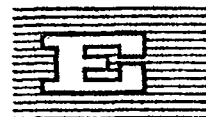


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COMMISSION ON HUMAN RIGHTS
Thirty-seventh session
Item 10 of the provisional agenda

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

Report by the Secretary-General prepared in accordance with resolution 18
(XXLIII) of the Sub-Commission on Prevention of Discrimination
and Protection of Minorities

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INTRODUCTION

1. This report is submitted in accordance with paragraph 5 of resolution 18 (XXXIII) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

2. By its resolution 18 (XXXIII), the Sub-Commission expressed deep concern over the fact that people were still disappearing in a number of countries, and urged the Commission on Human Rights to extend the mandate of its Working Group on Enforced or Involuntary Disappearances. It emphasized that the extreme gravity of the situation necessitated emergency action by the Working Group of the Commission and by other organs in the United Nations system as well as by the Secretary-General. It urged the Secretary-General to continue to exercise his good offices, as requested by the General Assembly, in cases of enforced or involuntary disappearances and decided to study further, at its thirty-fourth session, the question of missing persons and of enforced or involuntary disappearances of persons, as a matter of high priority, especially as regards:

(a) The adequacy of methods utilized at the domestic and international levels in searching for missing and disappeared persons and in undertaking speedy and impartial investigations;

(b) The adequacy of methods for ensuring that law enforcement and security authorities or organizations are fully accountable especially in law, in the discharge of their duties, taking into account, as stated by the General Assembly, that such accountability includes legal responsibility for unjustifiable excesses which might lead to enforced or involuntary disappearances and to other violations of human rights;

(c) Procedures for regarding as official the detention without trial as an emergency preventive measure of any person held on premises whether or not intended for that purpose;

(d) The adequacy of the protection of persons who provide information about disappeared persons; particularly the protection of witnesses and journalists who furnish such information; and,

(e) Procedures for effective reporting, monitoring and appraisal of cases of missing persons and of enforced and involuntary disappearances, including cases in which an authority implicated on the basis of relevant facts contents itself with replying by denials without due investigation and without showing itself ready to investigate and to set up an inquiry for the purpose, and, when such situations occur, procedures providing for publication of findings relating to such situations.

3. In paragraph 5 of that resolution, the Sub-Commission requested the Secretary-General to invite governments, specialized agencies, regional inter-governmental organizations and non-governmental organizations to transmit to the Commission at the thirty-seventh session and to the Sub-Commission at its thirty-fourth session, through the Secretary-General, information, views or comments on the matters mentioned in the preceding paragraph.

4. In accordance with the resolution, the Secretary-General requested governments, specialized agencies, regional intergovernmental organizations and interested

non-governmental organizations to transmit any relevant information, views or comments. As of 15 January 1981, the following substantive replies had been received by the Secretary-General:

Governments: Argentina, Austria, Qatar, Sweden.

Specialized agencies: International Labour Organisation, Food and Agriculture Organization, World Health Organization.

Regional intergovernmental organizations and other intergovernmental organizations outside the United Nations system:

Council of Europe, Intergovernmental Committee for Migration.

Non-governmental organizations: International Federation of Human Rights, International League for Human Rights.

In accordance with editorial directives issued by the Economic and Social Council, notably in resolution 1979/41, and endorsed by the General Assembly, the contents of the replies have been slightly summarized. The full texts are on file in the Secretariat and are available to any member of the Commission who may wish to consult them. Any replies received after 15 January 1981 will form the subject of addenda to the present document.

I. REPLIES FROM GOVERNMENTS

ARGENTINA

[Original: Spanish]
[24 December 1980]

In accordance with paragraph 5 of resolution 18 (XXXIII) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Government of Argentina has been invited to transmit to the Commission at its thirty-seventh session and to the Sub-Commission at its thirty-fourth session information, views or comments on the matters mentioned in paragraph 4 of the said resolution, in connection with the question of persons whose whereabouts are unknown and enforced or involuntary disappearances.

On 8 December 1980, the Government of Argentina forwarded the enclosed letter to the Working Group on Enforced or Involuntary Disappearances.

As this letter contains comments of a general nature relating to the matters dealt with in resolution 18 (XXXIII), I have been instructed to inform you that it is to be regarded as containing the comments of the Government of Argentina on the questions referred to in the said resolution and would request that it be distributed as a document of the thirty-seventh session of the Commission on Human Rights.

ANNEX

Letter dated 8 December 1980 from the Permanent Representative
of Argentina to the United Nations Office at Geneva
addressed to the Chairman of the Working Group
on Enforced and Involuntary Disappearances of Persons

Sir,

1. I wish to refer to note G/SO 217/1 ARG CONF, dated 25 September 1980, addressed to me by the Director of the Division of Human Rights on behalf of the Working Group on Enforced or Involuntary Disappearances in connection with the procedures laid down under Economic and Social Council resolutions 728 F (XXVIII) and 1503 (XLVIII), with a view to confirming the Group's viewpoints on this matter.

The note states that various co-existing procedures have been established in the United Nations with regard to alleged violations of human rights, in order to deal with different problems or situations. In this regard, it starts from the premise that the procedures are all of equal weight and independent status. With reference to an earlier note from my Government, it states expressly "... To argue that one procedure should be governed by another would be to frustrate the intention of the General Assembly, the Economic and Social Council and the Commission on Human Rights in devising methods and approaches for dealing with specific problems or phenomena which the international community has regarded as questions of a special nature..."

2. In this respect, it should be emphasized that the Argentine Republic has never denied the existence and development of various United Nations procedures for considering violations of human rights. These procedures flow from the provisions of the Charter in accordance with which Member States have undertaken to ensure, in co-operation with the United Nations, universal and effective respect for fundamental human rights and freedoms. But where our view departs from that held by the Working Group is that the latter considers all these procedures to be on a footing of absolute equality. By contrast, our view, based on the resolutions of the relevant bodies in the United Nations, is that two major categories of systems or procedures have been evolved to ascertain compliance by States with the obligations laid down under the Charter, and the legal bases reflect the special nature of the subjects of law involved, namely:

- I. Consideration of complaints submitted by one State against another;
- II. Consideration of complaints submitted in communications from individuals.

The first category is concerned with international personality and with the fact that States, as members of the United Nations, have rights and obligations which derive from the Charter of the Organization. The second is concerned with the right of petition, whereby the complaints of individuals and non-governmental organizations may present features which enable United Nations bodies to take appropriate decisions even if the complaints, taken individually, are not of such substance as to assert a right at the international level.

3. Recognition of the "right of petition" was slow to develop and, not being expressly recognized in the Charter of the Organization, did not figure in the Universal Declaration of Human Rights either. Its present significance stems from resolutions of the Organization dating back to Economic and Social Council resolution 75 (V). On the basis of a very limited competence, whereby the Commission on Human Rights was not authorized to take any action, a refinement of procedures has been achieved and their basic features are set out in Economic and Social Council resolutions 728 F, 1235 and 1503.

The procedure of confidential communications was introduced in the first of those resolutions; under the terms of the resolution, the procedure consisted solely in conferring a power to accept such complaints from natural and legal persons, without any possibility of adopting the slightest measure in that regard, and States did not incur liability as a result of a complaint from an individual.

With the adoption of Economic and Social Council resolution 1235, the Commission on Human Rights was entrusted with the task of examining information relevant to gross violations of human rights and was empowered to report on such situations to the Economic and Social Council. But Economic and Social Council resolution 1503 later extended the scope of the confidential procedure for considering complaints by individuals, which consists in verifying alleged violations of human rights and adopting decisions, to cases in which the requirements laid down by that resolution are deemed to have been met, which is not the case under the terms of Economic and Social Council resolution 728 F (XXVIII).

It should be noted that, at the time, many delegations objected to the changes, pursuant to resolutions 1235 and 1503, in these procedures and deemed them unacceptable since they considered that they violated the Charter of the United Nations and, in particular, the provisions of Article 2, paragraph 7; the procedures contravened or placed an erroneous interpretation on the relevant resolutions and decisions of United Nations bodies and, in particular, on Economic and Social Council resolution 728 F (XXVIII). They disregarded the norms of international law, which do not recognize the international personality of individuals and protect States against procedures to which they have not given their consent under a treaty; they constituted an unauthorized and unlawful substitute for the procedure for reviewing complaints provided for in the Optional Protocol to the International Covenant on Civil and Political Rights; they tended to undermine the Commission's powers to deal with flagrant violations of human rights, except in the case of the Sub-Commission, under resolution 1235; and they exceeded the powers of both the Commission and the Sub-Commission which would be acting ultra vires by approving and implementing it.

4. Subsequently, despite the objections to these procedures, which start out by selecting communications which "appear to reveal a consistent pattern of gross and reliably attested violations", they have been implemented. This is due to the fact that their practical application has been governed by two concepts which the Argentine Republic regards as fundamental:

- (i) The principle of confidentiality, which is laid down in paragraph 3 of Economic and Social Council resolution 1503. In our view, this principle is of basic importance if the rights of States are to be protected against attempts at politicization and abuse in matters of human rights.

The Argentine Republic has submitted the following comment on this principle:

"(1)... the Argentine Government considers it in no circumstances advisable that there should be a de facto parallelism of activities and/or superposition of powers in dealing with situations relating to violations of human rights. The object pursued in guaranteeing and rendering effective the single and indivisible application of the principle of confidentiality is not only to ensure an objective examination of the facts by the relevant United Nations bodies but also to afford protection to States during the procedure for verifying such facts. Experience has shown that such a procedure is the sole means of ensuring a free-flowing and constructive dialogue and at the same time it acts as a filter against machinations which might ultimately affect the United Nations as a whole by undermining its efforts to strengthen mutual understanding and ensure friendly relations among peoples". (See document E/CN.4/1273/Add.1).

(ii) The rules which lay down the procedure to be followed for the admissibility of communications. This procedure has been expressly regulated by resolution I (XXIV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and, on the basis of Economic and Social Council resolutions 728 F, 1235 and 1503, it stipulates the standards and criteria which communications must meet, from whom communications may originate, what their content must be, the features which may render them inadmissible and the time-limit for submitting them.

On the basis of the foregoing, the Argentine Government has repeatedly expressed the view that communications submitted by individuals, even in the case of disappeared persons, must comply with the requirements and respect the procedures laid down in Economic and Social Council resolution 1503 (XLVIII) and related resolutions, since this resolution incorporates the elements which afford Member States the guarantees that are indispensable for considering such communications, namely, confidentiality and admissibility.

According to its interpretation of General Assembly resolution 33/173 and Economic and Social Council resolution 1979/38, in the note to which we are replying, the Working Group, however, considers that "a specialized procedure has been established" for dealing with the problems of missing and disappeared persons which would be complementary to other existing procedures and which would not be subordinated to any pre-existing procedures" and, in accordance with paragraph 3 of resolution 20 (XXXVI) of the Commission on Human Rights, it maintains that the Group may receive and handle information relating to disappeared persons submitted by or concerning individuals.

5. The Argentine Republic takes a different view and, in the case of complaints by individuals, cannot agree to a procedure that differs from the one laid down under Economic and Social Council resolution 1503 and related resolutions. This has already been the subject of a number of formal reservations entered by Argentine delegations. In this connection, when Economic and Social Council resolution 1979/38, relating to disappeared persons, was adopted, paragraph 3 was included which reads:

"Also requests the Sub-Commission to consider communications on disappeared persons in accordance with the relevant resolutions".

When this resolution was adopted on 4 May 1979, the delegations of the United Kingdom (on behalf of the sponsors of the relevant draft resolution) and Argentina made the following statements:

United Kingdom:

"As I said this morning, it is my understanding that communications will automatically be considered under the confidential procedure laid down in (Economic and Social Council) resolution 1503. We have, however, heard the views expressed by the representative of Argentina this morning and, to take account of his opinion, we have therefore submitted this new wording which I trust will be generally acceptable...". b/

Argentina:

"I wanted to speak immediately after the distinguished representative of the United Kingdom, with whom we have worked very hard on this question. I would like to make it quite clear that I wish to see reflected in the summary record of this Committee of the Economic and Social Council a point which is of cardinal importance to us and will be the key to whether or not this consensus will actually materialize. The distinguished representative of the United Kingdom, speaking on behalf of the sponsors, has indicated that, as regards the special question which we are considering, resolution 1503 (XLVIII) applies to the case of disappeared persons and does not cover other special cases for which a different criterion could have been adopted. This must be made quite clear. If difficulties arise in future as a result of different interpretations, we would like it known that our consent is given on the basis that resolution 1503 (XLVIII) is the basis for this understanding".

Again when resolution 20 (XXXVI) was adopted by the Commission on Human Rights, the Argentine delegation made the following statement during the relevant part of its explanation of vote:

"... the method of work which the group adopts must not be superimposed on or affect the proper operation of the existing procedures for allegations by individuals, as laid down in (Economic and Social Council) resolution 1503 and related resolutions - it is in the same spirit that we interpret the notion of 'discretion' in the text that has been adopted, which we regard as a key element in the effective fulfilment of the Working Group's task; my delegation also understands that the information submitted to the Working Group is governed by the same rules of admissibility as have been especially evolved, inter alia, by resolution 1 (XXIV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities".

These views were repeated before the Working Group by the undersigned at the meeting which we held on 18 September 1980, when the view was expressed that the Group should abide by existing procedures and should not create an ad hoc procedure which could only take effect upon the adoption of an express decision by the Commission on Human Rights, confirmed by the highest organs of the Organization, that is, the Economic and Social Council and the General Assembly.

6. It should be borne in mind that the Commission on Human Rights resolution 20 (XXXVI), concerning the question of missing and disappeared persons, invites the Group, in operative paragraph 6, "... in establishing its working methods, to bear in mind the need to be able to respond effectively to information that comes before it...". Our interpretation of the usual meaning to be attributed to these words is

b/ Translation from Spanish by the United Nations Secretariat.

that the Working Group has only been empowered to agree on its own internal arrangements, that is, to decide among its members on the way in which it is going to work. Hence the Group will be able to deal with the information which is voluntarily submitted to it in accordance with operative paragraphs 3 and 4 of the same resolution, but it does not imply - nor does the text so state - that such a power is tantamount to authorization to establish a new procedure for considering communications submitted by individuals - a power which, moreover, the Commission on Human Rights does not have. So it would be rash to assert, as does the note to which we are replying, that "... there is nothing in resolutions 728 F and 1503 to the effect that the procedures adopted subsequently should be governed by their provisions..." simply because no procedure was adopted under resolution 20 (XXXVI). If the intention had been to adopt a new procedure, rules of a kind similar to those laid down in the resolutions invoked by the Argentine Republic should have been expressly specified, particularly in the case of those relating to the "admissibility" of communications. Otherwise, if the Working Group's interpretation were followed solely because information was submitted, admissibility would be automatic even when, for example, it was politically motivated.

On the other hand, the fact that communications from individuals are dealt with in the context of Economic and Social Council resolution 1503 and related resolutions certainly does not mean that this affects the Working Group's competence to receive information from Governments, either through other information available to the bodies referred to in that resolution or in the course of the direct contacts with the Group which we hope to have in the near future.

7. The insistence on the need for a special procedure in regard to admissibility is especially relevant in the case of "alleged disappearances", more particularly because of the objectives and motivations of many of the communications in question, and it cannot be regarded as a matter of legal niceties. Argentina's experience in this respect points to the existence of well-defined political interests hiding behind what is seemingly a concern to search for disappeared persons.

In my country, the phenomenon of disappeared persons was linked from the outset with the criminal activities of terrorist organizations of different types which chose mindless violence as their sole method of prevailing over legally constituted society. Resorting pitilessly to terrorism, these organizations, in their attacks repeatedly violated the right to life of innocent victims and of all those who might stand in the way of their aims.

In systematically encouraging accusations against the Argentine Government, the terrorist organizations had a two-fold purpose: first, to build up a historical record that would enable them to legitimize as victims those persons who - whether fugitives abroad, or imprisoned or in hiding in Argentina - need international support to replace the means which they once obtained in Argentina by crime and terror. Secondly, to create a "black legend" that can be used politically in the international sphere as a further means of aggression against the nation, in the hope of thus bringing pressure to bear on the Argentine Government and of prompting an unfavourable reaction to our sovereign foreign policy.

8. By resorting to supposed facts, orchestrated accusations, preconceptions and, in particular, by fabricating interviews with so-called "missing persons who have reappeared", the terrorist organizations endeavour to create a false picture of Argentina violating human rights.

International organizations cannot allow themselves to be used as a vehicle for disseminating this distorted image. The truth of the matter regarding the events in my country is very different from what the enemies of peace and order are seeking to portray in a skilfully orchestrated and generously financed campaign.

As my Government has had occasion to explain before to the Commission on Human Rights, the increase in the number of disappearances in our country, compared with normal times, was a phenomenon which regrettably arose out of the internal unrest caused by terrorist aggression. The tragic disappearance of persons from their normal places of residence is something that occurs in various parts of the world, as is recognized in General Assembly resolution 33/173, and it inevitably increases at any time of internal unrest, international conflict or major natural disaster. The action taken to repel the repeated extremist attacks that occurred in my country led to armed confrontation, which on some occasions reached considerable proportions owing to the intensity of the armed action and the number of persons involved in the fighting.

The terrorist activities, based on brutal and indiscriminate methods of aggression that involved hundreds of innocent victims, managed to create a situation which, if it had lasted for any length of time, would have brought my country to social and economic chaos. The only possible reaction to such armed aggression was force and the cause of many of the disappearances is to be found in the confrontation that took place. The methods employed by the terrorists make it enormously difficult to identify those who fell in the struggle; a terrorist either carries no identity papers whatsoever or he has a false identity. Again, the people who died in an armed clash were rarely connected by their relatives with such events - something that would have made it easy to identify them. In some instances, their families were aware of their subversive activities and did not wish to endanger themselves; in others, those who died had long since gone underground and lost contact with their relatives and friends.

In other cases, the disappearances have not been the immediate outcome of armed clashes with the forces of law and order but have occurred as a result of action by the subversives themselves. The investigations conducted by the competent authorities in my country have brought to light quite a number of cases of subversives killed by members of their organizations because they were accused of desertion or betrayal. On some occasions these crimes, described as 'executions', were announced publicly by these organizations, but they only revealed the victim's nom de guerre and did not give his real name. The 'regulations' that subversive groups establish for themselves punish any infringement of the rules with death and thus impose an iron discipline that is said to be necessary to spur on the members to commit the worst atrocities. The material seized by the forces of law and order in recent years includes a number of these 'sentences' against members of terrorist organizations.

In other cases, extremists were wounded in the fighting and were carried off by their accomplices to die later on; the bodies were buried or made to disappear in some other way, but always in secret of course. It was also a common practice of the subversive organizations to carry away the bodies of their dead from the place of the clash, for recognition of the bodies might have uncovered the secrecy with which the organizations sought to shroud their activities, activities which were carried on through a network of small cells that each had a few members.

Large numbers of disappearances can also be explained by the fact that members of subversive organizations deserted and stay in hiding from the authorities and their own organizations, in the latter instance for fear of reprisals. This kind of disappearance has given rise to complaints by the relatives, who have gone before the courts and generally used pre-established methods on the advice of persons and organizations frequently connected with terrorist groups.

Conversely, 'going underground' has also led to cases publicly reported as disappearances. Logically, a terrorist gang has to be joined in secret and, to all intents and purposes, anyone who takes such a decision therefore becomes a 'missing person' because he suddenly and, without apparent reason, leaves home, his job and his social circle. This is one of the most common types of 'disappearance', since the relatives of the person in question report the act as something that is inexplicable. This was the case in one of the most recent and brutal terrorist attacks in my country, in which, amongst other innocent victims, a well-known Argentine businessman was killed right in the centre of the city of Buenos Aires. Subversive criminals long since reported missing took part in this act, which occurred in November 1979. Other persons said to be missing are now living abroad with false papers and actively working for the campaign against Argentina.

In other cases, fewer in number, the cause of the alleged disappearance lies in the fact that the person has spontaneously turned himself in to the authorities, confessed that he is a member of a subversive gang and reported on its activities and plans. In such instances, Argentina law provides for a substantial reduction of the penalty; these people have been tried accordingly and are now serving their sentences. For elementary reasons of security, their names are not publicized, so as to prevent former accomplices from taking reprisals against them and their relatives. The laws now in force guarantee physical protection for such persons and this means that, even though some of the persons in this situation have regained their freedom, the relevant information must remain confidential.

Other disappearances are the result of abduction by subversives, who consider that the persons in question are opposed to their aims.

My Government does not rule out the possibility that some disappearances may have been due to excesses by individuals in enforcing law and order, which can be explained by the characteristics of an internal conflict that was marked by the brutality of the methods used by the terrorist aggressors. These cases are also matters of concern to the people and the Government of Argentina, and hence the determination with which they endeavoured to restore the rule of law so as to ensure that such lamentable acts will not be repeated.

The Argentine Government has not been insensitive to the complaints received. On the contrary, it has deemed it a duty to organize a search for missing persons through the offices that exist for this purpose in the Ministry of the Interior and the federal and provincial police forces. In cases in which an offence is presumed to have been committed, the Judiciary, national or provincial, also takes action to investigate the facts.

However, this positive attitude on the part of the competent authorities in my country must not be jeopardized by false and arbitrary complaints. The activities of groups which bandy about unexplained and fanciful figures for missing persons and include names which have arisen in the circumstances described above and sometimes names of notorious terrorist criminals killed long ago in clashes with the forces of law and order, merely lead to confusion and discouragement in a task undertaken in a spirit of seriousness and honesty.

9. The terrorists who are carrying on their destructive campaign from abroad frequently resort, in the case of international bodies such as the body of which you are Chairman, to the method of fabricating 'testimony' concerning alleged victims of 'repression' who have left Argentina after suffering all kinds of ill-treatment and torture at clandestine detention centres - according to their hostile reports.

To begin with, I wish to reiterate that my Government has declared that there are no clandestine detention centres in my country.

Secondly, my Government wishes to explain how subversives mount this kind of campaign of defamation, which is presented to the world public through the press or through organizations that are willing to lend a forum. It is very important for the Working Group you preside over to bear in mind the matters discussed below in evaluating, with better knowledge of the facts, the versions that will certainly be sent to you by those who make up these intrigues.

The 'testimony' on alleged disappearances normally comes from members of subversive groups who go underground. After they go into hiding, their relatives - sometimes aware of the manoeuvre and sometimes unconnected with it - initiate administrative and judicial action provided for in Argentine law for cases of missing persons, more particularly by entering a writ of habeas corpus. At the same time, the matter is communicated to organs 'connected with human rights' and the case is submitted to international organizations (governmental or non-governmental) to make sure that it is included in all the lists of 'missing persons' published in Argentina or abroad. Meanwhile, the subversive, hiding on Argentine territory or abroad, carries on his terrorist activities and benefits from the advantages of the anonymity of his new status as a 'missing person', for he is often provided with a new identity by means of false papers.

After some time has passed, the future 'witnesses' re-emerge abroad without any clear explanation of the circumstances in which, according to them, they were detained or of the place or of the reasons for their release. The person who has turned up again - invariably somebody who has an enviable memory - starts to recount his sufferings during his imaginary captivity, in which he alleges that he suffered torture and ill-treatment and was frequently transferred to the most varied 'clandestine detention centres'.

The purpose of these so-called transfers is to imply that they enabled the 'detainee' to get to know other persons who were in the same situation and their sufferings are then described. The false 'witness' invariably gives the names of persons 'spoken to' (although the ill-treatment he frequently mentions includes being held 'incommunicado'), the circumstances of their detention, their own transfers, ages, physical appearance and many other details about other people.

These false 'witnesses' usually use the same precision in describing their alleged captors, who are presented as 'members of the armed forces or security agencies', and supply the name, military rank and other details at great length and, in some cases, even give their home address.

Repetition of this false 'testimony' which is cleverly worked out to make sure that the data on places and people 'coincide' ('see-ing that the information ties in'), creates a picture of a situation that an observer who has not been alerted in advance could regard as convincing evidence. All this is managed by members of terrorist gangs who are living in foreign countries, where they can even count on the complacency of groups which are perhaps well-intentioned, but ill-informed, and of some press circles which are only interested in rash sensationalism.

My Government denounces these reports as false, insidious and totally lacking in truth, and appeals to the good sense of your Working Group so that, in its good faith, it will not be taken unawares by 'testimony' that forms part of a sophisticated network of defamation and abuse.

Such brazen and fanciful narratives do not contribute anything to the exhaustive investigation of acts which may have given rise to genuine disappearances reported through the administrative or judicial channels kept open under Argentine law. The independence enjoyed by the Judiciary in my country is a guarantee to the people who use such channels that every effort will be made to clear up acts that may constitute offences.

All this reveals how much it is necessary for organs responsible for protecting human rights to apply properly elaborated and agreed procedures that set forth certain rules on admissibility and enable them to set aside all cases of abuse of the right of petition, which - we are able to affirm - occur frequently in matters pertaining to persons said to be missing.

10. The problem of violence was a mark of the larger part of the 1970s and led to situations which were brought about by nihilistic terrorism and had an enormous impact on the Argentine people. Yet, 1980 is an important milestone: the restoration and consolidation of order and internal peace following the defeat of the armed gangs that caused this criminal aggression. At the same time, the cases or situations alleged to be violations of human rights have been very few in number; after a short time, most of them are disproved by the facts and the remainder are under investigation in order to determine their true nature and scope.

For example, in the course of 1980 the Argentine authorities have, by various means, learned of a small number of cases of persons who are said to be missing or cannot be located at their normal place of residence.

The majority of these cases are included in lists, circulating inside or outside Argentina, of alleged victims of involuntary or enforced disappearances, but the work of investigation undertaken by the authorities has made it possible to pinpoint different kinds of situations.

A. Names circulating in Argentina

- (i) Names brought to the knowledge of the authorities through press publications or by persons or institutions which state that they are interested in searching for the persons in question but do not lay complaints or offer further details.
- (ii) Persons who have disappeared in circumstances that are unknown or are not specified by the complainants, who formally request a search by the authorities.
- (iii) Persons of whom it is said, with or without a formal complaint, that they have been victims of 'abduction' or unlawful deprivation of their liberty.

Official efforts to shed light on these situations cover the three kinds of cases, but it is the third kind that calls for an examination of a possible violation of human rights, especially in instances in which the complaints, from relatives or persons who have been connected with the events, contain information that makes for such a presumption.

The national authorities have learned of 11 possible abductions said to have occurred in 1980, a figure which reduces the problem to its real dimensions.

It is necessary in every case for the persons concerned to submit formal complaints and avail themselves immediately of the various remedies provided for in the internal legal order, for this alone will make it possible to clear up the facts properly and punish the persons responsible, where appropriate. Again, it is a generally accepted principle that international consideration of a case calls for prior exhaustion of the remedies afforded by the State (see, inter alia, article 20 of the Statute of the Inter-American Commission on Human Rights and article 34 of its Regulations, article 26 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and paragraph 6 (i) of Economic and Social Council resolution 1503 (XLVIII)). However, in order for this internal procedure to be exhausted, it is also necessary for each case to be formally submitted to the competent national authorities.

B. Names circulating exclusively abroad

These are names which, either individually or included on lists, are mentioned in publications or pamphlets printed in various countries and usually submitted to international or regional organizations as alleged cases of violations of human rights.

The main features of these cases are the omission of the precise identity of the person reported missing and of factual information (time, place and means) on the way in which the alleged disappearances, described as involuntary, are said to have occurred. This, together with the habitual anonymity of the complainant, precludes any proper investigation and highlights the real purpose of complaints of this kind, which is to make charges that are so vague they cannot be easily refuted, yet make it possible to maintain the image of this phenomenon in Argentina.

Needless to say, in these circumstances an implicit responsibility lies on those who echo or serve as channels for such charges without the slightest accuracy or evidence being required of the complainants, who thus become accomplices - perhaps involuntary accomplices - in a campaign of defamation clearly fomented from abroad.

In cases of this type, the Argentine Government will conduct investigations only when domestic remedies are set in motion through formal complaints by persons or bodies who take responsibility for their assertions and furnish the information needed to initiate the search.

In this note it is not possible to overlook, since they already form part of this campaign, some accusations concerning alleged disappearances outside Argentine territory, accusations which are made irresponsibly against this Government and, therefore, are categorically rejected.

Mr. Chairman:

The Argentine Government understands and shares the noble humanitarian aims of the activities of your Working Group in the face of a phenomenon with grave consequences that affect not only the Argentine Republic but also many other members of the international community. As we have stated, our own experience shows that the distressing situation concerning disappearances has virtually come to an end and, at the same time, there has been a marked improvement in internal security. However, bearing in mind the interest displayed by the United Nations in co-operating with the Governments concerned in the adoption of appropriate measures, it believes it appropriate that the question of the various criteria regarding the procedure to be followed in connection with communications submitted to the Working Group should be submitted to the Commission on Human Rights at its next session, as part of the Group's report on its activities, its conclusions and its recommendations.

AUSTRIA

[Original: English]
[15 January 1981]

To treat cases of politically caused involuntary disappearances in a generalizing way seems to raise certain difficulties. In the opinion of the Austrian Federal Government it is preferable to undertake investigations on a case-by-case basis in order to find individually appropriate solutions. The preferability of such an approach has been demonstrated clearly by the political situation in a number of Latin American countries. In these cases, the main task consisted in verifying concrete charges raised with regard to the disappearance of persons in "political disgrace". In this connection, the methods specified in paragraph 4 of resolution 18 (XXXIII) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities have proven to be quite purposeful.

In addition, suitable ways and means will have to be found to induce States in the territory of which involuntary disappearances take place to meet the obligation laid down in paragraph 4 of resolution 18 (XXXIII). Finally, one could add procedures to those defined by paragraph 4 of this resolution in order to delimit the responsibility of persons who cause involuntary disappearances.

QATAR

[Original: Arabic]
[27 November 1981]

The State of Qatar supports all efforts to oppose the detention and enforced disappearance of persons. This is confirmed by the fact that the State of Qatar possesses a Code of Conduct for Law Enforcement Officials who, in the discharge of their duties, must respect and protect human dignity and the human rights of every individual. Respect for human dignity is one of the fundamental principles of State policy and is guaranteed under Qatar legislation. In the internal sphere, the State has made legal provision for the protection of the individual. In the international sphere, the State of Qatar has a firm belief in international covenants and resolutions and proclaims its commitment to and full respect for the Universal Declaration of Human Rights. Hence, Qatar legislation has always respected human rights. Article 9 of the Constitution provides that "All persons shall enjoy equal public rights and shall be subject to equal public duties without distinction on grounds of race, sex or religion".

Article 11 of the Constitution states that "A person who is accused of a criminal offence shall be considered innocent until he is proved guilty. He shall have the right to a fair trial before a court and to defend himself either personally or through an attorney".

The Islamic legal principle is given legislative expression in article 10, which states that "No act may be considered a criminal offence, and no criminal penalty may be imposed, except under a law that has been previously enacted".

Qatar law has always respected human rights in the legislation deriving from the Constitution as follows: articles 15, 19, 21, 24 and 25 of the Code of Criminal Procedure provide ample guarantees for detainees and article 28 of that Code stipulates that members of the police are not entitled to hold in custody for more than 48 hours a person detained without a warrant of arrest. Likewise, articles 30, 31, 32, 34, 59, 114, 60, 65, 33, 84, etc., all provide protection and justice for any detainee and prohibit all forms of violence and unlawful detention. There has never been a case of enforced disappearance of a person in the State of Qatar and there is therefore, no redress for a crime which does not exist and is unknown in its society.

The State of Qatar believes that no one should have the right to practise violence and terrorism or attempt to bring about the enforced disappearance of persons under any circumstances and for any reasons whatsoever, irrespective of whether there is a conflict between political groups within a State, between individuals and the state or between persons as defined under general international law. States which are accused of violations of human rights and of engaging in acts of terrorism, unlawful detention and the enforced disappearance of persons must conduct investigations in order to identify and severely punish those responsible for such violations. The Charter of the United Nations, the Universal Declaration of Human Rights, the two international covenants and other important international instruments stipulate that, in the event of a flagrant violation of human rights and the failure of a State to observe the basic principles of international law and the provisions of the said instruments, the question of human rights ceases to be a purely domestic matter and becomes a subject of concern to the international community. In our opinion, therefore, there are justifications for the action that must be taken by the United Nations and its organs in condemning flagrant violations of human rights in States accused of the unlawful detention and enforced disappearance of persons. The international community must expose the actions of such States in order to put an end to such violations.

The State of Qatar believes that the Sub-Commission on Prevention of Discrimination and Protection of Minorities must be supported and allowed to establish a working group to analyse the information received in connection with the enforced disappearance of persons and to prepare for the Sub-Commission's annual review of developments in this field. The State of Qatar is in favour of work of a more technical nature such as that undertaken by the United Nations conferences on crime prevention and the Committee on Crime Prevention Control.

Amnesty International, which has done commendable work in publicizing events relating to the enforced disappearance of persons in various parts of the world, has stated unequivocally that the possibility of recourse to violence is inherent in mankind and can be prevented only by institutional, legal and religious constraints. As that organization has clearly recognized, it is difficult to substantiate claims concerning the use of violence in connection with the enforced disappearance of persons, since very few Governments are willing even to acknowledge the use of such methods in their countries, let alone conduct internal investigations in connection therewith. This is a field in which freedom of information and the press can play a vital role.

The detention and enforced disappearance of persons is on the increase in racist South Africa and Israel in spite of guarantees providing for the treatment of detainees in a humanitarian manner consistent with the provisions of the Universal Declaration of Human Rights. In our view, efforts to achieve wider acceptance and performance of the obligations laid down in those instruments must remain one of the objectives of the United Nations in order to prevent States from engaging in human rights violations and to ensure that States punish those responsible for such violations.

The international community must endeavour to protect and encourage persons, such as journalists and others, who provide information about the occurrence and location of such crimes and States must fulfil their international obligations by submitting reports for publication by the Secretary-General of the United Nations.

The State of Qatar requests the Secretary-General of the United Nations to call upon States to formulate and adopt the legal measures needed to prevent the violation of human rights in connection with detention and to endeavour to prevent the enforced disappearance of persons which, in itself, constitutes a flagrant violation of human rights.

SWEDEN

[Original: English]
[24 November 1980]

The reply of the Government of Sweden on the different questions mentioned in paragraph 4 of resolution 18 (XXXIII) is as follows:

- (a) If a person disappears in Sweden, a search order will be issued. The search order will be sent to all police agencies throughout Sweden, and computerized routines are used to make the search as effective as possible.
- (b) In modern times, there has been no case in Sweden of an "enforced or involuntary disappearance" attributable to the law enforcement or security authorities. Having regard to the legal system in Sweden, it is highly unlikely that any such case will occur. If, however, there should be such a case, the responsible official, when identified, would be prosecuted and convicted of an ordinary criminal offence such as kidnapping.
- (c) Detention without trial as an emergency-preventive measure is unknown in Swedish law and in Swedish practice. If a person was so detained, it would be an entirely illegal act which would be punishable as kidnapping or as unlawful deprivation of liberty under the Penal Code.
- (d) Journalists and other interested persons are given all necessary assistance by the Swedish authorities. They are entitled to inspect the files of the authorities except in cases where a certain document is secret according to a specific provision of the Secrecy Act. The person asking to see a certain file or a certain document is not obliged to inform the authorities of the purpose of this request and he is not even obliged to reveal his name or identity.
- (e) As stated above under (b), there has not, in modern times, been any case in Sweden, where a person has disappeared while being in the care of a public authority. If such a case should occur - which is highly unlikely - the rules governing the activities of the police and the prison system would ensure that a thorough inquiry would immediately take place. Undoubtedly a case of this kind would also fall under the competence of the Parliamentary Ombudsman (justitieombudsmannen) and the Chancellor of Justice (justitiekanslern).

II. REPLIES FROM SPECIALIZED AGENCIES

INTERNATIONAL LABOUR ORGANISATION

[Original: English]
[5 November 1980]

As we have indicated in previous correspondence regarding this question, the Governing Body Committee on Freedom of Association has on various occasions examined complaints relating to the disappearance of trade unionists. In this connection the ILO would draw attention to certain decisions taken by the Governing Body last year, on the basis of recommendations contained in the Committee's 193rd report, with a view to expediting action on complaints of a particularly urgent or serious nature (particulars were given in response to resolution 28 (XXXVI) of the Commission on Human Rights.

The International Labour Organisation shall continue to bring to your attention (as was already done in our letters of 19 July 1979 and 4 June 1980) reports of the Committee on Freedom of Association dealing with cases of allegations of disappearances.

FOOD AND AGRICULTURE ORGANIZATION

[Original: English]
[15 January 1981]

The Food and Agriculture Organization has no information or comments to provide on the matters mentioned in paragraph 4 of resolution 18 (XXXIII).

WORLD HEALTH ORGANIZATION

[Original: English]
[25 November 1980]

The World Health Organization has no comments to offer on the issues raised in paragraph 4 of resolution 18 (XXXIII).

III. REPLIES FROM REGIONAL INTERGOVERNMENTAL ORGANIZATIONS AND
OTHER INTERGOVERNMENTAL ORGANIZATIONS OUTSIDE THE
UNITED NATIONS SYSTEM

COUNCIL OF EUROPE

[Original: English]
[14 January 1981]

Reference is made to the letter addressed to you on 28 May 1980 by Mr. Jean Raymond, Deputy Secretary of the European Commission of Human Rights on this matter (copy enclosed) which is still valid, and to Recommendation 646 (1971) of the Parliamentary Assembly of the Council of Europe "on action to be taken in tracing missing persons" and Recommendation No. R (79) 6 of the Committee of Ministers to Member States concerning the search of missing persons. 1/

ANNEX

Letter dated 28 May 1980 from the Deputy Secretary to the European Commission on Human Rights addressed to the Director of the United Nations Division of Human Rights

"... No individual applications based on Article 25 of the European Convention on Human Rights have been brought before the Commission on the above subject.

The issue has, however, arisen in an inter-State application, based on Article 24 of the Convention, namely in Application No. 8007/77, Cyprus v. Turkey. I enclose a copy of the decision on admissibility of the above application of 10 July 1978. The Commission is still in the process of examining the merits of this application.

I note that you have not requested any information on the subject from the Council of Europe, as such. May I take this opportunity to recall that the Committee of Ministers of the Council of Europe adopted, on 20 April 1979, a Recommendation on the Search for Missing Persons.

Yours faithfully,

J. Raymond
Deputy Secretary to the European
Commission of Human Rights"

INTERGOVERNMENTAL COMMITTEE FOR MIGRATION

[Original: English]
[6 November 1980]

The Intergovernmental Committee for Migration does not have any comments to make nor any information to provide to the Commission on Human Rights concerning missing persons.

1/ The texts of these recommendations are in the files of the Secretariat and may be consulted on request by any member of the Commission.

IV. REPLIES FROM NON-GOVERNMENTAL ORGANIZATIONS

INTERNATIONAL FEDERATION OF HUMAN RIGHTS

[Original: French]
[10 January 1981]

The various matters covered by paragraph 4 of this resolution should form the subject of an international treaty similar to that prepared by the Paris Bar and submitted to the United Nations Educational, Scientific and Cultural Organization.

We would stress that only by making immediate and sustained representations to the States concerned will it be possible to put an end to the abhorrent practice of causing persons to disappear.

In this connection, a procedure for the rapid reporting of disappearances should be established:

Providing that, in addition to action taken by the Secretary-General of the United Nations, the members of a group of experts proposed by the Commission of Human Rights should intervene as a "good offices" mission;

Recognizing the role of non-governmental organizations in approaching the countries in which these practices are perpetrated.

INTERNATIONAL LEAGUE FOR HUMAN RIGHTS

[Original: English]
[12 January 1981]

The phenomenon of disappearances involves many aspects that fall outside the boundaries of legal problems. Disappearances may occur randomly or with a rationality that is unacceptable under any legal system. Governments do not act like "Governments"; police do not act like "police". But, even given this background, it is valuable to view disappearances through the prism of legal doctrine. Successes and failures can be documented through habeas corpus or amparo proceedings and verified patterns of institutional abuse, such as government participation in illegal acts or basic denial of legal rights, may emerge.

It is clear that judicial power to uphold human rights is contingent on other structures of society, and it is equally clear that Governments are capable of undermining judicial authority directly. Thus, it is crucial to both support domestic legal struggles and at the same time to build international structures that can support an international judiciary - one that has the power and the authority to investigate the status of a "desparecido" and demand his or her release.

The Spanish term "desparecido" (translated "disappeared") has found its way into a vocabulary that has evolved with the growing consciousness of human rights violations in the world. "Disappearances" describe a practice whereby individuals are abducted through the complicity, consent or conspiracy of government forces: unlike in the case of kidnapping, or the taking of hostages, in a "disappearance" there is no demand for ransom of any sort.

There are five basic elements that characterize "disappearances". 2/

1. Individuals are abducted or kidnapped, and subjected to imprisonment, torture and death. Eye-witness accounts of these brutal practices have been documented by persons who were in the ranks of the disappeared and were subsequently released.
2. The abductors are well-organized and well-armed; they are government agents, members of the military and police forces and people dressed in civilian attire who often identify themselves as security officers.
3. The "disappearances" are a conscious and deliberate policy on the part of the government in an attempt to eliminate what they perceive as threatening, destabilizing opposition forces. The abductions are often carried out with the direct participation of government agents, military personnel, or those responsible for enforcing the law within the country. In some cases, the Governments will actually confer upon security personnel the unbridled power to arrest, interrogate, imprison and kill citizens.
4. There is no way in which targets can be identified. The disappeared come from all sectors of society - some are terrorists, suspected terrorists or more often individuals more vaguely suspected of being subversives. Some are union leaders, or political radicals. Many are simply opposed to the existing regime. Some are tragically abducted incidentally or by mistake. Often husbands and wives and children are abducted together. Frequently their homes are looted and destroyed without interference by regular law enforcement agents.
5. Information and evidence relating to the disappeared is extremely difficult to obtain. Friends and family members often will not speak out for fear of their own safety or of further endangering the abductee. The Governments refuse to accept any responsibility for explaining or investigating the events.

Governments have offered varied explanations for the existence of this practice. Disappearances usually occur in countries where the Governments are experiencing considerable political opposition and thus can justify "drastic action" to control "subversion" or "terrorism" as a means of self-preservation. Whatever excuse is offered, the institutionalized government policy of "disappearances" is State terror. It represents a dismantling of the rule of law and a gross violation of basic human rights.

It is evident that disappearances constitute numerous infractions of domestic laws, customary international laws and international treaties and covenants. The process violates some provisions of virtually every country's internal law. Since Governments categorically deny any knowledge of or responsibility for the disappearances, the Judiciary, even if its machinery has remained intact, is powerless to act. Many of those lawyers who have been courageous enough to act on behalf of the disappeared and their families become victims of these practices.

From the perspective of international law, disappearances executed with government participation or complicity are violations of the Charter of the United Nations, the Universal Declaration of Human Rights, the Charter of the Organization of American States, the International Covenant on Civil and Political Rights, and where refugees are abducted, the Convention of the Status of Refugees.

2/ See Testimony of Jerome J. Shustack on behalf of the International League for Human Rights before the Sub-Committee on International Organizations of the Committee on Foreign Affairs, House of Representatives of the United States. (20 September 1979).

DOMESTIC LEGAL REMEDIES: HABEAS CORPUS AND AMPARO

In light of the clearly illegal nature of disappearances, it is important to examine domestic legal relief that may be available to the disappeared and their families. Two remedies are already extant within the domestic law of many of those countries in which disappearances have occurred. These are habeas corpus and amparo.

Habeas corpus (literally "you have the body") developed into a device for the protection of liberty in 17th Century England and exists both in countries whose law developed out of English common law and in countries whose legal systems arose out of other traditions. The legal term amparo (literally "protection") originated in Mexico in 1840 and exists in nearly 20 Central and South American countries.

The difference between habeas corpus and amparo is difficult to define since the meaning of each varies within each country that has adopted these provisions. Generally, habeas corpus is a writ used to inquire into and test the legality of a detention. It is a judicial check on the authority by which a person is detained. The scope of amparo is broader than that of habeas corpus and often includes this same protection against illegal detentions (particularly if amparo was adopted by a legal system which had no pre-existing writ of habeas corpus), as well as a more general protection of other constitutional rights.

At the United Nations seminar on Amparo, Habeas Corpus and Other Similar Remedies, held in Mexico in 1961, the participants agreed that "amparo, habeas corpus, mandado de seguridad (a similar Brazilian remedy) ... are enduring legal institutions essential to the survival of any civilized community". 3/

Clearly the effectiveness of habeas corpus and amparo in fulfilling this important role is entirely dependent on the existence of a strong and independent Judiciary which can demand of the Executive explanation and justification of the imprisonment. At the United Nations seminar mentioned above, Mr. Harold F. Reis, United States alternate participant from the Department of Justice, expressed this same concern:

... the judicial power could prevail in such circumstances only if the atmosphere in the country was such that the people and the authorities in control of the instruments of power acknowledged that the judicial authority must be respected. 4/

The effective use of domestic legal remedies for the protection of both the officially detained and of the disappeared requires a governmental system responsive to judicial power and respectful of judicial independence. The declaration of a state of siege or state of emergency is virtually a statement by the Executive that such an attitude towards the Judiciary shall not prevail. Thus, for example, following the imposition of martial law, a discernible pattern emerges in which the jurisdiction of military tribunals overwhelms the civil courts: first through

3/ ST/TAO/HR/12, p. 112.

4/ Ibid., p. 85.

expansion of "crimes of rebellion" and later through direct jurisdiction over other alleged offences. The tribunals operate for the Executive rather than as a check on it; thus constitutional restraints on executive power are ignored. In practical terms, the resulting erosion or destruction of civil judicial institutions, combined with the Government's denial of knowledge or responsibility for the disappeared, may severely undermine the effectiveness of the procedures of habeas corpus and amparo.

Given the failure of the domestic legal system to significantly alter government behaviour under such circumstances, it is necessary to look to an international mechanism for the assertion of these rights. Ideally, there should exist an international forum to which victims may appeal through petitions of habeas corpus or amparo. One suggestion is the establishment of regional circuit courts to fulfil this role. Although the creation of an International Court of Habeas Corpus anytime in the near future appears unfeasible, some interim steps may be taken in that direction. Existing regional courts could be utilized, if not immediately to decide individual cases, then to examine the adequacy of domestic legal remedies, perhaps through advisory opinions. Procedures should be set up to allow thorough and speedy investigations of non-functioning judiciaries and, eventually, of individual detentions and disappearances. In the inter-American setting, the newly constituted Inter-American Court on Human Rights should consider review of patterns of abuse by utilizing its advisory jurisdiction. This procedure may be initiated at the request of the Inter-American Commission on Human Rights as it considers countries where gross violations are occurring.
