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

Cuba: draft resolution

1996/... Report of the Working Group on Arbitrary Detention

The Commission on Human Rights,

Recalling that, as recommended by the Commission, the Economic and Social Council, by its decision 1991/243 of 31 May 1991, decided to establish the Working Group on Arbitrary Detention with the task of investigating cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant legal instruments adopted by the States concerned,

Bearing in mind that at the time when the Commission recommended to the Council to establish the Working Group, there existed a clear difference, both in the juridical literature and in United Nations practice, between the situation of "detention" and that of "imprisonment", particularly in the light of the "use of terms" applicable to each of these distinct situations for the purposes of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted three years previously by the General Assembly in its resolution 43/173 of 9 December 1988,

Recalling that pursuant to the Body of Principles, the term "detention" means the condition of a person deprived of personal liberty, except as a result of conviction for an offence, while the term "imprisonment" means the condition of a person deprived of personal liberty as a result of conviction for an offence,

Considering that in the case of contractual legal instruments, including human rights instruments, the acceptance by States of the juridical obligations contained therein takes place by means of ratification, accession or any other valid expression of consent by the State concerned,

Having duly taken into account its previous resolutions on this subject, namely resolutions 1991/42 of 5 March 1991, 1992/28 of 28 February 1992, 1993/36 of 5 March 1993, 1994/32 of 4 March 1994 and 1995/59 of 7 March 1995,

Having also duly taken into account the previous reports submitted to the Commission by the Working Group (E/CN.4/1992/20, E/CN.4/1993/24, E/CN.4/1994/27 and E/CN.4/1995/31 and Add.1-4),

Having been able fully to appreciate the practical consequences of the so-called "deliberations" adopted by the Working Group, in which it has expressed, on several occasions, its views on the sense and practical scope of the original mandate conferred upon the Group by the Economic and Social Council,

Having reviewed the fifth report submitted by the Working Group (E/CN.4/1996/40), in particular, its chapter III and annex I, as well as the decisions adopted by the Group at its eleventh, twelfth and thirteenth sessions (E/CN.4/1996/40/Add.1),

Conscious that by resolution 1994/32 it extended for a further three years, ending in 1997, the initial three-year mandate of the Working Group,

1. Takes due note of the fifth report submitted by the Working Group on Arbitrary Detention (E/CN.4/1996/40);

2. Requests the Working Group to take duly into account in the exercise of the functions conferred upon it by the Economic and Social Council in its decision 1991/243 of 31 May 1991, the clear differentiation existing both in United Nations parlance and practical action, between the situations of "detention" and "imprisonment", as established by the General Assembly in resolution 43/173 of 9 December 1988;

3. Also requests the Working Group, when analysing the admissibility of a complaint against a State and/or the applicability of the provisions of a

human rights instrument to a particular human rights situation, to also take duly into account whether such instrument is only a standard of a purely recommendatory nature or a contractual legal instrument establishing juridical obligations for the State concerned and, in the latter case, whether such obligations are applicable to the said State as a party to that particular legal instrument;

4. Further requests the Working Group to reassess the appropriateness of substituting an approach based on cooperation for its present "adversarial" method of work which, in fact, propitiates unnecessary confrontations between the Working Group and States concerned;

5. Requests the Working Group to revise further its present methods of work, as summarized in annex I to its report, so as to make them compatible with the guidelines established in the present resolution;

6. Also requests the Working Group to report to the Commission at its fifty-third session on the steps taken to implement the present resolution.
