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COMMISSION ON HUMAN RIGHTS

Thirty-seventh session

SUMMARY RECORD OF THE 1606th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 18 February 1981, at 4.30 p.m.

Chairman:

Mr. CALERO RODRIGUES

(Brazil)

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The meeting was called to order at 4.45 p.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 and Add.1; E/CN.4/1453; E/CN.4/L.1552)

1. Mr. PAPASTEFANOU (Greece) said it was quite obvious that the United Nations and Member States must make an effort to put an end to the phenomenon of disappearances, obtain information about missing and disappeared persons, and ensure the return of those persons to their families. The United Nations must condemn that phenomenon, whatever its cause and in whatever conditions it occurred, and establish international machinery to identify specific cases and enable the victims to return home. In resolutions 33/173 and 35/193, the General Assembly had expressed its deep concern about enforced or involuntary disappearances. The Commission, in its resolution 20 (XXXVI), had established a working group to consider the matter and the Sub-Commission had carried out a study of the problem. His delegation was awaiting the results of those efforts, which had been undertaken at various levels but which were all designed to protect the victims and their families.
2. His delegation welcomed the work already carried out by the Working Group on Enforced or Involuntary Disappearances, which had demonstrated that it was determined effectively to perform its considerable task. As the situation now stood, however, the United Nations would not be able to achieve positive results without the co-operation of the Governments and entities concerned. It was therefore a matter of regret that, in some cases, Governments had adopted an unco-operative attitude.
3. In the light of the report of the Group, his delegation supported the proposal for an extension of the Group's mandate, in the hope that its efforts would yield satisfactory results.
4. Mr. SAHNI (Federal Republic of Germany) said it was difficult to believe that, at the present time, States were committing so many violations of human rights. Germans felt particularly concerned by that problem since they could remember only too clearly how, in 1933, the Nazi "night and fog" commandos had begun to abduct political opponents and, in some cases, had caused them to disappear forever. His own family had experienced suffering and sorrow 37 years previously when one of its members had disappeared without a trace for several weeks in a Gestapo prison. At the time of the Gestapo, many of the missing persons had been what were now known as "leftists", in other words, persons of the same political persuasion as those on whose fate the Group was trying to shed some light. It seemed to him that some people were willing in retrospect to grant absolution to the Nazi "night and fog" commandos when they used an apparent or real state of national emergency as a pretext for trying to justify the disappearance of thousands of persons and for withholding information about their fate.
5. He had considered it important to trace the origin of the practice of the "disappearance" of persons as a reminder to those who had spoken out at the beginning of the session against any revival of nazism and neo-facism and who, he hoped, would remain true to their convictions when they dealt further with the matter under consideration.

6. In the opinion of his delegation, the Working Group was on the right track. Its report mentioned 11,000 to 13,000 cases of missing persons, although that was only a fraction of the total number of missing persons throughout the world. The Commission must bear in mind the fact that the distress which lay behind that number was not quantifiable.

7. When the phenomenon of disappearances affected thousands of persons in a single country, there could be no doubt that it was the result of the policy of that country's Government. Amnesty International had rightly stressed that the practice of disappearances was not the prerogative of any region or ideology. Everyone knew that only some countries were listed in the report, whereas others, where people also disappeared as a result of State intervention were not. It was the relative freedom of information and the press in Latin America that made it possible to consider the many cases which occurred there. His Government was particularly concerned about what was happening in Argentina because it had been unable to obtain any information about 21 missing persons of German nationality or of Argentine nationality but of German origin. In the opinion of his delegation however, Argentina was not the only country about which the Commission should be concerned. With regard to the Philippines, it hoped that the lifting of martial law would enable a satisfactory solution to be found for the problem of missing persons.

8. The phenomenon of disappearances had assumed such proportions throughout the world that it could not simply be written off by a reference to the problem of terrorism. Nor was it enough to deplore it passively; measures must be taken to eradicate it. His delegation therefore appealed to all Governments concerned to take the work of the Group more seriously than they had done hitherto and to show their willingness to co-operate with it.

9. His delegation considered that the work of the Group was one of the Commission's most important activities and that, as long as people continued to disappear or to be reported missing, the Group must continue that work. It therefore fully supported the draft resolution submitted by the delegation of France (E/CN.4/L.1552).

10. Mr. INGLES (Philippines) said he wished to refer to the case of a Philippine national who had been missing abroad for one year. One year previously, it had been reported in the newspapers that a Philippine Catholic priest had been abducted in Guatemala. According to the information which the Philippine ambassador in Mexico had been able to obtain, the priest had not been abducted, but arrested, and no one knew why. When contacted by telegram, the Minister for Foreign Affairs of Guatemala had given no reply. A diplomat from the Philippine Embassy in Mexico had gone to Guatemala, but the Ministry of Foreign Affairs of Guatemala had been unable to furnish any information. Everyone therefore feared for the life of that priest, of whom there had been no news for one year.

11. It was thus in a humanitarian spirit that his delegation was supporting the French draft resolution proposing a one-year extension of the Working Group's mandate. It also supported the view expressed by the representative of Australia at the preceding meeting that the Group had been established not to judge Governments, but rather to obtain information on missing or disappeared persons.

12. With regard to persons who had disappeared in the Philippines, his Government would send its reply to the Group as soon as it had completed its inquiries into the fate of those persons. A state of insurrection existed in the north and south of the country, the regions where most of the disappearances had taken place, and in such circumstances it was not always possible to know what had happened to missing or disappeared persons, some of whom might have taken part in action in the field.

13. On 17 January 1981, martial law had been lifted in the Philippines; many political prisoners had been released, others had been transferred from military to civilian prisons, the military courts had been abolished and the remedy of habeas corpus had been re-established. As conditions became more normal, it would be easier to find out what had become of persons who were not among the prisoners who had been released or transferred to civilian prisons.

14. His Government was perfectly willing to co-operate with the Group, to which it would send detailed information concerning the cases brought to its attention.

15. Mr. HEREDIA (Cuba) said that it was of the highest importance to consider the problem of disappearances from a humanitarian point of view. There should not be undue concern about voluntary absences or even disappearances arising out of particular circumstances, such as social disturbances as a result of which some persons were no longer to be found in the places they had habitually frequented. Rather, the Commission should focus attention on disappearances resulting from oppression. Involuntary disappearances became an international problem when unpopular régimes used that method to stifle opposition. The enforced disappearance of political opponents had become a new method of oppression in countries where the authorities exercised power against the will of the majority of the population. Fascists and other international reactionary elements would not succeed by that method or any other in preventing the triumph of the just cause of peoples. The international community, outraged by the murders, torture and ill-treatment to which political opponents were subjected and by the very fact of involuntary disappearances which were contrary to every principle of human rights, must nevertheless continue to concern itself with that question.

16. Three years previously, in the Commission, a man who had devoted his entire life to a people and who had been a revolutionary had publicly denounced violations of human rights in his country. He had been incarcerated in the worst prisons for 19 years for the mere fact of having supported his people against the tyranny of the Paraguayan authorities. Now that man had disappeared. The Cuban people, together with the other peoples of the world, were therefore calling on the Paraguayan régime to spare the life of Antonio Maidana, to release him immediately and to allow him to exercise all fundamental human rights and freedoms.

17. His delegation shared the sorrow and sufferings of the relatives and friends of persons who had disappeared as a result of oppression and appealed to the Commission and the international community strongly to oppose the practice of enforced disappearances.

18. His delegation reserved the right to refer at a later stage to what it considered were the most appropriate means of continuing that humanitarian task.

19. Mr. SALAH-BEY (Algeria) said that the question of missing and disappeared persons was a matter of deep concern in that it was a world-wide phenomenon affecting a large number of persons. In view of the size of the task entrusted to it, the limited means available to it and the complexity of the problem, the Working Group had performed its mission to the best of its ability. That did not, however, mean that his delegation supported the Group's conclusions or that it endorsed the procedure which had led to the Group's establishment.

20. First of all, what decision could the Commission take concerning the report? It could, at most, take note of the report. In so doing, it would have decided to endorse all the elements, true or false, contained therein. It was clear that, although all the members of the Commission had probably studied the report, the same would not be true of public opinion, for which the report was ultimately intended, as acknowledged by the Group in the recommendation contained in paragraph 196 of its report. His delegation was therefore concerned that public opinion might remember only the list of countries referred to in the report, without taking account of the circumstances in which the events complained of had taken place or of the truth of the allegations made. There lay the first fault in the procedure adopted. Serious cases were lumped together with less serious ones, Governments which were accountable were lumped together with those which were not. In his delegation's opinion, the Commission should, at a stage to be determined and in accordance with procedures to be established, be called upon to consider only definitely proven cases of disappearance.

21. Secondly, his delegation held the view that bringing discussions or acts to the attention of the public was a way of punishing the Governments which had been incriminated and that such punishment should be meted out only after every precaution had been taken to determine the responsibility of the Government in question.

22. Thirdly, the Commission's work must not be influenced by outside pressure or, in particular, by certain mass media which unfortunately sought in most cases to sensationalize events rather than to provide objective information. It was a well known fact that various media had already reported most of the detailed cases referred to in the report. The Commission could not, however, be considered as a sounding-board for an orchestrated campaign against a particular country.

23. For those and other reasons, and in particular because the Group had studied only a few hundred of the thousands of cases submitted to it, he was of the opinion that, in order to combat that serious and scandalous phenomenon, any procedure established by the Commission must meet the following requirements: it must enable the Group or any other body established by the Commission to check complaints closely and sift them responsibly; it must ensure the absolute independence of the Commission's work; and it must permit publicity only concerning those Governments that had been recognized as responsible by the Commission as a result of its work.

24. Mr. TERREFE (Ethiopia) said he wished to make it clear that the purpose of the remarks he was about to make was not to question the personal integrity or authority of the members of the Working Group on Enforced or Involuntary Disappearances.

25. His delegation queried the criteria and motives for singling out 15 countries - in Latin America, Africa, Asia and Europe - and the methodology it had used in order to ascertain the authenticity of the information it had received on 11,000 to 13,000 cases of disappearance. Quite clearly, the Group, in three sessions totalling 19 days, could

not have dealt fairly with such a vast subject. The fact that certain of its members had perhaps been inclined to accept unsubstantiated allegations, that there had been an interruption in the Group's leadership, and that certain absent members had had to be replaced adversely affected the scope and content of its report (E/CH.4/1435 and Add.1).

26. With respect to the Group's recommendation that its mandate should be renewed (para. 193 of the report), his delegation would endorse it only if there was a consensus. The Group had been established for one year under Commission resolution 20 (XXXVI), and its mandate did not necessarily have to be extended, especially since a considerable number of Member States were not pleased with the way in which it had been performing its functions. Moreover, in his delegation's opinion, the multiplicity of committees in the area of human rights did not necessarily guarantee better protection of the exercise of those rights. In any event, his delegation would not adopt a position on proposals for changing the composition or mandate of any subsidiary organ of the Commission until it had carefully weighed all those considerations.

27. Those general remarks should in no way be construed as meaning that the Ethiopian Government would cease to co-operate with the existing subsidiary organs; it had always co-operated with such organs without hesitation.

28. The objective of the Ethiopian revolution was to restore to the people at large the political, economic, social and other human rights which had been usurped by the discredited pre-1974 régime. The human rights of all persons, including those subjected to any form of detention and imprisonment, were fully respected in Ethiopia, in accordance with General Assembly resolution 33/173, and he quoted in that connection articles 410, 414 and 417 of the Ethiopian Penal Code. Even at the time when individuals and groups, assisted by outside forces, had attacked the Ethiopian revolution and the unity and territorial integrity of the country, due process of law had been applied. The accusation made by one non-governmental organization, as reflected in paragraphs 102 and 103 of the Working Group's report, was false and largely derived from a privileged group of former officials and descendants of the former feudal monarch, who had lived in lavishly furnished palaces while the oppressed masses had been suffering from appalling poverty. Those politically-motivated attacks were being launched at a time when the representative of the Secretary-General, who had established direct contact with the Ethiopian Government in matters pertaining to the human-rights situation in Ethiopia, had been invited to go to Ethiopia for the second time. The inclusion of Ethiopia in the list of countries considered under Commission resolution 20 (XXXVI) was unjustified. The Commission should therefore take all those facts into consideration before adopting the report of the Working Group or extending its mandate, as proposed in draft resolution E/CH.4/L.1552, about which his delegation, together with others, had very serious reservations.

29. Mr. BERGTHUN (Observer for Norway) said that the Norwegian people were very sensitive to the problem of enforced or involuntary disappearances. The Norwegian Committee on Human Rights had collected, through various Norwegian human-rights organizations, information on cases of disappearance in a number of countries in various continents and had submitted it to the Working Group on Enforced or Involuntary Disappearances. It intended to continue that practice.

30. His delegation congratulated the Group on its excellent report (E/CN.4/1435 and Add.1), which was all the more commendable since it had had only six months in which to prepare the report and certain Governments had extended to it insufficient co-operation or none at all. His delegation hoped that the Governments in question would adopt a more constructive attitude towards the Group, thus demonstrating their desire to protect human rights.

31. His delegation had not been convinced by the arguments adduced for applying the procedure set forth in Economic and Social Council resolution 1503 (XLVIII) to the Group's work, which would benefit from being made public, although a certain degree of discretion should be exercised in order to protect the families and individuals concerned. The Group's mandate should therefore be extended and it should take all necessary emergency measures in every case of disappearance brought to its attention. His delegation accordingly supported the draft resolution submitted by the French delegation (E/CN.4/L.1552), which it hoped would be adopted without a vote.

32. Mr. NUCHTTE (Observer for Venezuela) said that Venezuela had greatly welcomed the establishment of the Working Group on Enforced or Involuntary Disappearances, not only because it represented a step forward in the search for solutions to the problem of enforced or involuntary disappearances, but also because it had been agreed to by consensus. However, in the current debate there were signs of serious divergences of opinion concerning the work accomplished by the Group, which had nevertheless fulfilled its mission with a keen awareness of its responsibilities. As cases of disappearance were continuing to occur, his delegation considered it imperative that the Group's mandate should be renewed. It therefore wished to co-sponsor draft resolution E/CN.4/L.1552 and appealed to all the States concerned to co-operate with the Group.

33. Mr. LIBEROFF (Observer for the International Union of Students) recalled that at the preceding session of the Commission a number of non-governmental organizations had already drawn particular attention to the seriousness of the problem of enforced disappearances, which had also been emphasized at the briefing meeting at the governmental level which had been held at the Palais des Nations on that question. The report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1435 and Add.1) had highlighted both the scale of the question and the diversity of attitudes among the Governments concerned. The international organizations had a particularly serious responsibility when the victims and their families were deprived of any domestic remedy; the situation was different in countries such as Nicaragua and Ethiopia, where the Governments were making efforts to put an end to the problem, an attitude which should be duly recognized by the Commission.

34. The Group's report showed that anti-democratic régimes in various parts of the world, particularly Latin America, were systematically abducting their political opponents. They gave as excuses the struggle against terrorism, the limited number of cases of disappearance, or the lack of time to study them, but such excuses were not acceptable. The struggle against terrorism did not consist in abducting young children and having them adopted by other families without the knowledge of their parents, or abducting convalescent or sick patients from hospitals. From the information presented in the report, and from other information which the International Union of Students had supplied to the Group, it was apparent that thousands of students, professors and university staff had disappeared, often after having been abducted in front of their colleagues or pupils by members of the security services or the armed forces; later it was reported that those missing

persons had been killed in clashes, had gone underground or had left the country. Yet in most cases there had been eyewitnesses of the abductions, and complaints had been lodged with the competent security services. The information at present submitted to the Commission highlighted the persistence of a tragic situation; in order to study that situation thoroughly, the procedures for the examination of cases should be modified, although undue manipulation of the Group should be avoided. The International Union of Students, which consisted of more than 100 student organizations throughout the world and constantly denounced the repressive practices that were the cause of the disappearances, considered that the Group's mandate should be extended and, as an organization recognized by the Economic and Social Council, it would continue to co-operate with the Group.

35. He went on to describe a personal situation. His father, a doctor, had obtained Uruguayan nationality after 20 years' residence in that country. On 12 July 1973, he had been arrested at his home, and it had later been learned that he was being held in a barracks near the capital where no one was allowed to visit him. On 7 November 1973 he had been expelled from the country, without any trial, on the pretext that he had been born in Argentina. He had resumed his profession in exile and had had a cancer operation in March 1976; on 19 May 1976, while he was convalescing, a group of 30 members of the security services had burst into his home at night and had abducted him after having struck his wife and daughters. Since then it had been impossible to obtain information on his whereabouts from any authority. Four other Uruguayan citizens arrested on the same night had been found murdered three days later, their bodies bearing marks of torture. That was one example among thousands of the practices of the Chilean, Argentine, Uruguayan, Salvadorian, Guatemalan, Paraguayan and other régimes, régimes which international public opinion condemned.

36. Viscount COLVILLE of CULROSS (United Kingdom), speaking as Acting Chairman/Rapporteur of the Working Group on Enforced or Involuntary Disappearances, said he wished to reply to a number of questions and observations on the activities and report of the Group of which he was Chairman. He noted that all the speakers had agreed that the phenomenon under consideration was a serious one and involved violation of many basic rights; in that respect the Group's view had been endorsed by the Commission. The Group had tried in the course of its work to be faithful to its terms of reference and to the spirit which had inspired them. It had been aware of the requirement to act with discretion; some representatives at least had thought it had succeeded. However, there had been criticisms and suggestions for changes, and the Group would give them the most careful consideration if its mandate was extended; it was always open to constructive criticism. With respect to its future activities, the Group was obviously dependent on the decision of the Commission, which had established it.

37. A common theme of the statements during the debate had been the humanitarian nature of the Group's task. The constant anguish of the families of missing persons could indeed not be ignored. Referring to suggestions concerning confidentiality, he drew attention to the practical difficulties in that area. One representative had criticized the Group's lack of progress; however, it had managed to shed light on the fate of a number of missing persons, thanks to the co-operation of Governments. During the course of the debate, still other Governments had offered their co-operation. Results had sometimes been achieved through the submission of the initial list of cases and at other times through subsequent inquiries into new cases.

38. In all its activities, the Group had made an effort to fulfil the directives contained in Commission resolution 20(XXXVI), and paragraph 6 in particular. It had communicated all the information it had been able to obtain to the families of missing persons: it would be regrettable if a new procedure prevented them from being so informed in the future. The many details which the Group had gathered on so many individual tragedies were available to all members of the Commission. At its preceding session the General Assembly had adopted by consensus resolution 35/193, whose spirit could not be forgotten. After quoting paragraph 2 of that resolution, he assured the Commission that, whatever method was chosen by the Commission in order to continue consideration of the question as the General Assembly had requested, the Group would take the greatest account of the opinions expressed during the debate if its mandate was renewed. In conclusion, the members of the Group wished to acknowledge the compliments and words of encouragement addressed to them by many delegations.

39. Mr. van BOVEN (Director, Division of Human Rights) said he had noted, during the debate, one delegation's sometimes heated comments on the role of the Secretariat and the Division of Human Rights in particular. He would not enter into various substantive aspects on which members of the Commission had already commented, but simply wished to state that the Secretariat was inspired by the principles of the Charter, and in particular Article 100 thereof, in carrying out its duties objectively, impartially and conscientiously. In discharging its mandates, it was guided by the relevant resolutions of higher policy-making organs, by the decisions of particular human rights organs of subsidiary organs, and by considerations of principle, whether they were human-rights principles, legal principles or other principles. The question of the channelling of information had arisen during the debate; the Working Group on Enforced or Involuntary Disappearances had taken a clear position regarding that question, which was reflected in annex X of its report, and had outlined the issues of principle pertaining to the Group's methods of work and the role of the Secretariat. Granted that various bodies considered allegations of violations of human rights, if a human-rights organ or subsidiary organ interpreted its mandate as requiring a certain course of action and the Secretariat could see no glaring legal objection to the course of action proposed, the Secretariat would carry out the duties requested of it by such an organ and leave matters pertaining to the correctness of legal interpretation to the organs responsible for determining such questions.

VIOLATIONS OF HUMAN RIGHTS IN SOUTHERN AFRICA; REPORT OF THE AD HOC WORKING GROUP OF EXPERTS (agenda item 6) (continued) (E/CN.4/L.1553)

40. Mr. BENHIMA (Morocco) introduced draft resolution E/CN.4/L.1553 concerning agenda item 6 on behalf of its sponsors (Burundi, Egypt, Ethiopia, Ghana, India, Iraq, Morocco, Nigeria, Philippines, Senegal, Syrian Arab Republic, Yugoslavia, Zaire and Zambia). The debate on item 6 had demonstrated the great interest that the Commission was continuing to take in it. All the statements had stressed the international community's grave concern about the worsening of human-rights violations in southern Africa, a concern that had been further increased by the recent failure of the negotiations on Namibia. After commenting briefly on draft resolution E/CN.4/L.1553 and drawing particular attention to operative paragraphs 3, 4, 6, 8, 10 and 13, he said that the sponsors regarded it as a contribution to the safeguarding of justice and dignity in southern Africa and a reaffirmation of their devotion to the ideals of the Charter. They were convinced that the members of the Commission who wished to champion those ideals would have no hesitation supporting the text.

The meeting rose at 6.15 p.m.