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COMMISSION ON HUMAN RIGHTS
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Agenda item 8

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

Argentina*, Australia, Austria, Belgium*, Bulgaria, Cameroon,
Costa Rica*, Cote d'Ivoire, Cyprus*, Denmark, Ecuador, France,
Georgia*, Germany, Greece*, Ireland*, Israel*, Italy, Latvia*,
Luxembourg*, Madagascar, Netherlands, Norway*, Poland*,
Portugal*, Republic of Korea, Romania*, Russian Federation,
Senegal*, Slovakia*, Spain*, Sweden*, Switzerland*,
United Kingdom of Great Britain and Northern Ireland,
United States of America: draft resolution

1996/... Question of enforced disappearances

The Commission on Human Rights,

Bearing in mind General Assembly resolution 33/173 of 20 December 1978,
in which the Assembly requested the Commission on Human Rights to consider the
question of disappeared persons with a view to making appropriate
recommendations, and all other United Nations resolutions concerning missing
or disappeared persons,

* In accordance with rule 69, paragraph 3, of the rules of procedure of
the functional commissions of the Economic and Social Council.

Recalling its resolution 20 (XXXVI) of 29 February 1980, in which it decided to establish a working group consisting of five of its members, to serve as experts in their individual capacity, to examine questions relevant to enforced or involuntary disappearances, and its resolutions 1991/41 of 5 March 1991, 1992/30 of 28 February 1992, 1993/35 of 5 March 1993, 1994/39 of 5 March 1994 and 1995/38 of 3 March 1995,

Recalling also General Assembly resolution 47/133 of 18 December 1992, by which the General Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearance,

Emphasizing that, in the Vienna Declaration and Programme of Action, the World Conference on Human Rights welcomed the adoption of the Declaration on the Protection of All Persons from Enforced Disappearance and called upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearance,

Noting that the Working Group on Enforced or Involuntary Disappearances considers the adoption of the latter Declaration to be the most encouraging development since its establishment in respect of efforts to combat enforced disappearances, especially in so far as it recognizes that the systematic practice of such acts "is of the nature of a crime against humanity".

Expressing concern in this connection that, according to the Working Group, the practice of a number of States can run counter to the Declaration,

Convinced of the need to continue implementing the provisions of General Assembly resolution 33/173 and of the other United Nations resolutions on the question of disappeared persons, with a view to finding solutions for cases of disappearance and eliminating enforced disappearances, duly taking into account the provisions of the Declaration,

Taking into account General Assembly resolution 49/193 of 23 December 1994,

Deeply concerned about the increase and spread of the practice of enforced disappearances in various parts of the world,

Concerned at the large number of reports concerning harassment, ill-treatment and intimidation of witnesses of disappearances or relatives of disappeared persons,

Nothing with satisfaction in this connection that the Working Group reports increased cooperation on the part of most States,

Recalling its resolution 1995/75 of 8 March 1995 on cooperation with representatives of United Nations human rights organs,

Having examined the report of the Working Group (E/CN.4/1996/38), and also the report of the expert member of the Working Group responsible for the special operation on missing persons in the territory of the former Yugoslavia (E/CN.4/1996/36),

1. Expresses its appreciation to the Working Group on Enforced or Involuntary Disappearances for the way in which it is performing its task, and thanks it for submitting a report to the Commission in accordance with its resolution 1995/38 of 3 March 1995;

2. Takes note of the report of the Working Group (E/CN.4/1995/38);

3. Encourages the Working Group in its efforts to help to eliminate the practice of enforced disappearances, to submit to the Commission all information it deems necessary and any specific recommendations it may wish to make regarding the fulfilment of its task;

4. Notes that the primary role of the Working Group, as described in its reports, is to act as a channel of communication between families of the disappeared persons and the Governments concerned, with a view to ensuring that sufficiently documented and clearly identified individual cases are investigated and to ascertain whether such information falls under its mandate and contains the required elements;

5. Reminds the Working Group of the need to observe, in its humanitarian task, United Nations standards and practices regarding the handling of communications and the consideration of government replies;

6. Deplores the fact that some Governments have never provided substantive replies concerning the cases of enforced disappearances in their countries, or acted on the recommendations concerning them made in the reports of the Working Group;

7. Urges the Governments concerned, particularly those which have not yet responded to communications transmitted to them by the Working Group, to take action as rapidly as possible concerning these communications, to cooperate with and assist the Working Group so that it may carry out its mandate effectively, and in particular to reply expeditiously to its requests for information;

8. Also urges the Governments concerned to intensify their cooperation with the Working Group on any action taken pursuant to recommendations addressed to them by the Working Group;

9. Once again urges Governments to take steps to protect the families of disappeared persons against any intimidation or ill-treatment to which they might be subjected;

10. Encourages Governments to give serious consideration to inviting the Working Group to visit their countries so as to enable the Working Group to fulfil its mandate even more effectively;

11. Urges Governments to take steps to ensure that, when a state of emergency is introduced, the protection of human rights is guaranteed, particularly as regards the prevention of enforced disappearances;

12. Reminds Governments of the need to ensure that their competent authorities conduct prompt and impartial inquiries in all circumstances whenever there is reason to believe that an enforced disappearance has occurred in a territory under their jurisdiction;

13. Recalls that, if allegations are confirmed, the perpetrators of enforced disappearances should be prosecuted;

14. Expresses its profound thanks to the many Governments that have cooperated with the Working Group and replied to its request for information, and to the Governments that have invited the Working Group to visit their countries, asks them to give all necessary attention to the Working Group's recommendations, and invites them to inform the Working Group of any action they take on those recommendations;

15. Commends in particular the efforts of Governments which investigate and/or develop appropriate mechanisms to investigate any cases of enforced disappearances which are brought to their attention, and encourages all the Governments concerned to expand their efforts in this area;

16. Invites States which have not yet done so to take legislative, administrative, judicial or other measures to implement the principles set forth in the Declaration on the Protection of All Persons from Enforced Disappearance, while considering the general comments of the Working Group contained in paragraphs 43 to 58 of its report;

17. Invites, in this connection, all Governments to take action to this end at the national and regional level and in cooperation with the United Nations, if appropriate through technical assistance;

18. Recalls that all acts of enforced disappearance are offences punishable by appropriate penalties which take into account their extreme seriousness under criminal law;

19. Encourages States to provide concrete information, as some have already done, on measures taken to give effect to the Declaration, as well as obstacles encountered;

20. Again invites the Working Group to identify obstacles to the realization of the Declaration, to recommend ways of overcoming those obstacles, and to pursue in this respect its dialogue with Governments and institutions concerned;

21. Invites the Working Group to continue to consider the question of impunity, in close collaboration with the rapporteurs appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and with due regard for the relevant provisions of the Declaration;

22. Requests the Working Group to pay particular attention to cases of children subjected to enforced disappearance and children of disappeared persons, and to cooperate closely with the Governments concerned in searching for and identifying these children;

23. Notes the activities of non-governmental organizations in support of the implementation of the Declaration, and invites them to continue to facilitate its dissemination and to contribute to the work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

24. Takes note of the cooperation provided to the Working Group by non-governmental organizations;

25. Takes note with interest of the report of the expert member of the Working Group responsible for the special process dealing with the problem of missing persons in the territory of the former Yugoslavia (E/CN.4/1996/36);

26. Requests the Working Group to report on its work to the Commission at its fifty-third session and to continue to discharge its mandate discreetly and conscientiously;

27. Once more requests the Secretary-General to ensure that the Working Group receives all the assistance and resources it requires to perform its function, especially in carrying out missions, following them up or holding sessions in countries that would be prepared to receive it;

28. Also requests the Secretary-General to solicit the observations of Governments on any measures they have taken for the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance;

29. Finally requests the Secretary-General to keep the Working Group and the Commission on Human Rights regularly informed on the steps he takes for the widespread dissemination and promotion of the Declaration on the Protection of All Persons from Enforced Disappearance.
