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Held at the Palais Wilson, Geneva, on Monday, 11 October 2010, at 3 p.m.

Chairperson: Mr. Iwasawa

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The meeting was called to order at 3.15 p.m.

Consideration of communications under the Optional Protocol to the Covenant

1. **Mr. O'Flaherty**, reporting on the pre-session meeting of the Working Group on Communications, said that the Working Group had met for three days the previous week and had considered 20 communications.
2. The Working Group commended the secretariat for the superb quality of its support. However, it was somewhat concerned about the reduction in Petitions Unit staff.

Consideration of reports submitted by States parties under article 40 of the Covenant

Sixth periodic report of El Salvador (CCPR/C/SLV/6; CCPR/C/SLV/Q/6 and Add.1; HRI/CORE/1/Add.34/Rev.2)

3. *At the invitation of the Chairperson, the members of the delegation of El Salvador took places at the Committee table.*
4. **Mr. Arene Guerra** (El Salvador) said that the Salvadoran Government that had assumed office in June 2009 had introduced major changes aimed at guaranteeing the human rights of all Salvadorans. It had recognized the country's human rights obligations and was committed to providing redress for victims of serious human rights violations. After decades of State indifference, the authorities were taking the first steps towards complying with international human rights standards.
5. **Mr. Morales Cruz** (El Salvador) said that since June 2009 the Government had been engaged in a process of assessment aimed at identifying actions, programmes and policies that could be introduced, implemented and adjusted so as to further Salvadoran compliance with the Covenant and other international human rights instruments.
6. Some of the statements made and data provided in the sixth periodic report (CCPR/C/SLV/6) submitted in early 2009 needed to be corrected because they reflected an approach to the State's international obligations that was not shared by the current Government. For instance, previous administrations had adopted an attitude of indifference to their international obligations vis-à-vis the victims of serious human rights violations during the internal armed conflict or had even repudiated such obligations. The current Government had sought to restore the victims' dignity and had condemned the actions of the State, which had been responsible for gross human rights violations during the armed conflict, especially against the civilian population.
7. The Government had initiated processes of inclusion and dialogue with the victims and the organizations representing them. The State's recognition of the authority of international human rights treaty and oversight bodies had been reflected at recent sessions of the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, the Human Rights Council and other treaty bodies. A National Commission on reparations and a National Commission to trace missing children were being established. The latter would apply international human rights standards in the search for children who had disappeared during the internal armed conflict.
8. At an event to celebrate the eighteenth anniversary of the Peace Agreements on 16 January 2010, the President of the Republic had admitted that State officials and members of semi-official bodies had committed serious human rights violations, thereby recognizing the State's responsibility for such acts. He had apologized, announced the establishment of the commissions on reparations and missing children, and offered to collaborate with competent national and international bodies in undertaking investigations and securing the victims' right to justice.

9. While the Government admitted that the goal of achieving full satisfaction for the victims of serious violations during the armed conflict called for even more resolute action on the part of all public institutions, it submitted that the procedures launched to date constituted a major step forward compared with the inaction of previous Governments.

10. A new approach had also been adopted to security policy, which was now based on the Constitution, the Peace Accords, respect for human dignity, transparency, accountability, involvement of the general public, gender equity and the lawful (and never arbitrary) use of force. The new security policy comprised: crime prevention and control; prevention of violence; enforcement of penalties; rehabilitation and reintegration into society; care for victims; and institutional and legal reform. A democratic approach was to be adopted to the prevention and reduction of violence and crime. Importance would be attached to the free exercise of rights and freedoms, wider social participation, involvement of local authorities and enhancement of the technical capacity of the central Government in the areas of justice and public security.

11. The new security and justice policy also guaranteed the independence, and provided for the strengthening, of the General Inspectorate of the National Civil Police. The action taken in that regard had begun to bear fruit, notwithstanding the resistance encountered in a national setting in which the Inspectorate's oversight capacity had been restricted. The training courses provided by the National Public Security Academy had also been improved.

12. The establishment of the Social Inclusion Secretariat at the Office of the President of the Republic demonstrated the Government's commitment to non-discrimination in the area of human rights. Its mandate included the promotion of a rights-based approach to public policy in order to eradicate discrimination and intolerance, and the implementation, where necessary, of affirmative action in support of children, young people, persons with disabilities, older persons, members of indigenous peoples and sexually diverse persons.

13. The policy of non-recognition and "statistical genocide" of indigenous peoples had been discarded. El Salvador was recognized as a multicultural nation with three indigenous groups: the Nahuatl/Pipil, the Lenca and the Kakawira. At least two peoples spoke a language other than Spanish. As the indigenous peoples had their own cultural, historical and ethnic heritage, their existence must be recognized in legal terms.

14. The State also needed to reach agreement with the indigenous peoples on inclusive public policies that respected their world view and guaranteed them unrestricted enjoyment of all their rights. The first National Indigenous Congress had been inaugurated in El Salvador that very day. Representatives of a wide range of indigenous peoples' organizations and associations had agreed on the agenda.

15. The Social Inclusion Secretariat was promoting the eradication of all forms of discrimination based on gender identity and sexual orientation. Executive Decree No. 56, adopted in May 2010, strictly prohibited discrimination in public administration on such grounds. Moreover, information and awareness-raising campaigns were being initiated to eliminate stereotypes and to promote policies that guaranteed the right to sexual diversity.

16. As full compliance with all the human rights standards enshrined in the Covenant still presented the Salvadoran authorities with enormous challenges, they attached great importance to the current dialogue and to the Committee's conclusions and recommendations.

17. **Mr. O'Flaherty** said it was regrettable that the State party's replies to the list of issues had not been submitted sooner so that they could have been translated into the Committee's working languages.

18. With regard to the first question, he was grateful for the State party's recognition that the courts did not invoke the provisions of the Covenant as frequently as they should, especially since international treaties formed part of domestic law. He asked what was being done in the universities and in other centres providing basic and continuing legal education to ensure that lawyers and judges were more familiar with the Covenant.

19. He took note of the fact that the Constitution had primacy over the Covenant. As a number of other Latin American countries, including Argentina, Colombia, Guatemala, Peru and Venezuela, had given the Covenant constitutional rank, he asked whether El Salvador might consider adopting a constitutional amendment to that effect. He was also curious to know how the State party honoured its international obligations in cases where the Constitution proved to be inconsistent with a provision of the Covenant. Was there a procedure such as a vetting system to ensure that new legislation was consistent with the Covenant?

20. Questions 2 to 5 of the list of issues all related to transitional justice. He was fully cognizant of the extraordinary range of human rights violations that had occurred during the internal armed conflict. United Nations sources reported that at least 75,000 people had been killed and the Truth Commission had recorded some 22,000 serious human rights abuses. In that context, he was alert to the difficult challenges presented by transitional justice and greatly appreciated the information provided to the Human Rights Committee, the Committee against Torture and the Human Rights Council, which demonstrated the vigour with which the issue of reparations was being addressed. However, articles 6 and 7 of the Covenant required the State party to conduct extensive criminal investigations and to ensure accountability for human rights abuses. Many cases of disappearance were still unresolved. Article 2 granted victims the right not only to reparations or compensation but also to a broader form of redress for the wrongs suffered by themselves and their families. The State party was also required to foster a human rights culture and to do everything in its power to ensure accountability, transparency and justice.

21. As the continued application of the General Amnesty Act mentioned in question 2 of the list of issues constituted a violation of the State party's obligations under the Covenant, he asked whether there was any possibility of the Act being reviewed and repealed. The Supreme Court had declared that it could exclude its applicability under certain circumstances, but he had never heard of any instance in which the Court had acted on that interpretation. In what circumstances could it exercise such jurisdiction and why had it failed to do so in the case mentioned in question 3 of the list of issues, namely the killing of Mgr. Oscar Romero, the Archbishop of San Salvador, as well as six Jesuit priests, their housekeeper and her daughter in 1989?

22. Question 3 also referred to the application of the statute of limitations. If the statute precluded courts from considering any case concerning human rights violations that related to the period prior to 1998, it would be incompatible with the Covenant.

23. According to the written reply to question 4, over 100 officers, including some senior officers, had been dismissed from the armed forces in the early 1990s. However, the Committee had been informed of those dismissals during its previous dialogue with the State party. Given the scale of the abuses committed, he found their number unconscionably small. According to the Truth Commission, the armed forces had been responsible for 60 per cent of the 22,000 human rights violations, other law enforcement officials for 25 per cent and civil defence officials for 20 per cent. He asked what action could be taken to reopen the issue of lustration in the security forces.

24. He warmly welcomed the reparations scheme and asked for more information on how it would work in practice. For instance, what forms of reparation were being

considered, what funds had been earmarked for the purpose and what time line was contemplated?

25. With regard to the State party's reply to question 5, he said that the procedure used in El Salvador for vetting new recruits to the National Civil Police was excellent and might usefully serve as a model for other States parties. However, question 5 did not concern new recruits, but rather applicants who might have perpetrated human rights violations or been implicated in violations of humanitarian law in the past. He would appreciate further information on that subject.

26. In order to help the Committee better understand the policy of the Government for dealing with human rights abuses committed in the past, he wished to know whether El Salvador's endorsement of recommendations 45 and 46 contained in the report of the Working Group on the Universal Periodic Review (A/HRC/14/5) was a sign of a policy shift in that regard. Those recommendations were to investigate fully and effectively violations committed against human rights defenders and journalists, and to bring those responsible to justice. Since neither recommendation mentioned a time limit, it would appear that they applied to abuses dating back to the period of the conflict.

27. **Ms. Majodina** said that in its most recent concluding observations (CCPR/CO/78/SLV), the Committee had expressed concern that the reform of the judicial system might not be sufficient to ensure compliance with article 14 of the Covenant. She wished to know what progress had been made in addressing that concern.

28. **Mr. Rivas Posada** said that the Committee was concerned at reports it had received of threats against the life of the senior public prosecutor. He recommended that the State party should not only provide police protection for such high-ranking officials but should also investigate the source of the threats.

29. The long period of internal armed conflict in El Salvador had seen a large number of enforced disappearances, which posed a challenge in terms of investigation and bringing the alleged perpetrators to justice. He welcomed the fact that measures had been taken by the current Administration to ascertain the whereabouts and fate of victims of disappearance, but noted that such efforts must be strengthened further. The Committee would closely monitor the State party's efforts in that regard.

30. It was not enough for the State party merely to report that it had reformed its legislation; it should also furnish information on its implementation, so that the Committee could assess the degree of progress made. While it was essential to have statistics on cases of enforced disappearance and torture and ill-treatment at the hands of public officials, that was not sufficient. The Committee also needed to know the outcomes of investigations and the punishment that had been imposed on offenders.

31. Similarly, on the subject of providing reparation to victims, a mere acknowledgement of wrongdoing or apologies by the State party did not suffice, even though such actions were an important aspect of reparation. It was more important for the Committee to know the specific results that had been achieved and details concerning the proper compensation of victims.

32. He wished to know whether the National Civil Police officers who had been convicted for offences committed during the conflict had been punished in accordance with the requirements of international law. Merely dismissing them was not sufficient and contributed to a culture of impunity. It was imperative to ensure that such offenders received sentences that were commensurate with the seriousness of their offence and that proper reparation was made to victims.

33. **Mr. Salvioli** said that, although El Salvador currently had no specific legal framework for indigenous peoples, he welcomed the fact that the first National Indigenous

Congress was under way in the State party. He wished to know what role was played by the State in that body and whether its decisions would be binding. He asked whether that new policy meant that the State party was planning to accede to the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169). He requested additional information on the participation of indigenous communities in public life, including the higher levels of civil service, political parties and Parliament. He wished to know whether any specific policies had been developed on indigenous issues, and requested additional information on the situation of indigenous land rights.

34. In its reply to question 9, the Government had listed many plans, but there appeared to be little information concerning their implementation. He asked when the Government expected the bills on genuine equality and on combating gender violence to be adopted. He pointed out that a number of recommendations made by other United Nations treaty bodies and special procedures mandate holders had not been given full effect by the State party. He drew particular attention to the recommendations of the Special Rapporteur on violence against women, which included additional research into the causes of such violence. The State party had also been recommended to collect statistics disaggregated by sex in all sectors, especially employment. It was regrettable that it had not implemented that recommendation as that prevented the Committee from carrying out a proper analysis of the State's commitment to the principle of gender equality.

35. He requested more detailed information on the preliminary bill on electoral reforms for achieving equality between men and women and asked when the bill was expected to be adopted. He wished to know whether any individuals had been prosecuted or sentenced for acts of domestic violence.

36. In its reply to question 9, the State party had referred to education programmes for rural areas that targeted both boys and girls. However, question 9 specifically referred to steps to improve the literacy rate of women, especially women in rural areas, since illiteracy was much worse for girls than for boys in those areas. He requested examples of the awareness-raising campaigns that had been initiated for the purposes of addressing that issue.

37. With regard to question 10, he asked whether any data were available concerning measures to prevent attacks on homosexuals, to investigate such incidents or to prosecute and punish perpetrators.

38. The situation regarding abortion was particularly distressing. The State party had not only failed to take into account the Committee's most recent concluding observations concerning abortion, but it had promulgated legislation that actually contradicted them by criminalizing all types of abortion. It was illogical for the State party to take steps to combat violence against women while simultaneously making abortion a criminal offence. The Committee had even received reports of women who had died as a result of failing to seek treatment when they had needed an abortion for medical reasons. It was indispensable for the State party to open a public debate on the issue. It should also review its legislation on abortion in order to bring it into conformity with international standards in the area of women's rights and human rights in general. It was difficult to understand why the State party had data on the number of women convicted and sentenced for having an abortion but none for men guilty of domestic violence. He hoped that those sensitive issues would be given due consideration in El Salvador's next periodic report.

39. **Mr. Thelin** requested information concerning the main features of the reform of the Code of Criminal Procedure. He enquired whether the reform would enhance the procedures for the representation of victims and improve their chances of obtaining reparation. He asked whether El Salvador planned to make the transition from an inquisitorial to an adversarial system.

40. **Mr. Amor** said that it was difficult to accept the State party's categorical treatment of the problem of abortion, which made no distinction between legitimate needs and other reasons for seeking an abortion. It was also difficult to accept that women could be sentenced to 30 years in prison for having an abortion. He suggested that the State party — short of repealing its legislation — could at least consider introducing appropriate distinctions between the various types of abortion. He asked whether the law criminalizing abortion had been based on social or religious considerations.

41. He would be grateful for additional information on the legal considerations relating to the statute of limitations, particularly in the case of Mgr. Oscar Romero. Was any derogation allowed from provisions prescribing a statute of limitations? The delegation should comment on whether progress had been made in implementing the Committee's recommendation, contained in its most recent concluding observations, to the effect that the State party should review its rules on the statute of limitations and bring them fully into line with its obligations under the Covenant.

42. **Mr. El-Haiba** asked whether the changes being made within the security forces formed part of a comprehensive reform of the security system and the criminal justice system. He urged the State party to consider the linkages between the systems and the need to promote the protection of human rights while maintaining law and order.

43. The Committee would welcome additional information on efforts being made to improve the situation of women and tackle gender-stereotyping and sexual discrimination in general. In particular, he asked how the Government planned to put a stop to the full-time employment of young girls, many of whom were from vulnerable groups.

44. Since abortion was illegal, even in cases of rape and incest, it would be useful to know to what extent the State party supported non-governmental organizations (NGOs) that took care of victims of rape and incest, who were reportedly sometimes refused access to public hospitals.

The meeting was suspended at 4.35 p.m. and resumed at 4.55 p.m.

45. **Mr. Arene Guerra** (El Salvador) recalled that President Mauricio Funes had been in office only since June 2009. The Government welcomed the opportunity to open a dialogue on the human rights of all Salvadoran citizens, both in his country and abroad, and recognized that much remained to be done to improve the situation of all citizens.

46. **Mr. Morales Cruz** (El Salvador) said that the Constitutional Chamber of the Supreme Court of Justice had considered the issue of the status of international instruments in his country's legal order. In a 2004 ruling, it had stated that international instruments had binding legal force in El Salvador and took precedence over domestic legislation. It was becoming increasingly common for judges in criminal and family courts to invoke international human rights instruments when faced with domestic legislation that limited human rights, and the Constitutional Chamber had based several recent rulings on international instruments, including the Covenant. Nonetheless, to date there had been no debate on constitutional reform with a view to modifying the status of international instruments.

47. While recognizing with appreciation the obligation to ensure that victims of unlawful arrest or detention should have an enforceable right to compensation, it was the responsibility of all State institutions to enforce that right. The Government had begun the process of fulfilling that obligation, and had established commissions on reparations and missing children. The National Commission on reparations had appointed its members, who included several State officials, and was currently drawing up its rules of procedure. Once they had been adopted, the Commission would begin a four-month negotiation period with the human rights organization that was representing victims of the internal armed conflict.

The victims would therefore have the opportunity to participate directly in developing the national reparations plan.

48. The National Commission to trace missing children would be entirely autonomous, include representatives of civil society and have full investigative capacities. Several Supreme Court rulings had highlighted the need to provide compensation to victims of the internal armed conflict, especially in cases of the enforced disappearance of children, which constituted violations of the Constitution.

49. The Government had no plans to repeal the General Amnesty Act. However, in 2000, in response to a request to declare the Act unconstitutional, the Constitutional Chamber of the Supreme Court had ruled that the Act did not apply to cases of serious human rights violations under article 2 of the Constitution or acts that had occurred between 1989 and 1992. That ruling, in addition to the 2004 Constitutional Chamber ruling that international instruments took precedence over domestic legislation, reduced the impact of the Act. If the judiciary chose to take that opportunity, their jurisprudence would provide a sound legal basis on which to conduct investigations and ensure access to justice for victims of human rights abuses. While the obligation to provide compensation gave the Government some room for manoeuvre, it was up to the judicial authorities to initiate the proceedings. The Office of the Attorney-General, in particular, had been slow to investigate cases involving human rights abuses that had occurred after 1998.

50. In the case of the six murdered Jesuit priests, the 2000 ruling of the Constitutional Chamber limiting the application of the General Amnesty Act had indeed been invoked. It had been the statute of limitations that had been applied in that case. The priests had been murdered before the adoption of the current Criminal Code, which provided that the statute of limitations could not be invoked in the case of serious human rights violations. However, the Criminal Code could not be applied retrospectively.

51. The Government recognized that much remained to be done to improve the human rights situation within the armed forces and the police, despite the “cleansing” operation that had resulted in the dismissal of some 100 officers. Since that operation, which had been conducted as part of the peace process, successive Governments had not proceeded further with it. The current Government, however, was strengthening institutional control and monitoring to ensure that any member of the armed forces or the police who committed a human rights violation or abused their power in any way was investigated and dismissed from service.

52. The Ombudsman had been provided with special protection, and investigations of threats against previous ombudsmen had been initiated by the Office of the Public Prosecutor. Similar protection measures had been put in place for community leaders in Cabañas, who had suffered threats as a result of their protests against mining activity in that region. The question of security for human rights defenders had been raised in the context of the universal periodic review within the United Nations Human Rights Council. Attacks against human rights defenders during the civil war would have been covered by the statute of limitations or the General Amnesty (Consolidation of the Peace) Act.

53. **Ms. Hernández de Espinoza** (El Salvador) said that for several years State institutions and the private sector had been making efforts to raise awareness of the Covenant and El Salvador’s obligations as a State party. Modules on the provisions of the Covenant had been included in training curricula for judicial and police officers. A training programme for public prosecutors had also been established under the aegis of the Office of the Ombudsman. University law curricula covered the rights enshrined in the Covenant and the other international human rights treaties. NGOs were also working to raise awareness of the Covenant. The Covenant could be invoked by all citizens. The National Civil Police and

National Public Security Academy were also focusing on a human rights-based approach in training for their officers; in so doing, they were raising awareness of the Covenant.

54. Turning to the question of education for girls, she said that Ministry of Education statistics showed that more girls than boys applied for school enrolment, and literacy statistics for 2010 showed a higher rate among girls than boys in State schools. The Government aimed to achieve 100 per cent literacy among all children, and to that end had established a strategy for inclusive education for children with disabilities and indigenous children. A model system for full-time schooling was in place with a view to reducing the literacy gap between boys and girls and ensuring greater equality.

55. El Salvador was currently taking its first steps towards the investigation and prosecution of offences motivated by gender or sexual orientation. The Government had established a unit for sexual diversity, which worked to eliminate gender-based or sexual orientation-based discrimination. The National Public Security Academy was taking measures to train police officers to behave respectfully towards people of different sexual orientations. One significant gap to be bridged was the inadequacy of punishment for the perpetrators of hate crimes and the lack of reparation for victims. Efforts were being made by the Executive to ensure proper police training and guarantee the investigation of hate crimes motivated by gender or sexual orientation. Statistics on investigations and convictions would be transmitted to the Committee in due course.

56. On the question of indigenous peoples and the role of the State, she said that the first National Indigenous Congress would begin work the following day. The Government had convened all the indigenous peoples' organizations and associations that were due to participate in order that they could set the agenda for the Congress. The Government acknowledged that it could not impose decisions on the indigenous peoples, and agreements must therefore be concluded. To that end, a body for cooperation between the Government and the indigenous peoples had been created. The Government would respect all decisions emanating from the Congress. It would consider ratifying the ILO Convention concerning Indigenous and Tribal Peoples, 1989 (No. 169), if a proposal to do so was made by the indigenous peoples. The Congress was also intended to establish an indigenous peoples' commission to draft culturally appropriate questions for the forthcoming national census; the indigenous peoples had been ignored in the previous census.

57. Abortion was a particularly difficult issue in El Salvador. The Constitution, the Criminal Code and the recently enacted legislation on comprehensive protection for children and adolescents considered a foetus to be a human life from the moment of conception. The Criminal Code criminalized all forms of abortion, which carried penalties of deprivation of liberty for periods of up to 11 years. The mentioned case involving a 30-year prison sentence had stemmed from a judicial error. The conviction had been for the murder of a newborn rather than for an abortion. The murder of one's own child constituted aggravated murder, and was punishable by 30 years' imprisonment. In the case in question, further forensic investigation had established that the child had been stillborn. The mother had been released and absolved of all guilt. The State would ensure that reparation was made for her wrongful conviction.

58. The Criminal Code permitted abortion in the case of a conflict between the duty to protect the child and the duty to protect the life of the mother. The courts decided on a case-by-case basis whether an abortion in that context constituted a criminal offence. Efforts were being made to revise the school curriculum for sexual and reproductive health, particularly for young women and girls, in order to prevent unwanted and underage pregnancies.

59. The process of judicial reform had been under way since 1998. While the new Code of Criminal Procedure had been adopted, it was not yet in force. When it did come into

force, however, it would initiate a move away from the inquisitorial system towards an adversarial approach, enabling victims to participate in proceedings by providing evidence; that would ensure a better balance between the rights of the victim and those of the accused.

60. **Ms. Navas Umaña** (El Salvador) said that the State recognized the shortcomings in the collection of data on serious human rights violations; appropriate information has not been provided on certain cases, particularly on prosecutions of the violation of the right to life and other serious cases. Although some investigations had begun during the reporting period, they had not yet been concluded. Under a new justice policy, efforts were being made to improve access to justice for victims of ordinary crimes and victims of offences committed by agents of the State. During the period 2002 to 2007 there had been very few cases of violations of the right to life by the police. Following the establishment of the new National Civil Police, 59 police officers had been dismissed for the crime of violating the right to life, and 27 had been dismissed for other violations relating to torture or cruel, inhuman or degrading treatment. Other penalties included suspension from duty for a period of 60 to 90 days for abuse of authority. Particular efforts had been under way since 2009 to crack down on police offences, and as a result, a further 37 officers had been dismissed. Security was governed by the principles of the 1992 Peace Accords, the American Convention on Human Rights, the International Covenant on Civil and Political Rights, and the Constitution.

61. The new Administration had made efforts to train the National Civil Police with a view to eradicating hate crimes, particularly against people of different sexual orientations. Training in human rights was provided for the police in order to ensure there was no threat of a return to past practices involving serious violations of human rights by the security forces. Efforts were also under way to ensure access to justice for victims of crimes committed by the police and security forces. A joint programme had been established by the Ministry of Health and the World Health Organization to investigate hate crimes committed on grounds of sexual orientation and against people with HIV/AIDS. Action had also been initiated to grant reparations to victims of offences committed during the period of insecurity in El Salvador.

62. The State had increased funding for the Office of the Ombudsman. The current Ombudsman was receiving appropriate protection to ensure that the security threats that had been made in the past were not repeated. An investigation into those threats had now been opened.

The meeting rose at 6 p.m.