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Held at Headquarters, New York,
on Friday, 4 April 1997, at 10 a.m.

Chairperson: Ms. CHANET

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Portugal on the application of the Covenant in Macau (CCPR/C/70/Add.9)

1. At the invitation of the Chairperson, Ms. Assunção, Mr. Ho Veng On, Mr. Jacinto, Mr. Nataf, Mr. Oliveira, Ms. Tou Wai Fong and Mr. Vidal took places at the Committee table.

2. Mr. OLIVEIRA (Portugal) said that his delegation was composed almost entirely of experts from Macau and was led by a permanent resident of the Territory. The Government of Portugal gave high priority to the protection of human rights in Macau; the civil liberties provisions of the Portuguese Constitution were applied there and preparations were under way for the implementation in the Territory of several major international human rights instruments. The Government had decided to give the highest priority to the application of the International Covenant on Civil and Political Rights, and a considerable body of laws and regulations had been elaborated to ensure that there would be no loopholes in that regard. Following consultations with the Chinese Government, an agreement had been concluded on the continuity of Covenant rights under the Basic Law that would govern Macau after it reverted to China. Considerable efforts had been made to ensure public awareness of applicable human rights instruments in the Territory, and local non-governmental organizations had made an invaluable contribution to those efforts. The purpose was to ensure the preservation of the Territory's way of life, and not just in the economic field, after the transition period ended in December 1999.

3. Considerable progress had been made in establishing Chinese as an official language, including the translation of legal texts into Chinese. There were similarities, but also considerable differences, with the situation in Hong Kong. For instance, the law provided for appeals in civil and criminal cases to be heard and concluded in Macau, and public international law prevailed over domestic law and could be invoked directly in the courts.

Part I of the list of issues

Issue 1: Reporting obligations and the Sino-Portuguese Joint Declaration (article 40 of the Covenant)

4. The CHAIRPERSON read out the content of issue 1, concerning arrangements to ensure future compliance with reporting obligations in respect of Macau under article 40 of the Covenant; and, in connection with paragraph 11 of the report, the extent to which residents of Macau had been consulted during the elaboration of the Sino-Portuguese Joint Declaration and were being kept informed of developments in that regard.

5. Mr. OLIVEIRA (Portugal) said that it was his Government's understanding that the commitment made by China to continue to apply both the International

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Covenants on Human Rights beyond the end of the transition period, through a specific provision of the Basic Law of the Territory, included the commitment to report to the Human Rights Committee pursuant to article 40. During the Sino-Portuguese consultations, China had introduced no restrictions or reservations in that regard. In addition, within the framework of the Sino-Portuguese Joint Liaison Group, Portugal had specifically asked China to state its position on the matter as soon as possible. His Government was still awaiting China's response, having repeated its request at several levels.

6. Concerning the matter of consultations, the population of Macau had expressed a preference for a joint declaration similar to the Sino-British Joint Declaration on Hong Kong. They had also said that the level of human rights protection should be no less than that for Hong Kong, and local experts had proposed some new clauses intended to improve prospects for the continuity of Macau's legal system.

Issue 2: Human rights institutions (article 2 of the Covenant)

7. The CHAIRPERSON read out the content of issue 2, concerning the effectiveness of the Public Information and Assistance Centre and the High Commission against Corruption and Administrative Illegality; the cases brought before those bodies in the past three years and the outcome of recent cases; and the possibility of establishing a national human rights institution to deal with human rights issues and/or to monitor the implementation of the Covenant.

8. Mr. VIDAL (Portugal) said that the Public Information and Assistance Centre was an internal body of the Administration, the purpose of which was to assist the public, receive complaints, make recommendations and provide legal counselling. Of the complaints received in 1994, 129 had concerned pollution and other environmental issues, 12 had concerned problems with garbage and 57 had concerned illegal construction. The remainder had dealt with minor issues. As to the outcome of such complaints, the Centre's role was to tell complainants which entities to contact to deal with the problem.

9. The role of the High Commission against Corruption and Administrative Illegality was twofold: to combat corruption and to act as an Ombudsman. With regard to corruption, it had the power to investigate, carry out inspections and take preventive action. When it uncovered evidence that an offence had been committed, it transmitted it to the prosecuting authorities. In 1993, it had handled 100 cases involving alleged criminal activities, of which 70 had involved corruption. Of the 100 cases, 23 had been referred to other bodies such as the Public Prosecutor's Department. The remaining cases had either been resolved by means of recommendations or had been found to be without substance. The press had reported on a number of convictions obtained as a result of investigations by the High Commission.

10. The High Commission's Ombudsman activities involved receiving complaints from the general public and making recommendations to the Administration for action to remedy any illegalities that had occurred. Of 103 cases investigated in 1993, six had involved violations of fundamental rights and freedoms. About 40 per cent of cases were resolved simply by suggesting remedial action to the authorities or services concerned. When there was enough evidence to justify

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administrative or criminal penalties, appropriate action was taken by the relevant authorities.

11. Mr. OLIVEIRA (Portugal) said that the authorities in Macau were indeed considering the possibility of establishing a national human rights institution. However, no local non-governmental organizations had made such a proposal and no analogous body existed in Portugal. Priority was being given to other tasks, such as stepping up training and education in the provisions of the international human rights instruments which had become applicable in Macau in 1993, and reinforcing the already wide range of institutions and mechanisms that existed within the legal system to guarantee human rights and fundamental freedoms in the Territory.

Issue 3: Persons of Chinese origin and use of the Chinese language (article 26 of the Covenant)

12. The CHAIRPERSON read out the content of issue 3, requesting information on the number and proportion of persons of Chinese origin in the political, economic, social and cultural life of the Territory; which sectors of the Administration and the judicial system were still functioning only in Portuguese; and the difficulties encountered in introducing the Chinese language in the administrative, legislative and judicial areas.

13. Mr. OLIVEIRA (Portugal) said that, in the Sino-British and Sino-Portuguese Declarations, the criteria for considering whether a person belonged to one of the ethnic communities concerned did not correspond to the concept of citizenship, which would not make sense in entities of a regional nature. Ethnic origin was not among the criteria for determining who was a resident of Macau.

14. Mr. HO Veng On (Portugal) said that the Consultative Council worked directly with the Administration; 80 per cent of its elected members and 40 per cent of its appointed members were persons born in Macau. After 1999, Macau would be a highly autonomous region. The Legislative Assembly consisted of three categories of members: those elected directly and those elected indirectly, of whom 50 per cent had been born in Macau, and those appointed by the Administration, of whom 43 per cent had been born in Macau; 65 per cent of municipal assembly members had been born in Macau and 35 per cent in China. As for the civil service, 25 per cent of departmental heads and 65 per cent of other civil servants had been born in Macau.

15. Mr. OLIVEIRA (Portugal) said that 95 per cent of the Territory's population was of Chinese origin and that the Chinese population dominated the Territory's economic life. Macau had a thriving social and cultural life and was a very open international city; many tourists and visitors came to the Territory, mostly from neighbouring regions.

16. Ms. TOU Wai Fong (Portugal) said that most government departments used both Chinese and Portuguese and therefore employed large numbers of translators and interpreters. The task of training increasing numbers of interpreters and translators had become a pressing one. However, as a growing number of bilingual staff took up leadership positions, the situation was improving.

Translators faced a tremendous workload in the legislative area because of the need to translate into Chinese, by 1999, all laws enacted between 1976 and 1990. In addition, preparatory work had to be done to meet future legislative needs, particularly in the technical sphere. Considerable efforts had been made in the judicial sphere; since 1995, simultaneous interpretation had been used in criminal and other cases. There were now 11 translators-interpreters working in the public courts, three in the Public Prosecutor's Department and two providing general support. Since 1994, 14 translators-interpreters specializing in legal translation and simultaneous interpretation had been trained. The standard forms for court papers and the printed matter most commonly used in the courts and in the Public Prosecutor's Department were published in both Chinese and Portuguese.

17. Mr. OLIVEIRA (Portugal) said that, since April 1994, significant progress had been made in both the judiciary and the Administration; most official forms were now bilingual. However, much remained to be done with respect to the translation of laws. While all court papers concerning outside relations with citizens were bilingual, internal paperwork was still drafted in Portuguese only and there were similar problems with notaries public and registrars. As far as judicial decisions of the Superior Court of Justice were concerned, although rulings were handed down by judges in Portuguese only, they were translated into and published in Chinese.

Issue 4: Use of weapons by the police (article 6 of the Covenant)

18. The CHAIRPERSON read out the content of issue 4, concerning the effectiveness of rules and regulations governing the use of weapons by the police and security forces, and any violations thereof; and any measures taken against persons found guilty of such violations and any action to prevent a recurrence.

Issue 5: Torture, ill-treatment, arbitrary arrest and detention (articles 7 and 9 of the Covenant)

19. The CHAIRPERSON read out the content of issue 5, requesting information about any complaints made to the authorities, during the period under review, alleging torture, cruel, inhuman or degrading treatment or punishment or arbitrary detention by the police or other forces; any investigations or prosecutions carried out in respect of such violations, and their outcomes; any action taken to punish those found guilty; and any compensation granted to the victims and steps taken to avoid a recurrence.

20. Mr. OLIVEIRA (Portugal) said that there had been no known cases of torture in Macau. However, in 1994, 1995 and 1996 respectively, there had been 15, 44 and 30 cases of police violence resulting in injury. There had also been four cases of improper use of weapons by the police in 1996. All the cases had been investigated; in two of them, disciplinary measures had been taken against the officers concerned, while in the other two, investigations were still ongoing. According to data from the Public Prosecutor's Department, 28 inquiries had been opened concerning cases of alleged police violence in 1994: six had led to indictments, no evidence of wrongdoing had been found in six others, 12 were still pending and two had been added to other existing files.

21. Ms. ASSUNÇÃO (Portugal) said that there had been no reports of arbitrary detention. The right to compensation in cases of unlawful arrest or unjustified loss of freedom was fully recognized in the new Criminal Procedure Code. In cases of ill-treatment or torture, the amount of compensation awarded depended on the seriousness of the offence.

22. Mr. OLIVEIRA (Portugal) said that, since all the cases mentioned had been isolated incidents and appropriate disciplinary action had been taken against the offenders, no specific measures had been taken to avoid a recurrence. However, in recent years, police officers had been receiving special training not only on law enforcement issues but also on how best to deal with sensitive situations which might lead to the unlawful use of weapons.

Issue 6: Treatment of prisoners and other detainees (article 10 of the Covenant)

23. The CHAIRPERSON read out the content of issue 6, concerning the extent to which the United Nations Standard Minimum Rules for the Treatment of Prisoners were being complied with; the dissemination of those provisions to the police, prison personnel and other persons responsible for conducting interrogations, and to persons deprived of their liberty; and arrangements for the supervision of places of detention and procedures for receiving and investigating complaints.

24. Ms. ASSUNÇÃO (Portugal) said that the legislation in force fully reflected the United Nations Standard Minimum Rules for the Treatment of Prisoners and that the fundamental rights of prisoners were respected. There were rules concerning, inter alia, the separation of male prisoners from female prisoners; the separation of minimum, medium and maximum security prisoners; personal hygiene; and discipline and punishment of prisoners. Corporal punishment was forbidden. Prisoners had the right of access to legal counsel, medical assistance and cultural, recreational and sports activities, and the right to complain to the prison warden and to the courts, particularly in cases where they were placed in a punishment cell for eight days or more. Under a decision of the Governor of Macau, prisoners also had the right to petition.

25. Prison regulations were provided to prisoners, upon their incarceration, in Portuguese or Chinese. Prisoners who did not understand either language or were illiterate were informed orally of the regulations and of their right to petition. A copy of the regulations was also available in the prison library or in a place where prisoners could have access to it. In recent years, courses had been organized for prison personnel and criminal investigation personnel on the rules for the treatment of prisoners. Courses had also been organized for police personnel on topics such as criminal procedure and ethics. The Public Prosecutor's Department was responsible for prison supervision. Complaints from prisoners were received by the warden or the courts and must be transmitted immediately to the appropriate authorities.

Issue 7: Freedom of movement and expulsion of aliens (articles 12 and 13 of the Covenant)

26. The CHAIRPERSON read out the content of issue 7, concerning measures adopted by the State party to regulate entry, length of stay and establishment of residence in the Territory of Macau; the legal implications of the temporary residence permits; specific measures for dealing with illegal immigration; the procedure followed by the authorities to establish that an individual's return or extradition to his/her country of origin would not represent any risk for him/her; the remedies available to individuals in such situations; and the reason why article 13 of the Covenant was not applicable to Macau.

27. Mr. NATAF (Portugal) said that since Macau was a free Territory, entry procedures were fairly liberal; holders of Portuguese, Chinese or Hong Kong identity documents and non-immigrant worker identity cards were allowed entry. In other cases, visas could be obtained upon demand from the Administration. The initial length of stay granted to aliens could be extended. Residence could be obtained by substantiating the residence application and providing proof of financial independence and of the absence of a criminal record. Applications for residence could also be granted on humanitarian grounds. Temporary residents could become permanent residents after seven years of uninterrupted residence in the Territory. During that period, they must communicate to the authorities any change of address in Macau and also inform them when leaving the Territory for more than 90 days. Only permanent residents could vote and stand for election.

28. As far as illegal immigration was concerned, 55 per cent of the population had not been born in Macau, which had the highest population density in the world, the Territory's policy on illegal immigration was therefore very strict. There were preventive and repressive measures for dealing with the problem and the Territory continued to receive large numbers of immigrants, mainly from the People's Republic of China. Administrative procedures were used to expel illegal immigrants, who were simply returned to the border on the first attempt. However, the law had been changed recently to make it an offence for would-be illegal immigrants to make repeated attempts to enter Macau. That had reduced the flow of illegal immigrants somewhat. While such immigrants could if caught, request asylum or refugee status, most of them were economic migrants and did not therefore qualify.

29. The first phase of extradition was administrative, while the second was judicial. Macau's laws prohibited extradition to countries that imposed the death penalty or life imprisonment and where the person whose extradition was requested faced prosecution for a political offence or of his race or religion or trial by a special court. The person to be extradited could remain at liberty, and the requesting State must substantiate the request for extradition and guarantee that the person would have access to legal counsel. The person could even appeal to the Constitutional Court.

30. Mr. OLIVEIRA (Portugal) said that article 13 of the Covenant was not applicable to Macau because, under the Organic Statute of the Territory, an alien could be expelled if it was felt that his or her presence might seriously jeopardize international or internal order.

Issue 8: Freedom of movement and nationality (article 12 of the Covenant)

31. The CHAIRPERSON read out the content of issue 8, concerning the arrangements made between the People's Republic of China and Portugal with regard to the nationality of residents of Macau, and their consequences for freedom of movement.

32. Mr. NATAF (Portugal) said that, upon signing the Sino-Portuguese Joint Declaration, Portugal had granted Portuguese nationality to all inhabitants of the Territory, without distinction as to race, language, religion or place of birth. Inhabitants of Macau thus had dual nationality: Portuguese and Chinese. China did not recognize dual nationality, however, and Portugal was doing its utmost to resolve that issue with the Chinese authorities and to insure against problems of statelessness.

33. Mr. BHAGWATI congratulated the delegation on its detailed and comprehensive report, but regretted the lack of information the actual implementation of the rights set forth in the Covenant. Nevertheless, he was gratified to note that the death penalty had been abolished, even for military crimes; that no state of emergency had been declared; that even under a state of siege or emergency certain basic rights could not be derogated from; and that no person could be extradited from Macau to a requesting State if that State's law provided for the death penalty or life imprisonment. He was also pleased to note that prisoners enjoyed all fundamental human rights and that the use of the Chinese language was increasing in the administration and the courts.

34. It would be helpful to know whether judicial officials, particularly senior judges, received human rights training and, if not, whether the reporting State intended to take any steps in that regard. Moreover, he wished to know whether an individual could approach the courts directly if his or her rights had been violated.

35. Article 8, paragraph 2, of the Portuguese Constitution stated that rules provided for in international conventions duly ratified or approved by Portugal should apply in municipal law as long as they remained internationally binding with respect to the Portuguese State. The delegation should explain whether that provision had become part of the domestic law of Macau as soon as the Constitution had been enacted. It was also unclear whether citizens could invoke the Covenant directly before the domestic courts and whether Macau residents could challenge executive orders or legislation on grounds of incompatibility with the Covenant. Specific cases should be cited.

36. It would be interesting to learn more about the composition of the Public Information and Assistance Centre and the High Commission against Corruption and Administrative Illegality. Specifically, the delegation should indicate whether those bodies included members of the public or the judiciary.

37. The functions and status of the Constitutional Court needed to be clarified, and information should be given about the type of cases which it examined and how many appeals had been lodged with it. The Committee would be grateful for more details about the respective jurisdictions of the Supreme Administrative Court and the Macau Administrative Court.

38. The Portuguese Constitution contained an excellent provision on the joint and several liability of State bodies for acts ultimately leading to human rights violations. The delegation should clarify whether that provision applied to Macau and, if so, whether any pertinent cases had been brought.

39. Mr. KLEIN said that he was impressed by the Portuguese Government's efforts to ensure the future well-being of Macau, both in economic terms and with respect to human rights. In that regard, he noted that the applicability of several human rights treaties would be extended to Macau in the near future. The reporting State should indicate whether those were international treaties which were already in force in China, or different treaties altogether. If they were in force in China, he felt bound to ask why the Portuguese Government was considering their territorial extension at such a late stage. If they were completely different, further details of perceived difficulties with regard to human rights after the 1999 hand-over would be welcome.

40. Clarification was required as to whether the legislative instruments listed in paragraph 16 of the report would remain in force after the hand-over to China in 1999. Specifically, he wished to know whether any problems had been encountered with regard to recently introduced legislation, as had been the case in Hong Kong.

41. The Basic Law adopted by China in 1993 stated that the Covenant would remain in force in Macau after 1999, but no similar clear-cut provision existed in the Sino-Portuguese Joint Declaration. The Sino-British Joint Declaration on Hong Kong had served as a model for Macau, but that Declaration did contain an assurance that the Covenant would continue to be respected once China resumed control. The Basic Law was a Chinese domestic law which could, theoretically, be amended at any time, whereas an international treaty obligation was less easy to alter.

42. The Portuguese Government had made some exceptions with respect to the applicability of the Covenant to Macau. Since the Joint Declaration asserted that Macau's laws would remain in force after the hand-over to China, he took it that the Covenant would also remain in force with the exceptions made by Portugal. The Basic Law, however, stated that the Covenant as a whole would remain in force. The delegation should clarify the apparent contradiction between the two documents.

43. The Committee would be interested to learn whether the special relationship between Macau and Hong Kong would continue after they both reverted to Chinese rule, and what exactly was meant by the term "nationality" in respect of Macau citizens. The report also stated that certain judges were appointed only for limited periods. The State party should explain how that squared with the full independence of the judiciary. There was no mention of prison overcrowding in the report, which he took to mean that no such problem existed in Macau. Lastly, the delegation should state whether Portuguese troops were currently serving in Macau and, if so, what their functions were.

44. Mr. EL-SHAFEI said that, as far as he was aware, negotiations on post-1999 reporting obligations in respect of Macau were still proceeding. The Joint Declaration stated that China would help to make arrangements for the

application of international agreements in Macau, which included the Covenant. He trusted that the Portuguese Government was using that commitment to ensure the fairest deal for the inhabitants of Macau.

45. The reporting State should explain why, if the Portuguese Parliament had decided in 1992 that the application of the Covenant would not affect the status of the Joint Declaration, more had not been made of the Chinese commitment under the Declaration to help elaborate reporting modalities for Macau.

46. Mr. YALDEN requested more information about the Public Information and Assistance Centre and the High Commission against Corruption and Administrative Illegality. The Centre appeared to be a kind of consumers' bureau, while the Commission performed an Ombudsman function without being an independent Ombudsman in the classic sense. The delegation had stated that the Administration of Macau was considering the possibility of establishing a national human rights institution, but that local non-governmental organizations had not agitated for such an institution and that no such institution existed in Portugal. In fact, Portugal did have an independent Ombudsman; moreover, Portugal came within the jurisdiction of the European Court of Human Rights. The Committee would like to know whether Macau was covered by European human rights instruments by virtue of its connection with Portugal and, if so, whether individuals could approach the relevant European courts. The reporting State should be more forthcoming about its plans to establish national human rights bodies in Macau, given that 1999 was not so far off and China lacked any such bodies.

47. He was pleased to note that a very high proportion of civil servants in Macau had been born in either Macau or China. Mysteriously, however, 75 per cent of departmental heads had not been born locally, a fact which he trusted the reporting State could clarify. Further details would also be appreciated on the future of the senior public service in general. On the matter of the promotion of Chinese as an official language, he acknowledged that some progress had been made, but suggested that the Administration still had a long way to go.

48. Ms. GAITAN DE POMBO asked whether there were any points of tension between the various legal systems used in Macau, and whether that pluralism had had an impact on the implementation of the Covenant. The State party should indicate whether, in its view, one system would prevail over the others following the 1999 hand-over. Lastly, more information was required on the dissemination of the Covenant among the various communities living in Macau.

49. Mr. ANDO said that more information was needed on the implementation of each specific provision of the Covenant. He asked why the Government of Portugal had extended the application of the Covenant to the Territory of Macau in 1992, when it had become a signatory to the Covenant in 1978. On the question of succession to Portugal's international obligations with respect to Macau, the dates were critical: the 1987 Joint Declaration referred to laws currently in force in Macau, but it was not clear whether that meant 1987, 1992 or 1999. Again, article 40 of the Basic Law referred to the provisions of the Covenant "as applied to Macau", but at what point in time was not clear. While

the Chinese Government had undertaken to maintain the present legal system in Macau, it might not agree to subsequent changes in that system.

50. Macau would need to decide on nationality qualifications for voting and for standing for election, and it would need a registration system for that purpose. More information was needed on the procedures for becoming a permanent resident and for qualifying to participate in the conduct of public affairs.

51. With regard to efforts to make Macau's judicial system locally based, he asked whether Macau residents would be able to take appeals to the Supreme Court in Lisbon, or whether the final remedy would be obtained within the Territory of Macau and a new court would be set up for that purpose. He asked whether Macau residents would be able to use Chinese if they were allowed to appeal to the courts in Portugal. One-year delays in the translation of legal documents into Chinese were too long, since Chinese residents would need to know the content of judicial decisions as soon as possible.

52. Ms. EVATT said that the report lacked factual information on the implementation of the Covenant.

53. With one exception, the Committee had received very little information from non-governmental organizations. She asked whether that meant that the relevant individuals and organizations had not had access to information about the report and its consideration by the Committee.

54. On the continuing application of the Covenant after 1999, the Committee had already expressed the view, in relation to Hong Kong, that the reporting obligation under article 40 of the Covenant would continue beyond China's resumption of sovereignty. She asked whether practical steps had been envisaged or were being taken to deal with that obligation, so as to ensure that both article 40 of the Covenant and article 40 of the Basic Law remained effective.

55. In relation to issue 3, she asked what the dominant ethnic groups were in the judiciary and the legal profession and whether significant changes had been taking place. On issue 7, she had heard that, although the Constitutional Court of Macau had ruled that it was unconstitutional to extradite a person to a country in which capital punishment was permitted, the Chinese Government had criticized the ruling on the grounds that an extradition agreement was not strictly necessary for the removal of prisoners. She asked whether, after Macau reverted to China, people would be more likely to be removed from Macau to mainland China, where they might face the death penalty, and whether the protection afforded by the Constitutional Court would be ended.

56. Mr. LALLAH said that there was no provision in the Covenant whereby Portugal could extend the territorial application of the Covenant to Macau. Portugal was reporting on Macau because Macau was a part of Portugal. Since Portugal had made no exceptions to the Covenant when it had become a party, it could not subsequently make an exception in respect of Macau.

57. Although article 40 of the Basic Law referred to the application of the Covenant to the Macau Special Administrative Region once that entity came into being, article 37 gave a restricted definition of freedom of expression. It was

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indicated in paragraph 260 of the report that freedom of expression and information were protected under the Portuguese Constitution; however, it was not clear whether the Portuguese Constitution would outlive the hand-over of authority in 1999 and, if so, to what effect. The answer to that question would give an idea of the likely strengths and weaknesses of the legal system for the protection of human rights after 1999.

58. Mr. PRADO VALLEJO said that, although the Basic Law incorporated basic rights and freedoms and made reference to the applicability of the Covenant, its articles 40 and 43 stated that the rights in question would not be restricted "unless as prescribed by law" or would be enjoyed "in accordance with law". He asked what would happen if there was a contradiction between Macau's law and the laws which existed or might exist in mainland China, and what would be done if China changed the Basic Law or restricted the rights and freedoms of citizens of Macau.

59. Mr. OLIVEIRA (Portugal) said that one of the basic principles of the 1987 Joint Declaration was that the legal system of the Macau Special Administrative Region would be autonomous. That meant that China's laws would not apply to Macau unless they were promulgated there, with a few exceptions which were listed in annex III to the Basic Law. In most cases, there was no conflict between national and regional laws because the field of application was different; national laws would not apply to the Macau Special Administrative Region and should not conflict with Macau's regional laws. If the legal framework functioned properly, there would be no overlap. There was no reference in the Joint Declaration, the Basic Law or any legal provision of the People's Republic of China to any precedence of national laws over regional laws.

60. Another principle which was a corollary of the high level of autonomy of Macau was that the court of final appeal of the Macau Special Administrative Region would be the jurisdiction of last instance; there would be no appeals to outside courts. Preparations were being made to that end and interim reforms had been introduced in 1991, but some work still remained to be done.

61. Legal experts were unanimous that article 8 of the Portuguese Constitution did apply in Macau; the chapter of the Constitution concerning civil liberties in Portugal had been reproduced in article 2 of the Organic Statute of Macau as the principles regulating fundamental rights and freedoms. Citizens could invoke those rights directly before the courts and could challenge legal provisions that were in violation of international treaties; such cases had occurred in Portugal, with the result that the Portuguese Constitutional Court had some case law in that area. There were several different mechanisms in the legal systems of Macau, Portugal and China whereby public international law prevailed over domestic law, and it was not expected that there would be any problems in that respect after 1999.

The meeting rose at 12.55 p.m.