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COMMISSION ON HUMAN RIGHTS  
Forty-ninth session  
Agenda item 10

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED  
TO ANY FORM OF DETENTION OR IMPRISONMENT

Argentina, Australia, Austria, Belgium\*, Bulgaria\*,  
Burundi, Chile, Costa Rica, Cyprus, Czech Republic,  
Finland, France, Hungary, Ireland, Poland, Portugal,  
Russian Federation, Rwanda\*, Senegal\*, Slovakia,  
Sweden, Switzerland\*, United Kingdom of Great Britain  
and Northern Ireland: draft resolution

1993\... Question of arbitrary detention

The Commission on Human Rights,

Recalling its resolution 1985/16 of 11 March 1985, in which it requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to analyse available information concerning the practice of administrative detention without charge or trial, and to make appropriate recommendations on the use of this practice,

Recalling also its resolution 1989/38 of 6 March 1989, its decision 1990/107 of 7 March 1990 and its resolution 1992/28 of 28 February 1992,

Reaffirming articles 3, 9, 10 and 29 as well as other relevant provisions of the Universal Declaration of Human Rights,

Recalling articles 9, 10, 11 and 14 to 22 of the International Covenant on Civil and Political Rights,

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\* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Having taken note with appreciation, at its forty-seventh session, of the revised report by Mr. Louis Joinet on the practice of administrative detention (E/CN.4/Sub.2/1990/29 and Add.1) and of the recommendations formulated therein,

Recalling that the General Assembly, in its resolution 43/173 of 9 December 1988, adopted the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which also covers administrative detention, and that, consequently, there is no longer a purpose in treating the question of administrative detention independently, even if, in certain cases, the procedure of administrative detention gives rise to specific abuses,

Recalling also its resolution 1991/42 of 5 March 1991, in which it decided to create, for a three-year period, a working group composed of five independent experts, with the task of investigating cases of detention imposed arbitrarily or otherwise consistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned,

Further recalling that, in its resolution 1992/28 of 28 February 1992, it expressed its satisfaction to the Working Group on Arbitrary Detention at the diligence with which it devised its methods of work,

Having considered the Working Group's report (E/CN.4/1993/24),

Having heard the comments made during the Commission's forty-ninth session,

1. Expresses its appreciation to the Working Group on Arbitrary Detention for the way in which it carries out its task, more particularly for the importance that it attaches to respect for the adversarial procedure in its dialogue with States, and to seeking the cooperation of all those concerned by the cases submitted to it for consideration;

2. Takes note with satisfaction of the Working Group's report and thanks the experts for the rigour with which they have performed their task, in the light of the very specific nature of their mandate of investigating cases;

3. Requests the Working Group, to continue, in discharging its mandate, to seek and gather information from Governments and intergovernmental and non-governmental organizations, as well as from the individuals concerned, their families or legal representatives;

4. Considers that the Working Group, within the framework of its mandate, and aiming still at objectivity, could take up cases on its own initiative;

5. Invites the Working Group to continue to take account, in fulfilling its mandate, of the need to carry out its task with discretion, objectivity and independence and to continue to improve its methods of work;

6. Takes note of the deliberations adopted by the Working Group on issues of a general nature, with a view to achieving better prevention and to facilitating the consideration of future cases as well as helping to further strengthen the impartiality of its work;

7. Welcomes the importance that the Working Group attaches to coordination with other mechanisms of the Commission as well as with treaty-monitoring bodies, and invites it to take a position in its next report on the issue of the admissibility of cases submitted to the Working Group when they are under consideration by other bodies;

8. Expresses its profound thanks to Governments which have extended their cooperation to the Working Group and responded to its requests for information, and asks all Governments concerned to demonstrate the same spirit of cooperation;

9. Requests Governments concerned to give the necessary attention to the "urgent appeals" addressed to them by the Working Group on a strictly humanitarian basis and without prejudging its final decision on the character of the detention;

10. Calls upon Governments concerned to pay due heed to the Working Group's decisions and, where necessary, to take appropriate steps and inform the Working Group, within a reasonable period of time, of the follow-up to the Group's recommendations so that it can report thereon to the Commission;

11. Encourages Governments to consider inviting the Working Group to their countries so as to enable the Group to discharge its protection mandate even more effectively and also to make concrete recommendations on action to promote human rights, in the spirit of the advisory or technical assistance services, that may be of help to the countries concerned;

12. Welcomes the fact that the Working Group has been informed of the release of many individuals whose situation had been brought to its attention;

13. Notes with concern that, according to the Working Group, the practice of arbitrary detention is facilitated and aggravated by several factors such as abuse of states of emergency, too vague a definition of offences against State security, and the existence of special jurisdictions;

14. Expresses also its concern at the fact that most cases of arbitrary deprivation of liberty are motivated by exercise of the right to freedom of opinion and expression;

15. Greatly encourages States to endeavour to take appropriate measures and ensure that the legislation in these three fields is in conformity with the relevant international instruments;

16. Also encourages States, in accordance with its resolution 1992/35 of 28 February 1992, entitled Habeas corpus, and with the recommendations of the Working Group, to establish a procedure such as habeas corpus and maintain it under in all circumstances, including during states of emergency;

17. Requests the Secretary-General to ensure that the Working Group receives all the necessary assistance, particularly in regard to staffing and appropriate resources to discharge its mandate, including the organization, carrying out and follow-up of missions in countries wishing to invite the Working Group;

18. Requests the Working Group to submit a report to the Commission, at its fiftieth session, and to make all suggestions and recommendations for better fulfilment of its task, particularly in regard to ways and means of ensuring the follow-up to its decisions, in cooperation with Governments;

19. Decides to continue its consideration of the question at its fiftieth session under the agenda item entitled "Question of the human rights of all persons subjected to any form of detention or imprisonment".

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