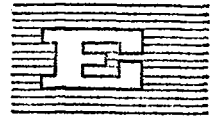


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COMMISSION ON HUMAN RIGHTS

Thirty-seventh session

SUMMARY RECORD OF THE 1616th MEETING

held at the Palais des Nations, Geneva,  
on Wednesday, 25 February 1981, at 4.30 p.m.

Chairman: Mr. CALERO RODRIGUES (Brazil)

CONTENTS

Question of human rights in Chile (continued)



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The meeting was called to order at 4.40 p.m.

QUESTION OF HUMAN RIGHTS IN CHILE (agenda item 5) (continued) (E/CN.4/1428; E/CN.4/1449; E/CN.4/1465; E/CN.4/L.1566; E/CN.4/L.1570; E/CN.4/NGO/293; E/CN.4/NGO/294; E/CN.4/NGO/298; E/CN.4/NGO/304; E/CN.4/NGO/311; E/CN.4/NGO/315; A/C.3/35/10)

1. Mr. SALAH-BEY (Algeria) said that a Working Group of five members had been established to investigate the situation of human rights in Chile in compliance with Commission resolution 3 (XXXI) and in response to the serious concern of the international community. At its thirty-fifth session the Commission, in accordance with General Assembly resolution 33/175, had appointed Mr. Dieye as Special Rapporteur. The Working Group and the Special Rapporteur had carried out their task conscientiously and impartially, despite the reticence of the Chilean authorities who, again in 1981, had expressed in a note verbale (document E/CN.4/1465), their refusal to co-operate either in special or in general procedures.
2. In his reports (A/35/522 and E/CN.4/1428), the Special Rapporteur had concluded that the human rights situation in Chile was tending to deteriorate. He noted, in paragraph 138 of document E/CN.4/1428, that the new Chilean Constitution did not in any way signify an advance in the matter of enjoyment of human rights and that it conferred constitutional status on an entire range of provisions that had been issued earlier and had been denounced as violations of human rights. He drew attention to the increase in the number of individual arrests, made for the most part without a warrant, and added that torture had become a common practice in Chile. In view of that situation, the Commission must continue to pay particular attention to the question and extend the Special Rapporteur's mandate in accordance with the recommendation made by the General Assembly at its thirty-fifth session; it might also make a further appeal to the Chilean authorities to co-operate with the Special Rapporteur.
3. Mr. GARVALOV (Bulgaria) said that since the overthrow of the constitutionally elected Government of President Allende, the fascist military junta in power in Chile had continued its flagrant and systematic violations of human rights. Mr. Dieye's reports (A/35/522 and E/CN.4/1428) showed that there had been no improvement in the situation and that in certain respects it had even deteriorated in comparison with the previous year. Two new decrees promulgated in January and July 1980 (Decrees Nos. 3168 and 3451) had further intensified the state of emergency and imposed further restrictions on the Chilean people. In 1980 there had been further cases of abduction and disappearance, and the number of arrests had increased. In paragraph 141 of document E/CN.4/1428, the Special Rapporteur concluded further that torture had become a common practice in Chile. He pointed out that many people had been arrested in August and September 1980 for having expressed their unwillingness to accept, or their opposition to, the Constitution drafted by the fascist junta. CNI was resorting to the same methods as DINA had used a few years previously. The Special Rapporteur, supported by other international sources, revealed once again that the security agencies and the armed forces were continuing to violate the right to life: the number of murders was increasing, and the

perpetrators were neither brought to trial nor punished. Many teachers had been dismissed and many students penalized for past or present political activities. Trade unions had been disbanded, workers had been prevented from organizing unions and union leaders had been dismissed.

4. With regard to the economic, social and cultural rights of the Chilean people, the standard of living for certain classes of society was deteriorating, pressure on the working class and the peasants was increasing, unemployment was growing, the rural population and, in particular, the indigenous population were living in extreme poverty, social security and social welfare were inadequate, etc. The Chilean workers were subjected to exploitation and oppressed by the new legislation discriminating against trade unions. The fascist junta admitted that 13 per cent of the labour force was unemployed, but other sources estimated that the number of unemployed had reached 20 per cent.

5. In 1980, the military junta and the Western States which supported it had tried to present the human rights situation in Chile as improving. One of those attempts had been the so-called plebiscite on a new Constitution. Paragraph 134 of document E/CN.4/1428, which he read out, listed the reasons why the plebiscite could not be considered as a valid expression of the will of the Chilean people. The plebiscite and the new Constitution, devised in an attempt to improve the military junta's international image, had in fact been designed to confer on it institutional authority and wide powers. The new Constitution contained numerous provisions which clearly violated the principles and provisions of the human rights instruments, the General Assembly resolutions on the human rights situation in Chile and the Charter itself.

6. The People's Republic of Bulgaria considered that the international community must continue to unmask the policies and practices of the fascist junta and to support the struggle for the restoration of all the rights and freedoms of the Chilean people. It therefore supported draft resolution E/CN.4/L.1566, whose adoption would be a further expression of support for Chilean patriots.

7. Mr. BOEL (Denmark) noted that on the basis of document A/35/522 the General Assembly, in resolution 35/188, had strongly urged the Chilean authorities to promote human rights, in particular by taking the specific steps outlined in Commission resolution 21 (XXXVI); it had also invited the Commission to extend the mandate of the Special Rapporteur.

8. Bearing in mind resolution 35/188, his delegation had closely studied the new report E/CN.4/1428. In that document, the Special Rapporteur had expressed regret at the absence of any change in respect of the human rights considered. The new Constitution, drawn up without popular participation, failed to guarantee adequate protection of human rights; in fact, it restricted even further the rights embodied in the previous Constitution. Moreover, in spite of repeated appeals, the Chilean authorities had done nothing to clarify the fate of missing persons.

9. In the absence of specific measures by those authorities to restore the enjoyment of human rights, the international community and the Commission must continue to keep the situation under review and to that end extend the mandate of the Special Rapporteur. His delegation would support any proposals to that effect and considered that an appeal should be made to the Chilean authorities to extend to the Special Rapporteur co-operation which they had so far withheld.

10. Mrs. NAUCHAA (Mongolia) thanked the Special Rapporteur for having presented his report and stated that the United Nations was in duty bound to expand international co-operation in ensuring respect for human rights wherever they were flagrantly and systematically violated as was the case in South Africa, the occupied Arab territories and Chile in particular. The situation in Chile had already been of concern to the international community for more than seven years. At the thirty-fifth session of the General Assembly, Mongolia had already commented favourably upon and endorsed document A/35/522. Now, the latest report of the Special Rapporteur (E/CN.4/1428) provided new evidence which betokened a deterioration in the situation.

11. The military junta could not hide the fact that it was seriously violating the two International Covenants on Human Rights. It was maintaining the state of emergency and its security forces were spreading terror. The Special Rapporteur showed why the plebiscite which had taken place in 1980 could not be regarded as a valid expression of the will of the Chilean people and how the new Constitution thus adopted violated that people's rights. Systematic violations of human rights, including torture were continuing and disappearances remained a very serious problem. Violations of trade-union rights were becoming more serious, as was indicated in paragraph 65 of report E/CN.4/1428, and the number of arbitrary arrests was increasing, as could be seen from paragraphs 57-64. Economic, social and cultural rights were still widely infringed and, in particular, the lot of the indigenous population was pitiful.

12. The deterioration noted in all fields should arouse the indignation of the international community. Despite the General Assembly's new appeal, in resolution 35/188, to the military junta to restore the rights of the Chilean people, the junta continued to ignore the international community's concern. Mongolia condemned that attitude and supported the Chilean people in its struggle against terror, aggression and illegality. In that spirit, it supported draft resolution E/CN.4/L.1566.

13. Mr. van der STOEL (Netherlands) said the situation in Chile since the coup d'Etat of 1973 certainly justified the investigation by the United Nations of the violations of human rights taking place there. The procedure by which a Working Group and, subsequently, a Special Rapporteur and an expert had been designated was unique, but it certainly set a fine precedent. The Chilean Government had co-operated with the Working Group during its 1978 visit, but unfortunately its attitude had since changed and it was not even represented by an observer at the current session. It had not even heeded the specific steps which the Commission had proposed in resolution 21 (XXXVI) for the restoration of the full enjoyment of human rights in Chile.

14. His delegation had appreciated the valuable and thorough reports submitted by the Special Rapporteur (A/35/522 and E/CN.4/1428) and concurred with the conclusion that after a few improvements a state of stagnation had again been reached and that the situation had even deteriorated in certain respects. The main event in 1980 had been the plebiscite of 11 September. There was nothing wrong in principle with holding a plebiscite, but in the present case the drafters of the Constitution had not been sufficiently representative (they had been no more than 25 in number) and the voting had taken place under the state of emergency, a fact which had not been conducive to the free expression of opposing opinions. The new Constitution itself could not guarantee the restoration of democratic institutions or the proper protection of human rights; it was particularly disappointing to note that the first part of the Constitution, concerning parliamentary institutions, was suspended for at least nine years.

15. During the period under consideration, the Special Rapporteur had indicated that mass arrests had declined but that individual arrests had increased. For the most part arrests were made without a warrant. It was also disappointing to learn that the judiciary did not use its powers to ensure the right of amparo of individuals arrested without a warrant. His delegation, which was continuing to play an active part within the Commission in the preparation of an international convention on the abolition of torture, was particularly shocked by the persistence of that practice in Chile. As for the restrictions imposed by the Chilean Government on the right to reside in, enter and leave the country, they were remarkably similar to practices in East European countries which that Government so vigorously condemned. Such restrictions constituted a violation of international law and of the Universal Declaration of Human Rights, whose article 13 he quoted. They were also a violation of article VIII of the American Declaration of the Rights and Duties of Man adopted at Bogota in 1948 by the Ninth International Conference of American States.

16. The Chilean Government had taken no steps to inform the Special Rapporteur or the Commission of the fate of missing persons. Referring to his delegation's statement under agenda item 10 (b) concerning the question of missing and disappeared persons, he expressed the hope that the Chilean Government would change its attitude and co-operate in future with the Working Group established under Commission resolution 20 (XXXVI). The Special Rapporteur also drew attention to repressive measures against members of the Church and the universities and restrictions on the freedom of assembly and association, including penalties upon trade unionists. Moreover, only a week previously, the Ministry of the Interior had called for the death penalty for five detainees accused of assassination. At the same time, the Government had announced the reinstatement of the military courts which, from 1973 to 1978, had sentenced to death a number of political opponents in summary judgements and on the basis of insufficient evidence. Such facts were particularly distressing at a time when efforts were being made in the United Nations to abolish capital punishment. In conclusion, he expressed the hope that the Commission would continue to study that disturbing situation and would extend the mandate of the Special Rapporteur.

17. Mr. NOVAK (United States of America) considered that the mandate of the Special Rapporteur should not be extended and that, if the Commission wished to continue reviewing the human rights situation in Chile, it should do so on the basis of information transmitted through the Secretary-General. He reminded the Commission that, at the previous session, his delegation had strongly urged the Commission to consider other approaches than the system of the Special Rapporteur and to take into account, in the decision to be reached at its thirty-seventh session, the evolution of the situation in Chile and the experience gained with the procedures adopted in other cases. In his opinion, such a change in procedure was warranted for three reasons.

18. In the first place, while the appointment of a Special Rapporteur was unique, the abuses of human rights in Chile were by no means unique. It was therefore an injustice to use singular procedures in cases which were not singular. Having said that, his delegation emphatically condemned the abuses committed in Chile.

19. Secondly, Chile had a tradition of respect for the highest values; its institutions had a history of high standards which, even under the recent extreme conditions, exerted a kind of gravitational pull towards respect for human rights. By all accounts the situation had improved since the early days of the Pinochet régime. The number of victims had decreased, although some methods remained deplorable. His Government had been assured that Chile was eager to resume its co-operation with the United Nations, and that should lead to a steady improvement in the human rights situation. As a result of a multiplication of contacts with the United Nations, many Chileans should no longer have the feeling that their country was being unjustly treated.

20. Thirdly, account must be taken of the context within which abuses were occurring in Chile. In recent months, armed terrorists had robbed banks, electric power pylons had been blown up and officials had been assassinated. Such terrorist acts, aimed precisely at making the situation worse, also constituted human rights violations which the Commission condemned, but they did not, of course, justify abuses by the Government. Both types of abuse must cease. By seeking to understand the problems facing Governments which were victims of terrorism and by supporting the legal approach and peaceful change, the international community would be more likely to bring about an improvement in the human rights situation in Chile and other countries than by adopting the alternative which the Commission had been willing to try at the preceding session.

21. According to the Special Rapporteur himself, his work in the past year had not led to a reduction in terrorism, nor had it resulted in a diminution of abuses for which the authorities were responsible. Something else must therefore be tried. When Chile was treated justly like other comparable nations, the multilateral and bilateral efforts to oppose international terrorism and to condemn violations of human rights would lead to the improvement which had been sought in vain through the existing methods.

22. His delegation had listened with interest to the hypocritical attacks on Chile made by the representatives of several countries where human rights were not respected. By applying a special procedure to Chile and not to those States, which committed more serious violations, the United Nations could scarcely win the confidence of attentive observers.

23. Mr. JAHN (Federal Republic of Germany) said his delegation had always stressed the fact that violations of human rights, wherever they occurred in the world, concerned the whole of international society and that similar cases called for similar measures.

24. Reports reaching his country of a certain improvement in the human rights situation in Chile in no way changed the general view of his delegation of the situation under review, which remained deplorable, as was shown by the report before the Commission. Furthermore, it was regrettable that information had still not been received on the fate of the thousands of persons who had disappeared in Chile. A way must be found of renewing the dialogue with Chile and ceasing to apply to that country a procedure which, in view of what was happening in other regions of the world, was too selective. The Commission should not create the impression that it wished to subject a particular country to a special procedure which it was not following in other, equally serious cases. How was it possible to believe in the good faith of a State which protested in the United Nations against the human rights violations in Chile when, according to the report by Amnesty International on the past year, it expelled its nationals who were opposed to the régime in power or denied them the possibility of returning home once they were abroad?

25. With reference to the draft resolution under consideration, he felt that the Commission should confine itself to the problem of human rights and should not call in question a country's legal system unless there was a direct link between that system and human rights. Draft resolution E/CN.4/L.1566 went beyond the sphere of competence of the Commission, whose role was to note violations of human rights and help to remedy them. So far, his delegation had consistently supported resolutions relating to the human rights situation in Chile in order to help to restore human rights in that country, but it also wanted to assist in devising methods which could be used not only in the case of Chile, but also in that of other countries. Had the Commission really established new procedures which could be applied generally? Had the system of the Working Group or the Special Rapporteur been effective in safeguarding human rights in the world? It would seem that the Commission was still a long way from its goal.

26. He made an urgent appeal to the Chilean leaders to restore the rights and freedoms which used to exist in a country which could boast of a long democratic tradition. He could not forget that everything that had been said about Chile in international bodies had been extremely selective and that the Commission, because of political considerations or for reasons of ideological solidarity, had too often and for too long refused to pay attention to people who expected it to protect and guarantee their rights. As he had said at its thirty-sixth session, the arbitrary acts which the Commission often committed caused the United Nations to lose its credibility and consequently hampered its capacity for action, as was illustrated by the fact that it was unable to influence the actions of the Chilean authorities. Such considerations should encourage the Commission not to confine itself to the course which it had chosen so far.

27. In the light of those comments his delegation could give its endorsement to the extension of the Special Rapporteur's mandate. It hoped, moreover, that the Chilean Government would take the necessary steps to enable the Commission to take note of its willingness to co-operate with the United Nations and then to record positive results of such co-operation, which should make it possible to end the Special Rapporteur's mandate. The Commission should give up the special procedure applied to Chile in favour of that provided for in resolution 1505 (XLVIII) of the Economic and Social Council.

28. The CHAIRMAN, replying to Mr. GONZALEZ de LEON (Mexico), said that the Commission would take a decision on the draft resolution before it (E/CN.4/L.1566) when the amendments which were to be issued under the symbol E/CN.4/L.1571 had been circulated.

29. Mr. von TRESKOW (Federal Republic of Germany) explained, for the information of the representative of Mexico, that the text of the amendments to the draft resolution submitted by his delegation had been communicated to the Mexican delegation before the meeting in the course of consultations on the draft resolution.

30. Mr. GONZALEZ de LEON (Mexico) said that, although the other sponsors of the draft resolution had not been informed of the amendments submitted by the delegation of the Federal Republic of Germany, he was certain that those amendments would be unacceptable to them and therefore proposed that a vote should be held on the draft resolution.

31. Mr. EL-FATTAL (Syrian Arab Republic) pointed out that the draft resolution had been submitted to the Commission on 20 February, i.e. five days earlier. His delegation was prepared to vote on that text at the current meeting; any amendment would only complicate the discussion since an amendment relating to a matter of substance appeared to be involved.

32. The CHAIRMAN said that the delegation of the Federal Republic of Germany had submitted its amendments within the time-limit, i.e. before the end of the discussion on item 5. He reminded the Commission that on occasion it had even authorized delegations to submit amendments when the discussion on the item to which the amendments related had already ended. It was not possible for the Commission to vote on the draft resolution before it had seen the amendments of the Federal Republic of Germany.

33. Mr. SALAH-BEY (Algeria) said it had been intended that the Commission should vote on the draft resolution. The amendments of the Federal Republic of Germany had not been endorsed by the sponsors of the draft resolution, which should therefore not be amended in any way. Moreover, the rule should be to end the discussion of an agenda item with a vote. If, in the case of agenda item 10, there had been reasons for allowing a certain time for the submission of the draft resolution because of the consultations which had taken place on that text, similar action could not be taken in the case of the draft resolution on the question of human rights in Chile.

34. The CHAIRMAN said the fact that the sponsors of the draft resolution did not accept the amendments of the Federal Republic of Germany did not mean that those amendments did not exist. It would be unfair to ignore them and it would be a dangerous precedent to vote on the draft resolution at the present stage.



35. Mr. BEAUNE (Canada) referred to the talks which delegations of the Western countries had held with the sponsors of the draft resolution with a view to making that text more acceptable and encouraging its adoption by consensus. As the discussion of item 5 had only just ended, members needed time for thought so as to be able to express an opinion on the draft resolution submitted to them, even though it had been circulated several days earlier. It would therefore be advisable to defer a decision on the draft resolution.

36. Mr. VILA (Cuba) supported the comments of the Mexican, Algerian and Syrian representatives, all the more so as the sponsors of the draft resolution had never received an assurance that their text, even with changes to give effect to the amendment, would be adopted by consensus or even supported.

37. Mr. VARELA (Costa Rica) considered that the only solution was to apply rule 64 of the rules of procedure, in conjunction with rule 52. He urged the sponsors of the draft resolution not to press for an immediate vote.

38. The CHAIRMAN felt that the suggestion made by the Canadian delegation was an acceptable compromise. The amendments had been properly submitted and their text would have to be circulated to the Commission for consideration. The Commission could, however, decide not to apply the 24-hour rule embodied in rule 52 of the rules of procedure and take a decision on the amendments and the draft resolution at the beginning of the following meeting.

39. Mr. GONZALEZ de LEON (Mexico), referring to rule 52 of the rules of procedure, suggested that the Commission might dispense with the submission in writing of the amendments by the delegation of the Federal Republic of Germany and simply have them read out at the current meeting.

40. The CHAIRMAN agreed that that was possible, but he understood that the Commission was not prepared to decide on amendments of substance without having seen them in writing. He would, in any case, not wish the Commission to vote on the draft resolution and to disregard the amendments.

41. Mr. ZORIN (Union of Soviet Socialist Republics) considered it irregular that the delegation of the Federal Republic of Germany had not informed the Commission, during its statement, of the amendments which it had submitted to the secretariat that same day, and that the vote on a draft resolution dated 20 February 1981 should be postponed. The sponsors of the draft resolution had the right to insist on an immediate vote, as they had made it quite clear that their consultations with the sponsors of the amendments had not resulted in agreement. In those circumstances, the Commission could rise above what seemed to be manoeuvres and take a decision on the draft resolution without taking the amendments into account.

42. The CHAIRMAN stated that any delegation whatever was entitled to submit amendments if it respected the relevant procedure, which was the case with the delegation of the Federal Republic of Germany.

43. Mr. JAHN (Federal Republic of Germany) said he thought he had clearly explained in his statement his delegation's position on the human rights situation in Chile. He had made no mention of the amendments submitted by his delegation because he had wanted to wait until the Commission had the text before it. He gave an assurance, in particular to the delegation of the Soviet Union, that there was no question of any manoeuvre.

44. Mr. BOEL (Denmark) entirely agreed with the remarks of the Chairman. The Commission should proceed as it normally would and give delegations time to examine the amendments calmly and to hold consultations. Postponing the vote on a draft resolution was a small matter if such a course would lead to a consensus.

45. Mr. LAMB (Australia) said that his delegation, which had always supported resolutions on the human rights situation in Chile, would not do so on this occasion for reasons of principle and ethics if the Commission decided to vote on the draft resolution without having considered the amendments of the Federal Republic of Germany.

46. Mr. GONZALEZ de LEON (Mexico) said that his delegation would be the last to refuse another delegation the right to submit amendments. The delegation of the Federal Republic of Germany could, however, submit its amendments orally and the Commission could decide on the draft resolution and the amendments at the current meeting. If the delegation of the Federal Republic of Germany was not prepared to do so, his delegation would move the closure of the debate under rule 50 of the rules of procedure.

47. Mr. M'BAYE (Senegal) said that the draft resolution, dated 20 February 1981, constituted a balanced text which fully satisfied his delegation. It was true that the amendment submitted by the delegation of the Federal Republic of Germany was admissible, but the point was to avoid making use of the rules of procedure for dilatory manoeuvres. As the Mexican delegation had suggested, the delegation of the Federal Republic of Germany could submit its amendments orally. The Commission could then take an immediate decision on them; if it was not prepared to do so, it should apply the 24-hour rule provided for in the rules of procedure.

48. The CHAIRMAN said that it was for the delegation of the Federal Republic of Germany to take a decision on the Senegalese proposal.

49. Mr. PACE (Secretary of the Commission) read out the amendments to draft resolution E/CN.4/L.1566 submitted by the delegation of the Federal Republic of Germany. \*/

50. Mr. von TRESKOW (Federal Republic of Germany) said it was his understanding that delegations needed to study his delegation's amendments closely. He therefore moved the adjournment of the meeting under rule 48 of the rules of procedure.

51. The motion of the delegation of the Federal Republic of Germany was adopted by 22 votes to 15, with 4 abstentions.

The meeting rose at 7 p.m.