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COMMISSION ON HUMAN RIGHTS

Thirty-seventh session

SUMMARY RECORD OF THE 1605th MEETING

Held at the Palais des Nations, Geneva.  
on Wednesday, 18 February 1981, at 10 a.m.

Chairman:

Mr. CALERO RODRIGUES

(Brazil)

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The meeting was called to order at 10.25 a.m.

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

(b) QUESTION OF MISSING AND DISAPPEARED PERSONS (agenda item 10) (continued)  
(E/CN.4/1434 and Add.1; E/CN.4/1435; E/CN.4/1453; E/CN.4/L.1552)

1. Mr. DYRLUND (Denmark) said that the abhorrent practice of enforced or involuntary disappearances, which violated a wide range of human rights and caused suffering to both the victims and their families, was one of the most important challenges facing the Commission and required urgent action on its part. His delegation had therefore sponsored the resolution establishing the Working Group on Enforced or Involuntary Disappearances and regarded its adoption as one of the main achievements of the Commission at its thirty-sixth session.
2. He expressed appreciation of the balanced and professional report produced by the Working Group (E/CN.4/1435) and noted with deep concern the evidence it provided that cases of enforced or involuntary disappearances had continued to occur since the previous session of the Commission. Even more alarming was the fact that most of such cases involved persons who had been arrested, detained or abducted by personnel belonging to a body which was an organ of the Government or which operated with its complicity. No circumstance could explain or justify that situation, because Governments had a primary responsibility to uphold the rule of law and to safeguard human rights.
3. As for the methods adopted by the Working Group, his delegation supported its humanitarian approach, which had, it was gratified to note, met with some positive results. It also commended the Working Group for its efforts to seek the co-operation of Governments, for such co-operation was of crucial importance if it was to achieve its objectives. It was to be hoped that all Governments would soon join the ranks of those which had showed such encouraging co-operation with the Working Group and had adopted special measures to deal with reports of enforced or involuntary disappearances. His delegation also appreciated the important contribution made to the Working Group's efforts by specialized agencies and non-governmental organizations.
4. Noting that the question of the publicity given to the Working Group's activities had been raised, he said that in his delegation's view the implementation of the Group's mandate did not require confidentiality. On the contrary, it felt quite strongly that the Working Group's report should be given the widest possible dissemination, because the weight of world public opinion could enhance the effectiveness of United Nations action to put an end to enforced or involuntary disappearances.
5. In view of the results achieved by the Working Group and the continued reports of disappearances, his delegation supported draft resolution E/CN.4/L.1552 and hoped that it would be adopted by consensus.
6. Mr. GOLZALEZ de LEON (Mexico) said it was clear from the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1435) that the Group had performed its task in good faith and had achieved initial results which fully justified the confidence placed in it. His delegation therefore supported

an extension of the Group's mandate for a sufficiently long period to enable it to deal with new cases of enforced or involuntary disappearances and with cases in which a Government such as that of Chile failed to co-operate in determining the fate of missing persons. While disappearances could occur in any country, there were some countries in which they were made possible by a sustained policy of Government repression.

7. The Working Group acknowledged the co-operation received from certain Governments. However, it was unfortunate that paragraphs 129 and 130, which dealt with Mexico, failed fully to reflect his Government's willingness to assist the Group. His Government was prepared to permit visits to Mexico by members of the Group if that was thought necessary and was also ready to provide more detailed information regarding the cases under study.

8. The Chairman of the Working Group had made particular mention of countries which had established internal machinery to investigate reports of enforced or involuntary disappearances. He drew attention in that connection to Mexico's reply in document E/CH.4/1434/Add.1, which showed that Mexico had the machinery to investigate such cases, that it made information regarding them available and that it provided legal guarantees to protect the rights of the individual and to restore them if they had been violated.

9. As for the Working Group's recommendations, his delegation had reservations regarding only two of them. With reference to paragraph 195, it agreed that the co-operation of Governments was essential, but strongly objected to the last sentence, which referred to the responsibility of Governments for what happened within their borders. Of course a Government had a responsibility to investigate cases of disappearances and to provide information on them, but it could not, as the Chairman of the Working Group himself had said, bear full responsibility for whatever happened within its jurisdiction. In connection with paragraph 196, his delegation stressed the need not for secrecy, but for discretion in regard to the dissemination of information concerning sensitive matters which were still being clarified. That point emerged clearly from paragraph 6 of Commission resolution 20 (XXXVI).

10. Mr. ZORIN (Union of Soviet Socialist Republics) said that his country unreservedly condemned the widespread and persistent practice of enforced or involuntary disappearances, particularly when that practice resulted from massive and flagrant violations of human rights perpetrated directly by, or with the connivance of, Governments, as in Chile, El Salvador and Guatemala, where terrorist régimes resorted to such violations in order to crush progressive forces. He drew attention in that connection to paragraph 108 of the report of the Working Group on Enforced or Involuntary Disappearances (E/CH.4/1435).

11. The effectiveness of the struggle against such practices depended primarily, however, on the efforts of the States in which they occurred, and on the sincerity with which the Governments concerned respected their commitments under the relevant international instruments. For that reason, and because it had felt that the Commission already had procedures enough to investigate disappearances, his delegation had questioned the need to establish the Working Group. Analysis of the Group's report had done nothing to dispel those doubts. Its authors had provided no evidence that their efforts, which had cost over half a million dollars, had produced any real results. Even the Group's scanty recommendations did no more than restate the obvious.

12. Some of the Group's actions were in fact cause for serious concern, including various procedural innovations for which it had not had the Commission's approval. For example, the Chairman had sent "urgent telegrams" to States on matters involving the fate of individuals rather than mass, systematic and flagrant violations of human rights. Some of those telegrams had even been sent on the Group's behalf by the Director of the Division of Human Rights. Nor was it within the competence of the Group or its Chairman to request a State to invite one or two of its members to visit it in order to establish direct contacts with relevant bodies and individuals.

13. Particularly dubious was the Working Group's method for evaluating the reliability of accusations. It was inadmissible to give greater credence to the assertions of non-governmental organizations than to those of Governments. He referred in that connection to the case of Ethiopia, which had been obliged to refute the questionable assertions of a non-governmental organization which had not been required to offer any proof. That practice was inconsistent with the presumption of innocence and must stop.

14. His delegation was convinced that the Working Group had only created an illusion of activity without contributing to a real solution to the problem. The continued distortion of procedures for the investigation of mass and flagrant violations of human rights would be intolerable. His delegation was therefore opposed to an extension of the Group's mandate.

15. Mr. ALANIZ (Observer for Nicaragua) said that, in order to clarify a number of points, his delegation wished to expand on the information provided to the Working Group by the National Commissioner for Human Rights and Humanitarian Matters of Nicaragua.

16. The Government of Nicaragua had never denied that many cases of disappearances and summary executions had occurred during the period immediately following its assumption of power in July 1979. However, the Government denied any responsibility for such cases since, during that period, it had had no control over the situation prevailing in various parts of the country. At that time, there had been no adequate police force or judiciary in Nicaragua. Communications, too, had been inadequate, so that it had been impossible to monitor the movements of large numbers of people. The only organized force in the country had been the Sandinista National Liberation Front which, being an army of national liberation, had found it difficult to function as a police force. Outbreaks of violence had occurred, resulting in dozens of deaths.

17. It should be remembered that, for 45 years, the people of Nicaragua had lived under a ruthless dictatorship. Naturally, therefore, upon the overthrow of that régime, there had been an outpouring of popular feeling. Mass executions had taken place in a number of areas, and many individuals had taken advantage of the situation to exact personal vengeance. It had been impossible to identify those responsible. In addition, upon the proclamation of the victory of the Sandinista Front, thousands of freedom fighters not belonging to the Sandinista army had moved to Managua prior to the arrival there of the Sandinista forces, which had thus been unable to control the situation. At the same time, large numbers of criminals who had escaped from prison had managed to acquire weapons

left behind by the forces of the Somoza régime and to use them for criminal purposes. Many of those criminals had also managed to lay their hands on uniforms resembling those of the Sandinista forces, so that it had been impossible to distinguish them from official personnel. The majority of the individuals concerned had since been recaptured and were currently in prison. The problem of identifying individuals was exacerbated by the fact that the Somoza dictatorship had never set up an adequate identity card system, and also by the fact that many official records in Managua had been lost as a result of earthquake damage.

18. Of the 70 cases of enforced or involuntary disappearance referred to in the Working Group's report, 33 had occurred prior to the assumption of power by the revolutionary Government in 1979. Consequently, the responsibility for those cases lay with the Somoza dictatorship. As far as the 34 members of the National Guard who had reportedly disappeared were concerned, he pointed out that almost 6,000 former members of the National Guard were currently based just beyond the Nicaraguan border, from where they made incursions into the country to commit acts of murder and rape.

19. As far as the persons said to have arrested the individuals reported as missing were concerned, he pointed out that the National Guard had been an institution of the former régime. Moreover, because of the confusion prevailing during the period immediately following the overthrow of the Somoza régime, many individuals had obtained weapons and uniforms and had taken advantage of the situation to commit criminal acts. Finally, the Milpas (Anti-Somoza Popular Militia) had been disbanded after the war. Indeed, the former head of the Milpas was currently employed by the government as an agronomist. However, the name of that group was still being used by armed criminal elements.

20. With regard to the sources of information available to the Working Group, he noted that all the cases of enforced or involuntary disappearance referred to had been reported to the Working Group by the Nicaraguan Permanent Commission for Human Rights, a body which had performed important work in reporting violations of human rights during the last years of the Somoza dictatorship. However, it seemed odd that the Permanent Commission should report cases which had occurred prior to the assumption of power by the current Government, or which could be attributed to a situation of armed conflict. Furthermore, the procedures adopted by the Permanent Commission were somewhat questionable, since it was known to have distributed leaflets which it had attempted to pass off as emanating from the International Committee of the Red Cross.

21. His Government regretted the fact that the Working Group had seen fit to publish allegations by the National Co-ordinator of the Nicaraguan Permanent Commission for Human Rights which were unfounded, and for which no supporting documentation had been provided. In annex XV to the Working Group's report, reference was made to a great many prisoners who had allegedly been held in the town of Granada. In that connection, he wished to point out that, from the outset, the Sandinista Government had been faced with the problem of more than 6,000 cases of captured National Guards who had refused to identify themselves or had produced false identity papers. Consequently, it had been necessary to find people able to identify them, thus delaying the institution of proceedings against them, contrary to the wishes of the Government. Some of the individuals concerned still denied that they had ever been members of the National Guard, in spite of having been identified as such.

22. With respect to the mass graves reported to have been found by the Permanent Commission for Human Rights, he pointed out that mass executions of members of the Sandinista Front were known to have been carried out by the Somoza régime and that the discovery of their mass graves had been reported in the European press.

23. With regard to the alleged existence of secret gaols, he noted that the Co-ordinator of the Permanent Commission for Human Rights had produced a photocopy of a document referring to two prisoners who were being held "on the orders of G.2 in a secret prison." He pointed out that the designation G.2 referred to a unit of the former National Guard, and was not used by the Sandinista Government.

24. It was absurd for the Working Group to have referred in its report to 70 cases of enforced or involuntary disappearance, knowing full well that 33 of those cases had occurred during the previous régime. His Government was open to any request for information and was prepared to receive any visiting mission, since it had nothing to hide. As the representatives of the Inter-American Commission on Human Rights and the International Committee of the Red Cross had been able to see for themselves, his Government made no special preparations for visits to any prison or other location. His Government asked that the situation in Nicaragua should be excluded from the work of the Working Group, since none of the allegations made were worth pursuing.

25. Mr. DAVIS (Australia) said that the Working Group established under Commission resolution 20 (XXXVI) had been entrusted with the essentially humanitarian task of seeking information on countless individuals in order to determine their fate; it had not been requested to consider communications which appeared to reveal a consistent pattern of gross and reliably attested violations of human rights. Its role had thus not been to sit in judgement on States, even though it might have had to study their conduct in order to place in context the disappearances being investigated.

26. The fact that Commission resolution 20 (XXXVI) had been adopted by consensus confirmed that no Member State had regarded its sovereignty as being infringed by the establishment of the Working Group or had been opposed to the humanitarian goals pursued.

27. The problem of disappeared persons was not confined to one or only a few countries; it was distressingly widespread, although it varied in intensity. In some countries there had been a reduction in the number of persons disappearing, but there still remained a great many persons unaccounted for, which meant continued uncertainty, anxiety and suffering for their relatives.

28. In the hope that the functioning of the Working Group would help to discourage new cases, he believed it essential that its mandate should be extended. Indeed, the Commission had been directed by the General Assembly in its resolution 35/193 to continue to study the question.

29. His delegation stressed the need for the willing co-operation of the States in which disappearances had occurred and noted with appreciation that such co-operation had been forthcoming in most cases. It was conscious of the difficulties which the Working Group had faced in coming to grips with the problem since not every disappearance could be resolved or explained by the Government directly concerned;

nor was every disappearance the result of the actions of some branch of the Executive of such a Government. Some disappeared persons had fled their country of origin, gone underground or been killed in violent clashes.

30. In sifting the evidence, the Working Group had to make due allowance for the fact that some information was politically motivated. However, there were a great number of cases in which the States concerned, if they were willing to co-operate, should be in a position to shed light on the whereabouts of disappeared persons.

31. The draft resolution submitted by France (E/CN.4/L.1552), which his delegation fully supported, reflected the widespread agreement on the need to extend the Group's mandate. In his delegation's opinion, there was also agreement that the mandate should be extended for more than one year; that was essential if the great mass of information was to be studied adequately and with continuity. Furthermore, it was essential that the Group should be able to react promptly to new cases.

32. His delegation believed that the dimensions of the task and the need to analyse the credibility of the information received warranted the maintenance of a small body consisting of five persons, one from each regional group.

33. Annex X to the report of the Working Group (E/CN.4/1435) set out its views on the question of the applicability of Economic and Social Council resolution 1503 (XLVIII) to its proceedings. He wished to state that the intention of General Assembly resolution 35/193, Economic and Social Council resolution 1980/128 and Commission resolution 20 (XXXVI) had been to establish a special body with specific instructions regarding the sources of its information and with authority to determine its own working methods. The Working Group was comparable in those respects to similar groups on southern Africa, Chile and the occupied Arab territories.

34. The resolutions to which he had referred had been adopted during the years 1978 to 1980 and could not be deemed to be subject to the provisions of Economic and Social Council resolution 1503 (XLVIII), which had been adopted in 1970 and related only to procedures for handling communications received by the Secretary-General which appeared to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.

35. Under operative paragraph 3 of Commission resolution 20 (XXXVI), the Working Group could receive information directly from a wide range of sources. It should be noted that the Economic and Social Council and the General Assembly had endorsed that resolution, without amending or disputing operative paragraph 3 in any way. The Commission, the Economic and Social Council and the General Assembly had clearly intended that the findings of the Working Group should be disclosed so that, wherever possible, the answers to questions concerning the whereabouts of disappeared persons could be transmitted to the next of kin.

36. His Government was deeply concerned at the reported pattern of involuntary disappearances in many parts of the world. The root causes of that phenomenon varied considerably, but not infrequently it arose from the reaction of a State or its law enforcement authorities to a revolutionary movement which sought to overthrow that State and used persistent acts of extreme terror to achieve its purpose.

37. While no terrorist should expect to be treated kindly by law enforcement officials whose colleagues or relatives had been maimed or killed by terrorist action, his Government believed that States should, even in such a crisis, endeavour to maintain at all times the rule of law and the fundamental principles of human rights. As Pope John Paul II had said recently at Manila, any apparent conflict between the exigencies of security and the citizen's basic rights must be resolved according to the fundamental principle that social organization existed only to serve man and to protect his dignity and that it could not claim to serve the common good when human rights were not safeguarded.

38. It was with the hope that the rule of a just and humane law would be re-established in countries where disappearances were brought about by some arm of the Executive that his Government joined in the appeal for co-operation to all States concerned.

39. Mr. JARDIM GAGLIARDI (Brazil), noting that his delegation had participated in the consensus that had resulted in the adoption of Commission resolution 20 (XXXVI), recalled that the Working Group on Enforced or Involuntary Disappearances had been invited to carry out its work with discretion, relying on the support of Governments.

40. Notwithstanding its efforts, he believed that the Group could have worked in a more confidential manner. The system of issuing press releases did not seem to be consistent with the need for discretion and, to some extent, was tantamount to prejudging the results of the Group's work. Less publicity would perhaps have resulted in a greater number of replies from the Governments concerned.

41. With regard to the substance of the report of the Working Group (E/CN.4/1435), it would have been preferable if the Group had devoted a greater part of its work to the question of disappearances itself, after considering general questions such as the adequacy of domestic and international methods utilized in searching for missing and disappeared persons and the conduct of speedy and impartial investigations by the appropriate bodies. His delegation believed that the Group would have done more effective work if it had adopted methods more in keeping with the machinery established by Economic and Social Council resolution 1503 (XLVIII), allowing Governments of countries where the problem occurred to collaborate to a greater extent. In dealing with matters affecting the internal competence of States, confidentiality and respect for well-established procedures were prerequisites to full co-operation between the Governments concerned and the international community.

42. His delegation was not opposed to extending the mandate of the Working Group since it believed that much work remained to be done. In its opinion, the Working Group would need a further year to complete its task. He hoped that if the mandate of the Group was extended, its members would take full account of the comments made at the current session.

43. His delegation supported several of the provisions of draft resolution E/CN.4/L.1552, but considered that it could be improved by the sponsoring delegation, perhaps through consultations with other delegations, in such a way as to ensure that the consensus reached in 1980 could be maintained in 1981.

The meeting rose at 12.10 p.m.