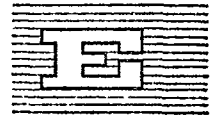
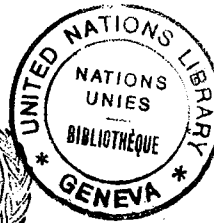


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COMMISSION ON HUMAN RIGHTS

Thirty-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1508TH MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 6 March 1979, at 4 p.m.

Chairman

Mr. BEAULNE

(Canada)

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Study of reported violations of human rights in Chile, with particular reference to torture and other cruel, inhuman or degrading treatment or punishment
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* The summary record of the second part (closed) of the meeting appears as document E/CN.4/SR.1508/Add.1.

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The meeting was called to order at 4.15 p.m.

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) (continued) (E/CN.4/1310; E/CN.4/L.1437; E/CN.4/L.1451)

Draft resolution E/CN.4/L.1437

1. Mr. SANON (Deputy Director, Division of Human Rights) explained the financial implications of draft resolution E/CN.4/L.1437, which were set out in detail in document E/CN.4/L.1451.
2. Mr. EL-SHAFFI (Egypt) said that, before draft resolution E/CN.4/L.1437 was put to the vote, he wished to pay a tribute, on behalf of his Government, to the Chilean Government and to the Ad Hoc Working Group on the Situation of Human Rights in Chile, which had reached agreement to co-operate, with the important result that the Working Group had been able to go to Chile in 1978.
3. While advocating continued vigilance on the part of the international community, the Working Group had noted in its report (E/CN.4/1310) that the situation of human rights in Chile had improved, and had indicated in what areas the improvement had taken place.
4. The experiment made with the Working Group was of great importance for the Commission and had in fact been judged to be so by the General Assembly, which had taken note of it at its thirty-third session in a separate resolution and intended to draw on it if called upon to deal with similar situations in the future. It was regrettable that the mandate of the Working Group had not been renewed and that no means had been found of prolonging the experiment, since it was the only way to obtain a thorough knowledge of the situation in Chile and to take remedial measures. Unfortunately draft resolution E/CN.4/L.1437 and the views expressed by numerous delegations that had spoken in favour of it showed that the path followed was not that which his country would have liked to see taken and which would have ensured a serious study of the situation by means of a true dialogue and genuine co-operation between the United Nations, represented by the Working Group, and the Government of Chile.
5. Draft resolution E/CN.4/L.1437 had many shortcomings. In particular, he had been surprised to see that it envisaged the appointment of a Special Rapporteur to study the situation of human rights in Chile and at the same time the establishment of a group of experts to concern themselves with the fate of disappeared persons, in other words, according to the many supporters of the draft, with purely humanitarian problems. He did not see why the Special Rapporteur, whose mission had no political implications, should not concern himself with humanitarian problems. It would be sufficient, in his opinion, to appoint a Special Rapporteur, because basically there was only one problem, however many aspects it assumed. He also wondered whether the sponsors of the draft resolution had consulted the representatives of the Chilean Government before taking the step of recommending the appointment of a Special Rapporteur and the formation of a group of experts to look into the question of human rights in Chile.

6. Although his delegation was keenly interested in the question and hoped that the Special Rapporteur and the group of experts would be able to carry out their mission, it nevertheless felt compelled, to its great regret, to abstain in the vote on draft resolution E/CN.4/L.1437.

7. Mr. DAVIS (Australia) said that his delegation was prepared to vote in favour of draft resolution E/CN.4/L.1437 as a whole, since it appreciated the work done by the Ad Hoc Working Group and would like to see an improvement in the situation of human rights in Chile. Nevertheless, it wished to point out that it had requested a separate vote on paragraph 6 (b), on the grounds that the problem of disappeared persons existed in many other countries besides Chile, sometimes to an even more distressing extent. Moreover, General Assembly resolution 33/173, which requested "the Commission on Human Rights to consider the question of disappeared persons with a view to making appropriate recommendations" provided for action that would be world-wide in scale and not limited to the case of Chile alone. His delegation felt that the question should be dealt with in a broader context, and hence considered that the terms of paragraph 6 (b) were inadequate.

8. Mr. CHARRY SAMPUR (Colombia) associated himself with the views of the Australian delegation. Draft resolution E/CN.4/L.1437 should be considered in the broader context of the Commission's debates and the events taking place in the rest of the world. Chile was not the only or the most serious case of the violation of human rights, although for various reasons other cases had been glossed over and were less of an obsession for certain delegations attending the Commission.

9. The draft resolution raised some rather delicate questions of sovereignty. His delegation had argued earlier that the protection of human rights was not in any sense an infringement of the sovereignty of States, since in deciding to accede to the Charter, which called for vigilance in the domain of human rights, States did so by a sovereign act of will. However, the adoption of certain measures of internal order in a country, such as the state of siege, was clearly a matter of national sovereignty. He had explained at the previous meeting that there were differences between countries with the Napoleonic system of Roman law in which certain measures such as state of siege formed part of the legal order and presupposed the restriction of certain guarantees, countries with an Anglo-Saxon or Germanic system of law in which decrees were enacted as and when they were felt to be necessary, and totalitarian countries, where such guarantees were not generally recognized - or at least less widely so than in the countries that were officially democracies - and hence could not be taken away.

10. It was hardly right to accuse one country of violating human rights while protecting others that were guilty of the same violations. Colombia was concerned by the situation of countries which had no allies, no protector and no economic strength, and were thus, so to speak, left out in the cold whereas others that were equally to blame were shielded from criticism and judged by different criteria.

11. His delegation also had reservations about paragraphs 9 and 10. It had not voted in favour of the establishment of the United Nations Trust Fund for Chile, since it considered that funds of that kind should be designed to assist any country in the world that was in the same situation as Chile. It therefore requested a separate vote on those paragraphs.

12. In accordance with the request of the Australian delegation, the CHAIRMAN put operative paragraph 6 (b) of the draft resolution to the vote separately.

13. Operative paragraph 6 (b) of draft resolution E/CN.4/L.1437 was adopted by 19 votes to 4, with 8 abstentions.

14. In accordance with the request of the Colombian delegation, the CHAIRMAN put operative paragraphs 9 and 10 of the draft resolution to the vote separately.

15. Operative paragraphs 9 and 10 of draft resolution E/CN.4/L.1437 were adopted by 19 votes to 2, with 11 abstentions.

16. The CHAIRMAN put the draft resolution as a whole to the vote.

17. Draft resolution E/CN.4/L.1437 as a whole was adopted by 24 votes to 2, with 6 abstentions.

18. Mr. CALERO RODRIGUES (Brazil) explained that he had voted against the draft resolution, first because it reproduced several points from resolutions adopted by the General Assembly at its previous session which Brazil had voted against, and secondly, because in his opinion the machinery it envisaged would be ineffective.

19. Mr. ALMEIDA RIBEIRO (Portugal) explained that he had voted in favour of the draft resolution just adopted because Chile had created a precedent in allowing members of the Ad Hoc Working Group to carry out an inquiry on the spot in complete freedom, and with the collaboration of the Government. That made it clear that there had been some improvement in the situation of human rights there. The example Chile had set should be followed by other countries.

20. Mr. BYOMERE (Uganda) said that his delegation had voted in favour of draft resolution E/CN.4/L.1437 because of the positive elements it embodied in relation to the situation of human rights in Chile. However, his delegation had abstained in the vote on paragraphs 9 and 10 on the grounds that any voluntary trust fund set up should be for all the people who had disappeared in any part of the world and not in one country only. Its views were consonant with the stand taken by the Ugandan delegation at the thirty-third session of the General Assembly with regard to the establishment of the Fund.

21. Mr. SOYER (France) explained that his delegation had voted in favour of the draft resolution as a whole since, like the Portuguese delegation, it wished to express its satisfaction at the co-operative attitude shown by Chile, which it hoped would be emulated by other countries. His delegation had abstained in the vote on paragraph 6 (b) on the grounds that the existence of a single Special Rapporteur would increase the chances of success, whereas the appointment of experts essentially to investigate the fate of the persons declared missing was liable, on the contrary, to make Chile less disposed to co-operate. His delegation had also abstained in the vote on paragraphs 9 and 10, since France was not in favour of establishing a discriminatory fund and would have preferred to see a general fund for assistance set up instead.

22. Mr. ZORIN (Union of Soviet Socialist Republics) said that his delegation had voted for the draft resolution in support of its well-known views on the flagrant and systematic violations committed by the Chilean Junta. There were gaps in the

draft, but it condemned the fascist régime of the Chilean Junta, reflected the deep concern which the continuation of those violations aroused in the international community, and urged the Chilean authorities to put an end to repression and restore human rights and fundamental freedoms in full.

23. However, the draft contained contradictory and unfounded provisions which weakened it and caused the Soviet Union to have reservations. For instance, it could not accept the part of the preamble where it stated that the situation of human rights in Chile had improved, since that was at variance with the facts. As the report of the Ad Hoc Working Group confirmed, the Junta continued to commit crimes and to carry out acts of intimidation and make arbitrary arrests for political reasons, and it was still subjecting its opponents to torture and cruel treatment. Another point that did not reflect the real situation was the reference to co-operation by the Chilean authorities with the Working Group and the alleged positive results of the experiment carried out by the three members of the Group who had visited Chile. Since the Chilean Junta was continuing its gross and flagrant violations of human rights, his delegation would have found it more satisfactory if the mandate of the Ad Hoc Working Group set up under General Assembly resolution 8 (XXXI) had been prolonged. With regard to the creation of a group of experts to look into the question of the fate of disappeared persons, in his delegation's opinion the composition of the group did not follow United Nations practice, which was to respect the principle of equitable geographical distribution. Consequently, his delegation felt that the creation of a group of that nature should not constitute a precedent, and reserved the right to revert to the matter later.

24. Count ZU RANTZAU (Federal Republic of Germany) said that his delegation had voted in favour of the draft resolution as a whole, but had abstained in the vote on paragraph 6 (b) for the same reasons as the French delegation. In the statement by his delegation in the general discussion on the question it had asked for the mandate of the Special Rapporteur to be broadened.

25. Mr. DIEYE (Senegal) said that, in adopting draft resolution E/CN.4/L.1437, the Commission on Human Rights had changed the way in which it would concern itself with human rights in Chile. The change reflected the trends observed in Chile, and was a salutary one. Contrary to what certain delegations contended, the fact that the Working Group had achieved positive results did not justify the extension of its mandate, since it was natural that when a situation changed, new steps were required to deal with the changes. The decision was thus a realistic one. He had been struck by the attitude of some of the delegations, which in 1975 had been opposed to the creation of the Working Group, had subsequently been pleased with it, and were now opposed to the changes proposed. In that connexion, it was evident from the decision taken at the last session of the General Assembly that the Special Rapporteur was to replace the Working Group in every sense, with the same mandate, in accordance with General Assembly resolution 8 (XXXI). With regard to the small group of experts to look into the question of disappeared persons, his delegation had eventually supported the decision to create it, because it did not think there could be any duplication or conflict of jurisdiction between the group and the Special Rapporteur. The number of missing persons had been determined, and

the experts' task should be clearly defined and should not take more than a year. If they had not completed their work in that space of time, the Commission should reconsider the whole matter at its thirty-sixth session in the light of the results obtained.

26. The CHAIRMAN said that the Commission had completed its consideration of agenda item 5.

VIOLATIONS OF HUMAN RIGHTS IN SOUTHERN AFRICA: REPORT OF THE AD HOC WORKING GROUP OF EXPERTS (agenda item 6) (continued) (E/CN.4/L.1432/Rev.2; E/CN.4/L.1439; E/CN.4/L.1449)

Draft resolution E/CN.4/L.1432/Rev.2

27. Mr. SANON (Deputy Director, Division of Human Rights) said that the statement of financial implications of the draft resolution had been published under symbol E/CN.4/L.1439. However, since operative paragraph 17 of the draft had been amended, the expenditure arising out of the additional one-week's meeting to be held at Geneva during May 1979 should be added to the statement, in case the Ad Hoc Working Group of Experts complied with the request of the Chairman of the Special Committee against Apartheid to investigate the cases of torture and murder of detainees in South Africa. The expenditure would be as follows: travel and subsistence costs: \$9,200; conference services and documentation: \$25,400; and consultants' fees: \$2,500 - a total of \$37,100.

28. In reply to a question by Mr. AYENI (Nigeria), Mr. PACE (Secretary of the Commission) explained that the Nigerian amendment, slightly amended with the consent of most of the sponsors of the draft resolution, appeared in operative paragraph 17. The symbol "[E/CN.4/1327/Add.2]" should be inserted in the fourth line of the paragraph, after the words "report ... communicated to the Commission".

29. Mr. EL-FATTAL (Syrian Arab Republic) felt that it would be appropriate to publish as addenda to document E/CN.4/1327 all the reports submitted to the Group of Three by States parties to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

30. At the request of the representative of Senegal, a vote was taken by roll-call on the draft resolution.

31. Austria, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Benin, Brazil, Bulgaria, Burundi, Colombia, Cuba, Cyprus, Egypt, India, Iran, Iraq, Ivory Coast, Morocco, Nigeria, Pakistan, Panama, Peru, Poland, Senegal, Syrian Arab Republic, Uganda, Union of Soviet Socialist Republics, Yugoslavia.

Against: France, Germany, Federal Republic of, United States of America.

Abstaining: Austria, Canada, Portugal, Sweden, Uruguay, Australia.

32. Draft resolution E/CN.4/L.1432/Rev.2 was adopted by 23 votes to 3, with 6 abstentions.

33. The CHAIRMAN invited delegations wishing to do so to explain their votes.
34. Mr. HOYT (United States of America) said that his delegation had hoped that all the members of the Commission would be open to efforts to achieve consensus agreement on a resolution relating to the racial situation in southern Africa.
35. The United States of America remained committed to the exercise of the right to self-determination and to the elimination of racial discrimination in southern Africa, to the cessation of the South African Government's policy of apartheid, and to the achievement of majority rule in Zimbabwe. It fully supported United Nations efforts to bring about an internationally acceptable solution to the Namibian situation. The report of the Ad Hoc Working Group of Experts (E/CN.4/1311) strengthened it in its conviction that the policies and practices which violated human rights in South Africa, Namibia and Zimbabwe stemmed directly from the political systems which denied political rights to the vast majority of the population.
36. After two years of negotiations led by its five Western members, the Security Council had approved a project for settling the Namibian question, and it had been accepted by the parties concerned. The United Nations Transition Assistance Group for Namibia (UNTAG) was scheduled to begin its task in Namibia on 15 March. The proper course for the Commission was to support the United Nations and its Secretary-General rather than adopt resolutions which were not helpful to the settlement process.
37. The resolution just adopted contained elements which the United States Government could not support or which required further study, particularly operative paragraph 9, in which the Commission had adopted the conclusions and recommendations of the Ad Hoc Working Group of Experts, and operative paragraphs 3, 5 and 8. In particular, his delegation was anxious to safeguard the integrity of fundamental international legal and political principles, and hence it had strong objections to operative paragraph 8(b), in which the Commission recommended that the Economic and Social Council should request the General Assembly, inter alia, to arrange for a study to be made of the legitimacy of the Government of a State Member of the United Nations which had come to power, not through foreign imposition but by internal processes. The same paragraph invoked the Charter of the United Nations and international law, but the resolution could only lead to the weakening of their basic principles, particularly the sacrosanct principle of non-interference in the domestic affairs of States.
38. Mr. DANIELIUS (Sweden) said that his delegation was able to accept most of the paragraphs of the resolution just adopted, but had difficulties with two of them, first paragraph 8, in which the Commission recommended that a study should be made of the South African Government's legitimacy, in view of its policy of apartheid. In the view of his delegation, the legitimacy of a Government was in no way affected by the policy it pursued. Secondly, paragraph 9, in which the Commission adopted the conclusions and recommendations of the report of the Ad Hoc Working Group of Experts (E/CN.4/1311). His delegation could accept most of them, but had some difficulty in accepting paragraph 19 of the conclusions and recommendations, which dealt with the endorsement of the Declaration and Programme of Action adopted by the World Conference to Combat Racism and Racial Discrimination.

39. Mr. ALMEIDA RIBEIRO (Portugal) explained that his delegation's abstention was without prejudice to its traditional attachment to multiracial co-existence and its condemnation of apartheid and manifestations thereof in southern Africa. It believed, however, that political evolution in that area must be achieved by non-violent means.

40. Mrs. ABELE-EMICH (Austria) said that while her delegation supported the work of the Ad Hoc Working Group of Experts, the renewal of its mandate and the principles underlying the resolution, it had abstained in the vote because the text contained certain elements which would not contribute to a peaceful settlement of the Namibian question.

41. Mr. DAVIS (Australia) said that his delegation recognized the contribution made by the Ad Hoc Working Group of Experts to the struggle against apartheid and had hoped that the Commission would be able to take a decision by consensus on the question, in the interests of the parties. His delegation had abstained in the vote because it had difficulties in accepting operative paragraphs 8 and 9.

42. Count ZU RANTZAU (Federal Republic of Germany) said that his delegation subscribed to the general principles underlying the resolution, but had difficulty in accepting certain paragraphs which did not take account of the efforts expended to achieve an equitable and rapid settlement of the Namibian problem at the international level.

43. Mr. ZORIN (Union of Soviet Socialist Republics) said in connexion with paragraph 18 of the resolution that it was the understanding of his delegation that the Chairman of the Commission would act within the scope of his functions, with the assistance of the officers of the Commission, rather than in his personal capacity, and that the provisions of that paragraph would not constitute a precedent.

44. Mr. LIVERMORE (Canada) said that his delegation had abstained in the vote on the resolution because its text was not balanced and it contained a number of unacceptable elements, especially operative paragraphs 8 and 9.

45. Mr. GIAMBRUNO (Uruguay) regretted that the sponsors of the resolution which had just been adopted had not consulted the other delegations. While endorsing the general principles underlying the resolution, his delegation had abstained in the vote because it had serious legal reservations regarding the desirability of studying the legitimacy of a Government of a State Member of the United Nations, however clearly blameworthy for its policy of apartheid.

Draft resolution E/CN.4/L.1449

46. Mr. EL-FATTAL (Syrian Arab Republic) said he would like to make the following amendments to the draft resolution which he proposed for adoption by the Commission: (1) In the first line of paragraph 1, replace the expression "Expresses its profound satisfaction" by "Expresses its profound appreciation"; (2) In the second line of paragraph 1 of the English version, replace the word "in" by "of"; (3) Replace the words "thank and congratulate" by the word "commend" in the first line of paragraph 2.

47. He hoped that the Commission would adopt the draft resolution by consensus.

48. Mr. HOYT (United States of America) requested that the draft resolution be put to the vote.

49. Mr. EL-FATTAL (Syrian Arab Republic) requested that a roll-call vote be taken on the draft resolution.

50. At the request of the representative of the Syrian Arab Republic, a vote was taken by roll-call on the draft resolution.

51. Austria, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Benin, Brazil, Bulgaria, Burundi, Colombia, Cuba, Cyprus, Egypt, India, Iran, Iraq, Ivory Coast, Morocco, Nigeria, Pakistan, Panama, Peru, Poland, Senegal, Syrian Arab Republic, Uganda, Union of Soviet Socialist Republics, Uruguay, Yugoslavia.

Against: United States of America.

Abstaining: Austria, Canada, France, Germany, Federal Republic of, Portugal, Sweden, Australia.

52. Draft resolution E/CN.4/L.1449 was adopted by 24 votes to 1, with 7 abstentions.

53. The CHAIRMAN invited delegations desiring to do so to explain their votes.

54. Mr. DANIELIUS (Sweden) said that while his delegation commended the decision of the Iranian Government to stop all supplies of oil to the South African régime, it had been unable to vote in favour of the resolution, which also referred to the severing of all relations, including diplomatic relations, with that régime.

55. Mr. HOYT (United States of America) said that his delegation had voted against the resolution, in conformity with the well-known United States policy concerning South Africa and the imposition of mandatory sanctions against it.

56. Mr. DJAHANGIR AMERI (Iran) expressed, on behalf of his Government, its gratitude to the Commission for the resolution it had just adopted, which acknowledged the role being played by the Iranian people, liberated by a popular revolution, in the universal struggle against apartheid and racial discrimination.

57. Mr. CHAVEZ GODOY (Peru) said that in the Spanish version of the resolution the words "desde ahora" in the second line of paragraph 2 should be deleted in order to give meaning to the text.

58. The CHAIRMAN said that the secretariat would take note of that comment.

59. He announced that the Commission had concluded its consideration of agenda item 6.

The public meeting rose at 5.45 p.m.