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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND  
FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD,  
WITH PARTICULAR REFERENCE TO COLONIAL AND  
OTHER DEPENDENT COUNTRIES AND TERRITORIES

Note by the Secretary-General

On 14 March 1979 the Commission on Human Rights adopted decision 12 (XXXV) by which it decided to send the following telegram to the Government of Guatemala:

"The Commission on Human Rights, meeting in Geneva for its thirty-fifth session, has taken note with profound regret of the assassination on 25 January last of Dr. Alberto Fuentes Mohr, Deputy of the Guatemalan Congress, ex-Minister for Foreign Affairs and Finance and a former member of the United Nations Secretariat.

The Commission takes note of the communication from the Government of Guatemala concerning these events and records with satisfaction the declaration by that Government (E/CN.4/1342) that it condemns 'the unspeakable crime committed against the person of Fuentes Mohr, member of Congress' and that it is 'acting with all necessary diligence to apprehend those responsible and to elucidate the matter'.

The Commission would welcome some information on this matter before the beginning of its thirty-sixth session."

On 4 February 1980 the following note verbale was addressed to the Commission on Human Rights at its thirty-sixth session by the Permanent Mission of Guatemala to the United Nations Office at Geneva:

"The Permanent Mission of Guatemala to the European Office of the United Nations at Geneva, Switzerland, presents its compliments to the Commission on Human Rights, meeting for its thirty-sixth session, and has the honour to transmit, on the instructions of its Government, the following information:

1. The Government of the Republic of Guatemala has not received, through the appropriate channels, the telegram referred to in the decision adopted on 14 March 1979 by the Commission on Human Rights at its thirty-fifth session.

2. Notwithstanding that omission, the Government of Guatemala has the honour to inform the Commission on Human Rights that, in accordance with official communication No. 023 of 15 January 1980 from the President of the Judicial Branch and the Supreme Court of Justice, the proceedings to investigate the death of Dr. Héctor Alberto Fuentes Mohr, which have been assigned case No. 109/79 and are being conducted by the First Officer of the Ninth Criminal Court of First Instance, Department of Guatemala:

(a) Are now in the preliminary stage; and

(b) Were instituted in the Thirteenth Criminal Court on 25 January 1979, when an on-the-spot inspection was made of the place where the events occurred and the judge ordered the Chief Detective of the National Police to carry out the necessary investigation.

On having the case referred to him, the judge of the Ninth Criminal Court of First Instance took statements from Mrs. Sherly Ann Knight Hagne de Fuentes - the wife of Dr. Héctor Alberto Fuentes Mohr - and from Mrs. Ana María Méndez de Rodríguez.

He also ordered the Judicial Section of the Attorney General's Office to carry out an investigation of the events which had led to the institution of the proceedings.

The records of the case include the report of the Judicial Section of the Attorney General's Office; it is prohibited by law (articles 14 and 309 of the Code of Penal Procedure) 1/ to disclose the contents of this document, since the legal proceedings are still in the preliminary stage.

3. On 26 January 1979, the Attorney General sent the judge hearing the case a memorandum in which he stated that he would act as the prosecutor in the proceedings. In other words, the State of Guatemala, through the Attorney General, is the prosecutor in the proceedings in question.

4. Mrs. Sherly Ann Knight Hagne de Fuentes is acting as a private plaintiff in the above-mentioned criminal proceedings.

The Permanent Mission of Guatemala to the European Office of the United Nations at Geneva, Switzerland, takes this opportunity to renew to the Commission on Human Rights the assurances of its highest consideration."

1/ Decree No. 52-73 of the Congress of the Republic of Guatemala: Article 14. The preliminary investigation or inquiry up to but not including the order for the initiation of the trial, shall be confidential and private, in accordance with the provisions of this Code. Documents related to the public part of the case shall be openly available and interested parties may obtain any reports, records, copies and attestations they request, except insofar as such documents relate to diplomatic or military matters, to information provided by private individuals under guarantee of secrecy or to matters which by their own special nature require strict confidence. The judge shall rule on these matters on his own responsibility.

Article 309. Any official, State employee or private individual who in any manner breaches the privacy and confidentiality of some or all of the proceedings during the preliminary investigation shall be liable under civil and criminal law. The first two categories of persons shall, in addition, be removed from office.