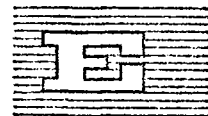


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COMMISSION ON HUMAN RIGHTS

Thirty-eighth session

SUMMARY RECORD OF THE 39th MEETING

held at the Palais des Nations, Geneva,  
on Friday, 26 February 1982, at 10 a.m.

Chairman: Mr. GARVALOV (Bulgaria)

CONTENTS

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 (continued)

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The meeting was called to order at 10.25 a.m.

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 (agenda item 10) (continued)  
(E/CN.4/1409; E/CN.4/1427; E/CN.4/1492 and Add.1; E/CN.4/1982/2;  
E/CN.4/1982/NGO/3; E/CN.4/1982/NGO/16; E/CN.4/1982/L.17; E/CN.4/1982/L.19)

1. Mr. GIUSTETTI (France), presenting draft resolution E/CN.4/1982/L.17, said that the text did not call for any comment, and the reasons for its presentation were clear. The question of missing and disappeared persons was unfortunately still a very timely one, since, as the Working Group on Enforced or Involuntary Disappearances observed in its report (E/CN.4/1492 and Add.1), events of that kind had again taken place in 1981. Moreover, the method adopted in 1980 for dealing with that question was still the best one at the present time and to a large extent met with the approval of both the Commission and public opinion in various countries.
2. The draft resolution, therefore, essentially repeated the provisions of the text adopted by the Commission at its previous session on the subject (resolution 10 (XXXVII)) and was aimed at extending the term of the Working Group's mandate for another year without altering it. In that respect, attention should be drawn to one satisfactory development: the Working Group, which was anxious to act with prudence, had gained the confidence of States and had benefited by the co-operation of various countries. That co-operation, which should make it possible to solve the problem in substance, should be preserved: States should assist the Working Group in throwing light on the fate of disappeared persons, even if they had to acknowledge their own responsibility, in which case the Working Group would refrain from reporting information it had received in confidence, as it stated itself in paragraph 80 of its report. They should also refrain altogether from resorting to that practice. In varying degrees, all States demonstrated that willingness, since no national legislation contained any serious lacunae authorizing legal recourse to the practice in question; however, in difficult situations the willingness was sometimes deficient, and the Working Group should then come to its aid. It was recognized that a Government which co-operated with the Group was very close to putting an end to all enforced or involuntary disappearances, as was shown by the experience brought out in the Working Group's report. In any case, involuntary or enforced disappearances had aroused indignation throughout the world and the establishment of the Working Group had raised great hopes. It was very much in the interest of the States in question that those hopes should not be dashed.
3. Within the framework of that co-operation, it would therefore be desirable that States should undertake serious inquiries about all cases of disappearance which were reported to them by the Working Group, and that they should supply the latter with information about the progress of their inquiries and authorize its members to go and seek information on the spot. It was also desirable that States should adopt measures based on the recommendations contained in paragraph 184 of the Working Group's report, all of them aimed at prohibiting the practice of clandestine arrest and detention. And it would be equally desirable that the Secretariat should, within the budgetary limitations imposed on it, provide the Working Group with all the means it needed to carry out its mission.

4. His delegation expressed the hope that the draft resolution, like the previous resolutions on that question, would be adopted without a formal vote.
5. Mr. PICTET (Observer for Switzerland) congratulated the Working Group on its report (E/CN.4/1492, updating the report in document E/CN.4/1435 circulated in January 1981), as well as on its pragmatic approach. He shared its concern about the rise in the number of disappearances in all parts of the world. No longer were the victims confined to responsible political persons or members of the opposition. Any person who might oppose the Government could be a victim.
6. To cause the disappearance of a person was contrary to the most elementary human right, being a violation of the principle of habeas corpus and several other fundamental rights. Disappeared persons were often maltreated, tortured and quite unable to seek protection against those illegal practices. At the juridical level, their situation was made equally tragic by their inability to invoke human rights, since they did not have the right to a hearing. Disappearances constituted a violation of three essential rights recognized by article 4 of the International Covenant on Civil and Political Rights, namely the right to life, the right to protection against torture or cruel, inhuman or degrading treatment, and the right to recognition as a person before the law. The article did not authorize any derogation from those rights, even in time of public emergency threatening the life of the nation.
7. To those consequences should be added mental torture and the traumas caused in children in particular by the unexplained disappearance of a close relative.
8. The Commission on Human Rights and the international community as a whole had the responsibility and duty to do everything possible to put an end to that practice.
9. In that connection he recalled resolution RES.II/XXIV on enforced or involuntary disappearances adopted at the twenty-fourth International Conference of the Red Cross, held at Manila in November 1981, which condemned any act leading to enforced or involuntary disappearances perpetrated by Governments or with their consent. In addition, resolution 23 of the World Conference of the United Nations Decade for Women, held at Copenhagen in 1981, a text of which his country was a sponsor, invited the Commission on Human Rights to carry out its mandate in full and help to solve the problem of disappeared persons.
10. His Government, which had approved the draft resolution on disappeared persons presented at the Commission's thirty-fifth session, attached great importance to the work of the Working Group and hoped that the Commission would adopt draft resolution E/CN.4/1982/L.17, which provided for the renewal of its mandate for one year.
11. Mr. LOVO CASTELAR (Observer for El Salvador) said that his delegation was especially interested in the report of the Working Group, since one of its chapters was devoted to El Salvador.

12. His Government had accepted the Working Group's invitation to send a representative to its fifth session and to describe to it the situation prevailing in the country, as well as his Government's objectives and its concern about the accusations with regard to disappearances. Accordingly, a constructive dialogue and collaboration had been established between the Government and the Working Group to deal with those cases at a purely humanitarian level. Extracts from the statement of the representative of El Salvador were contained in annex XI of the Working Group's report.

13. His Government had appreciated the earnestness and courtesy which had characterized that meeting, as well as the constructive attitude of the Group, and, it had stayed in contact with the Working Group since then. His Government paid a special tribute to the Chairman of the Working Group for the way in which he had carried out his functions and for his understanding. That attitude had dispelled any misgivings which his Government might have had with regard to the Working Group in view of the political bias and partiality which sometimes accompanied the study of human rights within the United Nations.

14. With regard to the observations and criticisms directed at the Working Group because of the way in which it had carried out its work, his delegation considered that the Group should make an effort to improve the terms of its collaboration with Governments. The Group's communications to Governments had not, it seemed, been preceded by any agreement with those Governments. Steps should be taken to see that States did not regard the Working Group as a tribunal which was prepared to accept all accusations and to assign liability to Governments on the basis of mere presumptions, thus reversing the burden of proof. That might cause Governments to fight shy of the Group; it would be advisable to place more emphasis on the confidential character of information.

15. In addition, the Working Group should eschew all prejudice and avoid forming hasty judgements about States. To use the Working Group's reports for political purposes to attack Governments was an inducement to the latter to cease all dialogue with the Group. For example, as far as El Salvador was concerned, the report contained inaccuracies which had been directly pointed out to the Chairman of the Working Group.

16. His delegation noted that the Group dealt at great length with allegations which, as mentioned in the report, might appear to be credible. That was serious in that it might present the situation in an erroneous and partial way, outside a country's general context.

17. His delegation wished to make a general reservation about the presentation in the report of incorrect information derived from private sources and circulated for political purposes. For example, in paragraph 72, the remedy of habeas corpus was presented in a negative way without any analysis which might have made it possible to express an objective opinion on the subject. Habeas corpus, while not infallible, was effective at a certain level, and the decision of the judge applying it had very often made it possible to release suspects.

18. With regard to paragraphs 73 to 75 of the report, concerning the Special Commission to Investigate Political Prisoners and the Disappeared established by the Revolutionary Junta and the Government of El Salvador in 1979, his delegation observed that since the Commission's reports reproduced in annex X of the report were documents from an official source, his Government should have been consulted in order to determine their authenticity. The reports had been obtained by the Working Group from third persons, they were not signed, and they might be incomplete.
19. With regard to the substance of the problem, it should be borne in mind that the disappearances were occurring in an atmosphere of political violence which enabled terrorist organizations of the extreme right and extreme left to confront each other militarily and caused large-scale migration of population.
20. His Government had set up internal machinery for investigating disappearances and had created a post of Commissioner for the Protection of Civil and Social Rights. It had furnished detailed replies concerning certain cases which were mentioned in paragraphs 11 and 12 of document E/CN.4/1492/Add.1. It had been able to supply specific information about 23 persons during the last 45 days, and it was continuing its inquiries into the other cases. In addition, it had furnished the Working Group with direct information about the situation of many persons, and explained that the number of cases submitted by the Working Group to the Government in 1981 up to the present time was 55 persons and not eight, as indicated in paragraph 78 of the report.
21. In conclusion, his delegation urged the Working Group to stop making indiscriminate use of reports from private groups and not to circulate them without having submitted the contents to the Governments in question. The Working Group was playing an important part by investigating situations relating to the very lives of persons and was trying to protect the rights of detained persons. In view of those humanitarian concerns, his delegation would endeavour to collaborate with the Group as effectively as possible and was in favour of renewing its mandate.
22. The CHAIRMAN announced that various non-governmental organizations had asked for the floor and, if there was no objection, he would permit them to speak under rule 76 of the rules of procedure.
23. Mr. MARTINEZ (Argentina), speaking on a point of order, pointed out that under rule 69 of its rules of procedure, the Commission could hear, in addition to its own members, any Member of the United Nations not a member of the Commission, and under rule 76 of the rules of procedure it could hear non-governmental organizations having consultative status with the Economic and Social Council. The former case followed the normal United Nations practice. In the latter case, the invitation to non-governmental organizations to take the floor did not have to be automatic: it should be based on Economic and Social Council resolution 1296 (XLIV), which defined arrangements for consultation with non-governmental organizations.
24. At the Commission's previous session, his delegation had noted with surprise that non-governmental organizations had permitted politically motivated persons to

speak on their behalf - which was in violation of Council resolution 1296 (XLIV). Consequently, it would hope that the name of the representative of the non-governmental organization invited to make a statement would be announced at the same time as that of the organization itself. In that way all delegations would be able to verify whether the name of that representative figured in the list of participants.

25. The CHAIRMAN said that in his opinion the point of order raised by the Argentine delegation was an important one. If there was no objection, he would consider that the Commission accepted the suggestion of the Argentine delegation that the Secretariat should indicate, together with the name of the non-governmental organization which was invited to make a statement, that of the representative who would make that statement.

26. It was so decided.

27. The CHAIRMAN said that Amnesty International had asked for the floor.

28. Mr. PACE (Secretary of the Commission) announced that Mr. Rodley would speak on behalf of that Organization.

29. Mr. RODLEY (Amnesty International), introducing himself as the Legal Adviser of Amnesty International, pointed out that the name of the Secretary-General of Amnesty International, who had not been included in the first two versions, was to be found in the third list of participants at the session (HR(XXXVIII)/Misc.3).

30. By establishing its Working Group on Enforced or Involuntary Disappearances, the Commission on Human Rights had made a valuable contribution to the efforts of the international community to put an end to those practices. Amnesty International had communicated details of "disappearance" cases to the Working Group and would continue to do so, since it did not doubt that the Working Group's mandate would be extended so long as its services were needed.

31. Concerning the problem of the increasingly numerous political executions, to which the Sub-Commission had decided to give its most urgent consideration and which had recently been touched on by the General Assembly in one of its resolutions, he stated that more than 3,000 persons, to mention only known cases, had been executed in 1981, three quarters of them for political activities, whether real or not.

32. Amnesty International was opposed to the death penalty in all circumstances as being a violation of the right to life and an ultimate form of cruel, inhuman and degrading penalty, especially since it was used not solely to punish the most serious crimes but often against political opponents, whether violent or not. The death penalty was frequently imposed in circumstances where the accused person did not have the safeguards ensuring a fair trial during a period of political upheaval or revolution, and it was often decreed in an arbitrary or summary manner.

33. For example, Islamic revolutionary tribunals in Iran, which did not recognize the most elementary safeguards, such as the presumption of innocence, the right to appeal against the sentence or to file an appeal for clemency, had caused more than 4,200 persons to be executed since the 1979 revolution, including more than 2,700 since June 1981. The penalties had often been applied forthwith and in some cases political prisoners had even been executed without any form of trial at all.

34. In Iraq, 300 political executions had been carried out in 1981 following trials held in camera before courts composed of representatives of the Executive arm, including members of the armed forces, without defence counsel or an opportunity to appeal to an ordinary court. In some cases, the sentences were carried out within 24 hours, which left little or no time to petition for pardon or a commutation of sentence.

35. He referred to the specific case of the president of a Pakistani students' organization who had been executed in June 1980 for murder. During the trial, the charge sheet had twice been altered, the first victim being found to be alive. When the defendant appealed, the High Court of the province had stayed his execution and ordered a new trial before a civilian court. The court had informed prison officials that the execution of the condemned man would be in contempt of court. The Chief Justice of the provincial court and another judge who had stayed the execution had been removed under a provincial constitutional order of March 1981. The newly constituted High Court had dismissed the orders for a stay of execution but had allowed an appeal to the Supreme Court. Before the latter had been able to take a decision, the defendant had been hanged. That was an exceptional case, but there were many other cases in other countries where political motives had undoubtedly influenced an execution.

36. Amnesty International had investigated executions in various parts of the world for a wide range of political acts, such as exercising authority under a previous Government, refusing to be conscripted into the armed forces or insulting a Head of State. There had been many executions punishing the non-violent exercise of certain human rights guaranteed in the Universal Declaration. Everywhere the judicial process was inherently arbitrary and subject to misuse for political purposes. For that reason, Amnesty International urged the Commission to consider the political use of the death penalty within a framework already established by the United Nations, i.e. to consider the desirability of the ultimate abolition of the death penalty, as the only complete solution of the problem.

37. The CHAIRMAN announced that if there were no objections, he would give the floor to the representative of the International Commission of Jurists under rule 76 of the rules of procedure.

38. Mr. PACE (Secretary of the Commission) said that that representative was Mr. Mignone.

39. Mr. MARTINEZ (Argentina), speaking on a point of order, noted that the name of that representative did not appear in the list of participants (HR(XXXVIII)/Misc.3). Mr. Mignone had already made statements before the Working Group on Enforced or Involuntary Disappearances (reported in annexes to the Group's reports for that year and the preceding year) which, as could be verified, were politically motivated statements and contained attacks against the Argentine Government. Since such statements were at variance with Economic and Social Council resolution 1296 (XLIV), Mr. Mignone was not entitled to take the floor at that time. Moreover, he had been prosecuted in Argentina under Act No. 14044 for calling for sanctions against that country. The Chairman of the Working Group on Enforced or Involuntary Disappearances had sent a note to the Permanent Mission of Argentina to the United Nations concerning Mr. Mignone's arrest for endangering the security of the Argentine State. The Mission had stated that Mr. Mignone had been released, although he was still being prosecuted for the above-mentioned acts. The delegation of Argentina was not opposed to giving the floor to some other representative of the International Commission of Jurists.

40. The CHAIRMAN said that because of the objection of a member of the Commission, he could not give the floor to the representative of the International Commission of Jurists who had been announced. He asked whether other delegations wished to speak on that subject.

41. Mr. van BOVEN (Director, Division of Human Rights) said that the question raised by the representative of Argentina had already been raised on various occasions in the Commission, the Sub-Commission and the working groups. The question was whether non-governmental organizations were free to designate those who were to act on their behalf. Hitherto, the Secretariat had always used the criterion of whether a representative was duly accredited. If that requirement had been met, the representative of a non-governmental organization had never been refused the floor, either in the Commission, in the Sub-Commission or in a working group. Economic and Social Council resolution 1296 (XLIV) defined the relations between non-governmental organizations and the Council's organs; a broad practice had been developed in that field, and within the framework of that practice it had not been thought that speaking on violations of human rights was in itself politically motivated. In fact, to speak of violations of human rights was the very purpose of the Commission's work.

42. The CHAIRMAN observed that in the present situation it was necessary to determine, first, whether the members of the Commission should authorize a non-governmental organization to make a statement under the item being discussed, and secondly, whether in that case the non-governmental organization could be represented by such-and-such a person. The Argentine delegation had said that it was opposed to allowing Mr. Mignone to make a statement, but it was willing to have another representative of the International Commission of Jurists take the floor. The International Commission of Jurists had in fact indicated that its statement would be read by Mr. Artucio. If there were no objections, he would consider that the Commission acceded to the request of the International Commission of Jurists and authorized Mr. Artucio to read his statement.

43. Mr. ARTUCIO (International Commission of Jurists) said that he would first like to say a few words about Mr. Mignone.



44. Mr. MARTINEZ (Argentina), speaking on a point of order, objected that the members of the Commission had given the speaker the floor so that he could speak about the question under consideration and not about anything else. If there was a desire to present Mr. Mignone's curriculum vitae, that could be done in writing.
45. Mr. ARTUCIO (International Commission of Jurists) asked for the floor on a point of order.
46. The CHAIRMAN pointed out that only members of the Commission could raise points of order.
47. Mr. DIEYE (Senegal) said that he would like to express a legal opinion on the basis of several years' experience of the Commission's work, while refraining from speaking on the substance of the matter. Up to that time, the Commission's constant practice had been to give the floor to non-governmental organizations more or less automatically. The Chairman had asked each time whether there was any objection, and hitherto there had never been one, as the Director of the Division of Human Rights had pointed out. The delegation of a State could obviously raise an objection for sound reasons, stating those reasons, as had been done by the Argentine delegation. However, the Commission could be establishing an undesirable precedent if the representative of an international organization was prevented from speaking or was limited to a narrow framework and to an unduly specific subject. There must be no muzzling of non-governmental organizations. His delegation would most definitely oppose such a practice. Non-governmental organizations provided the Commission with information which was perhaps not always accurate, and it had to distinguish between what was good and what was not; but members of the Commission should not object to non-governmental organizations taking the floor.
48. The CHAIRMAN recalled that the members of the Commission had not raised any objection when he had requested their opinion on the procedure requested by the Argentine delegation; the representative of Senegal should have expressed his legal opinion at that time. Moreover, the Commission's practice indicated that it had already requested on a previous occasion that statements should not contain anything extraneous to the question under consideration. In order to take account of the Argentine delegation's request, the speaker should keep to the question which was under discussion by the Commission.
49. Mr. DIEYE (Senegal) explained that, from a juridical point of view, it was perfectly permissible to object to the statement of a non-governmental organization if the objection was based on specific, logical and convincing reasons, even though such objection came very close to a limitation of the right of speech. On the other hand, it was not permissible to ask a non-governmental organization in an insidious way to identify its spokesman and impose limitations with regard to the substance of its statement. Rule 76 of the rules of procedure could not be more clear and it guaranteed the right of non-governmental organizations to a hearing, which did not mean that their ideas and opinions were bound to influence the Commission's work. He considered it highly important that the Commission should discuss that question in order to take a clear and definite decision with a view to preventing the establishment of a dangerous precedent.

50. Mr. BEAULNE (Canada) wondered whether it would not be possible to settle the question by asking the representative of the International Commission of Jurists to reply to the objections raised by its choice of spokesman; that would prevent a lengthy debate and safeguard everybody's right to speak.
51. The CHAIRMAN replied that it was for the members of the Commission, not the Chairman, to take a decision on that suggestion.
52. Mr. MARTINEZ (Argentina) said that the question had never been to deprive non-governmental organizations of the right to speak. All that was asked was that the organization in question should be represented by some person other than the one who had been originally designated - whose name, in the present case, did not appear in the official list. That request had met with no objection on the part of the members of the Commission, and moreover it had been clearly understood by the International Commission of Jurists, which on its own initiative had designated a different spokesman. Some members had wished to reopen the debate by raising a point of order. However, the fact was that according to the Commission's rules of procedure, only members of the Commission could do so: neither a non-governmental organization nor the representative of a State which was not at present a member of the Commission could raise a point of order.
53. He stressed that he had no objection to the content of the statement of the International Commission of Jurists, and he was willing that it should be read out by some other person, provided that the person in question confined himself to the agenda item under consideration. He asked that the Commission continue its discussions and waste no more time in theoretical arguments.
54. The CHAIRMAN said he would like to explain that it had never been his intention to prevent anybody from addressing the Commission; in fact that was a prerogative he did not possess. However, he had always endeavoured to follow the rules of procedure rigorously, and it was very clearly laid down that the Commission could hear anybody at all, subject to the approval of its members. He wished to refute any insinuation that he might have attempted to deprive non-governmental organizations of their right to speak.
55. Mr. ADJOYI (Togo) said that in his opinion it was not so much a matter of determining whether such and such a non-governmental organization had the right to be heard by the Commission, since rules 75 and 76 of the rules of procedure were very clear on that point, as of determining whether it could only express itself through the voice of some particular spokesman. In his opinion, the name and title of the representative were of no importance.
56. Mr. MAHONEY (Gambia) said he was concerned about the controversy that was dividing the members of the Commission. There was a great risk of establishing a very serious precedent. With regard to the Canadian delegation's proposal, experience showed that only a vote could determine decisively what the opinion of the members of the Commission was on questions of that kind.
57. Mr. MORENO-SALCEDO (Philippines) said that the Commission was faced with two questions: the first, which had been resolved, was whether a non-governmental organization had the right to be heard by the Commission, and the second was whether its spokesman could be any person at all who was designated by the organization. Since the representative of Argentina had disputed the latter right, The Commission had decided that the objection should be upheld, although he himself

could not say whether that decision was a wise one or not. However, the representative of the International Commission of Jurists had no sooner mentioned the name of the spokesman who had been originally designated than the representative of Argentina had interrupted him, insisting that he must keep to the agenda item under consideration. But how was one to know whether a statement went beyond the scope of the debate when it had not been heard? All the members of the Commission were free to raise objections of any kind, even of a personal kind, but only after hearing the statement in question. If they acted otherwise, the members of the Commission would be failing in their duty, which in the present instance was to safeguard the right to speak. In view of the importance of that question, he asked that the meeting be suspended in order to enable delegations to reflect on it.

The meeting was suspended at 12.15 p.m. and resumed at 12.55 p.m.

58. The CHAIRMAN said that the interested parties had had fruitful consultations, but that for lack of time it would not be possible at the current meeting to resume consideration of the question on the agenda.

The meeting rose at 1 p.m.