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COMMISSION ON HUMAN RIGHTS

Thirty-ninth session

SUMMARY RECORD OF THE 32nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 22 February 1983, at 3 p.m.

Chairman: Mr. OTUNNU (Uganda)

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The meeting was called to order at 3.15 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

- (b) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES (agenda item 10) (continued)
(E/CN.4/1983/L.28; E/CN.4/1983/L.29/Rev.1; E/CN.4/1983/L.31; E/CN.4/1983/L.32;
E/CN.4/1983/L.39; E/CN.4/1983/4, chap. I-A, draft resolution V)

Draft resolution E/CN.4/1983/L.29/Rev.1

1. Mr. DHAVERNAS (Canada) said that the sponsors of draft resolution E/CN.4/1983/L.29/Rev.1 were willing to delete operative paragraph 3, which seemed to be posing some problems.
2. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission decided to adopt draft resolution E/CN.4/1983/L.29/Rev.1, on the understanding that operative paragraph 3 would be deleted.
3. Draft resolution E/CN.4/1983/L.29/Rev.1, as amended, was adopted without a vote.

Draft resolution E/CN.4/1983/L.32

4. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission decided to adopt draft resolution E/CN.4/1983/L.32 without a vote.
5. Draft resolution E/CN.4/1983/L.32 was adopted without a vote.

Draft resolution E/CN.4/1983/L.28

6. Mr. MACCOTTA (Italy) said that, for the reasons his delegation had already explained during the general debate on the question, it would have been preferable for the Commission to strengthen the mandate of the Working Group on Enforced or Involuntary Disappearances. Nevertheless, his country was ready to join in the consensus that the French delegation had called for when it had submitted the draft resolution.
7. Mr. HERDOCIA (Nicaragua) said that his delegation had already paid tribute to the Working Group on Enforced or Involuntary Disappearances for its humanitarian endeavours and was completely in favour of extending the Group's mandate. His country had been co-operating with the Working Group since December 1980 by providing it with additional information; accordingly, there was no longer any reason to include Nicaragua in the Group's future reports.
8. Mr. PACE (Secretary of the Commission) read out the financial implications of draft resolution E/CN.4/1983/L.28, as set forth in document E/CN.4/1983/L.44 (paras. 1 to 3).
9. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission was ready to adopt draft resolution E/CN.4/1983/L.28 without a vote.
10. Draft resolution E/CN.4/1983/L.28 was adopted without a vote.

Draft resolution V of the Sub-Commission (E/CN.4/1983/4, chap. I-A)

11. Mr. BOZOVIC (Yugoslavia) said that, in draft resolution V, the Sub-Commission was proposing that the International Law Commission should consider the phenomenon of missing or disappeared persons as a crime against humanity, but it might be preferable to give further thought to the definition of that crime. By adopting the draft resolution, the Commission would in some sense be restricting the opportunity for the International Law Commission to take account of opinions expressed on all of the aspects of crimes against peace and security. The way in which operative paragraph 1 was worded implied that all the opinions expressed on that subject were unanimous, which was not really the case. It would therefore be better to postpone consideration of the draft resolution until the next session of the Commission.
12. Viscount COLVILLE of CULROSS (United Kingdom) said his delegation would abstain if the Commission proceeded to a vote, since the draft resolution under consideration also posed some problems for his country. The observations made by the representative of Yugoslavia were entirely relevant. While it agreed that the odious phenomenon of disappeared persons should be eliminated, his delegation was not convinced that such violations of human rights should be dealt with in a code of offences against the peace and security of mankind. In that respect, protection was already provided by existing international instruments, and in particular by the Covenants. Rather than draft further codes, it would be better to ensure that all States applied the existing international instruments. The procedure envisaged in the draft resolution of the Sub-Commission was not necessarily the best course of action, even though the ultimate objective was highly commendable.
13. Mr. DAVEREDE (Argentina) said that he shared the Yugoslav representative's misgivings regarding draft resolution V. Moreover, his delegation had already had occasion to express those misgivings during the Commission's consideration of the report of the Sub-Commission. It seemed preferable, as had been proposed by the representative of Yugoslavia, to postpone a decision on the draft resolution until the 1984 session.
14. Mr. HAYES (Ireland) said that, in principle, any proposal designed to eliminate the odious phenomenon of disappeared persons deserved to be adopted. His delegation agreed that the phenomenon constituted a crime, but was not sure that it could yet be designated as a crime against humanity. By adopting the draft resolution, the Commission would be prejudging the conclusions of the International Law Commission and would be expressing an opinion which the latter was alone competent to formulate. Consequently, it seemed inadvisable to adopt the draft resolution. If it were put to a vote, his delegation would abstain, but like the representative of Yugoslavia would prefer the Commission to postpone its decision until it knew what the full implications would be.
15. Mr. KALINOWSKI (Poland) said that, although he categorically condemned the odious practice of disappearances, he too found it difficult to accept the operative part of the draft resolution. It would therefore be preferable to postpone consideration of the draft until the next session.
16. Mr. MACCOTTA (Italy) pointed out that international law, far from being fixed for all time, was constantly evolving. Hence, it might be possible to amend the draft resolution in order to establish whether, in the light of developments concerning disappearances, the latter could be placed in the category of crimes against humanity as defined at the present time.

17. Mr. FOUYOUROS (Cyprus) said that, in his view, it would be better to postpone a decision on the draft resolution.
18. Mr. BERNS (United States of America) said that he too came from a country that condemned the odious practice of disappearances. In the proposed text, however, the Sub-Commission implied that the Commission, and then the Economic and Social Council, should fully endorse the opinions and comments of the members of the Sub-Commission on that question. Those opinions and comments should therefore be studied in much greater detail and the International Law Commission was alone competent to decide whether the practice of disappearances should be ranked as a crime against humanity. Consequently, his country could not approve the draft resolution submitted by the Sub-Commission.
19. Mr. BOZOVIC (Yugoslavia), supported by Mr. CHOWDURY (Bangladesh), formally proposed that consideration of draft resolution V of the Sub-Commission should be postponed.
20. The CHAIRMAN asked the Commission whether it wished to postpone consideration of draft resolution V of the Sub-Commission.
21. The Yugoslav proposal concerning postponement of the consideration of draft resolution V of the Sub-Commission was adopted by 41 votes to none.
22. The CHAIRMAN gave the floor to delegations wishing to explain their vote.
23. Mr. MACCOTTA (Italy) said that his delegation had joined in the consensus on draft resolution E/CN.4/1983/L.28, concerning enforced or involuntary disappearances, after it had heard the statement by the representative of Argentina on 16 February.
24. Mr. DAVEREDE (Argentina), speaking on a point of order, pointed out that draft resolution E/CN.4/1983/L.28 did not explicitly mention any Government and, consequently, the representative of Italy was not justified in referring to his country in connection with that draft resolution.
25. Mr. MACCOTTA (Italy) said that he had taken note of the statement to the effect that, in the country in question, the problem of disappearances affected all sectors of the population, without distinction as to origin or nationality, and that the Government of the country was continuing to respond to requests duly submitted by friendly Governments or international organizations and was hoping to find a solution to that national problem. He had also taken note of the fact that the problem was under public discussion and would gradually be clarified with the participation of national bodies as part of the process of constitutional normalization.
26. Finally, with regard to paragraph 32 of the report of the Working Group (E/CN.4/1983/14), on which different interpretations had been placed, his delegation believed that any Government had the right to intervene not only through diplomatic channels but also by all other means set forth in bilateral or multilateral agreements or within the framework of international law, for the purpose of ensuring the protection of its nationals.
27. Mr. BERNS (United States of America) said that his delegation had voted for an extension of the mandaté of the Working Group on Enforced or Involuntary Disappearances, but it would have been better if there had been no further disappearances and hence no further need for such a working group.

28. Not all disappearances were recent. One of the oldest and most notorious cases was that of Raoul Wallenberg, First Secretary at the Swedish Delegation in Budapest during the Second World War, a man who had saved the lives of 100,000 persons, who would otherwise probably have disappeared, and had personally helped 20,000 persons to escape death at the hands of the Nazis. On 17 January 1945, Mr. Wallenberg had disappeared after being taken prisoner by the Soviet Union in Budapest. For twelve years nothing had been heard of him until the Soviet Union announced that he had been imprisoned in Moscow and had died in July 1947. However, according to reports by persons who had seen him, he was apparently still alive.

29. The United States delegation wondered whether the Working Group on Enforced or Involuntary Disappearances might not be authorized to inquire into the fate of Raoul Wallenberg in the hope of discovering his whereabouts and, if he was still alive, obtaining his release.

30. Mr. POUYOUROS (Cyprus) expressed satisfaction that draft resolution E/CN.4/1983/L.28 had been adopted by consensus, since it would enable the Working Group to continue the difficult task assigned to it. His delegation, which had always regarded the establishment of the Working Group as a dire necessity, believed that, after three years in existence, its mandate should once again be renewed. He hoped that all the Governments concerned would lend their support to the Group, which had already achieved significant results in its purely humanitarian task.

31. His delegation had joined in the consensus on extending the mandate of the Working Group for two main reasons. Firstly, it felt sincere concern about the human drama experienced by the relatives of missing or disappeared persons and, secondly, a large part of the population of Cyprus knew the anguish of uncertainty regarding the fate of missing relatives. The problem of missing persons in Cyprus had already been dealt with in the report of the Working Group (E/CN.4/1983/14) and in General Assembly resolution 37/181. In that respect, it was gratifying to note that, in his introductory statement, the Chairman of the Working Group had indicated that the Group was ready to assist in the quest for a speedy solution to the problem of missing persons in Cyprus, in accordance with the terms of the General Assembly resolution.

32. The CHAIRMAN announced that the Commission had concluded its consideration of the draft resolutions concerning agenda items 10 and 10 (b).

ORGANIZATION OF WORK (continued)

33. The CHAIRMAN invited the Commission to review the organization of its work, since it could not immediately begin its consideration of agenda item 5 as scheduled.

34. Mr. PACE (Secretary of the Commission) explained that, under agenda item 5 concerning human rights in Chile, the Commission was to consider an additional report by the Special Rapporteur on the situation of human rights in Chile (E/CN.4/1983/9). However, the Special Rapporteur had been hospitalized in New York at the very moment when he was finalizing his additional report, and the translation, reproduction and distribution of the reports had thus been delayed. The secretariat would make every endeavour to ensure that the delay did not unduly impede the work of the Commission and it would arrange for delegations to receive the document in the various languages at the beginning of the following week.

35. The CHAIRMAN said the Bureau had proposed that agenda item 12 should be considered pending distribution of the report on Chile (E/CN.4/1983/9). However, it was for the Commission to decide whether, at that time, it would interrupt its consideration of item 12, comprising a public debate and a debate in closed meetings, in order to consider item 5, or whether it would conclude its consideration of item 12 before turning to item 5.

36. Mr. GONZALEZ de LEON (Mexico) said that it would be inadvisable to interrupt consideration of agenda item 12 and formally proposed that the Commission should conclude its consideration of item 12 before turning to item 5.

37. After a procedural discussion, the CHAIRMAN invited the Commission to take a decision on the Mexican proposal.

38. The Mexican proposal was adopted without a vote.

The meeting rose at 5 p.m.