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Forty-fifth session

SUMMARY RECORD OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 17 February 1989, at 10 a.m.

Chairman: Mr. BOSSUYT (Belgium)
later: Mme. ILIC (Yugoslavia)

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The meeting was called to order at 10.10 a.m.

STATEMENT BY MR. D. CAPUTO, MINISTER FOR FOREIGN AFFAIRS OF ARGENTINA AND
PRESIDENT OF THE UNITED NATIONS GENERAL ASSEMBLY

1. The CHAIRMAN said he was particularly honoured to welcome, on behalf of the Commission on Human Rights, the President of the United Nations General Assembly.
2. The presence of the President of the forty-third session was confirmation of the crucial role played by the Commission in the defence of human rights. It was to be hoped that the United Nations would make available to all its organs working in that field the resources needed to enable them to accomplish the tasks assigned to them by the international community, with a view to attaining one of the main aims of the Charter, namely the protection of human rights.
3. In his capacity as Minister for Foreign Affairs of Argentina, Mr. Caputo was the representative of a people who had succeeded in restoring a democratic and constitutional régime after long and tragic years attended by kidnappings, torture, disappearances, terror, censorship and a ban on all political and trade-union activity.
4. The Commission on Human Rights, which had on occasion been criticized for discriminatory zeal against the Latin American countries, had unquestionably contributed more to a significant and sometimes radical improvement in the human rights situation in that continent than elsewhere. The question also arose of whether greater attention or less indifference to human rights violations in other countries might not bring more progress in the area of human rights. Furthermore, the people and the Minister for Foreign Affairs of Argentina, far from thinking that the Commission had been overly concerned with the human rights violations committed under the military régime, considered that it had studied those cases for too long under the confidential procedure. Mr. Caputo, by his presence reminded the Commission that the purpose of the Commission on Human Rights was not to protect the interests of Governments but to safeguard human rights everywhere in the world. Coherence in the defence of that principle had enabled Argentine democracy to win through and to develop those institutions necessary to face totalitarian challenges whatever their source.
5. Mr. CAPUTO (Minister for Foreign Affairs of Argentina and President of the forty-third session of the General Assembly), thanked the Chairman and assured him that the people of Argentina fully endorsed what he had just said. His message would strengthen them in their resolve to pursue the path they had set themselves. He also paid a tribute to the Under-Secretary-General for Human Rights for the effective way the Centre for Human Rights functioned. Lastly he stressed the role of the Chairman of the forty-fourth session of the Commission in helping to bring Africa closer to the other continents, especially Latin America.
6. By his presence he wished to bear witness to the importance that the General Assembly attached to the work of the Commission on Human Rights, whose authority and prestige were being recognized increasingly by States. Experience had shown that the major world conflicts all contained a fairly obvious human rights component, whence the complementarity of various United Nations bodies and consequently the General Assembly and the Commission on Human Rights.

7. The Commission's greatest achievement was that it had succeeded in moving on from the functions originally assigned to it, primarily entailing the promotion and elaboration of the international Bill of Human Rights, to establish machinery to protect and safeguard those rights which had unquestionably helped to mitigate or in some cases eliminate the violations of fundamental rights and freedoms in different parts of the world.

8. The Commission had not given undue attention to the situation in Argentina. Indeed, the people of Argentina were grateful to the Commission for assuming the role of the conscience of the international community and for denouncing the violations committed in Argentina, and elsewhere.

9. As the President of the forty-third session of the General Assembly, he had witnessed what he believed was the most profound change in world relations since the Second World War. Dialogue and co-operation were beginning to prevail and the disarmament agreements concluded between the super-Powers as well as the great progress made towards the solution of the most serious regional conflicts were proof of that new situation. Nevertheless, those spectacular changes, unthinkable only a few years earlier, were only the beginning of a long and difficult process which would bring security to the peoples of the world and spare them the dreaded possibility of a nuclear holocaust. The time had therefore come to look much more carefully at future living conditions and the new era of peace could only usher in a new phase in the fight for human rights.

10. Peace would not only depend on disarmament and the settlement of regional conflicts and would certainly not be won until all human beings enjoyed freedom and well-being. It was therefore obvious that in order to safeguard peace, every effort should be made to strengthen human rights and indeed all the rights, material and spiritual, that ensured human dignity. The new international situation had made the world much more interdependent and it would be a fallacy to believe that peace would reign when two thirds of mankind enjoyed neither freedom nor well-being. The economic situation of the third world, with its inadequate economic development and unfulfilled political needs carried the seeds of new forms of international insecurity. The challenge confronting the leading countries would be the need to devise new ways to open a political dialogue on development issues.

11. A new phenomenon, the "poor democracies", had appeared in Latin America. In the past, democracies had rarely been poor whereas poverty had usually been rife under authoritarian or dictatorial régimes. While there had never been so many democratic régimes in Latin America before, neither had the continent ever experienced such a prolonged and deep economic crisis as that now besetting it. In 1990, the per capita income in most Latin American countries would be at the same level as in 1970. The developed countries had not given any thought to that phenomenon and they were not pursuing a clear policy in respect of the poor democracies. However, well-being could not be dissociated from the freedom in which millions of people in Latin America still believed, despite their dire poverty. That new situation needed to be taken into account because it was a phenomenon that shed new light on peace and human rights issues.

12. The difficulties confronting the democracies in Latin America did not stem solely from the social situation, but also from the terrorism engaged in by marginals convinced that they were the depositaries of truth and of methods

to ensure the happiness of society, who intended to take power by force. Terrorists of whatever stripe or leaning believed that the end justified the means. On the other hand, the strength of democracy lay in harmonizing the means and the ends and in seeking to consolidate freedom despite economic difficulties, by responding to terrorism while exercising the fullest respect for human rights.

13. Extreme left wing terrorism claimed justification for its crimes by hypocritically invoking future happiness, whereas history had shown that hell merely engendered hell. Those who invoked the name of God to justify their acts while denying the sovereign will of the people ended up by endorsing Millán de Astray's cry of "Long live death", the total negation of the idea of God. That moral relativism had to be combated, as the President of the Republic of Argentina said when he took office in 1984. Mr. Alfonsín had thus shown that the claim that the end justified the means implied recognition that one could legitimately hurt, even exterminate, other human beings. However, it was a fallacy to believe that such a terrible price would one day enable future generations to have a better life, when it was the well-being of the present generation that every Government was committed to assure. While it was important to repel terrorist aggression effectively, or run the risk of losing one's freedom, it was equally important that legal means should be used to achieve that end, namely, with full respect for human rights.

14. He recalled that when he had addressed the Commission on behalf of the new democratic Argentine Government in 1984, he had said his country had just emerged from a long night during which all fundamental rights had been violated. It had embarked upon the process of restoring justice and the rule of law, of which it was proud and which had been witnessed by the entire world. In recent years, Argentina, like the other poor Latin American democracies, had again been beset by serious economic difficulties and expressions of violence and intolerance, the most recent of which had been the savage terrorist attack by an extreme left wing armed group in January. However, unlike what had happened in the past, the situation had been restored without any violation of human rights for the simple reason that the majority of the population did not want any more violence or illegality and condemned the groups responsible for those acts. Consequently, the rebellion had been crushed and the guilty had been interrogated and imprisoned in full respect for human rights, as was shown by the fact that the military commander-in-chief had requested the presence of the federal judge in the military unit and the President of the Republic and representatives of all the mass media were present on the spot. Those events demonstrated the capacity of a régime to defend itself against any form of internal and external aggression while respecting the law and it was wrong to believe that the condemnation of human rights violations was equivalent to a condemnation of the armed forces or to an implicit tolerance of terrorism. The Government had used the armed forces to safeguard peace and security, and that had been understood by society as a whole. He reaffirmed the Argentine Government's commitment to protect human rights unreservedly; to that end, it had used and would continue to use all the power conferred on it by the law and under the rule of law.

15. The world was now entering a new era where peace was no longer a mirage. That situation had been achieved through great imagination and daring and countries had to display the same qualities to ensure the freedom and well-being of humanity and for peace to prevail.

16. The CHAIRMAN thanked the Minister for Foreign Affairs of Argentina for his statement which enhanced the prestige of the Commission and was an encouragement to the Commission to continue its efforts, because even if relations between States improved, vigilance should not be relaxed; in the area of human rights, no achievement was secured for ever.

17. The Commission would certainly reflect on the issues raised by Mr. Caputo, in particular that concerning the relationships between rich countries and what he had described as the "poor democracies".

18. The meeting was suspended at 10.45 a.m. and resumed at 11 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (agenda item 4) (continued) (E/CN.4/1989/L.2 and L.4)

19. Mr. ROA KOURI (Cuba), introducing draft resolution E/CN.4/1989/L.2, said that its main aim was to enable the Commission to condemn once again the massive and flagrant violations of human rights and fundamental freedoms committed by Israel in occupied Syrian territory for nearly 22 years, in violation of the fundamental principles of both international and humanitarian law and in disregard of the many resolutions adopted by the United Nations Security Council and General Assembly, in particular resolution 1514 (XV) which contained the Declaration on the Granting of Independence to Colonial Countries and Peoples.

20. The text of the draft was virtually the same as that of resolution 1988/2 adopted by the Commission, but it had been updated to take into account the events that had occurred subsequently in that occupied territory. The preambular part contained a reference to the most recent decisions adopted by the forty-first session of the World Health Assembly, by the forty-third session of the General Assembly and by the 80th Inter-Parliamentary Conference. The sponsors of the draft had thought it advisable to draw attention to a number of new and disquieting developments and to recall those that the Commission should continue to condemn. Consequently, in paragraph 8, Israel was condemned for persisting in its policy and practices of annexation in the occupied Syrian Arab Golan, including expropriating land, building settlements thereon and diverting water to those settlements, thus depriving the Golan population of its sources of life. Paragraph 9 called upon all States to urge the occupying power to cease such practices, including boycott measures, which constituted a violation of the fundamental principles of international humanitarian law.

21. The sponsors of the draft resolution believed that the massive violations of the human rights of the inhabitants of the occupied Syrian territory should be strongly condemned by the Commission and hoped that the draft would receive wide support.

22. The CHAIRMAN invited the Commission to adopt draft resolution E/CN.4/1989/L.2.

23. At the request of the representative of the United Kingdom of Great Britain and Northern Ireland, a vote was taken by roll-call on the last preambular paragraph of draft resolution E/CN.4/1989/L.2.

24. Cuba, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Bangladesh, Botswana, Bulgaria, China, Cuba, Ethiopia, Gambia, German Democratic Republic, India, Iraq, Mexico, Morocco, Nigeria, Pakistan, Rwanda, Senegal, Somalia, Sri Lanka, Ukrainian Soviet Socialist Republic, Union of Socialist Republics, Yugoslavia.

Against: Argentina, Belgium, Canada, France, Germany, Federal Republic of, Italy, Japan, Portugal, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Brazil, Colombia, Cyprus, Panama, Peru, Philippines, Swaziland, Togo, Venezuela.

25. The last preambular paragraph of draft resolution E/CN.4/1989/L.2 was adopted by 21 votes to 12, with 9 abstentions.

26. At the request of the representative of the United States of America, a vote was taken by roll-call on draft resolution E/CN.4/1989/L.2 as a whole.

27. Sweden, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Botswana, Brazil, Bulgaria, China, Cyprus, Colombia, Cuba, Ethiopia, Gambia, German Democratic Republic, India, Iraq, Mexico, Morocco, Nigeria, Pakistan, Panama, Peru, Philippines, Rwanda, Senegal, Somalia, Sri Lanka, Swaziland, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia.

Against: United States of America.

Abstaining: Belgium, Canada, France, Germany, Federal Republic of, Italy, Japan, Portugal, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland.

28. Draft resolution E/CN.4/1989/L.2 as a whole was adopted by 31 votes to 1, with 10 abstentions.

29. Mr. SHARMA (India), introducing draft resolution E/CN.4/1989/L.4, said that the text reflected the Commission's concern to find a lasting solution to the situation in Palestine, the occupation of which constituted a flagrant violation of human rights and an offence against peace and security.

30. Part A of the draft listed some of the serious violations of human rights and fundamental freedoms that occurred as a result of the systematic and persistent policy pursued by the Israeli occupation authorities infringing the

principles of international law and international conventions, in particular, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949.

31. Part B of the draft reaffirmed that the Convention was applicable to all Palestinian territories occupied by Israel since 1967, including Jerusalem, condemned Israel's refusal to apply the Convention and urged all States parties to the Convention to make every effort to ensure respect for its provisions in all the occupied Palestinian and Arab occupied territories. Furthermore, it strongly condemned Israel for the violations of article 49 of the Convention which it had perpetuated by pursuing a policy of deportation and expulsion of Palestinian citizens and called upon Israel to comply with the relevant resolutions of the Security Council, the General Assembly and the Commission on Human Rights. It also condemned Israel for its policies of ill-treatment and torture of Palestinian detainees in Israeli prisons and concentration camps and urged it to grant prisoner-of-war status, in accordance with the 1949 Geneva Convention relative to the Treatment of Prisoners of War, to all captured Palestinian fighters and to treat them accordingly.

32. In light of recent events in the occupied territories, which brought the situation in Palestine to the fore, the sponsors hoped that the draft would receive the widest possible support.

33. The CHAIRMAN announced that Sri Lanka and Senegal had become sponsors of draft resolution E/CN.4/1989/L.4.

34. Mr. LEVITTE (France) said that his delegation would not be able to vote in favour of draft resolution E/CN.4/1989/L.4 whose language, in certain paragraphs, did not reflect the positions agreed on by the Arab group in other bodies, and in particular, in the Security Council. It was a matter for regret, particularly since a constructive discussion had been started in an attempt to arrive at a text which would receive general support, but which had not been completed, due to lack of time.

35. The CHAIRMAN invited the Commission to adopt draft resolution E/CN.4/1989/L.4.

36. At the request of the representative of the United States of America, a vote was taken by roll-call on part A of draft resolution E/CN.4/1989/L.4.

37. Portugal, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Botswana, Brazil, Bulgaria, China, Colombia, Cuba, Cyprus, Ethiopia, Gambia, German Democratic Republic, India, Iraq, Mexico, Morocco, Nigeria, Pakistan, Panama, Peru, Philippines, Rwanda, Senegal, Somalia, Sri Lanka, Sweden, Swaziland, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia.

Against: Belgium, Canada, France, Germany, Federal Republic of, Italy, Portugal, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Japan, Spain.

38. Part A of draft resolution E/CN.4/1989/L.4 was adopted by 32 votes to 8, with 2 abstentions.

39. At the request of the representative of the United Kingdom of Great Britain and Northern Ireland, a vote was taken by roll-call on paragraph 1 of part B of draft resolution E/CN.4/1989.L.4.

40. Cuba, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Belgium, Botswana, Brazil, Bulgaria, Canada, China, Colombia, Cuba, Cyprus, Ethiopia, France, Gambia, German Democratic Republic, Germany, Federal Republic of, India, Iraq, Italy, Japan, Mexico, Morocco, Nigeria, Pakistan, Panama, Peru, Philippines, Portugal, Rwanda, Senegal, Somalia, Spain, Sri Lanka, Swaziland, Sweden, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia.

Against: None.

Abstaining: None.

41. Paragraph 1 of part B of draft resolution E/CN.4/1989/L.4 was adopted by 42 votes to none, with no abstentions.

42. At the request of the representative of the Federal Republic of Germany, a vote was taken by roll-call on paragraph 4 of part B of draft resolution E.CN.4/1989/L.4.

43. Ethiopia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Botswana, Brazil, Bulgaria, China, Colombia, Cuba, Cyprus, Ethiopia, Gambia, German Democratic Republic, India, Iraq, Mexico, Morocco, Nigeria, Pakistan, Panama, Peru, Philippines, Rwanda, Senegal, Somalia, Sri Lanka, Swaziland, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia.

Against: Belgium, Canada, France, Germany, Federal Republic of, Italy, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Japan, Portugal, Spain.

44. Paragraph 4 of part B of draft resolution E/CN.4/1989/L.4 was adopted by 31 votes to 8, with 3 abstentions.

45. At the request of the representative of the United States of America, a vote was taken by roll-call on part B as a whole, of draft resolution E/CN.4/1989/L.4.

46. Gambia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Botswana, Brazil, Bulgaria, China, Colombia, Cuba, Cyprus, Ethiopia, Gambia, German Democratic Republic, India, Iraq, Mexico, Morocco, Nigeria, Pakistan, Panama, Peru, Philippines, Rwanda, Senegal, Somalia, Sri Lanka, Swaziland, Sweden, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia.

Against: United States of America.

Abstaining: Belgium, Canada, France, Germany, Federal Republic of, Italy, Japan, Portugal, Spain, United Kingdom of Great Britain and Northern Ireland.

47. Part B, as a whole, of draft resolution E/CN.4/1989/L.4 was adopted by 32 votes to 1, with 9 abstentions.

48. Mr. KUEHL (United States of America), speaking in explanation of vote after the vote on the two draft resolutions E/CN.4/1989/L.2 and L.4, said that the United States considered Israel's occupation of the Arab territories to be governed by The Hague Regulations of 1907 and the 1949 Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. The United States also believed that Security Council resolutions 491 (1981), 252 (1968) and 338 (1978) continued to apply to the Golan Heights, and that the Golan problem should be resolved by negotiations.

49. While reaffirming his country's firm opposition to the human rights violations committed in the occupied Arab territories and to the excessive Israeli measures applied in those territories, such as administrative detention, deportations, demolition of dwellings, closing of universities and establishment of settlements, his delegation had the impression that the two draft resolutions were more intent on one-sided criticism of Israel than on a true search for a solution to the problems that they cited. Consequently, it regretted that it had not been able to vote in favour of those resolutions in their current form and hoped that any text submitted in the future would be more moderate, objective, accurate and balanced.

50. Nevertheless, the United States would continue to support the legitimate rights of Palestinians and to extend support to them as it had done in the past as the largest contributor to the United Nations Relief and Works Agency for Palestine Refugees in the Near East since its founding, and by providing a home for countless Palestinian families. It would also continue to encourage a realistic dialogue among the parties concerned in order to reduce the present violence and to end the root causes of that violence.

51. The United States sincerely believed, as its dialogue with PLO representatives proved, that only through direct negotiations among the parties could a balanced solution to that complex problem be found and a just and lasting peace be established in the region.

52. Mr. ROMARE (Sweden) said that his delegation had voted in favour of the draft resolution E/CN.4/1989/L.4. His delegation had some reservations concerning the wording of certain paragraphs of part A, which would have prevented it from voting for them had a separate vote been taken. His delegation had not been able to support draft resolution E/CN.4/1989/L.2 because of the contents of the fourteenth preambular paragraph and of operative paragraphs 5, 7 and 10.

53. Mr. STEEL (United Kingdom of Great Britain and Northern Ireland) said that his delegation had not been able to support draft resolutions E/CN.4/1989/L.2 and L.4. Although the United Kingdom had not failed to remind the Government of Israel of its obligations in respect of human rights and of the applicability of international law in the occupied territories, his delegation found some of the terms employed in the drafts voted on all the more unacceptable as during the general debate, it had expressed the hope that a polemical tone would be avoided. Before the vote, his delegation had discussed the draft with the sponsors and they had listened to it but had not made any changes that would give it satisfaction. The emotive and intemperate language of the drafts adopted did not seem conducive to progress on the peace process and was inconsistent with the moderate policies pursued by the PLO in recent months.

54. Mr. DE AZAMBUJA (Brazil) said that his delegation had voted in favour of draft resolutions E/CN.4/1989/L.2 and L.4 because it thought that, in the context of a situation which had deteriorated considerably the Commission ought to speak out unequivocally against the practices that had led to that deterioration. Nevertheless, some of the language used in the texts lacked objectivity and accuracy. His delegation would have abstained if a separate vote had been taken on one specific paragraph of draft resolution E/CN.4/1989/L.2 and on certain parts of part A of document E/CN.4/1989/L.4. With respect to paragraph 4 of part B of that resolution, his delegation had voted in favour on the understanding that the paragraph did not imply any derogation from the accepted provisions of international humanitarian law in particular, those enshrined in the Third Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.

55. Mr. HELLER (Mexico) said that his delegation had voted for draft resolution E/CN.4/1989/L.4 as a whole despite some reservations on the fourth preambular paragraph and on paragraphs 1 and 3 of part B. It had also voted for draft resolution E/CN.4/1989/L.2 but had done so by mistake and requested that the record should indicate that his delegation had intended to abstain in the vote.

56. Mr. CERDA (Argentina) said that his delegation had voted for draft resolutions E/CN.4/1989/L.2 and L.4 despite its reservations on certain paragraphs and the methods used by the sponsors. Nevertheless, Argentina's positive vote was in keeping with its position on that question and with the general statement made by his delegation on item 4.

57. Mr. RUIZ (Venezuela) said that his delegation had voted for the resolutions just adopted to voice its concern at the serious violations of human rights committed in the occupied Arab territories. His delegation did, however, have reservations on some paragraphs because they did not seem conducive to the quest for peace. If separate votes had been taken on those paragraphs, Venezuela would have abstained.

58. Mr. HYNES (Canada) recalled that Canada's position on human rights violations in the occupied territories had been explained during the debate. His delegation had nevertheless found some of the components of draft resolutions E/CN.4/1989/L.2 and L.4 unacceptable. It had abstained on the first resolution and had voted against part A of draft resolution E/CN.4/1989/L.4 mainly because of the references to "concentration camps" and "war crimes" in paragraph 3. His delegation had abstained on part B because it referred to resolutions that Canada had not supported. However, his delegation had been able to support paragraphs 1 and 5.

59. Mr. RIVAS (Colombia) said that his delegation had voted in favour of draft resolution E/CN.4/1989/L.4 because it thought that the Commission was duty bound to condemn human rights violations in the occupied territories and to draw the attention of Governments to conduct that was incompatible with their international commitments. However, his delegation felt that language used in paragraphs 3 and 4 of part A and 2 and 3 of part B was extreme and his delegation would have abstained if a separate vote had been taken on those paragraphs.

60. Mr. ALVAREZ (Peru) said that his delegation had voted for both of the draft resolutions just adopted, but would have abstained if a separate vote had been taken on paragraphs 3 and 4 of part A and on paragraph 3 of part B of draft resolution E/CN.4/1989/L.4. Those paragraphs were either not in conformity with Peru's position, or contained elements which did not come within the purview of the Commission.

61. Mr. GLAIEL (Observer for the Syrian Arab Republic) welcomed the adoption of draft resolutions E/CN.4/1989/L.2 and L.4 which demonstrated wide sympathy for the just cause of peoples subjected to military occupation. The negative vote of certain countries had been due to preconceived ideas. The Syrian Arab Republic thanked all those delegations which had voted in favour of the resolutions and thus shown their concern for the occupied Syrian territory.

62. The CHAIRMAN said that the Commission had completed its consideration of agenda item 4.

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION; ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS; NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (agenda item 11) (continued) (E/CN.4/1989/3 - E/CN.4/Sub.2/1988/45 (Chapter I, Section A, resolution I), E/CN.4/1989/20 and 21, E/CN.4/1989/47, E/CN.4/1989/CRP.1 and CRP.2, A/Res.43/128)

63. Mr. BENEDETTI (Italy) agreed with the Under-Secretary-General for Human Rights that in the triangular relationship existing in the area of human rights between legislation, application and information, the United Nations and the international community should give more importance to information, which was an indispensable tool for the implementation of legislation. Furthermore, in conjunction with education, it should enable millions of people to become aware of their rights and to recognize that other members of the community had equal rights.

64. The launching of the World Public Information Campaign on Human Rights would be a timely initiative which the Italian Government fully supported. Of course, public information activities were not something that was new, but the World Campaign would provide an opportunity to intensify such activities, to adopt a more coherent and better targeted approach and to establish a triangular relationship between the United Nations, the States Members and the NGOs. States Members should avoid the temptation of thinking that information was not their business.

65. Information and education should be oriented primarily towards young people in school. Consequently, his delegation welcomed the teaching manual on human rights which had just been finalized and distributed. His delegation also supported initiatives such as workshops, seminars and training courses for people who through their position in the administrative structure of a country could play a crucial role in protecting human rights. The importance of television, radio and audio-visual material should also be remembered because they were useful tools for disseminating information on human rights.

66. The work undertaken in the context of the Information Campaign should be co-ordinated and should involve both the Centre for Human Rights and the Department of Public Information particularly through the Centre's new External Relations, Publications and Documentations Section.

67. It was doubtful whether the resources needed could be provided solely by the Centre for Human Rights, whose budget was very limited and had to finance other programmes, and by the Department of Information. Consequently, the Secretary-General should make available all the human and financial resources required to carry out the campaign from the regular budget. The delegation of Italy awaited with interest the submission of the budget for the Campaign, which should be ready in time for the next session of the Commission. For their part, member States should support the Campaign, not only by organizing activities but also by making financial contributions, for example through contributions to the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights.

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

- (a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;
- (b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;
- (c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES (agenda item 10)
(continued)

(E/CN.4/1989/3 - E/CN.4/Sub.2/1988/45 (Chapter I, Section B, decision 2), E/CN.4/1989/15, 17, 18, and Add.1, 19, 50, 58, 63; E/CN.4/1989/NGO/3, 12, 30, 38, 40, 49, 52; E/CN.4/Sub.2/1988/12, 15, 17 and Add.1, 18/Rev.1, 20 and Corr.1, 20/Add.1 and Add.1/Corr.1; A/43/779; A/C.6/42/L.12)

68. Mr. SKWEYIYA (Observer, African National Congress) drew the attention of the Commission to the plight of over 300 detainees who were on a hunger strike in different jails in South Africa to protest against their arbitrary and

unjust detention. The ANC estimated the number of people at present in detention without trial in South Africa, under the state of emergency, to be over 3,000.

69. In addition to the arbitrary nature of their detention, those people, many of them children and teenagers, were subjected to various forms of torture and ill-treatment and many had died in detention (there were 68 known cases since 1963). A recent United States State Department study on South Africa showed that, according to court testimony and sworn affidavits, ill-treatment and torture were commonly inflicted on security detainees. The study also reported numerous incidents of torture involving detainees under the age of 18, particularly at the Protea police station in Soweto.

70. The same study also revealed the existence of "death squads" operating outside of the law both inside and outside South Africa. The existence of those death squads had long been denounced by the ANC, which called upon the Western Governments to adopt comprehensive and mandatory sanctions as the only peaceful means of putting an end to those heinous practices.

71. The ANC was also concerned by the disappearances of anti-apartheid activists in South Africa and by the continuing pattern of violence between vigilante groups and the democratic movement in South Africa. The Western press was wrongly portraying that violence as merely "black-on-black" violence. Well-documented information had shown that certain elements, such as the Inkatha, operated side by side with the South African police in detaining, torturing and murdering anti-apartheid activists.

72. The number of executions in South Africa was unsurpassed in the world: the year before, a total of 117 people had been executed and many activists were currently sitting on death row. Although the death sentence of the "Sharpeville Six" had been commuted because of the pressure by the international community, particularly at the forty-fourth session of the Commission, the "Uppington 25" and about 80 others were presently awaiting execution.

73. The ANC called upon the international community to condemn those judicial executions strongly and to intensify its support for the democratic forces in South Africa. As the above-mentioned State Department study indicated, the South African Government was increasingly subverting the limited independence once enjoyed by the South African judiciary, thus depriving South Africans of the protection of the courts.

74. Mr. PHEKO (Observer, Pan Africanist Congress of Azania) reminded the Commission that during consideration of agenda item 6, he had stated that the South African régime had used torture to extract "confessions". Many South Africans had been sentenced to prison or to death after being tortured. That was the case of Cecil Luthondo, a PAC member, who had been hanged eight months earlier despite protests by the Security Council over the hanging of 17 Africans in 1963.

75. One of the methods used to force the accused person to speak was to cover his head until he suffocated. Another was to apply electric shocks to the genitals. Sometimes the accused was hung upside down or buried up to his neck. The torturers of one PAC member had even urinated in his face while he was in that position. Accused persons were sometimes put in chains and were made to stand, without food or water, and without being allowed to sleep and

forced to sign whatever the police demanded, in theory, to spare them from immediate torture. The "Sharpeville Six" and the 273 persons that he had mentioned in his earlier statement had nevertheless been condemned to long prison sentences or even the death penalty.

76. Others were put in solitary confinement in stinking, windowless cells, infested with vermin. A particularly cruel treatment had been meted out to the PAC leaders: four of them had been poisoned during their imprisonment and Zephania Mothopeng, who was poisoned and ill for more than two years had not been allowed to be visited by his own doctor. Accused persons were often severely beaten to extract incriminating information from them. Magistrates were required to visit detainees, but as their interests were identical to those of the régime's police, they did not discharge their duties with the integrity that a non-racial society such as the PAC aspired to, would demand. African women who refused to give information to the police were sometimes forced to copulate with dogs.

77. He asked the Commission and other international bodies involved in the protection of human rights to prevail upon the Pretoria régime to stop the use of torture as a method of extracting information. In particular, he thanked the delegations of France and Canada, which had described the measures their countries had taken against apartheid. The PAC also appreciated the declaration made by the United States on the subject, although it remained to be seen whether that country could achieve the goal it had set itself without applying comprehensive and mandatory sanctions against South Africa.

78. The statements made by the United Kingdom had been, on the other hand, depressingly unhelpful. By establishing the Union of South Africa in 1909, it had conspired with the settlers to create colonial South Africa, thereby depriving Africans of their right to self-determination. Today, it was the armed struggle of those same Africans that the United Kingdom was opposing, just as it opposed the adoption of sanctions against South Africa. The United Kingdom declared that it was opposed to violence, but it had fought the Africans for over 100 years. Imposed by the sword, colonialism in South Africa could only perish by the sword or by comprehensive and mandatory sanctions. The people of Azania were ready to fight for their freedom and their right to self-determination for another 100 years. They would never sell their land, systematically despoiled since 1886, for scholarships or projects. The help the United Kingdom claimed it was giving to the Africans was only to help them to bandage their wounded and bury their dead. Finally, he doubted whether the Reverend Stanley Mgoba was really opposed to sanctions, as the United Kingdom delegation claimed.

79. Mrs. Illic (Yugoslavia) took the Chair.

80. Mr. WILLE (Observer for Norway) said that despite condemnation by the international community, torture and disappearances were frequent occurrences. The Commission should redouble its efforts to combat those practices. It was encouraging that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been ratified by some 40 States and had entered into force in 1987, two years after it had been opened for signature. In that connection also, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had also entered into force on 1 February 1987. The Committee against Torture, set up under article 17 of the Convention against Torture, afforded additional protection to victims but its full potential would only be realized when

States parties allowed investigation of complaints made against them by other States or by their own nationals. Norway, therefore, urged States to consider making the appropriate declarations and strictly adhere to their obligations regarding the financing of the Committee, because there was no basis in the Convention for a limitation of the joint responsibility of States parties in that regard.

81. Additional mechanisms were none the less desirable. The Special Rapporteur on torture, for example, had a different role from that of the Committee. Whereas the Committee was concerned mainly with monitoring compliance with treaty obligations, the Special Rapporteur had a mandate to deal with the question of torture in all its aspects and in all States, regardless of whether they were parties to international instruments or not. It was therefore desirable to strive for further ratifications to the Convention and its universal acceptance and to reinforce and give wide publicity to the Special Rapporteur's mandate.

82. In his fourth report to the Commission (E/CN.4/1989/15), the Special Rapporteur appointed to examine questions relevant to torture, Mr. Kooijmans, had rightly emphasized measures geared to the prevention of torture during detention. As it was crucial to inform security forces about the rights of persons for whom they were responsible, it would be particularly desirable to incorporate the recommendations of the Special Rapporteur in projects which could be carried out successfully under the programme for advisory services and technical assistance.

83. His delegation was pleased that the Special Rapporteur had been able to visit a number of countries to observe practices and study existing safeguards against torture. Those visits had resulted in constructive recommendations to the Governments concerned. The time had also come for the Special Rapporteur to investigate specific cases that were brought to his attention on such visits. It would be all to the good if the Governments that had not yet answered the Special Rapporteur could reconsider their position and allow him to carry out his mission. Lastly, Norway had always supported the United Nations Voluntary Fund for Victims of Torture and urged other countries to do the same.

84. The phenomenon of disappearances continued to be very disturbing. Since its establishment nine years ago, the Working Group on Enforced or Involuntary Disappearances had discharged its task in a very satisfactory manner and had developed a suitable working method. In 1988, the Working Group had transmitted approximately 400 cases reported to have occurred in 15 countries. The number of those individual cases had practically doubled since 1987 and the number of countries involved had also increased. It was distressing that the majority of the cases reported in 1988 had remained unclarified partly because many of the countries had no institutional or legal framework that allowed a person who had disappeared to be traced quickly. That aspect of the problem might be remedied by the projects conducted under the programme for advisory services and technical assistance.

85. Norway hoped that the Working Group would continue to enjoy the co-operation of all parties and was especially pleased that it had been invited to visit Colombia in 1988. It was, in fact, indispensable for all Governments concerned to respond to the Group's communications rather than rejecting them as mere allegations particularly if they concerned cases governed by the urgent action procedure. The Working Group had done well to

recommend that its staff should be increased and that it should be provided with the facilities that it needed to be able to discharge its onerous and complex task. Governments should take steps to protect the families of disappeared persons and to ensure that groups in support of disappeared persons and their families were no longer threatened or persecuted.

86. At the previous session, his delegation had called attention to the need to provide measures to protect the right to life and physical and mental integrity of individuals in situations of emergency or internal violence. It, therefore, welcomed resolution 1988/24 in which the Sub-Commission had requested its Special Rapporteur, Mr. Despouy, to submit draft standard provisions on emergency situations, including situations of internal unrest and tension. That work could be the first stage in drafting more exhaustive standards on the subject and would complement the work of the Special Rapporteurs dealing with the question of torture and summary and arbitrary executions as well as the work of the Working Group on Enforced or Involuntary Disappearances.

87. Mr. ZURITA (Spain) said that torture was the most aberrant violation of human dignity. In his last report on that phenomenon, the Special Rapporteur, Mr. Kooijmans, stressed that the practice had become more frequent in some regions of the world and that civil war situations lent themselves particularly to torture. For human rights to be respected, peace and justice must prevail. His delegation hoped that in the future, the Special Rapporteur would provide more detailed information on the cases that he transmitted and on the replies from Governments. In order to encourage Governments to respond better to requests for information, a distinction should also be made between the countries that did not reply to requests for information from the Special Rapporteur or gave incomplete replies and those whose replies were perfectly satisfactory.

88. The information supplied on the visits made by the Special Rapporteur to Peru, the Republic of Korea and Turkey was extremely useful. The Governments of those three countries concerned should now set about implementing the recommendations made by the Special Rapporteur. As Mr. Kooijmans himself said, the fact that a Government invited the Special Rapporteur in no way inferred that torture was practised in that country, but could be considered as irrefutable evidence of that Government's desire to fight against torture. The invitation by the Government of Guatemala should therefore be welcomed.

89. Spain was a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which had come into force on 1 February 1989. It had been underscored in many studies and the reports by the Special Rapporteur that the system of regular and unscheduled visits by independent experts to places of detention was probably the currently most effective way of preventing torture. In order to eradicate that odious phenomenon which had been condemned for years, the international community now had an appropriate legal instrument at its disposal in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. By ratifying and acceding to the Convention and, above all, by making the declarations provided for in articles 21 and 22, States could give legal effect to their intentions. Spain, for its part, had ratified the Convention and made both declarations to demonstrate its willingness to contribute to eradicating the practice of torture.

90. Mr. PRIELAIDA (International Federation of Free Journalists) said that all States that wished to guarantee the protection of the individual and his rights through the Convention nevertheless interpreted those rights according to their political, religious or social systems. While their sincerity was not in doubt, it was regrettable that they were certain of possessing the truth, which changed from one régime to another and from one year to the next. That accounted for the scepticism created by the statements of certain delegations with respect to the enjoyment of essential rights in the countries they represented.

91. One could hope, however, that the Commission would be able to continue to improve the lot of thousands of human beings if relations between States ceased to be politicized at the humanitarian level. At its preceding session, the Committee had instructed working groups to submit reports, particularly on the practice of torture and on the exercise of freedom of expression and opinion, often the root cause of torture and which particularly affected the press and the media.

92. Indeed, in many countries, the exercise of freedom of opinion and expression was regulated by the police apparatus, a situation which led to hosts of arrests, imprisonments and deportations. In Lithuania, there had recently been a purely police trial of two priests who had been subjected to moral torture while they were in detention. Although they had been released, many others were still deported and ill-treated in Siberia. Considerable progress had been made since the previous year in the area of freedom of expression and association and in respect of arbitrary arrests and trials in that region of the Soviet Union, but the occupier's presence was always felt if only because the administrative language was Russian. It was also true that the Soviet Union had restored their national symbols, flags and emblems to Lithuania, Latvia and Estonia but it had not given them back what was most important to them, namely their independence which had been usurped in 1939. On the previous day, for the first time since 1940, Lithuania had commemorated its national day, the proclamation of independence in 1918, but the occupier's red flag was still flying.

93. The question of the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers was also bound up with the problems of torture and ill-treatment. Since the end of the war, war criminals or persons similarly classified had been tracked down, especially in the United States and the United Kingdom. The procedure sometimes used in those proceedings was illegal. Thus, accused persons who were natives of the Baltic States were sent back to their country of origin, which came under the purview of the Soviet Union, although the latter had not been competent in respect of those countries at the time when the acts in question had been committed. The Soviet legal system was not competent to try nationals of a country which it had occupied militarily or to deal with crimes committed prior to the occupation and by non-Soviet citizens. Persons guilty of Stalinist crimes in the Baltic countries which caused the death of thousands of persons, as far as he knew, had never been brought to justice.

94. The press and the International Federation of Free Journalists protested against any form of violence and they denounced torture which was still too prevalent, despite the assurances given by some countries in the Commission. The end did not justify the means when fundamental human rights were involved.

The meeting rose at 12.55 p.m.