitment, dedication and skills of international civil servants. The Charter of the United Nations rightly demanded that staff members should be impartial and objective in carrying out their functions, and it was essential for that impartiality and objectivity that the basic human rights of staff members, as well as their privileges and immunities, should be respected in all circumstances.

12. A number of alarming reports had been received concerning failure to observe such privileges and immunities and containing allegations of violations of basic human rights of staff members, experts or their family members. The report of the killing of Lt.-Col. Higgins, who was kidnapped while on official duty in the Middle East, had caused deep concern within the entire Organization. Similar reports about the fate of Mr. Alec Collett, who

was also abducted in the same region, were of continuing deep concern. Indeed, efforts by the Secretary-General to ensure respect for the privileges and immunities and the human rights of all staff members were continuing. In some cases, the relevant authorities provided positive responses, but, unfortunately, in others no progress could be reported. The Sub-Commission, together with the Commission on Human Rights, had attached great importance to these issues and in 1988 had appointed Mrs. Bautista to present a preliminary report on them to the present session. The issue of respect for the privileges and immunities and human rights of United Nations experts was also part of the mandate of the Special Rapporteur as defined by the Sub-Commission and the Commission on Human Rights. One case of relevance to the Sub-Commission was that of Mr. Mazilu, Special Rapporteur on Human Rights and Youth. The issue of the applicability of the Convention on Privileges and Immunities to him in connection with his mandate was now before the International Court of Justice, and his report was before the Sub-Commission in connection with item 15.

13. Last, but certainly not least, under item 9 came the question of human rights and states of emergency. The Sub-Commission, for a number of years, had been giving its closest attention to the legal framework within which states of emergency could be declared and in connection with which the enjoyment of certain rights could be suspended. The impact of such states of emergency on the effective enjoyment of human rights was another aspect that had been of concern to the Sub-Commission, and those subjects were dealt with by the Special Rapporteur, Mr. Despouy. In that connection, he noted the growing co-operation of Governments in Mr. Despouy's work, which was a very welcome development and greatly assisted in a full understanding of all the aspects of that complicated subject. Mr. Despouy would be presenting his report to the Sub-Commission.

14. Mr. DESPOUY introduced his third annual report and list of States which, since 1 January 1985, had proclaimed, extended or terminated a state of emergency (E/CN.4/Sub.2/1989/30, Add.1 and Add.2/Rev.1). He said that all legal systems allowed for special rules to cover special situations, when the normal rights of citizens could be suspended. At the same time, there were domestic and international legislative provisions designed to guarantee the legality of such exceptional measures and to preserve respect for human rights in situations of crisis. The criteria that should be observed were that the state of emergency had to be proclaimed publicly, to be of a temporary nature, and in proportion to the seriousness of the crisis. There had to be a real and imminent public danger and even in a state of emergency intangible rights such as the right to life and physical integrity could never be suspended.

15. Formerly States had been the sole arbiters of the rights they recognized, suspended or left in force during emergency situations, but powers had now been given to international bodies such as the Inter-American Commission on Human Rights and the Human Rights Committee to ascertain whether the criteria of legality were observed in emergency situations and to monitor their impact on human rights.

16. His third report followed the pattern of the preceding ones, with an addendum (E/CN.4/Sub.2/1989/30/Add.1) containing a summary table by State and a reply from the Government of the Republic of South Africa.

17. The Commission on Human Rights had requested him to make a supplementary report for the next session and the purpose of his present statement was to report on the methodological progress made.

18. As far as information was concerned, he had received considerable co-operation from States and a great deal of information from university professors and specialized institutes on the problem of legislation in states of emergency, from the viewpoint of comparative law and of human rights.

19. Document E/CN.4/Sub.2/1989/30 contained a description of the method he used to obtain information from Governments, United Nations organs, specialized agencies, other intergovernmental organizations, non-governmental organizations and other sources. Information received on states of emergency in force, recently proclaimed, extended or terminated was summarized in the form of summary tables in document E/CN.4/Sub.2/1989/30/Add.1. Document E/CN.4/Sub.2/1989/30/Add.2 contained observations and recommendations. Information supplied by non-governmental organizations alleging violations of human rights in connection with emergency measures taken by a Government was examined in the light of any other available information and presented in the form of a summary table accompanied by remarks, a copy of which might be sent to the Government concerned for comment. Any such comments were transmitted to the organizations concerned for additional information. If Governments did not reply to him, the allegations of the non-governmental organizations would appear in his report. However, most Governments had co-operated willingly.

20. According to the information received since November 1988, when his second updated report had been issued, at least 25 States had proclaimed or extended a state of emergency or continued to take emergency measures in respect of all or part of the territories under their jurisdiction or control. Official information had been received in the case of 14 of those States or territories, namely, South Africa, Algeria, Argentina, Brunei Darussalam, China, Colombia, Peru, United Kingdom of Great Britain and Northern Ireland, territories occupied by Israel, Turkey, Myanmar, Union of Soviet Socialist Republics, Venezuela and Yugoslavia.

21. He had received information concerning 11 other States regarding which he would like to receive confirmation from the Governments concerned.

22. There might be States that had declared a state of emergency concerning which he had not been informed, and in that connection he appealed to reliable sources for relevant information.

23. He had received information concerning the termination of states of emergency or the restoration of suspended constitutional legal freedoms concerning Algeria, Argentina, Chile, Haiti, Senegal, Sri Lanka, Venezuela and Yugoslavia. The information concerning Haiti was contradictory, since the Government had informed the Secretary-General in the letter dated 16 March 1989 that the 1987 Constitution had been brought back into force, but according to other information communicated by the Government about 30 articles of the Constitution remained temporarily suspended. He also understood that the state of emergency was still in force in Senegal.

24. The method he had used in preparing his third report required greater co-operation from the Governments concerned and had provided the possibility of debate, and he was pleased by the favourable reception it had received.

25. In his next report he intended to present some model legal provisions that could serve as a reference for States so that their internal legislation on the state of emergency and implementation would not have a negative impact on human rights and would meet the criteria of lawfulness deriving from the relevant norms of public international law. The suggested criteria were contained in document E/CN.4/Sub.2/1989/38/Add.2/Rev.1.

26. Administrative detention was the only possibility of holding people for any length of time without a charge being made against them, but a state of emergency had to have been publicly proclaimed in such cases. However, there were countries where it was possible to hold persons under administrative detention without the need to declare any state of emergency. He invited members to give thought to the question of how to restrict such arbitrary administrative detention without prior declaration of a state of emergency.

27. He thanked the Governments which had co-operated with him and the organizations that had sent him information.

28. Mr. JOINET said that problems in assembling his report (E/CN.4/Sub.2/1989/27) had resulted in some inconsistencies; he had therefore prepared a written text of his present statement which would be available to members.

29. His report had been available since the beginning of the session, and many participants had suggested amendments which would be included, together with the oral comments, in the revised version to be submitted to the Commission on Human Rights.

30. In paragraph 78 of the report he proposed that a special report on the development of all forms of administrative detention throughout the world should be submitted each year to the Commission for its consideration. His report was written on the lines of such an annual report.

31. On the scope of his study, he said that the practice of administrative detention was spreading very noticeably. Even the most democratic States had legislative provisions authorizing administrative detention. The problem therefore was not whether administrative detention was authorized but the guarantees with which it should be coupled. Administrative detention required no intervention by a judge at the outset, and thus great vigilance was needed with regard to the conditions in which it was used. There were worse cases of violations of human rights of detainees when the detention was administrative than when it was judicial, and he agreed with Mr. Despouy's remarks in that regard.

32. At least 12 different terms were used to describe administrative detention in different legal systems, as listed in paragraph 16 of his report. To avoid any conflict of interpretation he had used the term "administrative detention" throughout.

33. There was a need for a rigorous definition, so as to distinguish administrative detention from the only other category of detention, namely judicial detention. Detention must fall within one or the other category. Within the meaning of the report, administrative detention referred exclusively to detention that, de jure or de facto, was decided on exclusively

by the Executive, and where the decision was taken exclusively by the administrative authority. Consequently, he had excluded from the scope of the study: (a) irregular judicial detention, arising where the judge had committed an error or an irregularity; and (b) situations in which persons were remanded in custody on police premises for purposes of the investigation. In the latter case, the decision was the responsibility of a judicial authority. However, certain situations arising, inter alia, in states of emergency, in which the control of the judge was reduced to such an extent that the detention resembled an administrative detention in its consequences, were considered as falling within the scope of the study.

34. Five main categories of administrative detention were studied: firstly, threats to public order or the security of the State, particularly in crisis or emergency situations; secondly, measures relating to the status of foreigners, particularly asylum-seekers and refugees; thirdly, detention for purposes of political "re-education"; fourthly, disciplinary measures, and fifthly, measures to combat social maladjustment. Categories four and five, which were quantitatively less important, were dealt with in paragraphs 37 to 39 of his report. He had also excluded administrative detention of the mentally ill from the scope of the report, since the Commission on Human Rights had decided to set up a working group to study the principles applicable in that area.

35. The first category applied basically to armed conflicts and to the proclamation of a state of emergency. Some permanent (rather than emergency) laws, described as internal or state of security laws attempted to authorize administrative detention in matters of ordinary law. In such cases the threat to human rights was still greater, since a state of emergency was at least limited in time.

36. Apart from measures connected with states of emergency and those connected with political opponents, it was measures relating to the status of foreigners that most often gave rise to administrative detention. The first category of such foreigners comprised those who were detained pending execution of an expulsion or refoulement. The second category comprised those detained in order to "neutralize" them politically for a brief period. Such measures were frequently applied to exiled political opponents during the visit of a Head of State. The third category comprised persons subjected to extradition proceedings. In many countries that procedure was an entirely judicial one - a state of affairs that was to be encouraged. The fourth category gave far the most cause for concern, and included foreign asylum-seekers or political refugees. He had not had time to deal with that category in his written report, and would thus dwell on it more extensively in the present statement.

37. The most striking aspect of the phenomenon was its extent, involving, for example, 2 million people from Indo-China, 1.7 million of whom had resettled in more than 30 countries. On 30 April 1989, almost 170,000 persons of Indo-Chinese origin, not including the substantial number not receiving assistance from the United Nations High Commissioner for Refugees, were in camps or centres.

38. However, the most serious aspect of the problem had been its political complexity. He had studied refugees and asylum-seekers from three countries: Viet Nam, Kampuchea and El Salvador. About 50 per cent of the Vietnamese refugees were grouped into closed, semi-open or open centres in Hong Kong. The closed centres housed those refugees who had arrived since 15 June 1988, the date on which the new procedure for determination of refugee status introduced by the Hong Kong authorities had entered into force. The semi-open centres housed, inter alia, the boat people who had arrived in Hong Kong between 1982 and June 1985.

39. The situation regarding the Khmers in Thailand was even more complex. To begin with, they were not regarded as refugees, but as displaced persons. About 300,000 of them received assistance from UNDRO; around 18,000 from the High Commissioner for Refugees, and the remainder (approximately 40,000) were in camps run by the Khmer Rouge. It was in the latter camps that the situation was the most critical.

40. A third region where the situation was a matter for concern was Central America, where around 40,000 Salvadorian refugees were confined in two camps, one of which, Colo Moncagua, was totally closed, surrounded by the Honduran army, and owed de facto allegiance to the FMLN, which exercised strict control, particularly with regard to requests to return to the country of origin. To counter the negative effects of those forms of administrative detention, at its 1986 session the Executive Committee of the Office of the High Commissioner for Refugees had enacted minimum principles for the treatment of those refugees.

41. The third category comprised persons administratively detained for purposes of political "re-education". After the Viet Nam war, 10,000 to 15,000 persons had been detained in that way between 1975 and 1976. In February 1987, a number of them had been freed, but were unable to leave the country. After a recent agreement with the United States, they could now do so provided they did not harm Viet Nam's interests. Only 120 of them were still in detention after almost 14 years. It was the only form of detention that must not be countenanced in any circumstances by national legislation, since it directly infringed article 18 of the International Covenant on Civil and Political Rights.

42. With regard to the legal framework of administrative detention, he wished to underscore four questions of principle. The first was: should guidelines be drafted for the treatment of persons administratively detained? He had made a proposal to that effect in his interim report. However, it would be recalled that, thanks to the efforts of the Sub-Commission, the General Assembly had agreed to extend the guidelines on detention, which had previously intended to cover only judicial detention, to encompass all forms of detention including administrative detention. There was thus no need to prepare further guidelines.

43. The second question of principle was, in what cases should isolation in detention be regarded as a form of cruel, inhuman or degrading punishment, or as torture? According to principle 6 of the Body of Principles, detention of a person in conditions which deprived him of the use of any of his natural senses constituted a form of cruel, inhuman or degrading treatment or punishment. With regard to other forms of isolation, he had drawn a distinction between "ordinary" isolation and "rigorous" isolation. In the

former case, detention was limited in time, and the detainee enjoyed some rights of communication, despite being detained in isolation. In the latter case, where his rights were further restricted, the isolation might constitute cruel, inhuman or degrading treatment or punishment.

44. Regarding the third question of principle, as to whether measures of redress such as habeas corpus or amparo should be regarded as inviolable, he proposed that the Sub-Commission should study the principle whereby habeas corpus should be recognized as an inviolable right par destination. The theory of inviolable rights drawn up within the Sub-Commission was valid only if the mechanism intended to ensure such inviolability was itself inviolable. To forbid torture in states of emergency, while failing to ensure that legislation forbidding it was inviolable, was to negate the inviolability of that right.

45. A last point, which did not feature in his report, but was an amendment based on his discussions with Mr. Despouy, was that if a special rapporteur were appointed, it was difficult to see how he could devote himself exclusively to administrative detention, without taking into account detention in all its forms, since the Basic Principles had been extended to apply to all situations. He asked for the Sub-Commission's opinion on that point, for inclusion in his revised report.

46. In areas relating to inviolable rights - disappearances, torture, summary executions - special rapporteurs had been appointed. There was also a special rapporteur to cover situations where rights were not inviolable, since guarantees of those rights were subject to restrictions. It was proposed that a special rapporteur should be appointed on the question of freedom of expression. However, there was currently a lacuna in the United Nations system, in that no mechanism specifically responsible for monitoring the situation of detainees world-wide existed.

47. Mr. FIX ZAMUDIO said that one of the most frequent causes of prolonged administrative detention without judicial intervention was so-called states of exception or emergency. In that regard he referred to Opinion No. 9 of the Inter-American Court of Human Rights, delivered in October 1987. There had in fact been two successive and complementary opinions of the Court, the first, No. 8, issued in July 1987, at the request of the Inter-American Commission on Human Rights, and the second, referred to by Mr. Joinet, No. 9, dated October 1987, issued at the request of the Government of Uruguay.

48. Essentially, in interpreting article 27 of the American Convention, the Inter-American Court had established that the specific instruments for the protection of human rights, namely, habeas corpus and amparo, could not be suspended during states of emergency (as had sometimes been the rule in various Latin American States during periods of government by military juntas), in view of the fact that they were essential safeguards for human rights, enabling the judge responsible for amparo or habeas corpus to ascertain that the detained persons were alive, and had not been subjected to torture, ill-treatment or solitary confinement.

49. During states of emergency, the first right to be suspended was usually that of personal freedom, with the police or the army authorized to detain persons without judicial authorization (in other words, administrative detention), sometimes for prolonged periods; habeas corpus and amparo, or

other instruments safeguarding human rights were also frequently suspended, with the prohibition of any judicial intervention other than that of the military judges.

50. In its second Opinion, besides indicating that in accordance with the American Convention those judicial instruments could not be suspended, the Court added that it was also not possible to restrict the basic principles of due process, which were generally not respected by military courts.

51. A further contribution was that relating to the fact that judges dealing with amparo and habeas corpus were not only empowered to examine the straightforward legality of the detention, but also its constitutionality and rationality, so that it would be possible to assess whether the specific measures to restrict personal liberty were in accordance with domestic constitutional norms, and whether they were proportional with the reasons alleged in the laws decreeing a state of emergency. That was not an innovation, since it had arisen in some cases submitted to the Argentine Supreme Court during states of emergency, particularly in the famous Timmerman case, and had been taken up by the 1984 Argentine domestic law of habeas corpus, enacted by Congress when democracy had been re-established.

52. Examination of the constitutionality and rationality (the latter similar to the détournement de pouvoir of the French Council of State), was essential, to enable the judge to determine whether the specific detentions reported to him came within the scope and limitations established by the constitutional norms and those international norms incorporated in domestic legislation for states of emergency, and whether the detentions could thus be regarded as illegal when the state of emergency was prolonged unnecessarily, if the period of administrative detention was unduly long, or if the military courts intervened unduly.

53. He was sure that those principles indicated by the Inter-American Court regarding the American Convention were taken into account, but that they could be applied to other regions, since various regional and United Nations international instruments set forth similar precepts, namely, the non-suspension of judicial instruments such as amparo, habeas corpus and others, during states of emergency, the immutability of the essential principle of the right of defence, and the powers of the judge to examine the constitutionality and rationality of the laws decreeing a state of emergency.

54. Mr. NEUDEK (Centre for Social Development and Humanitarian Affairs, United Nations Office at Vienna) said that the Director-General of the United Nations Office at Vienna, Ms. Anstee, was also the Secretary-General of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which would be held from 27 August to 7 September 1990, in Havana. The Congress would deal with the following topics: first, crime prevention in the context of development; secondly, problems of imprisonment and alternative measures; thirdly, organized crime and terrorism; fourthly, juvenile justice; and fifthly, criminal justice and crime prevention - standards and norms. Preparations for the Congress were well advanced and all preparatory meetings had been successfully concluded.

The Centre for Human Rights had been represented at several of the meetings, and had contributed to them effectively. The same was true for the tenth session of the Committee on Crime Prevention and Control and the First Inter-Agency Meeting on Crime Prevention, both held at Vienna in 1988. All the draft resolutions proposed by the Committee had been adopted by consensus by the Economic and Social Council the previous spring.

55. Co-operation between the United Nations Offices at Geneva and Vienna was being further strengthened, and included preparations for the eleventh session of the Committee on Crime Prevention and Control, to be held at Vienna from 5 to 14 February 1990. That session would be immediately followed by the Second Inter-Agency Meeting on Crime Prevention. In order to better co-ordinate activities in the field of administration of justice and human rights, focal points had been created with the Centre for Human Rights and the Centre for Social Development and Humanitarian Affairs at Vienna.

56. He singled out four substantive areas in which close co-operation between Geneva and Vienna continued to be especially promising and fruitful. The first area was the independence and impartiality of the judiciary and the role of lawyers. A draft resolution on that topic had been tabled at the Sub-Commission with a view to inviting Mr. Joinet to prepare a working paper on the subject. In order to maximize effectiveness of work and to co-ordinate activities, it might be useful to recall that the United Nations Office at Vienna was conducting the first quinquennial survey on the implementation of the Basic Principles on the Independence of the Judiciary, to be presented to the Eighth Congress for further follow-up. In addition, basic principles on the role of lawyers were being formulated for possible adoption by the Congress. Much credit in that regard belonged to the International Commission of Jurists and its Centre for the Independence of Judges and Lawyers, for their strong support.

57. The second area of mutual interest was law enforcement. In pursuance of existing mandates, the United Nations Office at Vienna was developing new international standards on the role of prosecution and on the use of force and firearms by law enforcement officials, for possible adoption by the Eighth Congress. He understood that the resolution on the latter subject was to be tabled at that session. That would usefully complement the work being done in Vienna.

58. The third area was victims of crime and abuse of power. As a draft resolution on compensation for gross violations of human rights had already been tabled before the Sub-Commission, it might be appropriate to recall that the Economic and Social Council, in a resolution adopted by consensus the previous spring, had proposed effective measures for the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The United Nations Office at Vienna had also conducted a global survey on that subject, to be presented to the Eighth Congress.

59. The fourth area of common concern was prevention and control of extra-legal, arbitrary and summary executions. In that area, a significant new international instrument had been adopted recently by the Economic and Social Council on the recommendation of the Committee on Crime Prevention and Control, namely, the Principles on Extra-legal, Arbitrary and Summary Executions. There was no doubt that the Principles would be of considerable

practical relevance not only to the Sub-Commission, but also to the Commission on Human Rights and its Special Rapporteur, Mr. Wako. In order to facilitate the implementation of the Principles, the United Nations Office at Vienna planned to publish a supplementary manual containing an autopsy protocol. He wished to pay tribute to the Minnesota Lawyers' Association for its most valuable initiative in that field.

60. There were other areas in which closer co-operation between the United Nations Offices at Geneva and Vienna was urgently needed. The latter was currently preparing the next two global quinquennial surveys, one on capital punishment, the other on the implementation of the Standard Minimum Rules for the Treatment of Prisoners. Both surveys would be presented to the Eighth Congress for further follow-up. In addition, the United Nations Office at Vienna was developing new international standards on non-custodial sanctions, on the prevention of juvenile delinquency, and on the treatment of juveniles deprived of their liberty. Last, but not least, he wished to emphasize the crucial importance of closer co-operation between Geneva and Vienna in the field of technical assistance and advisory services. The United Nations Office at Vienna would be happy to provide the human rights programme with expertise and experience derived from its own area of work, which included not only the activities of the interregional adviser in crime prevention and criminal justice, but also those of the United Nations institutes in that field in Rome, Tokyo, San José (Costa Rica), Helsinki and, most recently, Kampala (Uganda).

61. He concluded by expressing his appreciation to Mr. Martenson, Director-General of the United Nations Office at Geneva and Under-Secretary-General for Human Rights, for the support he had extended and continued to extend to the United Nations Office at Vienna. He was confident that their co-operation would be intensified even further during the final stages of preparations for the Eighth Congress, at the Congress itself, and beyond.

62. Mr. BRODY (International Commission of Jurists) said that for almost four decades his organization had been deeply troubled by the growing use of administrative detention in all parts of the world. Administrative detention gave broad, discretionary and arbitrary power to the Executive and was therefore open to, and had been subject to, much abuse. It was often used to suppress political opposition and to weaken social organizations. It was universally agreed that it should be resorted to only in the most extraordinary conditions, and not for the sake of ease or convenience. Yet, according to a 1985 study by his organization, 85 countries had provisions in their legislation for that form of detention, often using it as a long-term solution to silence opposition to the Government of the day. Since then, the practice had become still more generalized. In that regard, his organization wished to bring to the attention of the Sub-Commission the recent decision by the Israeli authorities to increase the permitted length of administrative detention from six months to one year. Since the beginning of the intifada in December 1987, at least 5,000 Palestinians had been detained without charge or trial. At present there were over 1,000 Palestinians in Israeli detention. In March 1988, the Israeli authorities had issued military orders increasing the number of officials with the power to detain administratively. At the same time, the authorities had suspended the prompt and automatic judicial review. Appeal could now be made only to a single military judge lacking

judicial independence. Finally, on 19 August 1989 the period of administrative detention had been extended from six months to a full year. The Israeli authorities asserted that administrative detention was used for prevention rather than as a punitive measure. There was little basis for the arrest of most of those detained, who were either innocent, or guilty only of stone throwing. All procedural safeguards, such as the prompt informing of the detainee as to the reason for detention, had been dropped, seriously eroding fundamental human rights guarantees.

63. Israel was far from being the only country to resort regularly to administrative detention to silence political opponents. The previous year his organization had reported to the Sub-Commission on the widespread use of administrative detention in Malaysia and Singapore, for periods of up to two years, renewable on termination of the two-year period. In October 1987, 106 people, most of them opposition leaders, had been so detained in Malaysia. In Ethiopia, the former Minister of Law and Order, a former Supreme Court Judge, a former professor of law and a lawyer had been in detention without trial for about 10 years. South Africa had used the provisions of the Internal Security Act and the Public Safety Act to detain over 10,000 people who had been in administrative detention since the declaration of the state of emergency.

64. Administrative detention ran counter to the guarantees contained in the International Covenant on Civil and Political Rights, particularly those in article 9. In that regard, he referred to the table annexed to Mr. Joinet's report, showing the provisions of the international instruments relevant to the practice of administrative detention. When Mr. Joinet had begun his task several years ago, the International Commission of Jurists had expressed the hope that he would develop standards regulating the use of administrative detention. The Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, recently adopted by the General Assembly, applied, as its name suggested, to administrative detention, and provided many important safeguards.

65. In the light of the widespread violations of those international norms, his organization strongly supported Mr. Joinet's recommendation that a yearly report on administrative detention throughout the world should be presented to the Commission. A special rapporteur would be needed, because there was no United Nations procedure for monitoring all the situations in which administrative detention was practised, and also to give particular focus to that widespread and growing phenomenon. The role of the Special Rapporteur might be to: complement the roles of the Special Rapporteurs on torture and executions and assist them in their work; determine whether there were any lacunae in the Body of Principles as it related to administrative detention and, if so, propose guidelines to fill those lacunae; make the Body of Principles widely known and respected by all concerned, especially law enforcement officials; carry out studies in order to submit proposals to the Commission on Human Rights on the conditions under which the right to a remedy, such as habeas corpus, could be declared non-derogable in conformity with the decisions of the Inter-American Court of Human Rights to which Mr. Joinet had referred; and obtain information on detention practices and conditions in different countries.

66. In addition to the safeguards contained in the Body of Principles, it was necessary to look at the circumstances in which administrative detention might be used. In that connection, the International Court of Justice recommended that: the practice should be resorted to only during an officially declared state of emergency which threatened the life of a nation and should be reported immediately to, and subject to ratification by, a democratically elected legislature; and that the detention be for a specified and limited period of time not exceeding six months.

67. Currently, the administrative detention employed in many countries fell far short of existing international standards. There were insufficient procedural safeguards and checks and controls on the use of powers which eroded the basic rights of the individual to freedom and liberty. The problem merited greater attention than it had received in the past.

68. Mr. RAMISHVILI said that Mr. Despuoy's report on states of emergency was of special interest to him in his capacity as a consultant to his own Government on the issue.

69. It sometimes happened that information reaching the Centre for Human Rights of the Special Rapporteur regarding states of emergency was not confirmed by the Government concerned. The secretariat was only mandated to approach the Government concerned on a yearly basis. There could therefore be a considerable delay in verifying the information. He therefore proposed that, in situations where a state of emergency had been reported, the Special Rapporteur should send a letter to the Government asking for confirmation or otherwise. If there was no reply from the Government, the Special Rapporteur would then be in a position to take the matter further. He suggested that the Special Rapporteur might wish to take the point into consideration in his further work on the issue.

70. Ms. KIRCHER (Amnesty International) said that the imposition of a state of emergency could contribute to serious violations of those fundamental rights which were non-derogable in any circumstances, such as the right to life and the prohibition against torture. The introduction of such measures created a climate of repression in which members of the security forces could act with impunity, exceeding even the special powers granted to them and protected from censure by a judicial system that was unable or unwilling to sanction those responsible. The longer the state of emergency remained in effect the greater was the risk that violations of human rights would become more systematic and widespread.

71. The state of emergency which had existed in certain areas of Peru since 1982 had led to extensive abuses of human rights, including torture, disappearances and extra-judicial executions in the emergency zones under military control. The security forces responsible for such abuses were not accountable to any civilian authorities; investigations were obstructed, witnesses intimidated or killed and the military courts which had jurisdiction in cases involving security personnel, rarely pursued the prosecution and trial of alleged offenders.

72. The nation-wide state of emergency which had been in force in Sri Lanka since 1983 had been lifted for a brief period at the beginning of 1989 and subsequently reimposed. Sri Lankan security forces and the Indian peace-keeping force had been responsible for a range of serious human rights

violations, including arbitrary detention, torture, disappearances and extra-judicial executions. In recent weeks such abuses had escalated alarmingly. Protected by a sweeping indemnity for past abuses, the Sri Lankan forces had wide emergency powers, bolstered by other extraordinary measures such as the regulation permitting the disposal of bodies without post-mortem or inquest on the sole authority of the Assistant Superintendant of Police.

73. In Colombia, where a state of siege had been in force for most of the past 30 years, the military had effectively set themselves above the law. Despite increasing evidence of the direct involvement of sectors of the armed forces in the gross and systematic violations characteristic of recent years, including the activities of paramilitary "death squads", military courts had failed to hold police and military personnel criminally liable. The military had repeatedly flouted the civilian judicial system and courageous judicial officials attempting to investigate abuses had been intimidated, threatened and even killed. During 1988 and the first five months of 1989, some 2,500 people had been apparent victims of extra-judicial executions; 250 more had disappeared and killings of non-combatant civilians had occurred on an unprecedented scale.

74. Under the state of emergency in Syria, which had been in force for over 26 years, the security forces could arrest and detain anyone suspected of endangering security and public order. In practice, most political prisoners had been detained for long periods without charge or trial. Detainees were also commonly tortured on arrival at the prison to which they had been transferred and some had allegedly died as a result of injuries sustained through torture or ill-treatment without medical care.

75. In Egypt, a state of emergency had been in force almost continuously since 1967 and thousands of people had been detained under emergency legislation. The number of detainees had risen sharply since May 1988. Detainees could be held for up to 45 days before being brought before a court and there had been numerous reports of torture and ill-treatment, generally immediately following arrest when detainees were often held incommunicado. In many cases the Government had used the emergency legislation to override court decisions to release detainees or had immediately re-arrested them under new detention orders.

76. Since 1986, human rights monitoring groups had estimated that some 32,500 people had been detained in South Africa under the broad emergency powers, including 9,800 believed to be children. Numerous detainees, including children, had alleged that they had been tortured and ill-treated. Following a wave of hunger strikes by detainees in early 1989, hundreds were released but detention had been increasingly replaced by the use of restriction orders which typically imposed severe restraints on a person's freedom of movement.

77. Martial law directives in Jordan, in force since 1967, provided for indefinite detention without charge. Detainees were typically arrested by the General Intelligence Department and held incommunicado for several weeks or months. There had been consistent allegations of torture and ill-treatment of detainees, including severe beatings and prolonged solitary confinement.

78. Her organization urged the Sub-Commission and the Special Rapporteur to examine more specifically the practical impact of emergency measures and, in particular, the serious and systematic human rights violations that were occurring during states of emergency and to consider urgent measures to prevent such abuses.

79. Amnesty International welcomed the report of the Special Rapporteur on administrative detention which was a practice that could lead to serious human rights violations. It called on all Governments that were holding administrative detainees to review urgently each case as well as the need to maintain the practice of administrative detention without charge or trial; it should not be used as a substitute for the safeguards of the criminal justice system.

80. In conclusion, Amnesty International believed that there was a pressing need for the Sub-Commission to monitor systematically the practice of administrative detention and to do all it could to encourage any Government which persisted in using administrative detention to implement effective safeguards to prevent the occurrence of arbitrary detention and torture.

81. Mr. LITTMAN (World Union for Progressive Judaism) said that the international community had known for a long time past which were the groups and States behind international terrorism and such barbaric practices as hostage-taking and the highjacking and blowing-up of planes. Yet there had been a refusal to denounce not only the despicable acts themselves but also the political-theological ideologies underpinning them, as well as those States which sponsored and gave logistic support to those surrogate terrorist groups.

82. Basing himself on article 33 of the 1949 Fourth Geneva Convention, the Legal Adviser to the Directorate of the International Committee of the Red Cross had stressed that no terrorist act could ever be justified; moreover, the taking of hostages was specifically prohibited under article 34.

83. On 23 February 1988, he had pointed out to the Commission on Human Rights that the abductors of the United Nations Commander, Colonel William Higgins, had been the same gang of killers who had abducted 11 Lebanese Jews over the years and thereafter had periodically announced that they had "executed the sentence of Allah" on 10 of them.

84. The question arose as to how many of those hostaged martyrs to mediaeval barbarism remained in detention or had long since been murdered, under torture, with their mercenary jailers using their corpses to prepare macabre videos for purposes of eventual blackmail. That was almost certainly what had happened in the case of Colonel Higgins.

85. In a widely reported interview in January 1987, the second-in-command of the PLO, Abu Iyad, who was a reliable source in such matters, had confirmed that all the various Hezbollah-Jihad terrorist groups, working mainly out of Jordan, were all one and the same and worked for Teheran. That fact had been confirmed 18 months later by the experienced Washington Post journalist Jim Hoagland in the International Herald Tribune on 21 June 1988. In that connection it was worth recalling that, six months after the Iranian revolution in August 1979, during his meeting with the Syrian Foreign Minister, the Ayatollah Khomeini had suggested the formation of a

world-wide organization under the name of "The Party of the Oppressed" which he declared would be the same as the Hezbollah. In February 1988, Sheikh Abdel Munim Mhana, who was close to the Hezbollah, had strongly defended the abduction of foreigners as also had his spiritual colleague, Sheikh Abdel Karim Obeid, who had been captured by the Israelis on 28 July 1989.

86. In 1988, Sheikh Muhammad Hussein Fadlallah, spiritual guide of the Hezbollah in Lebanon, had expressed regret that the hostage problem was hurting the organization's credibility in terms of both humanitarian and Islamic aspects. Sheikh Fadlallah was right to worry about such credibility. The Islamic heritage surely did not endorse the taking hostage of a spiritual leader's emissary, such as Terry Waite, nor United Nations officers of peace-keeping forces, nor non-combatant civilians, journalists, mothers and babies.

87. At the Sub-Commission's previous session he had appealed on behalf of nine Jews unjustly arrested between September and December 1987 and detained in Syria without charge or trial. Subsequently another Syrian Jew had been arrested in July 1988. Four persons had since been released, including two minors. The remaining detainees were Ibrahim and Victor Laham, Zaki Mamroud, Eli and Salim Swed. All had been grossly mistreated and some allegedly tortured. It was feared that the Swed brothers, both pharmacists, might have been killed as there had been no news about them for some considerable time.

88. His organization welcomed the ongoing initiatives by the Soviet authorities to co-operate in determining the fate of Raoul Wallenberg, the courageous Swedish diplomat who had been a hero of the Second World War.

89. In his view, it would be appropriate if President Gorbachev, who had been proposed for the Nobel Peace Prize, should decide to terminate the anomalous situation of the remaining political detainees held either in prison camps such as Perm 35 or in psychiatric wards. Among the hundreds thus detained were people like Mikhael Petrovich Kazachkov, who had been in Perm 35 since 1975, and the human rights activist Sergei Kuznetzov, committed to a psychiatric institution as recently as December 1988.

90. Mr. SADI said that the observer for Amnesty International had referred to the state of emergency and martial law in Jordan. It was perfectly true that, since 1967, martial law had existed in Jordan as a consequence of the war with Israel. There had been a continuing debate in Jordan regarding the feasibility of lifting the state of martial law and the trend in opinion in the run-up to the elections of 8 November 1989 was in favour of lifting that state.

91. On the issue of torture, he wished to assure the Sub-Commission that it was not State policy to practice torture and to abuse prisoners. As elsewhere in the developing world, subordinates on occasion indulged in abusive practices but it was not State policy to do so.

92. Ms. ROUSSO-LENOIR (Observer for the International Federation of Human Rights) said that her organization was particularly concerned by violations of the rights of detainees which were often committed with the object of extorting confessions.

93. In November 1988, a mission representing the International Federation of Human Rights and the Association of Humanitarian Lawyers had visited Japan to investigate the practice of administrative detention known as daiyo kangoku or substitute imprisonment. According to Japanese criminal procedure, a suspect must, within 72 hours of his detention, be brought before a judge who, in principle, would decide whether the suspect should be charged but had the option of prescribing that he should be detained for 10 days at a time up to a total of 20 to 23 days, at the end of which he must either be charged or freed. The places of detention were cells in police stations, under the supervision of the police alone. Such a situation facilitated human rights violations designed to extract false confessions leading to heavy sentences.

94. A draft Criminal Institution Act, accompanied by a secret Police Custody Facilities Act, had been submitted to the Japanese Diet in 1982 when both bills had been rejected. The two had however been resubmitted to the Diet and were currently being reconsidered. The latter act, if adopted, would have the effect of replacing the term "cells in police stations" by "detention centres" and of making such centres the principal place for holding suspects. It would therefore have the effect of institutionalizing the practice of daiyo kangoku. Thus, Japan would be amending legislation already contrary to international law by new measures which would be even less compatible with such law.

95. Her organization therefore wished to stress the need for cells of police stations to be transferred from police control to the prison authority and that access of lawyers to their clients should not be, as at present, at the whim of the police.

96. In El Salvador, Pedro Antonio Andrade Martinez, a member of the Front Farabundo Martí de Libération National had been arrested on 28 May 1989 and transferred to the general headquarters of the National Police on 6 June, or five days after the legal detention period of 72 hours. He had been brought before a military judge, in violation of article 10 of the International Covenant on Civil and Political Rights and of article 6 of Additional Protocol II to the Geneva Conventions of 12 August 1949, and charged with the possession of illegal firearms and of being one of the perpetrators of the 1985 attack on the American marine guard of the United States Embassy. He had then been transferred to police headquarters where he continued to be detained illegally. Between 7 and 11 June, 1989, he had been subjected to lengthy interrogations by police officers who had attempted to extort a confession by threatening reprisals against his wife and two daughters who had felt obliged to leave the country. Two members of the United States Embassies in Mexico and El Salvador had also interrogated him on several occasions with a view to obtaining his collaboration. The violation of Mr. Andrade Martinez's human rights could only be ended by his transfer to a prison and the submission of his case to a civil court.

97. Her organization was concerned at the situation of 226 prisoners of conscience in Morocco. For the past 15 years some of those prisoners had been serving sentences varying in length from 3 years to life. Those prisoners had been deprived of their most elementary rights including, in particular, contact with the outside world through family visits and access to the press and to books; health conditions and medical services were such that seven had recently gone on hunger strike. One had died on 19 August and three were in a state of coma.

98. Her organization therefore urged the Sub-Commission to request the Government of Morocco to implement article 10 (1) of the International Covenant on Civil and Political Rights, which had been ratified by that country, and free those prisoners under article 19 of the Covenant.

99. Her organization also wished to draw the attention of the Sub-Commission to the slowness or even obstruction shown by the Argentine courts in searching for and restoring children to their families, notwithstanding the very complete information contained in the files submitted by the Abuelas de la Plaza de Mayo. Apart from Mr. Ramos-Padilla and Mr. Antonio Borras, the Argentine judges had not been co-operative; indeed, many judges during the dictatorship, had frequently themselves served as intermediaries in the traffic in children. Some of those judges had subsequently remained silent although they were aware of the identity of some of those children and the families who had received them. A new Government had been elected in Argentina and it would be appropriate for the President to intervene. In the light of Sub-Commission resolution 15 (XXXIV), the Sub-Commission should request the new Government to reactivate the procedures for the search for and the restitution of children.

100. Her organization also requested the Sub-Commission to urge the Government of Argentina to reach a speedy decision on the request by the Federal Republic of Germany for the extradition of the former Nazi Schwanberger. Syria should also be reminded that France had requested the extradition of the Nazi criminal Aloys Brunner whose presence in Syria had been confirmed by a number of press interviews which he had given on Syrian territory.

101. Ms. TANG FONG HAR (Pax Romana) said that administrative detention without trial, a frequent occurrence, included imprisonment for the non-violent exercise of basic human rights, and was often accompanied by torture and other forms of cruel, degrading and inhuman treatment. Some detainees were never allowed to challenge their detention before a court; for others the right of access to a court was restricted or denied during the crucial first days or weeks under arrest; and even when some form of judicial and review was possible, the courts' role was limited to reviewing technical procedural issues rather than the substantive justification of the detention. In many countries, administrative detention was a routine tool to stifle political dissent.

102. In the case of Singapore, for example, in mid-1987, 22 people had been arrested and detained under the Internal Security Act for allegedly participating in a Marxist conspiracy to overthrow the Government. As one of the 22 - considered by Amnesty International as prisoners of conscience - she herself had been detained from 20 June until 12 September. By the end of 1987, all but one had been released and in April 1988 nine, including herself, had publicly repudiated the Government's allegations and had described the physical and psychological ill-treatment they had endured. The following day eight had been re-arrested and three more had been arrested the following month. Government plans to set up a commission of inquiry to determine whether the so-called Marxist conspiracy was a Government fabrication and to investigate the allegations of torture, had suddenly been cancelled, on the grounds that the Commission had become redundant as a result of sworn affidavits by the detainees during their renewed custody. In Singapore administrative detention without recourse to judicial review meant being held in solitary confinement, in almost total sensory deprivation except for the

voices of the interrogators shouting abuse, only interrupted by being repeatedly hit in the face or other parts of the body. The detainee was subjected to threats, assault on his or her spouse, loved ones and friends; threats against his or her dignity and personality; and the threat of indefinite detention - one person was still under detention after 22 years.

103. In the initial interrogation, the detainees reached a point where they were ready to sign any so-called confession to avoid further ill-treatment and physical torture.

104. The arbitrary use and excesses of executive power were all the more severe when the legislative authority was induced to make amendments to laws to cover any gaps. One of the two remaining detainees in Singapore, had instituted court proceedings, invoking habeas corpus, to challenge the legality of her detention. On 8 December 1988 the Court of Appeal had ordered her release, stating that the detention order was defective; but within minutes of her release and while she was still in the custody of the Internal Security Police, she had been served with a fresh detention order and imprisoned for the third time. Her renewed appeal was to be heard during the current year. In the meantime, the Government had amended the Constitution and the Internal Security Act, thus abolishing appeals to the Privy Council with retrospective effect and excluding judicial review of Government actions under the Internal Security Act. Her case was further hampered by the Government's banning of her counsel early in the year.

105. The other detainee, the former executive secretary of the Catholic Justice and Peace Commission, on whose behalf Pax Romana had intervened in the past, had remained in solitary confinement since his arrest in 1987, accused of being the local mastermind in the so-called conspiracy. His latest representations to the Advisory Board - whose members were appointed by the Government - had been rejected in April and he, too, had now taken proceedings to challenge the grounds of his arrest and continuing detention in the courts.

106. She urged the Sub-Commission to urge the Government of Singapore to release the two remaining detainees immediately and unconditionally unless it was prepared to charge and try them for a recognizable criminal offence in a court of law, to urge the Government to lift immediately all restrictions on the freedom of movement and association of former detainees and to stop harassing them, their families and friends, and to institute an international inquiry to assess the human rights situation in Singapore in relation to the administration of justice and the rights of detainees and former detainees.

107. Mr. TARDU (International Centre of Sociological, Penal and Penitentiary Research and Studies) said that he was pleased to see that the Sub-Commission and United Nations bodies had resumed their standard-setting activities in respect of the administration of justice and human rights. He supported those efforts, because there were always new problems and new attacks on human rights. However, the expansion of those activities gave rise to problems of method, and first and foremost of co-ordination, in particular between the two groups of human rights organizations, in Geneva and Vienna, carrying out parallel activities. There had been positive results, such as the Fifth United Nations Congress on Prevention of Crime and the Treatment of Offenders in 1975 which had launched the international campaign against torture by adopting a Declaration, followed by the efforts of the Commission on Human Rights to prepare a Convention. A degree of pluralism was an advantage in

that it took account of problems confined to different regions of the world or different spheres of activity, while respecting the same basic principles. However, it was important to ensure that co-ordination was not too rigid and that the temptation towards inter-agency laissez-faire in standard-setting was avoided. The latter might entail useless duplication and overlapping as well as the risk of contradiction which might cause doubt and legal uncertainty. He suggested that the preliminary co-ordination machinery should be made more flexible in the form of intensified exchanges of information among international agencies and regular and frequent meetings between heads of secretariat, heads of inter-agency bodies and special rapporteurs, preferably before rather than after work had begun.

108. With regard to the technical assistance and advisory service for training officials in the system of justice - police, magistrates and prison staff - he congratulated the Centre for Human Rights on the importance it had assigned to the administration of justice in its programmes and welcomed its action-oriented approach. His own organization had taken the same pragmatic approach in its programmes of international training courses in human rights for police and prison staff. It looked forward to closer co-operation with the Centre.

109. With regard to the question of international civil servants subjected to detention, he reaffirmed his organization's deep concern at the violation of the human rights of international civil servants, especially those in prison. Despite repeated resolutions by the Commission and the Sub-Commission, those problems remained. Some people had been freed, thanks to the efforts of the Secretary-General, and especially the Association for the Security and Independence of International Civil Servants, but there had been new imprisonments and the total number of persons held was now between 150 and 160. The problem was one of the privileges and immunities of international civil servants jeopardized the Organization's peacekeeping, technical assistance and other functions. But above all it was a problem of human rights, of summary detention without respect for the fundamental rules of fair trial. Officials were often held in secret, without contact with their families and without medical care, despite the formal resolutions of the Commission and the Sub-Commission. Their Governments were reluctant to intervene because they felt that it was a problem purely for the executive heads of agencies. The victims themselves hesitated to contact non-governmental organizations, which could help them, for fear of breaking their oath of loyalty to their organization. They were a particularly vulnerable group, victims of arbitrary detention, often with less protection than other citizens.

110. The executive heads of agencies had taken many initiatives in the past and must be given unqualified support, but their efforts would always be limited without the weight of world public opinion and without the voice of the United Nations human rights organs, and, first and foremost, the Sub-Commission.

111. Mr. LISKOFSKY (International League for Human Rights) said that all too often a state of emergency was accompanied by excessive and systematic violations of human rights.

112. Recent cases before the Sub-Commission included Chile, wracked by 16 years of continuing emergency conditions, where every right had been infringed, and where such abuses were encouraged by emergency conditions, and where, despite the formal lifting of the emergency, many of the abuses had continued. There was also the case of Paraguay, where decades of emergency conditions had encouraged a system in which detainees were rounded up, tortured and ill-treated and where the courts had not provided even minimal guarantees to those brought before them.

113. The best example of the relationship between those abuses could be seen in the events that had taken place in June and after in the world's largest nation, which emphasized the need for the Sub-Commission and the United Nations as a whole to develop more effective implementation mechanisms to deal with massive human rights violations without delay, and for the Sub-Commission to speed up its preparation and adoption of specialized instruments on the problems embodied by agenda item 9. It would be useful to consider how the issues under agenda item 9 were interrelated in the country in question. In the first place, the validity of the declaration of martial law itself was questionable because there had been no evidence before the declaration that student activities posed any significant threat to life and property. No State Council Meeting was known to have been held - as required by the Law of the Organization of the Country's State Council - to consider the matter before the martial law order was issued. The military action had plainly violated international law because it was taken to achieve an illegitimate objective, namely, to crush the peacefully conducted pro-democracy movement and prevent a vast number of people from all walks of life from exercising their right to freedom of assembly and association and to freedom of opinion and expression.

114. When the Government had decided to launch its military assault, the continuing demonstrations posed no significant threat to national security or public order. The taking of life by State organs was required by international law to be an exceptional measure, strictly controlled and limited by law. The use of force by Government organs had to be in pursuit of a legitimate purpose and proportionate to that purpose, but in the country in question it had been neither. The steps taken to suppress the democracy movement had been totally disproportionate to any real threat of public disorder. The army had used maximum force rather than less lethal methods. Persons obstructing the troops had been killed and many totally innocent people had been gunned down for no apparent reason, including persons seeking to bring medical assistance to the wounded.

115. The Government had misrepresented the events that had occurred. It had hindered efforts to ascertain how many had died and had released implausible accounts of the extent of loss of life and numbers injured. By sentencing many of its citizens to death and executing them within days, the Government had failed to observe the procedural safeguards required by international law. It had failed to reply to communications from the United Nations Special Rapporteur.

116. The Sub-Commission had made valuable contributions to the adoption of principles on the prevention and investigation of extra-legal, arbitrary and summary executions, now approved by the Committee on Crime Prevention and Control and by the Economic and Social Council. United Nations human rights bodies had proposed standards for the proper investigation of death under

suspicious circumstances, including provision for an adequate autopsy. In the country of which he was speaking, there were no investigations, no autopsies, no accounting to relatives - only a massive cover-up to hide the truth and to threaten relatives who might try to find their loved ones. Detentions continued apace, estimates ranging from between 2 and 3,000 to as many as 120,000. With few exceptions, the Government had not acknowledged detentions, nor made public the names, charges or whereabouts of the detained.

117. All members of the United Nations had an obligation to extend to their citizens the human rights guarantees enumerated in the Universal Declaration of Human Rights and other instruments. The International League for Human Rights recommended that the Government in question should take the following action to meet that obligation: it should immediately release the detained and arrested persons who had peacefully exercised their fundamental rights of political expression or association; it should cease further violence, arrests and repressive measures against persons said to be connected with those events; it should ensure that the rights of those detained, accused or tried on capital charges in connection with the pro-democracy movement were fully protected in accordance with international standards of due process; it should cease utilizing expedited or summary trial proceedings in all cases, especially capital cases; it should ensure that detainees were granted prompt access to relatives and to legal assistance; it should make public the names, reasons for arrest and whereabouts of those detained in connection with the pro-democracy movement; and it should undertake forthwith a series of remedial and preventive measures to protect the internationally guaranteed rights of its citizens, particularly those with which the present agenda item was concerned.

118. It was also essential: that there should be a full and public accounting of the fate of those who had died during the June 1989 events and their aftermath, with family members being provided with access to an adequate autopsy; that steps should be taken to ensure that individuals making inquiries into the whereabouts of family members were not subjected to reprisals; and that a full and prompt response be given to the five urgent inquiries by the United Nations Special Rapporteurs on summary and arbitrary executions and on torture - the Special Rapporteurs to be invited to visit the country immediately to investigate conditions following the tragic events, to visit persons detained or imprisoned as a result of the campaign of suppression of the pro-democracy movement, and to observe their trials.

119. In view of the seriousness of the events he had detailed, the International League for Human Rights urged the Sub-Commission to adopt a resolution unequivocally condemning the egregious violations of human rights and encouraging the Government of the People's Republic of China to adopt the measures recommended.

120. Mr. BHANDARE said that detention in any form and a state of emergency were both aberrations of human rights, but they would continue as long as there were conflicts and tensions. What was common to both was the need for an effective monitoring agency. In that connection he referred to the report by the Commission on Human Rights Special Rapporteur concerning the human rights of all persons subjected to any form of detention or imprisonment, with special reference to torture (E/CN.4/1989/15). He also referred to the report by Mr. Despouy on the question of human rights and states of emergency (E/CN.4/Sub.2/1988/18/Rev.1) and fully supported the approach in

paragraph 73. It was important for cases of undeclared states of emergency to be studied, since when a Government tried to conceal a state of emergency it was difficult to make an objective assessment. He noted a growing consensus that proper training was needed, not only for enforcement authorities, armed forces and detention authorities, but also for the authorities who declared a state of emergency or refused to admit it. He hoped that Mr. Despouy and Mr. Joinet would continue their studies.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (continued) (E/CN.4/Sub.2/1989/4; E/CN.4/Sub.2/1989/42/Add.1; E/CN.4/1986/42)

121. Mrs. WARZAZI, supported by Ms. KSENTINI and Mr. ASSOUMA, appealed to the Chairman to allow the observer for Angola, who had been absent the previous day, to speak in reply to Mrs. Palley, although the debate on agenda item 4 had been concluded.

122. Mr. CANGA (Observer for Angola) said that it was difficult for him to make a thorough study of the document referred to by Mrs. Palley (a confidential dossier regarding allegations of the use of chemical weapons), because of its late distribution. The two men named in paragraph 40 who had denounced the use of chemical weapons in Angola, were both personal friends of Mr. Savimbi and their statements were contradictory and without foundation.

123. His Government was trying to solve internal problems, while attempts were being made to sow confusion in the subregion and to discredit Angola in the eyes of the international community. In November 1988 Angola had denounced the use of chemical weapons on its territory by UNITA. For 14 years UNITA had been an instrument of aggression used against the people of Angola by South Africa. That group had been trained in and armed from Namibia when that territory had been illegally occupied by South Africa. Neither the Angolan armed forces nor the internationalist Cuban forces who had always fought at their side to safeguard Angola's territorial integrity and its sovereignty against repeated external aggression, had used chemical weapons. Angola had always respected its international commitments. The accusation was simply a political manoeuvre by its enemies, propaganda to bring into question his Government's efforts and to disrupt peace in southern Africa.

124. In order to dispel any misunderstanding on the subject, he wished to inform the Sub-Commission that the Angolan armed forces had captured from a UNITA group in the Uko-Seles area two 500-gramme bottles containing toxic products of the tear-gas variety causing severe irritation and sneezing, severe difficulty in breathing, having a poisonous effect on the skin and, in high concentration, causing nausea and vomiting. It was not climatic factors that had injured Angolan soldiers, but premeditated action by Angola's enemies. In view of the statement by Mrs. Palley, Angola could, if necessary, submit the substances in question to the United Nations for analysis, which would prove the serious human rights violations by the enemies of the nation. His Government would do its best to clarify the situation in the light of the information supplied by Mrs. Palley.

The meeting rose at 1 p.m.