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COMMISSION ON HUMAN RIGHTS

Thirty-fifth session

SUMMARY RECORD OF THE 1498th MEETING

held at the Palais des Nations, Geneva,  
on Tuesday, 27 February 1979, at 4 p.m.

Chairman: Mr. GARVALOV (Bulgaria)

later: Mr. BEAULNE (Canada)

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The meeting was called to order at 4.30 p.m.

VIOLATIONS OF HUMAN RIGHTS IN SOUTHERN AFRICA: REPORT OF THE AD HOC WORKING GROUP OF EXPERTS (agenda item 6) (continued) (E/CN.4/1311; E/CN.4/NGO/243; ST/HR/SER.A/1)

THE ADVERSE CONSEQUENCES FOR THE ENJOYMENT OF HUMAN RIGHTS OF POLITICAL, MILITARY, ECONOMIC AND OTHER FORMS OF ASSISTANCE GIVEN TO COLONIAL AND RACIST REGIMES IN SOUTHERN AFRICA (agenda item 7) (continued) (E/CN.4/Sub.2/415; E/CN.4/NGO/233)

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1. Mr. ERMACORA (Austria) said that his Government had a very clear standpoint with regard to apartheid, which it considered to be a blatant form of massive and systematic violation of human rights. He wished to emphasize a particular aspect of the question which was apparent from Mr. Capotorti's report: in South Africa, a minority was governing a majority; in a way, therefore, what was involved was a minority problem, some aspects of which were obviously inverted.

2. The report of the Ad Hoc Working Group of Experts (E/CN.4/1311) was based on testimony, written statements and press articles, but the Working Group had never been able to go to South Africa. In that connexion, he referred to the letter from the South African Government mentioned in paragraph 17 of the report, the text of which was reproduced in annex 1. After reading out the second and third paragraphs of that letter, which stated the reasons why the Minister for Foreign Affairs of South Africa had not agreed to receive the Working Group, he observed that the report would undoubtedly have been more complete if the Working Group had been able to visit the country; however, the over-all picture it presented was accurate, even if certain details might be viewed in a different way. The position expressed by the South African Government in its letter was wrong: if it wanted the facts to be presented in some other way, it must co-operate with the Working Group. It had shown itself willing to co-operate with regard to Namibia, but ever since 1967 it had refused to co-operate with regard to the situation of human rights in South Africa.

3. In paragraph 23 of the conclusions and recommendations of the Working Group, it was recommended that the Commission "should decide that a comprehensive study be carried out on the action taken to implement the recommendations made by the Ad Hoc Working Group of Experts since its establishment, with a view to improved assessment of the further efforts needed ...". Identical recommendations were in fact being

adopted year after year with regard to the Middle East and southern Africa: that amounted to an admission of impotence, since those recommendations never led to substantial changes. In paragraph 17 of its conclusions and recommendations, the Working Group suggested that the Commission "should ask the United Nations General Assembly to have a study made of the problem of the South African Government's legitimacy in view of its policy of apartheid and in particular its systematic refusal to apply the principles of the Charter of the United Nations ...". In that respect, reference might be made to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, which envisaged the situation where Governments did not represent the whole of the population and denied it the right to self-determination. Reference might also be made to Article 4 of the Charter, which he read out. The recommendation made in paragraph 17 of the Working Group's report was important and action should certainly be taken on it.

4. Mr. Khalifa's report (E/CN.4/Sub.2/415) had raised a number of questions which were reflected in draft resolution E/CN.4/L.1433. He (Mr. Ermacora) considered that paragraph 2 of that text should preferably be amended to read: "... contribute to a denial ...". In order to find answers to the questions raised in the report, reference might also be made to article 4 of the Convention on the Prevention and Punishment of the Crime of Genocide, which he read out, and to article 3 of the International Convention on the Suppression and Punishment of the Crime of Apartheid. With regard to the provisional list submitted pursuant to Commission resolution 7 (XXXIII), he observed that the listing of names was a serious matter, in which account should be taken of the points mentioned in article 14 of the International Covenant on Civil and Political Rights.

5. Lastly, concerning the situation which had been described by the representative of India and was the subject of draft decision E/CN.4/1430/Rev.1, he said that, although the practice described was offensive, it must be borne in mind that in the United Nations instruments relating to human rights, the expression "systematic practice" had a special meaning. In the case in question, the two parties concerned had acceded to the International Convention on the Elimination of All Forms of Racial Discrimination and had recognized the competence of the body established under that Convention. The United Kingdom was also a signatory of the European Convention on Human Rights. Without wishing to limit the right of Governments to express themselves freely before the Commission, he observed that any private individuals who had been victims of such violations could address themselves to a competent international body. If the problem could not be solved on the basis of the existing instruments and by means of the machinery for implementation for which provision had been made, it would be necessary to take other measures.

6. The CHAIRMAN announced that the debate on items 6, 7, 16 and 20 was closed; draft resolutions on those items could still be submitted in the course of the next two days.

STUDY OF REPORTED VIOLATIONS OF HUMAN RIGHTS IN CHILE, WITH PARTICULAR REFERENCE TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (agenda item 5) (E/CN.4/1310; E/CN.4/NGO/235/239/248; E/CN.4/Sub.2/412, Vol. I-IV; A/33/293 and 331)

7. Mr. BERNASSOLA (Christian Democratic World Union), speaking at the invitation of the Chairman, said that his organization's denunciations of the violations of human rights in Chile had been confirmed by the report of the Ad Hoc Working Group, by a recommendation of the Economic and Social Council and by various General Assembly resolutions, the most recent of which was resolution 33/176 of 20 December 1978. Notwithstanding the Chilean Government's declarations, it was well known that the United States of America had requested the extradition of three DINA officials - General Contreras, Colonel Espinoza and Captain Fernández, whom it considered guilty of the murder of Mr. Letelier. The question of the situation of the missing detainees, which the Chilean Government had so far systematically tried to ignore, had recently come dramatically to the fore again with the discovery, in a lime kiln in the village of Longquén near Santiago, of numerous bodies of persons who were alleged by Chilean representatives in the United Nations, to have died in other circumstances.

8. Thousands of Chileans were forced to live in exile, political parties were still prohibited and the registers of voters had been destroyed; those facts seriously hampered the exercise of civil rights precisely at a time when the Government intended to impose a new constitution by means of a plebiscite which lacked all guarantees. The repressive machinery and the state of emergency had been maintained, the press and radio were muzzled, and television was under the absolute control of the régime. The Government's intervention in the universities was destroying their autonomy, restricting freedom of thought and influencing all forms of cultural expression. In addition, violations of trade-union freedom had been further intensified: in October 1978, seven federations had been dissolved and their property seized, a development which had affected more than 500 affiliated trade unions. Some 60 workers in the Chuquicamata copper mine had been imprisoned, together with Mr. Castillo, a former member of Parliament, who had defended their rights. It was true that, out of fear of an international boycott, the Chilean Government, following an agreement with the AFL-CIO, had modified its attitude by forcing the Minister of Labour to resign and by adopting a new labour plan which guaranteed freedom of assembly, collective bargaining, etc. But all that fell far short of the legitimate aspirations of the Chilean workers.

9. His organization believed that human rights must be respected by all nations, especially those which had signed the relevant international covenants, and that violations must be reported, at first to the Governments concerned and then to the supranational tribunals which were responsible for hearing complaints and ordering sanctions. The present situation called for the development of a particular aspect of international law - which had already been confirmed in the framework of the European Community - in order to go beyond the concept of non-interference in a country's internal affairs when human dignity was at stake.

10. Mr. AL-HAFEDH (Afro-Asian Peoples Solidarity Organization), speaking at the invitation of the Chairman, said that many political parties and religious and social organizations in Asia and Africa had been shocked by the arrests, tortures and other

violations of human rights which had taken place in Chile. From the very beginning, his organization had committed itself to the defence of human rights in Chile and had supported the struggle of the Chilean people for the restoration of democracy and legality. Quite recently, at its session held in Hanoi in January 1979, the Presidium of the organization had decided to support the struggle for the release of the persons whose disappearance had been announced by the Chilean Government, to appeal to the Secretary-General of the United Nations and the Commission on Human Rights to endeavour, pursuant to General Assembly resolution 31/124, to obtain information on the fate of the Chilean political detainees, to establish an economic and financial boycott of the Chilean Government and, lastly, to ask all States represented in IMF, IBRD and the Inter-American Development Bank to refrain from extending credits to the Chilean Government if it failed to implement the above-mentioned General Assembly resolution. His organization requested the delegations participating in the Commission's thirty-fifth session to take those proposals into account in order to continue to defend human rights in Chile.

11. Mrs. VON ROEMER (International Confederation of Free Trade Unions) said that since September 1973, her organization had been obliged to protest many times against the repressive measures which the Chilean Government was inflicting on trade unions and trade unionists, and against violations of the human rights of the working people. In October 1978, it had been obliged to protest against the dissolution of seven trade unions, the confiscation of their property and the arrest of trade-union leaders. It had noted with satisfaction the adoption by the General Assembly of resolution 33/175. It had also examined with appreciation the report on violations of human rights in Chile submitted by the Ad Hoc Working Group (E/CN.4/1310).

12. The Chilean Government had apparently promised to restore trade-union rights and to hold free elections. However, the recent decree concerning the exercise of freedom of assembly showed that that liberalization affected only unions which possessed their own headquarters. They would be allowed to hold meetings at their headquarters outside working hours. However, trade unions without headquarters would have to notify the nearest police station at least 24 hours before their meeting. Since, as a result of the events of the past few years, most Chilean trade unions no longer had any headquarters, they would be subject to that restriction. Furthermore, many trade unions were still prohibited. Another recent decree concerned union dues: by making the payment of dues voluntary, the decree undermined the financial position of the unions. Instead of a step forward towards trade-union freedom, the two decrees she had mentioned seemed to point towards the institutionalization of government control over trade unions.

13. With regard to the right to strike, annex IV of the report in document E/CN.4/1310 showed that that right would be extremely limited and that the employers could always respond to a strike with a lock-out. Even if the right of assembly was respected and if genuine elections were held, there could be no real trade-union movement unless the right to freedom of expression was strictly respected. In that connexion, the statement by the Minister of Labour reproduced in annex IV gave little reason for hope.

14. Her organization hoped that the Special Rapporteur to be appointed by the Commission would have a broad mandate which would include keeping a close watch on developments concerning trade-union rights in Chile. It appealed to the Commission to call upon the Chilean Government to repeal all restrictive measures affecting trade unions and to restore conditions which would permit a genuine trade-union movement. It hoped that, in accordance with General Assembly resolution 33/175, paragraph 7 (b), the Commission would find effective ways of obtaining information on the fate of the missing persons, among whom were many trade unionists.

15. Mr. MACDERMOT (International Commission of Jurists) said that he intended to make some comments on the draft constitution of Chile proposed by the Ortuzar commission and on the work of a Chilean group known as the Group of 24.

16. The Ortuzar commission's draft constitution sought to establish a democratic republic, provided for a bi-cameral national congress and purported to guarantee human rights. However, a close study of the powers to be granted to the National Security Council, the Constitutional Tribunal and the Supreme Court led to the conclusion that those institutions were intended to ensure the continuation of the present authoritarian régime. Article 8 provided that any act intended to propagate doctrines which attacked the family or advocated violence or a conception of the State which was totalitarian in nature or founded on the class struggle was illegal and contrary to the constitutional order. The Constitutional Tribunal was to determine whether individuals, organizations or political parties had offended against that provision. Those found guilty would be disqualified from holding any public office for a period of five years, from being leaders of an educational, business, professional, trade-union or student organization and from performing any functions relating to teaching, the mass media or the publication or dissemination of opinions or information. The Constitutional Tribunal could also disqualify from membership of either chamber of congress anyone whom it found guilty of conduct contrary to the foundations of institutionality or of seriously endangering the security or honour of the nation. There was to be no right of appeal against any decision of the Tribunal. It would be readily apparent that those provisions could be used to stifle any serious criticism of the conditions of national security which the régime was seeking to establish.

17. An appearance of impartiality was given to those procedures by providing that five of the seven members of the Constitutional Tribunal were to be appointed by the Supreme Court and that three of them must be members of that Court. All those provisions ensured that the judicial power would be used to disqualify from positions of power or influence, on the basis of purely political considerations, all persons who were critical of the values on which the current régime was founded. Such a role was incompatible with the concept of an independent judiciary.

18. The provisions concerning states of exception provided for an unparalleled range of situations: a state of assembly in case of external war, a state of siege in case of civil war or civil commotion, a state of emergency in case of serious disturbance of public order or a threat to national security, and, a state of catastrophe in case of natural disaster. The habeas corpus remedy of amparo was

to be suspended during a state of assembly or state of siege, and no court of justice could question the legality of any measures taken by the authorities in the exercise of any emergency powers. The state of siege was to remain in force until revoked by the Congress. Other states of exception required only the consent of the National Security Council. Those states of exception gave the President the power to restrict basic freedoms, including freedom of movement, information, assembly, association, speech and trade-union rights. He could also restrict property rights, expel citizens or aliens and prohibit persons from leaving or returning to the country. In short, the current military régime could continue.

19. The Group of 24, composed of leading personalities representing the various political tendencies opposed to a totalitarian form of government, had been formed about six months previously for the purpose of trying to determine the principles of a democratic constitution. Over 100 persons had been participating in its work in some 15 working groups which submitted the results of their activities to the Central Working Committee. At the end of October, the Committee had planned to hold a plenary meeting but it had been indirectly prohibited by the authorities.

20. The Committee was not seeking to compete with the Ortuzar commission, whose draft constitution was expected to be introduced after a referendum. However, its work would enable it to refute the propaganda of the current régime, which claimed that the opposition forces were so divided that the only alternative would be chaos.

21. The International Commission of Jurists admired the report of the Ad Hoc Working Group (E/CN.4/1310), which showed how necessary it was to do everything possible to come to the aid of missing persons, many of whom might still be alive and in custody, in spite of official denials. The value of such denials could be assessed from the recent discovery of the corpses in a mine shaft which had now been identified as those of persons who had been arrested in 1973 and of whom the authorities had denied all knowledge. Full information on those cases was contained in document E/CN.4/NGO/248.

22. The problem of the missing persons was the most agonizing aspect of the violations of human rights now taking place. However, while there were about 600 cases of missing persons in Chile, there were reported to be over 4,000 in neighbouring countries, many of which had occurred during the past three years. There were three countries in Central America and three in the southern part of South America where the number of missing persons was high. The question therefore arose whether, in the light of General Assembly resolution 32/173, it might not be possible to broaden the mandate of the ad hoc committee which was envisaged under General Assembly resolution 33/175 so that it could study not only the cases of missing persons in Chile but also those which involved other countries. It would perhaps be appropriate to postpone a decision on the matter until the question of missing persons had been considered under agenda item 10.

23. Mr. DURHAM (International Indian Treaty Council), speaking at the invitation of the Chairman, said that he wished to make some comments concerning the situation of the Mapuche Indians in Chile. His organization had already had occasion to describe to the Commission, at its thirty-fourth session, the situation of those Indians by sending it a communication which had been issued as document E/CN.4/NGO/223 and by suggesting that it should consider the problem of the usurpation of their lands by legislative means. That suggestion had been adopted, since the question was dealt with in the most recent reports submitted by the Ad Hoc Working Group to the General Assembly (A/33/331) and to the Commission (E/CN.4/1310).

24. At the current session, his organization wished to raise three problems, the first of which was the imminent promulgation of an act relating to indigenous property which, according to President Pinochet, would respect the cultural values of the Mapuches and enable them voluntarily and freely to opt for the individual land ownership régime if they preferred that formula to the current collective ownership régime. Actually, the purpose of the bill was to divide the Mapuche community and thus make it easier to destroy it, its traditions, its language and its culture - to destroy it by hunger. The reaction of the Mapuches - those living in towns as well as in the countryside - had not been long in coming. The Mapuches in Santiago had sent to General Pinochet a letter bearing 400 signatures in which they complained that, in spite of their repeated requests on that subject, the bill was still unknown to them and that, if adopted, it would oblige the Mapuches who had no land to migrate to the city and the others to pay taxes which they had never paid, since they had not bought the lands but had obtained them by natural right. Furthermore, 155 representatives of 90 Mapuche communities had held a meeting at Temuco on 12 September 1978 as a result of which they had sent to the Government a statement in which they (a) asked to be informed, before its promulgation, of the text amending Act No. 17,792; (b) rejected the bill; (c) refused to sell their land for purposes of tourism, commerce or similar activities; (d) maintained that the Mapuche communities which had declared themselves in favour of the bill had not been authorized by anyone to do so; (e) stated that the bill endangered the ethnical character of the Mapuche people; and (f) recommended the adoption of a series of measures concerning them, e.g. the restitution of usurped land, the improvement of land planning and technical assistance, the creation of truly representative and stable bodies, and the award of scholarships.

25. At a time when land surveys had begun in expectation of the promulgation of the bill, his organization considered that if the Mapuche people were divided, they would be deprived of their land and condemned to dispersal, migration to the towns, starvation wages, if not unemployment, poverty and malnutrition. The international community could not allow the Junta to commit such a crime.

26. Secondly, a number of Mapuche Indians had been detained and had gone missing. Their case was all the more dramatic since, being confined to the reserves, the Mapuche Indians were unaware of the procedure to be followed in order to obtain information on the missing persons. He read out the names of five of them, but he hoped to be able to provide a complete list subsequently. In the meantime, his organization called for the release of those detainees who were still alive and, in the case of those who were dead, information on the date of their death and the place where they were buried.

27. Thirdly, the Mapuche Indians had not escaped the repression prevailing in Chile. In that regard, he referred to a statement made under oath to a notary in Santiago on 16 October 1978, the text of which he made available to the Secretariat in the original language (Spanish), together with the articles published on the subject in the Chilean press.

Mr. Beaulne (Canada) took the Chair.



28. Mr. de ANGELI (World Federation of Trade Unions), speaking at the invitation of the Chairman, stressed his organization's deep concern about the seriousness of the systematic and constant violations of the trade-union rights and freedoms of Chilean workers mentioned, in particular, in the report on the Ad Hoc Working Group (E/CN.4/1310). The international trade-union movement had, at the end of November 1978, called on the Chilean military régime to ensure the genuine restoration of those rights and freedoms. Promises had been made to that end, but there had been little change in the situation. The measures envisaged by the Junta in the trade-union sphere were essentially similar to the political provisions of the draft constitution - prepared by a commission which was in no way representative and did not base itself on the Universal Declaration of Human Rights - which sought to institutionalize the régime. The political and ideological division between "good" and "bad" Chileans would make it impossible for the workers to exercise the right to strike because of repression by the Government or employers, and would lead to the splitting-up, and eventual obliteration, of the Chilean trade-union movement in the name of trade-union democracy.
29. His organization considered that that situation called for urgent and direct action and a categorical condemnation on the part of the International Labour Organisation.
30. The military régime had flouted the workers' rights inherent in the human person as set out in the Universal Declaration of Human Rights by depriving trade-union leaders of their nationality, by prohibiting seven national trade-union organizations, by depriving public-sector employees of their trade-union rights, by restricting considerably the right of assembly, by reducing systematically the staff of the State administration and enterprises in order to apply an economic policy which favoured only the national and foreign monopolies, by setting a wage lower than the minimum wage for the beneficiaries of the minimum employment plan, on the one hand, and by decontrolling as from 8 February, salaries and wages in the private sector, on the other, by condemning the vast majority of the population to poverty and by refusing to allow the trade-union leaders and workers who had left Chile to return. Furthermore, it had promulgated legislation - in particular Decree Laws Nos. 198 (1973) and 2,345, 2,346, 2,347 and 2,376 (1978) - which was intended to suppress the trade-union movement. It had, of course, prepared a plan in the labour sector which it presented as being a "breakthrough" in the trade-union field, but that breakthrough remained limited.
31. His organization therefore considered that at the current session the Commission should (1) condemn categorically the repressive and anti-trade-union policy of the Junta; (2) strongly reject the bases on which the Junta was trying to consolidate the régime; (3) demand the effective restoration of the trade-union rights and freedoms of Chilean workers; (4) adopt the measures mentioned in the relevant General Assembly resolutions and other resolutions in order to exert effective **pressure** on the Junta so that it would restore the human rights and democratic and trade-union freedoms of the workers; (5) call on the Junta to reply to the requests for information concerning the missing trade-union leaders; and (6) demand the punishment of those responsible for the murder of the leader Segundo Maureira Lillo and his sons, whose bodies had been found in a clandestine graveyard at Lonquén.
32. While supporting the proposal to appoint a special rapporteur and stressing the need to entrust the question of the missing persons to an ad hoc commission, his organization requested the Commission to undertake an inquiry into the harmful role that had been played in the attempt to divide the Chilean trade-union movement by the American institute for the development of trade unionism, which had already been a party to the conspiracy that had led to the overthrow of the democratic Popular Unity régime and had recently held negotiations with the Chilean authorities with a view to breaking the Chilean workers' will to fight.