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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fortieth session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 23 August 1988, at 3 p.m.

Chairman: Ms. PALLEY
later: Mr. BHANDARE

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The meeting was called to order at 3.20 p.m.

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

(a) QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION AND IMPRISONMENT (E/CN.4/1988/15, 17 and Add.1, 22, and Add.1 and 2; E/CN.4/Sub.2/1987/15, 16, 19/Rev.1 and Add.1 and 2, 20; E/CN.4/Sub.2/1988/13-16; E/CN.4/1988/NGO/51; E/CN.4/Sub.2/1988/NGO/10)

(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. Mr. CALI (International Indian Treaty Council) said that ever since his organization had started taking part in the work of various United Nations bodies, it had maintained a keen interest in the fundamental rights and freedoms of indigenous people in its member countries. It wished to draw attention to a number of countries where the administration of justice was defective and people were arrested in violation of their rights and freedoms.

2. In El Salvador the operation of the judicial system was extremely unsatisfactory in regard to investigation and punishment of serious violations of human rights; to date, none of the members of the government armed forces who had committed grave violations had been punished. The number of arbitrary arrests and forced disappearances had increased and the organization, Americas Watch, had recently published a detailed report on arrests and disappearances of trade union leaders and workers exercising their right to strike and to organize. Many of those now detained for political or labour reasons had been held incommunicado for more than 72 hours, the period stipulated by law in El Salvador.

3. The Government had attempted to justify those arbitrary detentions on the ground that the workers were associated with the armed opposition but, as Americas Watch had claimed, punishment of workers for their political opinions was a violation of their rights as citizens and workers. The victims included members of the National Indigenous Association of Salvador, a body affiliated to his organization, who had been arrested recently by members of the paramilitary governmental group known as Civil Defence. He appealed to the Sub-Commission to urge the competent authorities in El Salvador to see that all the officials responsible for those human rights violations were punished and to abolish arbitrary arrest and forced disappearance.

4. The situation in Guatemala was a matter of concern to indigenous peoples and the international community. Most of the population of that country was indigenous and it had the largest number of disappearances on the American continent. Not a month went by without disappearances and none of them had been investigated. There were numerous cases of imprisonment and torture by the security forces, which also involved enforced disappearances. Those responsible, operating in daylight in unregistered vehicles and in the presence of witnesses, enjoyed de facto immunity from punishment, as well as de jure immunity through the amnesty decrees pronounced annually since 1986.

5. At its thirty-ninth session the Sub-Commission had postponed consideration of the situation in Guatemala for a year, in order to evaluate the results of the peace plan and pending a visit to Guatemala by two members of the Working Group on Forced or Involuntary Disappearances in October 1987. The Working Group had now reported on that visit (E/CN.4/1988/19/Add.1). Paragraph 24 referred to the case of a student who had been arrested in September 1985. His mother had started proceedings and the judge had established that the registration numbers of the vehicles involved belonged respectively to the Ministry of Defence and one of the military barracks. The theft of the vehicles had not been reported, the Minister for Defence had denied any knowledge of the affair, and investigations had reached a dead end. Paragraph 36 of the report concerned the case of an employee kidnapped in 1987, whose wife had reported his disappearance to the police and had been summoned by telegram to appear at police headquarters. She and her mother had been kidnapped and their tortured bodies found three days later.

6. The judicial system was becoming increasingly ineffectual and even judges were being kidnapped. A judge who had sentenced 16 security guards to imprisonment for kidnap, torture and assassination, and the investigating lawyer, had both been kidnapped. The savagely beaten body of the lawyer had subsequently been found. The judge had turned up alive and shortly afterwards the security guards had been freed. The Working Group in paragraph 78 of its report attributed the very large number of disappearances to continued repression by the military and their accomplices, particularly in the countryside, in districts under the complete control of the armed forces.

7. The mutual support group, GAM, which brought together more than a thousand families of prisoners and people who had disappeared since 1984, continued to have recourse to habeas corpus, but the Government's answer to their appeals for investigation of the disappearances was the same as that of the military: no investigation, only threats. In the rural areas of Guatemala, where more than one third of disappearances in Latin America had occurred, there were more than a hundred clandestine cemeteries. His organization appealed to the Sub-Commission for firm measures for protecting the life of those who defended human rights in Guatemala.

8. Mr. GAJARDO (World Federation of Democratic Youth), speaking on the human rights situation, especially in Latin America, said that, in December 1987, the Government of Colombia had deposited with the Secretary-General the instruments of ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, he wished to draw attention to two recent examples of physical and psychological torture which were unworthy of a signatory State of the Convention: a student who had been taken to a military barracks and kept on his feet for three days without food or sleep, after being hung by the arms and pulled by the feet, beaten in the stomach and stifled by smoke; and a case in which members of the army had razed a man's house to the ground and taken him, two of his brothers and his father to the military barracks. He had been moved to another place, forced to listen to recordings of his brothers screaming, had been beaten and threatened with death.

9. Colombia was currently involved in the so-called dirty war of disappearances, threats and deaths by paramilitary groups. Political leaders, trade unionists, academics and human rights activists were daily victims of

the state of terror. Despite efforts by various parties to achieve a just peace in Colombia, it was essential for the international community to devote more attention to the current situation there.

10. The signature of the Esquipulas peace accord had given rise to some hope of achieving a lasting solution in the Central American region. Esquipulas II was still a factor for peace, but it was not enough where human rights in Guatemala were concerned. At its thirty-ninth session the Sub-Commission had decided not to adopt a resolution on the situation in that country, but to give the Government an opportunity to improve the human rights situation. There had been little improvement. New cases of disappearance were occurring, and the very methods it had been hoped never to see again, such as mass elimination of persons and the death squadrons, were again being used. On 18 April, four Guatemalan citizens, members of the Opposition had returned to the country, exercising their rights in the light, inter alia, of a statement to the Commission on Human Rights by the representative of the Guatemalan Government, and two of them, prominent human rights defenders, had been arrested. The arrest had been unjust, because defence of the human rights of the majority of Guatemalans was not a crime, and illegal, because it violated the Constitution and laws of the country and the Universal Declaration of Human Rights. It had been carried out despite the opinion expressed by the President of the Supreme Court of Justice that it was not logical to arrest those who returned, nor was it legal to apply the amnesty procedure. It was clear that amnesty decrees were used to protect members of the security forces who had committed crimes against Guatemalan people and that an attempt was made to establish criminal records for victims of repression and arbitrary acts by the army.

11. The situation in Guatemala had worsened and it would be desirable for the Commission to consider it at the forty-fifth session under agenda item 12 and for the Sub-Commission to devote serious attention to the cases of detention.

12. His organization was disturbed at the administration of justice in El Salvador, which seemed incapable of punishing members of the armed forces guilty of serious and massive violations of human rights. A new law had been promulgated giving the military authorities exceptional powers over civilians and, at the end of July, on the initiative of the Government, the Assembly had adopted an emergency law, under which workers in State and private enterprises who manifested their discontent at the Government's policies would be subject to military jurisdiction, thus legalizing repression of the workers and restoring a state of emergency. He urged the Sub-Commission to pursue its concern about the administration of justice, arbitrary imprisonment, torture and disappearances.

13. During 1987, repression of the opposition to the military régime in Chile had increased and hardened and the possibility of torture by the police forces had doubled. The dictatorship was modernizing and refining its machinery for repression. There had been 4,797 arbitrary arrests and 3,567 arrests during protest demonstrations. Political arrests continued, in violation of the most elementary human rights. Young people and children were victims of the régime of terror. In that connection he mentioned the case of the former Minister of External Relations and Vice-President of the Republic, who had returned to Chile, exercising her legitimate right to live in the country, but was now in prison in Santiago. Chile continued to suffer from massive and systematic

violations of human rights and the Sub-Commission must give no respite to a régime which sought to keep itself in power by arms, terror and fraudulent elections.

14. Mr. ENRIQUEZ CONTRERAS (International Association of Democratic Lawyers) said that he would concentrate on the situation in Guatemala, although the present item affected all the people of Latin America. Since the time of the Conquest, alien laws and regulations had been imposed on the Guatemalan people - a legal system that protected the conquerors and imposed punishment and arbitrary detention, oppression, exploitation and discrimination on the conquered, despite the existence of a system ensuring social harmony, based on an ancient culture.

15. For nearly five centuries the system for the administration of justice had served those who held economic and political power. The fundamental purpose of the laws, that were unjust for the majority of the Guatemalan people, was the destruction of the centuries-old organizational structures of the indigenous population. The laws controlling the population were a flagrant violation of the rights of free movement, residence, organization, demonstration and participation and of the life, culture and the very existence of the population, formally guaranteed under the Constitution and recognized in the Universal Declaration of Human Rights and the International Covenants, since they were in fact forms of collective detention. They were based on a legal fiction of egalitarian justice and the exercise of human rights and duties by all citizens, but, applied to a particularly unequal social and economic system, they placed the majority of the people in a disadvantaged situation, in which access to justice was difficult. Discrimination was linked with the lack of clarity of the laws. A recent survey had shown that 83.1 per cent of lawyers, 71.8 per cent of legal officials and 65.2 per cent of defendants found the laws unclear; and if they were not clear for those directly involved in the administration of justice, they would be even less so for the ordinary citizen. The existing laws were not appropriate to the current situation in the country, still less to the customs of the indigenous population, who constituted the majority and who often did not know why they had been arrested, accused or sentenced. Ignorance of a law promulgated in the official gazette was no excuse for failure to observe it, yet the average illiteracy rate was 64.7 per cent in the country as a whole and 90 per cent in the indigenous areas.

16. The new Constitution provided for a series of laws which, together, could guarantee the human rights of prisoners and the whole population, but they had not been drawn up by Congress, but by people who were under pressure from the groups which held economic and political power. The administration of justice posed serious problems regarding arbitary and illegal detention, such as discrimination against the indigenous majority of the population. A person could not be detained for being indigenous or poor, yet that occurred daily. Urgent measures were needed to remedy such injustice. It was not a question of minor imperfections in the system: it was a complex and serious problem which needed constant monitoring by the international community.

17. As examples of the situation, he mentioned the arrest of 103 people by the national police on suspicion of offences, without legal warrants; the refusal of a judge to proceed with a case brought by trade unionists against

their employer; and an attack by 12 armed men on the leaders of a students' association, one member being forced to leave the country with his family under the diplomatic protection of the Costa Rican Embassy.

18. He appealed to the Sub-Commission to recommend that the Commission should consider the case under agenda item 12, at its forty-fifth session and to review the decision taken on Guatemala at its thirty-ninth session.

19. Mr. BALIAN (Human Rights Advocates) said that his organization urged the Sub-Commission at its present session to transmit to the Commission its recommendations on a second optional protocol to the International Covenant on Civil and Political Rights, on abolition of the death penalty. In countries that imposed the death penalty, some form of judicial or executive review was necessary, since conditions of detention for those condemned to death might violate the provisions on cruel, inhuman or degrading treatment set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

20. The main abuse suffered by those condemned to death was the psychological cruelty of not knowing when they were to die, which the European Commission on Human Rights had pronounced a violation of the prohibition of inhuman or degrading treatment set forth in the European Convention on Human Rights, except where the uncertainty regarding the execution date was necessary in order to provide for adequate review of the sentence.

21. The Japanese system might be unnecessarily cruel, since neither the condemned nor their families were informed of the date of execution. The constant fear of imminent execution deprived condemned persons of periods of comparative peace when execution would be distant, as well as the dignity of being able to prepare for death. The Japanese system illustrated the fallibility of the death penalty and the need for observing procedures for thorough review. In one year, three sentences of death had been reversed, and the condemned persons found innocent; in one instance the detainee had suffered on "death row" for 32 years. He suggested that the Sub-Commission should request the Secretary-General to invite Governments, relevant United Nations agencies and intergovernmental and non-governmental organizations to transmit information concerning "death row" conditions.

22. With regard to Turkey, although the use of torture had been systematic and widespread even before the 1980 military coup. Its incidence had increased dramatically immediately after the coup and the pattern had shown no significant change to date. People detained for political acts had usually been tortured, in some cases to death. They were forced under torture to confess to any crime and to name other people: many people had been convicted on the basis of such so-called confessions. Torture had become a habit for punishment without trial; it was used to silence those who exposed the practice, which appeared to be State policy.

23. The stories emerging from Diyarbekir Military Prison were particularly disturbing: a man forced to eat a live rat; prisoners put in septic tanks and forced to eat excrement and drink urine. Often entire families, including children, were brought in and tortured together in order to intimidate them or extract information. Many victims had lost their lives through torture. There were also accounts of so-called military psychologists experimenting

with drugs on prison inmates and of doctors injecting victims with stimulants to prevent them from fainting under torture, or treating victims' wounds to conceal the marks of torture.

24. Despite the overwhelming evidence, most government officials denied that torture was practised in Turkey. Yet throughout the country people had been tortured in police stations, prisons of every type and buildings especially equipped for torture which were not located in remote places and were well known to the public and presumably to the authorities. The authorities had repeatedly stated that all complaints of torture were investigated and those responsible prosecuted. Relatively few had been convicted in relation to the number of charges brought, which in any case bore little relation to the actual number of torture victims in Turkey.

25. In all charges involving torture it was the individual torturer who was tried, never the policy. If the régime really wanted the evil eliminated, it should point its finger at the high-ranking government officials and their policy that allowed torture to continue. Even though article 17 of the 1982 Turkish Constitution prohibited torture, much more needed to be done to eliminate the practice. Most important, torture could not be eradicated unless and until the long periods of permissible detention for political offences were abolished.

26. His organization was convinced that, without greater international scrutiny, there was unlikely to be any appreciable improvement. The international community, and in particular the Sub-Commission, could and should use their considerable influence to encourage Turkey to take more than symbolic steps to curb the unrelenting practice of torture.

27. Human Rights Advocates had prepared a comprehensive and up-to-date report on the continuing violations of human rights in Turkey, copies of which were available for participants.

28. Mr. YOKOTA, in welcoming Mr. Bossuyt's well-documented report (E/CN.4/Sub.2/1987/20) on capital punishment, said that the possible abolition of the death penalty was one of the most difficult questions currently facing humanity and no quick and easy answer was available. The question was multifaceted and must be considered not only from the point of view of national policy but also in terms of emotional, psychological, moral and religious factors both at the personal and social levels.

29. There were a number of reasons why he personally would like to see the death penalty abolished without exception not only in his own country, Japan, but in the entire world. Human-imposed death was a form of punishment which represented a rejection of human dignity and was therefore contrary to the Charter of the United Nations and other international instruments; it ran counter to the inherent right to life and therefore to the spirit of article 6 of the International Covenant on Civil and Political Rights. The death penalty was the equivalent of torture or cruel, inhuman or degrading punishment within the meaning of article 7 of the same Covenant. Even in the most careful and impartial courts of justice, there was a possibility of error in imposing a death sentence and, once the victim had been executed, no remedy was available. There had been several reversals of death sentences in Japan, as the representative of Human Rights Advocates had pointed out. Moreover, there was no scientific evidence that the death penalty was a deterrent to

crime and it was not consistent with the modern principle of penal law that the penalty should represent an educational process. There was also the danger that the death penalty could be abused through its use against political opponents or racial and religious minorities.

30. His own personal moral and religious convictions did not condone any intentional taking of human life, even for the sake of public order and safety. In that connection he faced a very difficult question of principle. The comments of some Governments mentioned in Mr. Bossuyt's report indicated that the death penalty could not be abolished because of the religious foundations of the States concerned. The issue therefore arose as to whether an abolitionist policy deeply rooted in religious and moral beliefs could be imposed on States which justified an opposite policy on the ground of their own different religious and moral beliefs. For example, in paragraph 84 (c) of Mr. Bossuyt's report, it was stated that the majority of Japanese citizens supported retention of the death penalty as a just punishment for criminals who had committed particularly heinous crimes and regarded it as an effective deterrent to such crimes. That a majority of the Japanese people held that view had been repeatedly confirmed by surveys. The majority view in Japan, therefore, seemed to give preference to the importance of the prevention of crime and the maintenance of general public safety over the need to protect the human dignity and right to life of the persons committing crimes. Japan was a democratic country and national policy must reflect the views of the majority.

31. A decision on a matter as important as the abolition of the death penalty could be taken only with the full understanding of the issues involved and with the support of the majority of the people. The abolition of capital punishment was, therefore, an issue which should be approached carefully and gradually, as had been argued by Mr. Joinet and others.

32. His own preference would, therefore, be for a less formal approach than the adoption of a second optional protocol to the International Covenant on Civil and Political Rights. His own proposal would be that the Sub-Commission should express the desirability of abolishing the death penalty and encourage Governments to take appropriate measures to arouse public interest and discussion regarding the issue in order to achieve the ultimate goal of abolition.

33. Without implying any criticism of the Special Rapporteur's report, he would like to make some suggestions for further consideration. The report did not clearly address the question of the method of imposing the death penalty. While in current circumstances the death penalty might be permitted to exist in some countries, methods of execution should be restricted to less painful or degrading means. Public execution should never be permitted. The method of execution should therefore be given further attention in the future on the basis of adequate scientific and medical advice and information.

34. The Special Rapporteur considered that the death penalty should be restricted exclusively to the most serious crimes. Further clarification of what crimes fell into the most serious category was needed.

35. The exception to the abolition of the death penalty for crimes committed in time of war caused him considerable difficulty. Under the Charter of the United Nations, no Member State should engage in an act of war; indeed in the

United Nations era the classical notions of "state of war" or "international law in time of war" had become outmoded and had been replaced by "use of force", "armed conflict", and "humanitarian law". The exception would in any case be useless for Japan, because article 9 of the Japanese Constitution prohibited Japan from engaging in war and thus the Government had no authority to declare or notify the beginning or ending of a state of war. He would therefore prefer the term "state of armed conflict" to "state of war", as used in several Red Cross conventions.

36. In conclusion, he invited the Sub-Committee's attention to the possible evasion of the abolition of the death penalty by law enforcement officers who might kill suspects before they were brought to trial, on the ground that the suspects might avoid the death penalty if brought to justice.

37. Mr. ILKAHANAF said that he shared the views expressed by other members that the number of documents on the item under discussion was such that they could not be effectively studied within the allotted time. Mr. Van Boven had suggested that the Sub-Commission should reconsider its yearly review of the item. He did not disagree with that view but could not see what form such reconsideration could take. The reports of the Secretary-General, the non-governmental organizations and the Special Rapporteurs made a valuable contribution to the discussion of the item and could not therefore be discontinued. The information supplied by Governments, the specialized agencies and the intergovernmental organizations did not, however, contain much evidence and tended to be superficial.

38. Mr. Joinet had suggested that there appeared to be a link between administrative detention and solitary confinement. Solitary confinement was imposed arbitrarily, without judicial order, after the conviction of the detained person and for that reason he would suggest that an in-depth study of that most heinous form of punishment should be carried out with particular attention to its long-term psychological and physical effect on its victims. The non-governmental organizations might also give some thought to the issue of solitary confinement.

39. He then invited the attention of the Sub-Commission to the issue of collective punishment. That was a form of punishment which was very common in many parts of the world, and was more far-reaching and devastating in its effects than individual punishment in that it affected and was applied to more people. Collective punishment was not formally imposed; it was inflicted upon a whole community by an arbitrary act of law enforcement officials, military personnel or other branches of the administration. That type of punishment had been witnessed in occupied Palestine and in South Africa and was also used in a number of other countries. He suggested that the Sub-Commission should give further consideration to collective punishment.

40. In connection with the proposed elaboration of a second optional protocol to the International Covenant on Civil and Political Rights regarding the abolition of the death penalty, there was a general consensus that the death penalty was not a deterrent but might rather represent an act of redress or revenge. States wishing to retain the death penalty argued that there was no reason why a person who had denied the right to life of another should be allowed that right himself. Questions of religion were also involved. He favoured further study of the issue.

41. With reference to the report of Mr. Despouy, he shared the view that a state of emergency was not illegal per se. States of emergency and human rights violations were linked to a certain extent. One of the main reasons why states of emergency were introduced was in order to deny the public certain civil and political rights. He also agreed that de facto states of emergency might prevail in countries for many years. He would like the Special Rapporteur to devote further time to identifying those countries where an undeclared or unproclaimed state of emergency prevailed.

42. Mr. VARELA welcomed Mr. Bossuyt's report, which provided an updated overview of the use of the death penalty in the world and the associated issues. In his own view, the problem of the death penalty should be considered in the context of the various international instruments for the protection of human rights.

43. Article 4 (2) of the American Convention on Human Rights, as approved by the Inter-American Conference on Human Rights in 1969, stipulated that in countries that had not abolished the death penalty, it might be imposed only for the most serious crimes and pursuant to a final judgement rendered by a competent court and in accordance with a law estabishing such punishment, enacted prior to the commission of the crime. The application of such punishment should not be extended to crimes to which it did not currently apply. Article 4 (3) further provided that the death penalty should not be re-established in States that had abolished it. Those provisions had provided a precedent for future action in the countries of Latin America.

44. The right to life was the fundamental right of human beings and all other rights made sense only in so far as the right to life was respected. The Special Rapporteur had given as the fundamental reason for the retention of the death penalty by some countries that it could represent a deterrent for those who might attack life and the property of the State. The fact, however, was that in countries where the death penalty had existed for centuries, crimes against life and property had not diminished. As regards the State security argument, the State might well confuse the security of society with the security of the group currently in power, namely, the Government of the day.

45. His own country, Costa Rica, had not employed the death penalty for over a century and arguments on the issue were, therefore, of academic interest only. Costa Rica had supported every proposal for the abolition of the death penalty. He welcomed the information provided by the Special Rapporteur that in many countries where the death penalty continued to exist in law, it was never or only very occasionally used in fact.

46. The proposal for a second optional protocol sought to convert de facto practice into a binding legal norm for acceding States. It would, therefore, represent a forward step in enhancing the protection of human rights. It would create obligations only for States parties to it. In that connection he welcomed the statement of Mrs. Warzazi. There was no reason, however, for States which had not abolished the death penalty to hamper those States which wished to internationalize guarantees for human rights beyond the reach of their own national legislation. Basically, a second protocol would be a guarantee that those who lived in régimes which had abolished the death penalty would have the additional protection of an international commitment by the Government that no domestic legislation could restore the death penalty.

47. Closely related to the issue of the death penalty was that of the human rights of detainees during states of emergency, to which the Special Rapporteur, Mr. Despouy, had drawn attention in his report (E/CN.4/Sub.2/1988/18 and Add.1). States of emergency involved violations of human rights and, in particular, represented threats to the right to life. He, therefore, welcomed Mr. Despouy's appeal to the Chairmen of the Working Groups on Enforced or Involuntary Disappearances and on Detention to devote particular attention to the protection of the right to life in emergency situations and to promoting any measures aimed at strengthening that right. In addition, he urged States to refrain from imposing measures restricting human rights except in special circumstances where such actions were necessary for the restoration of legality. Even in a state of emergency, however, there could be no justification for enforced disappearances, which represented one of the most serious violations of human rights, because it violated not only the rights of the disappeared person but also those of his relatives and because the situation remained unresolved over a period of time. There was accordingly a need for the Commission on Human Rights to establish instruments which would define the crime of enforced or involuntary disappearance and be strong enough to offer protection against that practice and to punish its perpetrators.

48. Mr. Bhandare resumed the Chair.

49. Mr. EIDE said that the agenda item under discussion was primarily a technical one which aimed at providing a safety net for the human rights of all groups in society. The agenda item had expanded over the years to cover a wide range of issues: the Sub-Commission must inquire both into the overall administration of justice in a particular country and into any areas where the system failed.

50. The most useful role which non-governmental organizations could play was to cite specific examples of the failure of the system of justice in a particular country. Government responses to those allegations should also be detailed and to the point - mutual recriminations were of no use to anyone. Some non-governmental organizations had raised new and valid points at the current session, such as the question of discrimination against former political prisoners and their families in Indonesia. A draft resolution on the treatment of former political prisoners was in preparation.

51. Mrs. GABR (Observer for Egypt) congratulated the Sub-Commission on its objective treatment of a delicate issue. The international organizations had an important role to play in the establishment of legal mechanisms which would enable States to guarantee the safety of their citizens and prevent abuses by security and occupation forces. The use of force against civilians in, for example, the occupied Arab territories, had been condemned by the international community. Her country supported United Nations efforts to draw up an international instrument regulating the investigation of suspicious deaths in detention, as well as the work of the Committee against Torture and moves to safeguard staff members of the Organization.

52. Her delegation welcomed Mr. Despouy's report on states of emergency (E/CN.4/Sub.2/1988/18 and Add.1). The state of emergency in her own country was an exceptional and temporary measure designed to combat the activities of

terrorists and drug traffickers. The right to a fair trial and the right of appeal of detainees had been preserved. The Government would lift the state of emergency as soon as the situation permitted.

53. Mr. ZAMIR (Observer for Bangladesh) said that he wished to clarify the information given in paragraph 9 of Mr. Despouy's report on states of emergency. His country had declared a state of emergency for a limited period in the face of grave threats to its economic security. The state of emergency had been lifted on 13 April 1988, and the newly elected parliament had just concluded its summer session.

54. Mr. LEE (Observer for the Republic of Korea) said that the process of democratization in his country under the new President, Roh Tae Woo, had led to the adoption of a new Constitution and the holding of open and free elections to the National Assembly. The Government had undertaken a review of the legal system in order to provide further institutional support for democratic reforms. A bill on accession to the International Covenants on Human Rights was soon to be submitted to the National Assembly for approval, and the Government had also decided to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the near future.

55. On the accession of President Roh in 1988, an amnesty had been granted to 1,731 persons who had been involved in political incidents. A further 82 persons had been released since then.

56. The statement of the International League for the Rights and Liberation of Peoples had displayed a biased and inherently negative attitude towards his country. The organization would harm no one but itself if it continued to present a false and distorted picture about the human rights situation and political developments in the Republic of Korea. His country's preparations for the twenty-fourth Olympic Games in Seoul, in which a number of socialist countries were to take part, had been highly commended by the International Olympic Committee. His country was confident that the Games would give a great impetus to Korean reconciliation and world peace as a whole.

57. Mr. STRASSERA (Observer for Argentina) said that the Argentine authorities had been seriously concerned about the plight of the children kidnapped during the military dictatorship and currently living in Paraguay. It had supported the despatch of the Special Rapporteur, Mr. van Boven, to investigate the matter. However, in his report (E/CN.4/Sub.2/1988/19), Mr. van Boven had not adequately reflected the Argentine authorities' efforts to secure the children's return. President Alfonsin had made a personal appeal to those holding the children, and Argentina had requested the Inter-American Court of Human Rights to take practical measures to resolve their tragic situation. Argentina had temporarily withdrawn its ambassador to Paraguay in protest at the slow handling of the cases, and had employed a lawyer to appear before the Paraguayan courts. Other measures included the establishment of a national genetic data bank, which would make it easier to resolve disputes over a child's parentage, and the granting of an allowance to the children of disappeared persons pending their parents' return.

58. He could not accept the allegation in paragraph 34 of the report that many Argentine judges had delayed or obstructed the handling of the cases. According to the data provided by the Grandmothers of the Plaza de Mayo, the

cases of two children only had been brought before the Argentine courts, so that Argentine judges had not had many opportunities to act, obstructively or otherwise. The Argentine Supreme Court had endorsed the decisions of lower courts restoring children to their own families. He was glad to see that Mr. van Boven had corrected certain points during his oral presentation of the report before the Sub-Commission.

59. Regrettably, the report had not fulfilled its fundamental objective, namely, to bring about the restoration of the children to their families, and it was therefore unacceptable to his delegation. He called upon the Paraguayan judiciary to respond without delay to his Government's appeals for the return of the children held in Paraguay.

60. Mr. GONZALEZ ARIAS (Observer for Paraguay), speaking in exercise of the right of reply, said the allegations that his Government was unwilling to co-operate with respect to the disappearance of Argentine children currently in Paraguay were far from true, as he had clearly informed both the Secretariat and Mr. van Boven himself. Only two cases were currently before the courts and the authorities of his country could not agree to any extrajudicial pressure being exercised. On 5 August 1988, the Centre for Human Rights had been informed that in both cases in which the Argentine Government had requested extradition, the judges of first and second instance had ordered both couples to be extradited to Argentina but the defence lawyers had had recourse to the remedy of last resort, namely, an appeal to the Supreme Court. However, the start of a new period of Government on 16 August 1988 entailed the confirmation of members of that Court by the Senate. In the meantime, the necessary steps had been taken in compliance with the note from the Argentine Embassy dated 9 July 1988, to ensure that the couples could not escape from Paraguay as they had from Argentina. They were under house arrest, guarded day and night.

61. Paragraphs 27 to 30 of the report (E/CN.4/Sub.2/1988/19) mentioned the cases of three other children who it had been determined "with a great deal of certainty" were also in Paraguay. If the information was so certain, it might be asked why the Argentine authorities had not requested extradition of the alleged kidnappers.

62. He recognized that the Argentine authorities had always acted with due courtesy but it should be remembered that, under the Constitution of Paraguay, the judiciary was independent of the Executive and article 199 clearly stated that no authority other than the courts might assume legal powers or interfere in any way in the judicial process.

63. He wished to refute the statement in the report that his country had become a refuge for kidnappers and a hiding place for their victims. Paraguay had certainly always been a country of asylum and more Argentines lived there than in any other place outside their own country but it was certainly not a refuge for kidnappers. The Government had co-operated immediately with the Argentine Government's request to locate and arrest the two couples. The only course of action currently possible was to await the judgement of the Supreme Court and hope that it would be favourable.

64. Mr. van BOVEN reminded the Sub-Committee that the report had been entrusted to one of its members rather than to the Working Group on Enforced or Involuntary Disappearances because of its sensitive nature. It was

certainly not perfect but he had tried to carry out his mandate in a humanitarian spirit and that approach had been stressed in the letters he had sent to both the Governments concerned. In some statements made at the current session, political considerations seemed to prevail over the best interests of the children concerned, which should be the sole criterion. To criticisms that he had overstepped his mandate, he would reply that he had interpreted it in the light of the preamble to Commission on Human Rights resolution 1988/76, which had endorsed the Sub-Commission's desire to facilitate family reunion and prevent a recurrence of the unfortunate outcome of similar cases in the past.

65. He acknowledged that diplomatic and legal efforts had been made by the Argentine Government but it was interesting to note that the supplementary information made available at the current session had not been given to him by government authorities during his visit to the country, although those authorities had brought him into contact with judges concerned with the cases and humanitarian organizations, which had provided such information. No similar co-operation had been received from the Government of Paraguay.

66. The report relied to a large extent on the efforts made by bodies such as the Grandmothers of the Plaza de Mayo, other relatives and those who lived continuously with the agonizing problem of the disappeared children. It was due to their efforts that some children had reappeared. The report should not be read as an attempt to oppose the efforts and reputation of government authorities and those of humanitarian organizations. In such a tragic situation, no political interests or considerations should prevail but rather the interests of the children themselves. If he had failed to make that clear, he would have failed in the task entrusted to him.

67. Mr. de SILVA (Observer for Sri Lanka) said that detention in any form constituted an infringement of human rights. However, it was sometimes necessary to restrict the rights of some for the common good. Such restrictions did not involve a denial of human rights. However, some cardinal safeguards must be observed with respect to detention. The need to detain a person must be imperative and the conditions under which he was detained must be consistent with his human dignity.

68. In most legal systems, three forms of detention were known: detention pending investigation and trial; detention of those convicted by a competent court, and preventive detention. Detention was normally subsequent to an arrest based on reasonable suspicion by an officer who had previously obtained a warrant. The period during which a person might be kept in custody before trial must be kept to the strict minimum.

69. Persons detained after conviction should have had a fair trial before a competent court, preferably with a right to appeal.

70. Preventive detention raised several issues. Most jurists agreed that there were many situations where it was necessary to prevent a person from committing a grave crime by placing him under detention. Since the decision to resort to such detention was often based on confidential information, it was usually taken by an administrative rather than a judicial authority. A writ of habeas corpus had proved to be a satisfactory remedy against misuse of the power of an administrative authority to place persons under preventive detention. The conditions for such detention must be as satisfactory as

possible, while preventing the person from attaining his aims by transmitting instructions to others. If it was considered necessary to keep the detainee incommunicado, that should be done for the minimum period necessary and, if possible, supervised interviews should be allowed.

71. With regard to punishment for bad behaviour within a place of detention, solitary confinement or restriction of diet should be the very last resort.

72. The category of "prisoners of conscience" presented other problems. For persons plotting to overthrow a legally elected Government, it would obviously be impossible to wait until they had committed a crime before detaining them. One solution might be to make it lawful to prevent by detention the manifestation through illegal conduct of views or beliefs which would amount to a crime when converted into deeds. Obviously, however, such persons should have recourse to a judicial or other independent authority, which could review the need for their detention or the conditions of detention. Such a procedure would protect the interests of the State, whilst providing safeguards against abuse by the administrative authorities.

73. Mr. ENG HEE (Observer for Malaysia), speaking in exercise of the right of reply, said that certain allegations had been made at the latest session of the Commission on Human Rights and the current session of the Sub-Commission about violations of human rights by the Malaysian Government. Out of some 106 people detained in October 1987, 32 were still under detention, including three active members of the parliamentary opposition. However, the Malaysian Government did not detain a person merely for critizing it. The political system recognized a parliamentary opposition and its leader even received a substantial allowance. The arrest and detention, which he had explained at the Commission's last session, had since been the subject of a White Paper, a document available to the general public, which mainly agreed that the Government had acted in time to prevent communal riots. Naturally, the opponents of that action had prevailed upon some non-governmental organizations to take up their cause.

74. The Internal Security Act, which he had explained at the last session of the Commission, was provided for in the Constitution of the country. The restrictions it imposed on the human rights and fundamental freedoms which it guaranteed were designed to ensure Malaysia's continued existence, despite its racial, religious and cultural diversity and the threat of Communist insurgence.

75. The 32 persons still detained had been given reasons for their detention, could appeal to the Advisory Board or apply for a writ of habeas corpus, as some had done.

76. The Internal Security Act was not used to muzzle the opposition. Its former leader had even been knighted for his services. Since the ruling National Front, a coalition of some 13 political parties, commanded 81 per cent of the votes in the House of Representatives, there was hardly a need to suppress the opposition.

77. Three newspapers closed down in October 1987 were back in circulation. The Far Eastern Economic Review, which still criticized the Government, was on sale in Malaysia.

78. Article 151 of the Constitution listed the remedies available to detainees, apart from applying for a writ of habeas corpus.

79. Since the attainment of independence in 1957, there had been seven general elections in Malaysia. The country had been led by four Prime Ministers; its general stability had given it one of the fastest growing economies in the Far East and its standards of social welfare, health and education had consistently improved.

The meeting rose at 6.10 p.m.