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## The 1980 U.N. Commission on Human Rights and the Disappeared

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## **The 1980 U.N. Commission on Human Rights and the Disappeared**

*David Kramer and David Weissbrodt*

When the public debate began at the United Nations Commission on Human Rights on the question of disappeared persons, the atmosphere in the huge assembly hall was tense and expectant. The public gallery was jammed with the wives and families of those persons who had been "disappeared"—arrested, tortured, imprisoned, or possibly killed by governments which refused to admit any knowledge or responsibility. The concerned audience came from all over the world. A few had even been disappeared themselves, but had managed to escape. They had haunted the halls and corridors of the Palais des Nations in Geneva since the beginning of the Commission; every delegate felt their presence and their desire for the United Nations to do something about their lost loved ones.

On a United Nations time scale, the phenomenon of disappearances was a relatively new issue. The General Assembly had first considered it on 20 December 1978 by expressing its concern and recognizing the urgency of the problem.<sup>1</sup> The next year, in March 1979, the issue of disappearances was included on the agenda of the Human Rights Commission, but was given such low priority that time expired before it could be debated. It was simply postponed until the 1980 session.<sup>2</sup> In the year's interim, international nongovernmental organizations (NGOs) performed an immense job of publicizing the issue and creating international pressure for meaningful action by the Human Rights Commission.

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1. United Nations, General Assembly Resolution 173, *Official Records* Suppl. 45 (A/33) 1978, p. 158.
  2. Economic and Social Council, Commission on Human Rights, Decision 15(XXXV) *Official Records* Suppl. 6 (E/1979/36, E/CN.4/1347) 1979, p. 137.
  3. Economic and Social Council Resolution 34, *Official Records* Suppl. 1 (E/1979/79), p. 26.

## Sub-Commission Recommendations

In May 1979, the Economic and Social Council requested that the Sub-Commission on Prevention of Discrimination and Protection of Minorities consider the subject of disappearances in order to make recommendations to the Commission on Human rights.<sup>3</sup> The Sub-Commission is comprised of twenty-six human rights experts from around the world, who are able to take positions without overt interference by their respective governments; the Sub-Commission has played an important creative role in U.N. human rights work. The U.N. Human Rights Commission, in contrast, is made up of representatives of forty-three nations and is an overtly political body with a central role in the human rights field. The Sub-Commission adopted resolution 5B(XXXII) of 5 September 1979 in which it pointed out "that the danger involved for such [disappeared] persons warrants urgent action on the part of all individuals and institutions. . . ."<sup>4</sup> It suggested that the extreme gravity of the phenomenon of disappearances "would justify envisaging some form of emergency remedy."<sup>5</sup> Finally, a study entitled *Report of the Expert on the Question of the Fate of Missing and Disappeared Persons in Chile*, had been submitted to the General Assembly on 21 November 1979 and was well received.<sup>6</sup> It recommended that "careful consideration" should be given to establishing particular measures at the United Nations level to respond rapidly and effectively "to disappearances."<sup>7</sup>

By the time of the 1980 session of the Human Rights Commission, disappearances had emerged from the netherworld of nonrecognition, but had not yet become crusted over with political or ideological affiliations that would make passage of a resolution impossible. The issue of disappearances was ripe for action by the Commission.

The overwhelming concern of the family members of the disappeared as well as the NGOs was not whether the Commission would act, but what the nature of that action would be. The experience of the most active NGOs—Amnesty International, the International Commission of Jurists, and the International League for Human Rights—strongly indicated that the first several days after the initial arrest of a person were the most crucial. In cases in which NGOs had been successful in directing international attention immediately toward the government concerned, they had had significant success in protecting the disappeared person from torture or other mistreatment, and even in causing persons to "reappear."

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4. Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities Resolution 5B (E/CN.4 Sub.2/435, E/CN.4/1350) 1979, p. 50, para. 1.

5. Ibid., p. 5.

6. Economic and Social Council, *Official Records* Suppl. 3 (A/34/583/Add.1) 1979.

7. Ibid., p. 197.

The debate was expected to center around the question of whether the Commission should set up a mechanism that could deal with individual cases of disappearances on an emergency basis.<sup>8</sup>

## PREPARATIONS FOR THE PUBLIC DEBATE

Long before the public debate on disappearances began, the Commission delegates present had been conducting intense, private negotiations. The issue seemed too new, uncertain, and potentially explosive to be handled entirely within the cumbersome procedures of formal debate.

The U.S. delegation had come prepared to take a strong stand in ensuring an effective U.N. mechanism to respond to disappearances. The Subcommittee on International Organizations of the House of Representatives had recently conducted hearings on the problem of disappeared persons.<sup>9</sup> Congress was in the process of passing a resolution that called on the President to "encourage the leaders of other countries to join with him in calling upon the United Nations . . . to establish effective procedures for dealing with cases of disappeared persons. . . ." <sup>10</sup> Many of the other Western governments had taken similar positions.

This strong interest in the issue of disappearances among all the Western delegates caused difficulties as the delegates squabbled among themselves to determine who would take a leadership role in formulating and sponsoring a resolution on disappearances. France, having come to the Commission with a prepared draft resolution, took the initiative. The French proposed that a group of three experts acting in their individual capacities would examine all reports of disappearances in any part of the world. The experts would be empowered to seek information from the governments and families concerned, and to take appropriate action, in consultation with the governments concerned.

The full text of the draft was as follows:

*The Commission on Human Rights,*

*Bearing in mind* General Assembly resolution 33/173 of 20 December 1978, which requested the Commission on Human Rights to consider the question of missing or disappeared persons with a view to making appropriate recommendations,

8. Economic and Social Council, Commission on Human Rights (NGO/283) 1980.

9. U.S., Congress, House, Committee on Foreign Affairs, *Human Rights and The Phenomenon of Disappearances, Hearings before the Subcommittee on International Organizations*, 96th Cong., 1st. sess., (Washington, D.C.: U.S. Government Printing Office, 1979).

10. *Ibid.*, p. 632; U.S., Congress, House, *Resolution 285*, 96th Cong., 2d sess., 1980.

*Taking into account* resolution 1979/38 of the Economic and Social Council, which requested the Commission to consider the question as a matter of priority, and resolution 5B(XXXII) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

*Convinced* that the elimination of enforced or involuntary disappearances requires a systematic effort on the part of the international community and on the part of Governments,

1. *Invites* the Secretary-General to appoint, in consultation with its Chairman, three experts of international standing in their individual capacities, to study and examine all reports and information which come to their attention concerning enforced or involuntary disappearances of persons in any part of the world;

2. *Requests* the experts to seek all available information concerning enforced or involuntary disappearances from the Governments and families concerned, and to take appropriate action, in consultation with the Governments concerned, to promote the implementation of the provisions of General Assembly resolution 33/173 and other United Nations resolutions relevant to the situation of missing or disappeared persons;

3. *Decides* that the experts should choose their working methods in such a way as to ensure the necessary speed and flexibility of action in responding to urgent situations.

4. *Requests* the experts to submit to the Commission at each session a report on their activities, together with their conclusions and recommendations;

5. *Requests* all Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations to cooperate with and assist the experts in the performance of their task;

6. *Further requests* Governments, at the request of the experts:

(a) To inform the experts without delay of cases in which they are unable to locate immediately or following a brief investigation either a person whose abduction or arrest has been reported to them or a person who has been reported missing and may be presumed to have been the victim of such acts;

(b) To inform the experts without delay of any facts established and any progress made and conclusions drawn in the course of investigations opened in cases of enforced or involuntary disappearances;

7. *Also requests* Governments, when they are presented with reliable reports on cases of enforced or involuntary disappearances, to undertake without delay impartial investigations into the whereabouts or fate of the missing or disappeared person and the identity of the abductors;

8. *Urges* the Secretary-General to continue to use his good offices in cases of enforced or involuntary disappearances of persons;

9. *Urgently requests* the Secretary-General to provide the experts with all necessary assistance in particular the staff and resources they require in order to perform their functions in an effective and expeditious manner;

10. *Decides* to continue consideration of this question at its thirty-seventh session.

## Western Bloc Reservations

The Western bloc reached agreement on all the provisions contained in the draft except for paragraph 6(a), which defined disappeared persons. To several of the Western countries—the United States, Canada, Australia, and the Netherlands—broadly defining disappeared persons as those who cannot be located immediately or following a brief investigation once an abduction was reported to the government was an open invitation to other countries to find the resolution imprecise and unworkable. The definition seemed to cover all *missing* persons, instead of all *disappeared* persons. It did not exclude a voluntary disappearance by someone who, for personal reasons, might wish to hide from the authorities or perhaps from their family. Nor did it exclude those cases in which it was thought that a person had voluntarily left the country. Yet the French insisted on their language.

The Western group was also haggling about which countries would be listed as cosponsors of the resolution. At first, all wanted to be cosponsors. As the fighting over the language of the draft continued, the number eventually dropped down to six cosponsors, and then four, and finally one, France.

The Western bloc had decided that it was necessary for them to take the initiative in proposing a resolution on disappearances. They were unable, however, to draft a suitable resolution. They argued among themselves late into the night, and because no agreement was reached, there was no text with which to approach nonaligned nations in an effort to get their support. This disagreement continued late into the third week.

The Western strategy was a serious miscalculation of the amount of support for a strong resolution on disappearances that existed among nonaligned nations. During the first week of the Commission, the NGO Special Committee on Human Rights in Geneva had hosted a meeting to informally discuss the question of disappearances. All delegates and NGOs were invited. The interest shown by the delegates was substantial. Despite the fact that the United States had scheduled a reception at the same time as the meeting, nineteen governments attended—almost half of the forty-three country membership of the Commission. Nine nonaligned countries, including Algeria and Iraq, attended. Even the USSR showed some interest in the meeting.

The overall context of the Commission may help explain why the United States and other Western nations did not make stronger overtures to those Third World countries which had shown interest in the issue of disappearances. For the last several years, the first weeks of the Commission session have become predictable. The question of the Occupied Territories is discussed, and Israel is condemned. Apartheid is discussed,

and South Africa is condemned. More recently, the right to economic development by the nonaligned nations is discussed, and some developed nations are chastised. At this session of the Commission, however, France and the United States broke this routine by introducing two new issues: the invasion of Afghanistan by the USSR, and the Soviet government's violation of the human rights of Nobel laureate Andrei Sakharov. Both issues created a situation of confrontation between the superpowers: many observers referred to the return of a Cold War atmosphere. Symbolic of the confrontational atmosphere were the initial instructions to the delegates of the United States not to fraternize with the delegates of the USSR. This instruction required special effort because the delegations were physically separated by only a few feet. Later in the session this instruction was withdrawn by the U.S. State Department. After delaying the Commission for several days of debate, a resolution was passed that condemned the invasion of Afghanistan by the USSR. The discussion of Sakharov was tabled to a later agenda item, and was eventually postponed without action until the 1981 session of the Human Rights Commission, because neither side was certain as to its support on a substantive vote.

Perhaps the tensions that had been created by the initiatives of the United States made it difficult for the Western bloc to consult with nonaligned and socialist nations on the disappearance issue, or perhaps the Western bloc, somewhat isolated by the confrontations that had occurred, simply assumed that it would need to take the initiative in order to move the issue forward.

The indecision of the Western bloc created a vacuum which Argentina tried to fill with a resolution of its own. That country—continually accused by the NGOs of being the worst perpetrator of disappearances<sup>11</sup>—was the country most vehemently against the creation of any new U.N. mechanism for dealing with disappearances. Argentina's resolution urged governments to inform the Secretary-General of the measures they were adopting to cope with the problem of disappearances. It called upon governments to express their opinion as to what procedures might be appropriate to deal with disappeared persons without encroaching upon the sovereignty of any nation. A working group of five persons would then meet a week before the 1981 session of the Human Rights Commission to evaluate the submissions of the government and to make appropriate recommendations to the Commission. The Argentine proposal, essentially postponing any action for at least a year, was circulated just before the beginning of public debate.

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11. Lawyers Committee for International Human Rights, *Violations of Human Rights in Argentina* (New York: Lawyers Committee for International Human Rights, 1979).

## THE PUBLIC DEBATE

On 22 February 1980 at the end of the third week of the Commission session, the public debate on disappearances began. The Western nations had still not agreed among themselves on the text of a resolution. The nonaligned nations were still reacting to the Argentine proposal. The socialist bloc was waiting to see what the nonaligned countries would do. As a consequence, no nation was prepared to speak.

The floor then unexpectedly went to the NGOs. The representative of Amnesty International (AI) spoke first. He defined the nature of the problem and described AI's efforts in collecting and submitting to the United Nations thousands of names of disappeared persons in Argentina, Afghanistan, Democratic Kampuchea, Ethiopia, Nicaragua, and Uganda.<sup>12</sup> He then proceeded to discuss the case of two Argentines, who had been disappeared, tortured, and imprisoned in a secret camp, but who had escaped to tell of their experiences. Argentina harshly interrupted the speech and demanded to know from the Chairman what right an NGO had to attack a government in front of the Commission.<sup>13</sup> The representative from Uruguay supported Argentina and denounced AI for attacking a government during the Commission session. Ethiopia also spoke against AI, accusing it of making false representations against Argentina, based solely on Western media reports. Canada and the United States came to the defense of AI in particular and NGOs in general, arguing that NGOs could not separate a discussion of particular instances of disappearances in various countries from a discussion of disappearances in general. The United States pointed out that NGOs had been allowed to mention specific countries during the discussion of previous items on the agenda and that the contribution of NGOs to the understanding of the phenomenon of disappearances had been particularly valuable. The Chair, Waleed M. Sadi of Jordan, ruled that although NGOs may not attack particular countries, they may provide the Commission with information about particular countries.<sup>14</sup> This ruling allowed AI and the other NGOs to continue presenting their "information" to the Commission.

The representative of the International Commission of Jurists (ICJ) stated that, because of the amount of information the NGOs had brought to light, governments could no longer deny that they had knowledge concerning the fate of disappeared persons. There was a need for the Human Rights Commission to receive sufficient information on all cases from all sources. The ICJ representative pointed out that thousands of

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12. Amnesty International, "The Question of Disappeared Persons: Oral Statement at the 36th Session of the U.N. Commission on Human Rights," mimeographed 1980.

13. Economic and Social Council, Commission on Human Rights (E/1980/13/Add.1, E/CN.4/1408 Add.1) 1980, p. 129.

14. *Ibid.*, p. 130.



families of disappeared persons were anxious that the Commission take some action. The International League for Human Rights outlined the emergency procedures other organizations had taken to cope with the phenomenon of disappearances.<sup>15</sup> The United Nations was urged to adopt similar measures.

This initial public debate of 22 February 1980 revealed several things about how the issue of disappearance was to fare before the Human Rights Commission. First, the debate exemplified just how critical the issue was for countries—such as Argentina—accused of disappearing persons. Second, the public debate disclosed a strategy that might defeat any action to establish a U.N. mechanism for handling disappearances. It was clear that the NGOs, which seemed to be primarily Western in orientation, advocated an effective resolution. It was also clear that they had the full support of the Western nations. If the initiative surrounding the issue of disappearances was viewed as Western there was a significant danger that, for that reason alone, Third World countries might not support it. Clearly, no resolution could pass the Commission without the support of a good number of Third World nations.

### **The Role of Nonaligned Nations**

The Third World caucused later in the day. Their discussion of disappearances was general and not tied to the language of any draft. The sense of the meeting was that although the caucus members were not prepared to gloss over the problem of disappearances as Argentina proposed, neither were they prepared to accept the strong and open-ended mechanism for responding to disappearances which the Western bloc's draft proposed.

Monday, February 25, the beginning of the fourth week of the Commission session, was the deadline for the introduction of all proposed resolutions concerning the issue of disappearances. Therefore, France briefly took the floor and introduced its draft resolution, although that resolution lacked the support of even the Western nations.<sup>16</sup> No other resolutions were introduced.

Responding to the needs of the Third World, the Western nations finally ended their isolation. Later that day Australia, Canada, and the Netherlands met with Iraq, Cuba, and Yugoslavia to ask for help. They had come to believe that it was necessary to encourage the drafting of a text by nonaligned nations, even if it might seem weak in comparison to the text drafted by Western nations. A text that would be sponsored by

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15. *Ibid.*, p. 131.

16. *Ibid.*, p. 132.

the nonaligned nations would have the immense advantage of assuring an overwhelming majority, or possibly even creating a consensus. The USSR and the other socialist bloc countries would not vote against a resolution that had the support of the Third World. Argentina would risk further isolating itself by voting against such a proposal. Consensus would be important in assuring that the decision of the Commission would win the approval and funding of the Economic and Social Council. A relatively weak proposal passed by consensus might have a better chance of being implemented successfully than a relatively strong text passed by a bare majority. Overall, it seemed easier and more effective for the West to try to upgrade a nonaligned proposal than to attempt to find enough votes for a Western proposal.

This approach meant that the Western countries, and the United States in particular, would have to yield the leadership on the issue of disappearances to a Third World country. The loss of control had to be real. Not only would it be difficult to convince a Third World country to assume the role of a speaker for the Western group, any ruse would be transparent and fail to get the necessary votes. No Western country would be allowed as a cosponsor. They would be free to lobby, as any country would be, for changes in the Third World draft, but their control would be greatly reduced. There was little choice: a strong Western draft might be defeated and the Argentine draft passed.

### **The Iraqi Proposal**

Iraq, with the help of Cuba, drew up a proposal which became the focus of the discussion among countries throughout the fourth week. After making some changes that Iraq accepted, the United States, and finally the other Western countries, accepted the draft. It provided for a working group of five of the Commission members in their own capacities (instead of three independent experts) to be appointed for just one year (instead of an indefinite time period). The working group was to examine the question of enforced or involuntary disappearances of persons. The United States succeeded in persuading Iraq to agree to extend the working group's mandate to examine the question of "cases of" enforced or involuntary disappearances. This would ensure that the working group could respond to individual cases and not just study the problem of disappearances in general. The United States also added a provision allowing "humanitarian organizations and others" to provide information to the working group which would not only allow NGOs to provide information but other organizations and individuals as well. No attempt was made to define what a disappeared person was; presumably, that would be left to the working group to decide.

On Wednesday, February 27, Iraq took the resolution, as amended, back to the other nonaligned countries. Several countries were in favor of it. Other countries reacted neutrally or even unfavorably, but were interested in avoiding a situation in which the nonaligned bloc would be split down the middle. Cuba, for instance, saw itself as a leader of the entire group of nonaligned countries, because of its position as Chair of the Bureau of the nonaligned group of nations. If a consensus on the disappearances issue could not be found and nonaligned countries split their votes, Cuba would necessarily have to end up supporting the position of some nonaligned countries and opposing that of others. This situation it wanted to avoid. Yugoslavia, fearing that the USSR would be inclined to side with Argentina if the issue came to a vote, also wanted to assure a consensus. The result was that the amendment suggested by the United States—that the working group was to consider cases or individual persons—was deleted. The language now read that the working group was to respond effectively to urgent *situations*, not cases.

### Intense Negotiations

Frantic lobbying efforts followed. The United States was unwilling to accept the language as changed, but time had run out. The luxury of having a formal meeting of the Western bloc or nonaligned bloc was no longer available. The vote, scheduled to take place on Friday, February 29, was only hours away. It had already been postponed several times, and could be postponed no longer. Iraq accepted the U.S. language dealing with individual cases, but all the other delegates had to be found and their agreement secured if there was any hope of achieving consensus. Delegates stepped up their pace, searching each other out, yelling, cajoling, and pleading. At times representatives of twenty to thirty different countries, or a majority of the Commission, could be seen in the hallways debating among themselves. The language that spoke in terms of “cases” was simply not acceptable to all the delegates.

The United States, seeing that “cases” was not acceptable, decided to lobby for a different set of words. It now proposed that instead of providing that the working group “examine the question of enforced or involuntary disappearances of persons” which could be interpreted as a mandate to study the question in abstract terms only, the language should provide that the working group “examine *questions relating to* enforced or involuntary disappearances of persons [Emphasis added].” The change was slight—only three words—and therefore acceptable to nearly all delegations, yet it seemed to tip the balance in favor of letting the working group respond to individual cases. At least, if the working group

chose to do so, no one could dispute that it was not functioning within its mandate.

Another frantic round of lobbying followed. Up until nearly the time of the vote, the United States adamantly insisted on adding to the resolution the words "questions relating to." All delegations were persuaded or pressured into agreeing to the amendment. It cannot be doubted that the position of the United States as a superpower and leader of the Western nations certainly helped its negotiating position, but the determination and insistence that the U.S. delegates brought into their one-to-one talks with other delegates were significant. The United States had given up control over the disappearances resolution in order to assure its passage; it then fought hard to strengthen it as much as politically possible.

Argentina was desperately trying to destroy the delicate agreement that had been reached by the Western, nonaligned, and socialist nations. It cabled to the governments of the delegates leading the consensus—including Iraq and the United States—and complained bitterly that the delegates of these countries were conducting a vicious vendetta against Argentina. The delegates were then contacted by their governments and had to explain that there had been no attack against Argentina at all. Argentina also planned to introduce a dozen different amendments to the resolution on disappearances hoping to delay the debate, weaken the proposal, and destroy any possibility of a single overwhelming vote in favor of the resolution.

## **Return to Public Debate**

On 29 February 1980 after one week of tense negotiations, the public debate resumed. The galleries were again packed with the relatives of the disappeared who had come to make sure that the plight of their family members was not ignored.

The countries that had agreed on the proposal on disappearances had also agreed on a plan of debate. According to Commission procedure, the only proposal that could be the subject of debate was the French proposal, as it was the only one that had been submitted in time. Therefore, France would agree to accept any amendments proposed by Iraq. Iraq would essentially introduce a new proposal as an amendment to the French resolution. Algeria would propose the three words, "questions relevant to," and Nigeria would give its support to this U.S. wording. Finally, Iraq would move that the resolution be adopted without a vote, in order to preserve an appearance of unanimity; those countries who might abstain or vote "no" in a roll call vote would not have their position recorded if the measure was passed without a vote. The only uncertain

factor was how effective Argentina would be in introducing and passing its amendments.

The representative of Iraq spoke first, introducing his proposal.<sup>17</sup> The delegate pleaded that politics should not be involved in the question of disappearances. His concern was to carry out the duty of the Human Rights Commission in regard to human rights and to avoid emotional attacks on any countries. He expressed the view that his proposal—co-sponsored by Iraq, Cyprus, Yugoslavia, and Senegal (later Iran and Costa Rica were added)—was the best possible compromise between the various versions other countries had put forward. Not all countries agreed with it, but he hoped there would not be “a problem to deal with it.” He moved to adopt the resolution without a vote.

Algeria spoke next. The delegate underlined the objective character of the mechanism being created and introduced the U.S. amendment, adding the words “questions relevant to” enforced or involuntary disappearances. Nigeria spoke simply to give its support to the amendment. France enthusiastically endorsed the Iraqi proposal and the amendment.

The Argentine forces then made their move. Brazil agreed with the proposal and the amendment, but wanted to make one small modification. It proposed an amendment that limited the Sub-Commission to making only general recommendations to the Human Rights Commission. The unamended text did not specify whether the recommendations by the Sub-Commission were to be general or specific thereby allowing the Sub-Commission to make specific recommendations concerning individual cases. The Brazilian amendment would bar the Sub-Commission from making recommendations on individual cases.

Uruguay spoke after Brazil, and although stating it was in favor of a consensus, proposed another amendment. It pointed out that there was no provision by which a government under investigation by the proposed working group might present its own case to the Human Rights Commission. It insisted that the working group on disappearances should not be able to present its conclusions to the Commission if the government being investigated had no chance to make its own presentation to the Commission. At the least, there should be a provision providing for simultaneous presentations by both the working group and the government. It had no specific language prepared but asked that the debate be delayed until it had a chance to consult with other nations on the issue.

Iraq then asked for the floor again. The delegate spoke in favor of the Brazilian amendment, but asked Uruguay to withdraw its proposed amendment. Agreement had been reached among all the countries, the time was late, and all countries had been consulted. The Chairman

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17. *Ibid.*, p. 141.

strongly supported Iraq's request to Uruguay. He pointed out that there had been many days of negotiations and he pleaded with everyone to cooperate. Uruguay could, of course, insist on the amendment if that is what it wanted to do, but Uruguay was strenuously urged to withdraw it. Had Uruguay pressed forward, the consensus might very well have broken down. Instead, Uruguay, although complaining that it had not been consulted regarding Iraq's proposal, withdrew its amendment.

## THE ADOPTED PROPOSAL

The proposal, as amended, was then adopted without a vote. The pre-ambular paragraphs, as proposed by France, remained the same. The operative paragraphs, however, were entirely replaced:

1. *Decides* to establish for a period of one year a Working Group consisting of five of its members, to serve as experts in their individual capacities, to examine questions relevant to enforced or involuntary disappearances of persons;
2. *Requests* the Chairman of the Commission to appoint the members of the group;
3. *Decides* that the Working Group, in carrying out its mandate, shall seek and receive information from governments, intergovernmental organizations, humanitarian organizations and other reliable sources;
4. *Requests* the Secretary-General to appeal to all governments to cooperate with and assist the Working Group in the performance of its tasks and to furnish all information required;
5. *Further requests* the Secretary-General to provide the Working Group with all necessary assistance, in particular staff and resources they require in order to perform their functions in an effective and expeditious manner;
6. *Invites* the Working Group, in establishing its working methods, to bear in mind the need to be able to respond effectively to information that comes before it and to carry out its work with discretion;
7. *Requests* the Working Group to submit to the Commission at its thirty-seventh session a report on its activities, together with its conclusions and recommendations;
8. *Further requests* the Sub-Commission on Prevention of Discrimination and Protection of Minorities to continue studying the most effective means for eliminating enforced or involuntary disappearances of persons, with a view to making general recommendations to the Commission at its thirty-seventh session;
9. *Decides* to consider this question again at its thirty-seventh session under a sub-item entitled "Question of Missing and Disappeared Persons."

The battle over the meaning of the proposal immediately began. In explaining their position after the adoption of the resolution, the USSR,

Argentina, and Ethiopia urged a restrictive reading of the resolution.<sup>18</sup> The USSR, for instance, pointedly referred to the fact that the working group had been created for one year only. It presumed that the group would work by strict consensus and that the duration of any meetings would be limited. It saw no need for the group to meet at all until two to three weeks before the 1981 session of the Human Rights Commission.

A reading that would allow the working group to consider individual cases of disappearance was urged by the U.S., Australia, Cyprus, Netherlands, and Canada. The United States specifically pointed out that the mandate of the working group of experts would allow it to consider the thousands of individual cases in existence. The general feeling of the Commission was that the working group would establish its own working methods and would be able, if it so chose, to investigate individual cases.

The United States, in its speech after the vote, joined the Iraqi resolution as a cosponsor, because it could not have politically been a cosponsor beforehand, but the United States wanted to be associated with the adopted resolution.

The fight over who would be selected as members of the working group began even before the resolution passed. By the end of the Commission on 14 March 1980 the choices had been made. Following the accepted requirement of geographical distribution, the working group members chosen were the representatives of Iraq,<sup>19</sup> Costa Rica, United Kingdom, Ghana, and Yugoslavia. The general feeling among the delegates of the Commission was that this selection could lead to an effective working group.

## PROGRESS REPORT

Having had its budget and authorizing resolution approved by the U.N. Economic and Social Council, the Working Group on Enforced or Involuntary Disappearances gathered a small staff, met for a week in mid-June, and reviewed information made available by governments, the International Labour Office, the European Commission on Human Rights, and nongovernmental organizations, such as Amnesty International, the International Commission of Jurists, the International Federation of Human Rights, the International League for Human Rights, and the World Council of Churches. The Working Group found fifteen countries from various

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18. *Ibid.*, p. 142-44.

19. Ironically, the representative of Iraq later resigned from the working group. Apparently, his government was displeased by the progressive role he played during the Commission session.

parts of the world as deserving particular concern.<sup>20</sup> Although the Working Group's report was not available until after January 1981, it appeared at this writing to be a general study analagous to the excellent *Report of the Expert on the Question of the Fate of the Missing and Disappeared Persons in Chile*,<sup>21</sup> which will consider the causes of, the context of, and possible measures to deal with the phenomenon of disappearances. The Working Group has also apparently developed a computerized list of persons who have been reported as disappeared, which is analagous to the lists of missing persons prepared by the International Committee of the Red Cross and submitted regularly by the ICRC to governments. In addition, the Working Group has attempted to focus immediate attention on several countries where disappearances continue to occur.<sup>22</sup> Few countries, however, appear to be cooperating with the Working Group. After meeting for a second time in mid-September 1980, the Working Group is evidently considering the possibility of direct contacts and visits to some countries, but only one country has indicated its willingness to invite the Working Group.

While the Working Group has begun to function, a number of other U.N. bodies have maintained a high level of attention on the problem of disappearances. The World Conference of the United Nations Decade for Women expressed grave concern in its resolution 23 at the increasing number of missing and disappeared persons, including women and children. The Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders referred in August 1980 to the connection between extrajudicial executions and disappearances. The Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted an extensive resolution on 11 September 1980, which urged the Commission on Human Rights to extend the mandate of its Working Group on Enforced or Involuntary Disappearances, urged the Secretary-General to use his good offices in urgent disappearance cases, and decided to find ways of undertaking speedy investigations of disappearances with a view toward protecting informants, publicizing findings when a government refuses to cooperate, and developing other emergency measures.<sup>23</sup> The 1980 General Assembly will almost certainly pass a resolution expressing continued concern about disappearances and the anguish of the relatives of people who disappear, welcoming the advent of the Working Group, urging the Secretary-General to use his good offices, and asking governments to cooperate with the Working Group.

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20. United Nations, Press Release no. HR/1945, 13 June 1980.

21. Economic and Social Council, *Official Records* Suppl. 3 (A/34/583/Add.1) 1979.

22. United Nations, Press Release no. HR/967, 19 September 1980.

23. Economic and Social Council, Committee on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities (1.756) 1980.



## CONCLUSION

From the efforts of the Working Group established by the Human Rights Commission, other U.N. bodies, and interested organizations, it is clear that disappearances remain an extremely important and yet very difficult problem for which no single measure or group of measures appears adequate.<sup>24</sup> It is unclear whether the Secretary-General has sufficiently used his good offices and his immense influence to focus on the problem of disappearances and to assure that governments cooperate with the Working Group on Enforced or Involuntary Disappearances. It also appears that the Working Group may not have given adequate attention to making direct contacts with responsible governments. Studies and lists may be useful, but some more particularized pressures from the United Nations must be exerted, if lives are to be saved.

However, the passage of the Human Rights Commission resolution on disappearances represents an exemplary act of negotiation and diplomacy. Concern for the effective protection of human rights predominated—if only for a moment—over political considerations. The Commission has taken the first important step toward finding an international approach to the difficult problem of disappearances.

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24. Some guidance for future work on the phenomenon of disappearances was provided by a seminar held in late June 1980. The results of the conference will be published in 1981 by Amnesty International.