Major Developments at the UN Commission on Human Rights in 1991

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Major Developments at the UN Commission on Human Rights in 1991

Penny Parker and David Weissbrodt*

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I. INTRODUCTION

The forty-seventh session of the United Nations Commission on Human Rights met from 28 January to 8 March 1991. The session, overshadowed by the then ongoing Persian Gulf War, was the last before Commission membership was raised from forty-three to fifty-three to remedy the under-representation of developing countries. Discussions about a restructured agenda, as well as the possible need for additional meetings and more financial resources, were held in connection with this future enlargement of the Commission.
The Commission adopted eighty-two resolutions and ten decisions, of which sixty-six resolutions and nine decisions were by consensus. Among the most significant were resolutions on Afghanistan, Albania, Chad, Cuba, El Salvador, Equatorial Guinea, Guatemala, Haiti, Iran, Iraq, Iraqi-occupied Kuwait, the Israeli-occupied Arab Territories, Myanmar, Romania, Somalia, South Africa, Southern Lebanon, Sudan, the Israeli-occupied Syrian territories, and Western Sahara. The Commission also broke new ground by establishing the Working Group on Arbitrary Detention.

On the other hand, the Commission failed to give adequate attention to the human rights situations in a number of countries, including Brazil, China (relating to Tibet and events following the suppression of demonstrations in Tiananmen Square during June 1989), Colombia, Indonesia (relating to East Timor), Peru, the Philippines, Sri Lanka, Turkey, and Zaire. In addition, the Commission made little progress in developing an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Members of the Commission subjected its Sub-Commission on Prevention of Discrimination and Protection of Minorities to considerable criticism and urged changes in the latter’s work methods.

The Commission heartily endorsed the upcoming 1993 World Conference on Human Rights, the first such conference to be held since the Teheran Conference of 1968. Several country delegations suggested matters to be discussed at the World Conference, a preparatory meeting was scheduled for September 1991, and at least two countries, Hungary and Morocco, lobbied actively to become the Conference host.

Before and during the session groups continued to work on draft declarations on the rights of human rights defenders, mentally-ill persons, and minorities.

II. PARTICIPATION AT THE 1991 SESSION

Enrique Bernales Ballesteros (Peru), who has been serving the Commission as its Special Rapporteur on Mercenaries, was elected Chair of the session. Kojo Amoo-Gottfried (Ghana), Goetz-Alexander Martius (Germany), and

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Vladimir A. Vasilenko (Ukrainian SSR) were elected as Vice-Chairs to represent their respective regions on the Commission’s Bureau, and Masahino Tauchi (Japan) was elected as Rapporteur. Hence, the membership of the Bureau dropped from three women in 1990 to none at the 1991 session.

Forty-three member countries and seventy-two observer governments attended the Commission session. Four nonmember governments also sent observers (the Democratic People’s Republic of Korea, the Holy See, the Republic of Korea, and Switzerland). Thirteen specialized intergovernmental organizations, two nongovernmental political organizations (the PLO and the Pan Africanist Congress of Azania), and 123 nongovernmental human rights organizations attended. Foreign dignitaries from nineteen different governments addressed the Commission. These numbers represent a slight increase over prior years, making the 1991 session the largest ever attended.

Among those governments newly participating as members of the Commission this year were Australia, Austria, Burundi, Czechoslovakia, Indonesia, Mauritania, and Zambia. For the first time in UN history the United Kingdom was not on the Commission (although it did attend as an observer government). Other countries who were members of the Commission in 1990 but were not selected to continue in 1991 included Botswana, Bulgaria, Nigeria, Sao Tome and Principe, Spain, and Sri Lanka.

Chairing the US delegation this year was J. Kenneth Blackwell, former Mayor of Cincinnati, who had participated in the delegation in 1990. Morris B. Abram, head of the Permanent US Mission in Geneva, was Vice-Chair. Nine other members of the US delegation had participated in 1990, according to the Commission’s “Provisional List of Attendance.” Ten members were

2. H.E. Jacques Poos, President, Council of Ministers of the European Communities and Minister of Foreign Affairs of Luxembourg; Luis Fernando Jaramillo, Minister of Foreign Affairs of Colombia; Sten Andersson, Minister of Foreign Affairs of Sweden; M. Lennox Boyd, Parliamentary Under-Secretary of Foreign and Commonwealth Affairs of the United Kingdom; Leonid M. Kravchuk, President of the Supreme Soviet of the Ukrainian SSR; Thorvald Stoltenberg, Minister of Foreign Affairs of Norway; Sylvestre Nsanzimana, Minister of Justice of Rwanda; Adrian Nastase, Minister of Foreign Affairs of Romania; Geza Jeszenszky, Minister of Foreign Affairs of Hungary; Abed Al Samie Omer, Minister in Charge of Human Rights and Special Adviser of the Political Committee of the Revolutionary Council of Sudan; Nimy M. Ngimbí, Deputy-Prime Minister and Special Adviser on Security Matters to the President of Zaire; Hector Gros Espiell, Minister of Foreign Affairs of Uruguay; Sulaiman Al-Mutawa, Minister of Planning of Kuwait; Edwige Avice, Vice-Minister of Foreign Affairs of France; Edmundo Vargas Carreño, Under-Secretary of Foreign Affairs of Chile; Haroldo Rodas Melgar, Vice-Minister of Foreign Affairs of Guatemala; Pedro de Castro Van-Dunem, Minister of Foreign Affairs of Angola; Alexis Frutos Vaeskan, Minister of Foreign Affairs of Paraguay; A. Denisov, member of the Presidium of the Supreme Soviet of the USSR; and Marie-Denise Fabien Jean-Louis, Minister of Foreign Affairs of Haiti. See Commission on Human Rights Concludes Annual Session, 4:2 Hum. Rts. Newsl. 1 (Apr. 1991).

3. For example, in 1990 there were seventy-three observer governments, sixteen intergovernmental organizations, 116 nongovernmental organizations, the PLO, the African National Congress, and the Pan-Africanist Congress.
new to the delegation this year. Neither Armando Valladares (Chair of the delegation for the last three years) nor Thomas Johnson (legal counsel to the US Mission in Geneva) participated in 1991; both had actively participated in prior sessions.

III. EFFECT OF THE PERSIAN GULF WAR

The Persian Gulf War began before and ended during the session. A resolution condemning the Iraqi invasion of Kuwait was actually voted upon several days after Iraq's withdrawal. The circumstances of the Gulf conflict illustrate how difficult it is for the Commission to influence or comment upon fast-moving world events, particularly as here, where significant measures had already been taken by the Security Council. Nonetheless, the Gulf War had a significant effect on several items before the Commission and will likely have a continuing residual effect on matters to be investigated and discussed by the Commission during the next several years.

The Gulf War figured prominently in opening speeches at the Commission, including those given by Jan Martenson, UN Under-Secretary-General for Human Rights; Purificacion V. Quisumbing (Philippines), outgoing Chair of the Commission; and Enrique Bernales Ballesteros (Peru), incoming Chair. S. Amos Wako, Special Rapporteur on Summary or Arbitrary Executions, issued an appeal in the opening week of the war for the preservation of life and for adherence to the 1940 Geneva Conventions and the 1977 Protocols. Numerous speeches during the Commission's session addressed the Gulf War hostilities, including some given by various Arab countries that normally do not participate in debates (such as Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates).

The General Assembly, in its resolution 45/170, had asked the Commission to look into the human rights situation in Kuwait. The Sub-Commission had also recommended that the Commission study the evolution of the human rights situation in Iraq. Both of these subjects were addressed

by the Commission, and resolutions were passed authorizing the appoint-
ment of special rapporteurs who will be responsible for preparing reports
for presentation to the 1992 session of the Commission and, in the case of
the Kuwait-occupation report, to the Secretary-General for distribution to
all members of the General Assembly. In addition, the Special Representa-
tive appointed to investigate conditions in Iran was given permission to
interview refugees and victims of chemical weapons.

The after-effects of the Gulf War may also be addressed in reports to
next year’s Commission on internally displaced persons, enforced or in-
voluntary disappearances, human rights in times of armed conflict, and
human rights and the environment.

The Gulf War coincided with the Commission’s discussion of the recently
adopted International Convention on the Protection of the Rights of All
Migrant Workers and Members of Their Families, approved by the General
Assembly on 18 December 1990 and submitted to member states for sig-
nature and ratification. During the Commission’s discussion of this agenda
item representatives from the governments of Egypt, Indonesia, and the
Philippines noted in particular that many of their citizens had been displaced
and victimized by the Gulf conflict. The needs of these migrant workers had
also been recently addressed in a roundtable discussion convened by the
International Labour Office.

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12. Resolution 1991/25 requests the Secretary-General to prepare a system-wide review and
analytical report of the needs of internally displaced persons to the Commission in 1992.
(1991). See also Quaker United Nations Office Press Release, Human Rights of In-
13. The Commission regularly receives reports on disappearances from its Working Group
on Enforced or Involuntary Disappearances. Iraq has often been mentioned in this group’s
reports. Iraq is urged in the Commission’s Resolution 1991/74 to cooperate in efforts to
clarify the many pending cases noted in the group’s latest report. C.H.R. Res. 1991/74,
has been on the Commission’s agenda for a number of years. The report has not yet been
prepared. In addition, Amos Wako, Special Rapporteur on Summary or Arbitrary Execu-
tions, calls for the drafting of new standards applicable to times of armed conflict in
15. Fatma Zohra Ksentini (Morocco), independent Expert of the Sub-Commission, has been
asked to prepare a study on human rights and the environment. C.H.R. Res. 1991/44,
17. International Labour Office, Inter-regional Tripartite Round Table on International Mi-
gration (Arab and Asian Countries), Bangkok (11–12 Dec. 1990) (Informal Summary
Record).
Finally, efforts to reportedly strengthen a resolution adopted by the Commission in 1989 on the subject of conscientious objection to military service were considered too politically sensitive, and the Commission instead adopted a mild resolution putting off consideration of this subject until a later session.¹⁸

IV. ENLARGEMENT AND ENHANCEMENT

In 1992 the Commission will be enlarged from forty-three members to fifty-three members, with the addition of four new representatives from Africa, three from Latin America, and three from Asia.¹⁹ The regional breakdown will then become 28 percent African, 23 percent Asian, 21 percent Latin American, 19 percent Western European and “Other” (WEO), and 9 percent Eastern European. It is clear that the Commission’s prior composition underrepresented developing countries—fully half of Western and Eastern European states were represented on the Commission, for instance, while fewer than one-quarter of African and Asian countries had seats.

There is a concern, however, that the 1992 change in composition will inhibit the Commission’s ability to take effective actions in the future. The regional imbalance has received greater attention as the Commission has become increasingly politicized and polarized, and regional blocs have, over the years, taken on increased importance.²⁰ These blocs are often able to prevent or control measures sought to be taken against one of the region’s governments. Bloc solidarity, for example, has long prevented public Commission initiatives in Africa (outside southern Africa). The disproportionate scrutiny of Latin American countries in the 1980s, combined with the highly political US campaign to condemn Cuba since 1987, has also caused the Latin American bloc to consolidate. The “Group of Eight”²¹ now effectively determines the limits of resolutions on El Salvador and Guatemala and would prevent initiatives on Colombia and Peru.

¹⁹. The Commission will then be composed of fifteen African countries (Angola, Burundi, Gabon, Gambia, Ghana, Kenya, Lesotho, Libya, Madagascar, Mauritania, Nigeria, Senegal, Somalia, Tunisia, and Zambia), twelve Asian countries (Bangladesh, China, Cyprus, India, Indonesia, Iran, Iraq, Japan, Pakistan, the Philippines, Sri Lanka, and Syria), eleven Latin American countries (Argentina, Barbados, Brazil, Chile, Colombia, Costa Rica, Cuba, Mexico, Peru, Uruguay, and Venezuela), ten Western European and “Other” (WEO) countries (Australia, Austria, Canada, France, Germany, Italy, the Netherlands, Portugal, the United Kingdom, and the United States), and five Eastern European countries (Bulgaria, Czechoslovakia, Hungary, the Soviet Union, and Yugoslavia).
²¹. The “Group of Eight” is comprised of Argentina, Brazil, Colombia, Mexico, Panama, Peru, Uruguay, and Venezuela.
At its forty-fourth session in 1989 the General Assembly adopted a resolution recommending an expansion in the size of the Commission to achieve "equitable geographical distribution."\(^{22}\) In the same resolution, as a compromise to gain WEO and Eastern European support, the General Assembly requested the Commission "to examine ways and means of making its work more effective."\(^{23}\)

The Commission in 1990 created an open-ended working group which met during that year's session to consider means of "enhancing" the Commission's work. At the 1990 session, however, the countries of the North—WEO and Eastern Europe—and the developing countries grouped in the G-77, or Nonaligned, Movement were unable to agree on any changes in the work of the Commission.

In May 1990 a global agreement was reached by the Economic and Social Council (ECOSOC). A resolution was passed, over the sole dissent of the United States, endorsing the urgent need for a more equitable regional representation in the United Nations.\(^{24}\) Although the WEO proportionately lost influence from that decision, they also won on three issues. First, ECOSOC decided that the Commission can meet exceptionally, when an urgent situation arises regarding human rights violations, provided that a majority of the Commission so agrees.\(^{25}\) Second, the body recommended that the terms of thematic special rapporteurs and the Working Group on Disappearances be extended from two years to three years. Third, ECOSOC decided that the Commission's Bureau would meet during the week following each session to make suggestions as to the organization of the Commission.\(^{26}\)

With the increase in membership coming in 1992, several members of the Commission regarded the 1991 session as an important opportunity for improvements. Rather than follow the very unproductive process of appointing a working group to consider revised procedures, the 1991 Commission used the ordinary resolution process for making changes. The most significant improvement was the establishment of a Working Group on Arbitrary Detention. Another institutional change, which might have been more difficult to adopt in the enlarged Commission of 1992, was the approval of secret ballot voting on resolutions in the Sub-Commission relating to human rights situations in particular countries.

The Belgian delegation proposed, and the Commission decided, that major changes to the Commission's agenda should be discussed in 1992.

\(^{23}\) Id.
\(^{25}\) Id.
\(^{26}\) Id.
and that a draft 1993 agenda should be prepared by the Secretary-General in accordance with the guidelines in the Commission's Decision 1991/109.27

A report filed by the Secretary-General at the Commission’s 1991 session also: expressed concerns about budgetary and time constraints which may arise from the enlargement of the Commission; suggested that the Commission may wish to implement electronic voting to conserve time; noted that the last time the Commission’s membership was enlarged, in 1979, it was also found necessary to increase the length of the session from four to six weeks; and indicated that changes in the Commission’s calendar may be necessary in 1992 to permit the timely submission of documents.28 A decision was also adopted by the Commission on the last day of the session, requesting permission from the Economic and Social Council to schedule additional meetings with full conference services if they become necessary during the 1992 session.29

It will be interesting to watch moves for leadership among the nonaligned countries in the new enlarged Commission. Two countries that have figured prominently in the leadership of the Nonaligned Movement, India and Yugoslavia, both have suffered considerable domestic turmoil during 1991. Cuba, another country often claiming to speak on behalf of the nonaligned, suffered setbacks in 1991 on the secret ballot issue and the US-sponsored resolution criticizing Cuba’s human rights conditions; Cuba was also criticized by members of its own Latin American group for failing to separate its “independent” Sub-Commission expert from its country delegation.

V. COUNTRY SITUATIONS

The Commission took action, or significantly failed to take action, on the following countries and regions: Afghanistan, Albania, the Baltics, Cambodia, Chad, Chile, China, Cuba, Cyprus, El Salvador, Equatorial Guinea, Guatemala, Haiti, Iran, Iraq, the Israeli-occupied Arab territories, Lebanon, Myanmar (Burma), Romania, Somalia, South Africa, Sudan, Western Sahara, Zaire, and other countries.

27. C.H.R. Dec. 1991/109, 47 U.N. ESCOR Supp. (No. 2) Annex at 188, U.N. Doc. E/CN.4/1991/91 (1991). The guidelines propose that the Commission’s agenda be divided into eight major categories: opening matters; situations (occupied Arab territories, self-determination, and South Africa); issues (economic, social, and cultural rights; right to development; status of international covenants; treaty bodies; and biennial issues); country procedures; thematic issues and procedures; standard-setting; further promotion of human rights (report of the Sub-Commission, advisory services, etc.); and closing matters.
A. Afghanistan

The Commission renewed the mandate of Special Rapporteur Felix Ermacora (Austria) for another year by a resolution which was adopted without a vote. The resolution welcomed the facts that the Special Rapporteur had received cooperation from Afghan authorities in visiting the country and that he had been able to visit areas in Afghanistan not under government control. The Commission urged all parties to the Afghan civil conflict to respect humanitarian rules, to halt the use of weapons against the civilian population, to protect all prisoners from acts of reprisal and violence, to expedite the exchange of prisoners, and to grant the International Committee of the Red Cross unrestricted access to the entire country and all places of detention. In another resolution, also adopted without a vote, the Commission emphasized the importance of the Agreements on the Settlement of the Situation Relating to Afghanistan, concluded at Geneva on 14 April 1988, and reaffirmed the right of the Afghan people to self-determination.

B. Albania

While the Commission had adopted such a resolution in 1990 by a split vote (twenty-seven in favor, three against, and twelve abstentions), a consensus resolution was passed at the 1991 session calling upon the government of Albania to free all political prisoners, establish legislative measures to meet the requirements of the International Bill of Human Rights, and assure the right to vote. The Albanian government has been reluctant in the past to respond to criticisms. For five years the Commission attempted to establish a dialogue with Albania through its confidential 1503 procedure. In 1988, when Albania again refused to respond, the Commission resolved to consider Albania's human rights violations under the public procedure authorized by ECOSOC resolution 1235. While the government is generally regarded as having improved its receptivity to inquiries, its responses for the most part still lack specifics.

C. Baltics

After extensive negotiations, the Soviet Union accepted a compromise statement announced by the Chair:

The Commission on Human Rights noted the positive developments in the Soviet Union towards greater respect for human rights and fundamental freedoms; expressed grave concern over the recent tragic acts of violence involving violations of human rights including the right to life, to freedom of information and to take part in the conduct of public affairs, bearing in mind the provisions contained in the Code of Conduct for Law Enforcement Officials adopted by the General Assembly in 1979 and in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990; welcomed the announced decision of the Government of the Soviet Union to conduct a thorough investigation of these events and to bring to justice those responsible; noted the readiness of the Government of the Soviet Union to communicate without delay to the Chairman of the Commission the results of this investigation; taking note of unresolved problems in the field of human rights in Lithuania and Latvia, urged the authorities concerned to ensure that human rights and fundamental freedoms are fully enjoyed, without discrimination, in Latvia and Lithuania.33

The willingness of the Soviet delegation to accept this decision contrasts sharply with the extraordinary efforts of that country's representatives in previous years to avoid any discussion of human rights problems in the Soviet Union.

D. Cambodia

While the Commission in 1990 adopted a resolution on self-determination in Cambodia by a split vote (thirty-one in favor, five against, and six abstaining), the 1991 session adopted a decision without a vote calling for a comprehensive political settlement and stressing the right to self-determination for the Cambodian people through free and fair elections organized and conducted by the United Nations.34

E. Chad

For the first time the Commission considered the human rights situation in Chad under the confidential communication procedure established by ECOSOC resolution 1503. The communication on Chad, referred by the Sub-Commission, was kept under consideration by the Commission. Presumably, the communication addresses the continuing armed conflict in Chad and related human rights violations.

F. Chile

Beginning in 1975 the Commission established a working group to study the human rights situation in Chile. In 1979 the Commission replaced the working group with a special rapporteur. During the 1990 session the Commission adopted a consensus resolution discontinuing the special rapporteur and requesting the recently elected government to report, at a special meeting in 1991, on the follow-up to the recommendations previously adopted by the United Nations in connection with the restoration of human rights. On 26 February 1991 Edmundo Vargas Carreño, Under-Secretary for Foreign Affairs of Chile, did report to the Commission on progress towards the protection of human rights,35 but no special meeting was actually held, and the Commission accepted the government’s statement without further deliberation.

G. China

The brutal suppression of pro-democracy demonstrators in Tiananmen Square during June 1989 and the continued imprisonment of many dissenters in China remained a concern to many at the Commission. In 1990 the Chinese government lobbied strenuously to defeat a resolution addressing such concerns and which had originated in the Sub-Commission. The Commission decided then to take no action on the resolution by a very close vote of seventeen in favor, fifteen against, and eleven abstaining. While China was mentioned during the general discussion on human rights violations under item 12 at the 1991 session, no resolution was introduced. Many nongovernmental organizations (NGOs) presented additional examples of human

35. Vargas Carreño noted that recent amendments to the Chilean Constitution imposed a duty on the state to protect human rights and guaranteed freedom of expression and the rights of trade unions. He also called attention to both a recently created commission charged with investigating disappearances and a presidential pardon of political prisoners. U.N. Press Release HR/2747 at 1 (1991).
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rights violations, in connection both with the original Tiananmen Square incidents and with the long-standing violations in Tibet. The government of China took advantage of its opportunity to speak under unusual agenda items (such as the discussion of the recently adopted International Treaty for the Protection of Migrant Workers) to defend its current practices.

H. Cuba

The United States continued its five-year campaign to censure Cuba, introducing a resolution aimed at the reprisals which the Cuban authorities reportedly took against witnesses who testified before the delegation of six Commission members who visited Cuba in 1988. At the 1989 session the US-proposed resolution was plagued with embarrassing disarray and caused political division among Commission members. That resolution failed and a weaker Latin American proposal was adopted instead.

The US task was made easier in 1990 by geopolitical changes which had occurred over the previous year, combined with a hardening of the Cuban position, Cuba’s increasing isolation, and reports of the government’s retaliation against witnesses who wanted to inform the Commission about violations. In 1990 the Commission adopted a US-sponsored resolution, by a margin of nineteen for, twelve against, and twelve abstaining, expressing concern over the reports of reprisals against witnesses, called on Cuba to respond to those reports, asked the Secretary-General to report to the next session on his contacts with the Cuban government, and placed Cuba on the agenda of the 1991 Commission under item 12 for "violations."

In 1991 the United States proposed a resolution calling for the Chair of the Commission to appoint a special representative to establish direct contacts with the government and citizens of Cuba on allegations of human rights violations. Colombia proposed a weaker resolution calling upon the UN Secretary-General to continue contacts with the government of Cuba. In a series of procedural moves by both sides, the Commission first decided, by a vote of eighteen in favor, seventeen against, with eight abstentions, to consider the Colombian resolution first. Unlike in 1989, the US delegation in 1991 was prepared for this sort of procedural tactic and immediately moved to amend the Colombian resolution to call for the appointment of a special representative to maintain direct contacts with the government and citizens of Cuba. The US amendment was accepted by a vote of twenty-one in favor, eighteen against, and four abstaining. The amended resolution was then adopted by a vote of twenty-two in favor, six against, and fifteen abstentions.

abstentions (including the Latin American delegations who had initially proposed the resolution). It is significant, however, that the final resolution does not permit NGOs to provide information on human rights abuses; only the government and the citizens of Cuba itself are allowed to communicate with the Special Representative.

I. Cyprus

Once again the problems arising from the Turkish occupation of part of Cyprus were deferred for another year. The Secretary-General filed a report of his efforts to negotiate a settlement between Greece and Turkey, but indicated very little progress had been made. A written report was also filed by the government of Turkey, complaining about human rights violations by the Greek Cypriots.

J. El Salvador

The Latin American group again presented a draft text expressing concern about the persistence of politically motivated violations of human rights, such as summary executions and enforced disappearances, and calling upon the government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) to continue their negotiations designed to halt the armed confrontation and infringements of the rights of the civilian population. The Commission adopted the resolution without a vote, extending the mandate of the Special Representative for a further year.

K. Equatorial Guinea

Despite serious questions about the effectiveness of advisory services tendered to the government of Equatorial Guinea, the Commission requested the UN Secretary-General to extend for another year the mandate of the independent expert assigned to the country.

L. Guatemala

One of the most hard-fought battles at the 1991 session concerned Guatemala, which had, since the accession of a civilian government, been receiving advisory services. At its 1990 session the Commission had adopted a compromise resolution raising the level of scrutiny one-half notch by inventing a new hybrid monitoring/advisory method; the Commission requested the Secretary-General to appoint an independent expert as his representative to examine the human rights situation in that country and, at the same time, to supervise the provision of advisory services. The resolution left open the agenda item (gross violations or advisory services) under which it would consider the Expert's report at the 1991 session.

After extensive debate and considerable criticism of human rights violations in the country, the Commission in 1991 decided, by a vote of twenty-one in favor, sixteen against, and five abstentions, to consider Guatemala under the less intrusive agenda item 21 for advisory services. The Commission then adopted a resolution without a vote requesting the Secretary-General to extend the mandate of the independent Expert for another year. The question of which agenda item should pertain to the Guatemalan human rights situation, however, was again left open for next year.

Many NGOs spoke convincingly on the abuses perpetrated by the current Guatemalan government and opposition groups. The failure of the government to respond meaningfully to these abuses was a great frustration to many human rights advocates.

M. Haiti

The discussion of Haiti had been moved last year out of the advisory services program and into item 12, concerning gross violations of human rights. In light of the recent government changes, there was little dispute this year over the decision to move Haiti back under the advisory services item and to appoint an independent expert to examine developments in the human rights situation in Haiti and to help devise measures to achieve improvements. A consensus text was reportedly achieved in part, however, by agreeing to remove Philippe Texier, the current Expert, and to replace him

with an expert of Latin American origin. Haiti’s foreign minister spoke before the Commission, welcoming further monitoring of its human rights efforts as the new administration begins to work.

N. Iran

The Commission’s Special Representative, Galindo Pohl (El Salvador), was able during the past year to visit Iran for the second time. There were, however, criticisms of his report for not addressing many of the human rights violations brought to his attention and for being overly conciliatory toward the Iranian government, which had, for the most part, offered only modest cooperation. Indeed, there were rumors that witnesses with whom the Special Representative met were subsequently harassed. Several observers believed the prudence manifested in the reports came in exchange for the promise of continued visits or in the Iranian government’s hope that the Special Representative’s mandate would be ended.

Pakistan introduced a draft resolution proposing to terminate the mandate of the Special Representative and thanking Iran for its cooperation. Austria, however, introduced an alternative resolution to extend the Special Representative’s term for another year. Extensive negotiations ensued, and the next day a compromise text was introduced by the Chair of the Commission which extended the mandate of the Special Representative for another year, requested the Representative to report to the 1992 session of the Commission, and stated, “the Commission will consider the report with a view to its discontinuing the mandate if there is further progress achieved regarding his recommendations. . . .” The compromise resolution was adopted without a vote, and indeed, by pre-agreement, without debate.

After the vote several Western countries explained that they interpreted the resolution as merely indicating that the Commission would in 1992 continue its annual practice of deciding whether to extend the mandate of the Special Representative. The Iranian government’s understanding of the resolution was clearly different; they had agreed to the resolution for only one more year, with the expectation that “progress” similar to the present year’s developments would satisfy the condition in the resolution and result in the end of the Special Representative’s mandate.

O. Iraq

The Commission in 1989 and 1990 had failed to initiate action on the human rights situation in Iraq. The decision to take no action in 1990 carried by a vote of eighteen to fourteen to nine, with abstentions by Latin American democracies (Brazil, Colombia, Peru, and Venezuela) providing the margin (Argentina went further, voting in favor of the motion). One can only speculate as to whether more effective UN action in the Commission and other fora might have deterred the Iraqi government from believing that it could invade Kuwait without substantial international response.

In any case, the Commission did finally respond after Iraq had invaded Kuwait and the Security Council had determined upon a joint international effort to dislodge Iraq. The Commission on 6 March 1991 adopted a resolution, by a vote of thirty in favor, one (Iraq) against, and ten abstaining, to appoint a special rapporteur to make a thorough study of the violations of human rights by the government of Iraq, including the plight of the Kurds. The Commission also adopted a resolution, by a vote of forty-one in favor, one against, and no abstentions, condemning the Iraqi invasion of Kuwait and appointing a special rapporteur to investigate the situation of human rights in Kuwait under Iraqi occupation. The Commission asked the Special Rapporteur “to report as soon as possible to the General Assembly and the Commission on Human Rights at its forty-eighth session. . . .” The Commission also asked the Special Rapporteur “to prepare a preliminary report as soon as possible and to transmit it to the Secretary-General for dissemination to all Member States” of the United Nations. In considering the latter resolution, Iraq proposed an amendment condemning acts of violence against Sudanese and others by Kuwaiti soldiers, but the amendment was rejected by a vote of two (Cuba and Iraq) in favor, twenty-three against, and five abstentions (Colombia, Indonesia, Mexico, Morocco, and Venezuela).

In addition to appointing the two new special rapporteurs on Iraq and Iraqi-occupied Kuwait, the Commission requested the Special Rapporteur on the situation of human rights in the neighboring Islamic Republic of Iran to broaden his mandate to include displaced persons, refugees, and victims of chemical weapons.

49. Brody, Parker, & Weissbrodt, supra note 1, at 575.
52. Id.
P. The Israeli-Occupied Arab Territories

There were several resolutions condemning the Israeli occupation of the Arab territories it has held since 1967. The resolutions were not substantially different from those adopted in 1990 and during the last several years. One resolution expressed particular concern about the effects of Israeli settlements in the occupied territories and was adopted by a vote of thirty-eight in favor, none against, and the United States abstaining.\(^5\) Another resolution (1) called for Israel to withdraw from the territories and (2) condemned the government for its violations of the Geneva Conventions.\(^5\) The two parts of this resolution were adopted by votes of twenty-six and twenty-eight in favor, the United States against, and ten and eleven abstentions, respectively.\(^6\)

Q. Lebanon

The Commission, by a vote of forty-one in favor, one (the United States) against, and none abstaining, condemned the continued Israeli violations of human rights in southern Lebanon, including the arbitrary detention of the civilian population, destruction of homes, confiscation of property, bombardment of villages, etc.\(^5\)

R. Myanmar (Burma)

Under the confidential 1503 procedure the Commission reportedly decided by consensus to continue for a second year the mandate of the independent Expert to pursue direct contacts with the Myanmar government on developments relating to the country’s human rights situation and to have the Expert report to the Commission at its next session. The Commission’s independent Expert, Ms. Ogata (Japan; she has recently been appointed UN High Commissioner for Refugees), had been able to visit Myanmar, but she had been placed in an isolated military-controlled residence, so that people were deterred from lodging complaints with her. According to the BBC, the confidential resolution was strengthened to urge that the Expert be permitted access to those people who wish to communicate with her. It had been

\(^{56}\) Id.
hoped, however, that Myanmar’s case would be transferred instead to public proceedings, in light of the worsening conditions there.

**S. Romania**

The Special Rapporteur on Romania, Joseph Voyame (Switzerland), had been denied entry into Romania before the fall of Ceausescu but was able to visit that country during the Commission’s session in 1990 and again before the 1991 session. With the agreement of the new authorities, the Commission noted that, “despite regrettable lapses, respect for human rights is in general continuing to improve in Romania” and renewed the Special Rapporteur’s mandate for a further year.

**T. Somalia**

The situation of human rights in Somalia was considered by the Commission in confidential proceedings, where it was determined that the country should remain under review for another year. In an unusual departure, the confidential debate on Somalia erupted into the Commission’s public proceedings when the delegation of Somalia, which had apparently claimed in private that it was not responsible for its new administration’s policies, attempted to vote on an unrelated procedural motion in the public proceedings. The delegation’s credentials to vote were then challenged, and a ruling had to be made from the Chair that Somalia could vote unless and until the Commission was formally notified by UN headquarters in New York to the contrary.

**U. South Africa**

The Commission heard reports from the Ad Hoc Working Group of Experts on Southern Africa and the Group of Three, established under the Apartheid Convention, as well as the updated report prepared by Sub-Commission Expert Khalifa (Egypt) on corporations doing business in South Africa. The Commission debate reflected the changing situation in South Africa. For the first time the Commission was able to adopt a resolution by consensus.

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59. Id.

on the current conditions in the country. Comments from several delegations after the vote, however, made it clear that the consensus had been a very precarious one. Several of the resolution’s sponsors were disappointed at the last-minute changes made to the resolution which had softened some of its criticisms; some of the original co-sponsors formally withdrew their sponsorship of the resolution but did not depart from the consensus vote.

The final resolution commended the positive changes “by which some political prisoners were released, political organizations were unbanned, the state of emergency was lifted and the Separate Amenities Act was repealed,”61 but called on the government of South Africa to release all political prisoners and to repeal all discriminatory laws.62 In the same consensus resolution the Commission decided to renew for two years the mandate of the Ad Hoc Working Group, which was asked to continue its reporting on human rights violations in South Africa. The decision to renew the Group’s mandate may help to develop a precedent for other country procedures.

The Commission decided “to discuss the question of detention, torture, and other inhuman treatment of children in South Africa at its forty-eighth session under the agenda item ‘Violations of human rights in South Africa: report of the Ad Hoc Working Group of Experts’.”63

The Commission also decided, by a vote of twenty-five in favor, thirteen against, and three abstentions, to call upon all governments to maintain sanctions against South Africa until agreement has been reached for a new constitution and elections.64 By a similar vote (twenty-eight in favor, thirteen against, and one abstention), the Commission decided to continue the mandate of the Special Rapporteur of the Sub-Commission responsible for monitoring banks and corporations doing business with South Africa.65

V. Sudan

The situation in Sudan has been the subject of a communication under the confidential 1503 procedure. The Commission decided to keep Sudan under consideration for another year.

62. Id.
W. Western Sahara

For the second year in a row, the Commission adopted without a vote a resolution on self-determination for the people of the Western Sahara.\(^6^6\)

X. Zaire

The Commission dropped consideration of Zaire, as anticipated by its decision of 1990 and despite evidence of continuing gross human rights violations in the country. The Deputy-Prime Minister of Zaire, who is also the Special Advisor on Security Matters to the President, addressed the public session of the Commission and assured it that human rights organizations were free to visit his country's places of detention and that the "sad incidents" of human rights violations at the University of Lubumbashi last year would be thoroughly investigated by his government.\(^6^7\)

Y. Other Countries Not Considered

The Commission once again failed even to consider action regarding some of the world's worst situations. Abundant evidence, including that gathered by the Commission's own thematic procedures, pointed to massive violations in Colombia, Peru, the Philippines, Sri Lanka, and Turkey. The genocide against the Yanomami Indians in Brazil was ignored by all but a few NGOs, as were the troubling situations in China, Ethiopia, Indonesia (in regard to East Timor), Kenya, Liberia, and Syria.

VI. THEMATIC MECHANISMS

The thematic mechanisms, established to examine specific types of human rights violations in the world, have proved in the eleven years since the creation of the first such procedure (the Working Group on Enforced or Involuntary Disappearances) to be the most effective and objective monitoring bodies of the international community. The mandates of the Working Group and the special rapporteurs on executions, torture, religious intolerance, and mercenaries were extended in 1990 for two years and thus were not subject to renewal until 1992. In 1991 the Commission established a


new thematic procedure, the Working Group on Arbitrary Detention, and further refined the mandate of last year's new Special Rapporteur on the Sale of Children. Resolutions were also adopted supporting the efforts of the thematic procedures relating to disappearances, executions, mercenaries, religious intolerance, and torture.68

A new practice begun last year, whereby the Commission instructed each thematic rapporteur or working group to comment in its report upon violations against human rights defenders,69 was expanded to include an additional subject this year. An analytical summary of these reports was compiled by the Secretariat for the Commission's 1991 session.70 The special rapporteurs to the Sub-Commission on Prevention of Discrimination and Protection of Minorities were also asked to discuss incidents of human rights violations against freedom of thought, conscience, peaceful assembly, and association.71 In addition, the Commission adopted a supportive general resolution on the work of the thematic procedures, encouraging contributions from NGOs and cooperation by member governments.72

A. Disappearances

In the past eleven years, the Working Group on Enforced or Involuntary Disappearances has transmitted about 20,000 cases of disappearance pertaining to forty-five governments in countries all over the world.73 In 1990, 486 disappearance cases were reported, down from 721 cases in 1989.74 Once again Peru topped the list, with 232 cases reported to have occurred in 1990, followed by Colombia (eighty-two), Guatemala (seventy-five), Sri Lanka (forty-four), the Philippines (forty-three), and El Salvador (seven).75 Peru has also failed to respond to recommendations from the Working Group's 1989 field visit, despite the fact that one of the members of the Working Group is a Peruvian.

Since its establishment eleven years ago, the Working Group has been the most effective of the Commission's theme mechanisms. It has been the cornerstone of international efforts to help relatives in their search for the

74. Id.
75. Id. at 94–96, 105–07.
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victims of disappearances and in working to prevent future disappearances. Its methods of work—including its urgent action procedure, its practice of providing feedback to the sources of information, and its reporting on the substance of cases transmitted—have served as a model for the other thematic procedures. Of the thematic mechanisms, only the Working Group regularly invites the authors of complaints to comment upon the official responses of governments so as to help assess the veracity of those responses.

As the Working Group indicated in its previous report, “impunity” is perhaps the single most important factor contributing to the phenomenon of disappearance. Perpetrators of human rights violations, whether civilian or military, become all the more irresponsible if they are not held to account before a court of law—whether due to the reluctance of the military justice system to try officers responsible for abuses, the institutional paralysis of the judicial system, or the lack of an effective habeas corpus mechanism.

Two members of the Working Group visited the Philippines from 27 August to 7 September 1990. The country, marked by social unrest from continuing poverty and injustice, continues to suffer from disappearances and governmental violence against citizens—despite the promulgation of a constitution with a comprehensive human rights policy. The Working Group drew upon its considerable experience in different countries to identify several contributing factors giving rise to disappearances in the Philippines:

A much-observed sequence of developments leads up to the occurrence of disappearances, starting with poverty and social injustice. The persistence of those conditions sooner or later induces structured opposition. Sustained inequality breeds insurgence, just as subversion leads to militarization and repression. Counterinsurgency, as a rule, is conducive to human rights violations, provoking even more terror from armed opponents. Soon, an entire country is swept into a spiral of violence, from which escape is invariably difficult. The Philippines is no exception.

The Philippines delegation to the Commission indicated that it believed the Working Group’s conclusions were far too harsh, but was evidently less offended by the report of the Special Rapporteur on Torture, who similarly indicated the persistence of serious human rights violations in the country.

B. Executions

The Special Rapporteur on Executions, S. Amos Wako, has completed his ninth year since the establishment of his mandate in 1982. The caseload

77. Id. at 30.
of the Rapporteur is becoming the largest among the thematic procedures, even though he lacks computerized support for his work; the Working Group on Enforced and Involuntary Disappearances, by comparison, has had computer support for its work for several years.

The Special Rapporteur noted a rise in the number of death threats this year, particularly aimed at human rights activists, trade unionists, teachers, lawyers, peasants, and student leaders.\textsuperscript{60} There was an alarming increase in reports of people who had died from torture, harsh prison conditions, or a lack of food, hygiene, or medical attention.\textsuperscript{81}

The Special Rapporteur commented that violent conflicts between military forces and armed opposition groups continue to proliferate, and he expressed concern about killings by military units of members of opposition groups. The Rapporteur particularly focused on the situation in Liberia: since January 1990 many civilians have died as rebel forces have entered Nimba county from outside Liberia and government forces have retaliated.\textsuperscript{82} During this period, the government has lost effective control over the actions of the troops, who reportedly, on 29 July 1990, killed some 600 civilians who had sought refuge at a church in Monrovia.\textsuperscript{83}

The Special Rapporteur commended governments that, in several cases, are now making efforts to prevent killings and follow proper legal proceedings for investigating extra-legal, arbitrary, and summary executions.\textsuperscript{84} He also recommended that a number of specific actions be taken by governments to avoid summary and arbitrary executions. He urged governments to implement all of the relevant international standards on this subject, including the new standards adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders.\textsuperscript{85} Governments should also take steps to ensure that all governmental and paramilitary forces, as well as individuals, follow these UN standards. Finally, governments should include instruction about human rights law in the training of their law enforcement and military personnel.\textsuperscript{86}

\textsuperscript{80} Id. at 146.
\textsuperscript{81} Id.
\textsuperscript{82} Id. at 147.
\textsuperscript{83} Id.
\textsuperscript{84} Id. at 148.
\textsuperscript{85} Id. at 150.
\textsuperscript{86} Id.
C. Torture

The Special Rapporteur on Torture, Peter Kooijmans (Netherlands), presented his sixth report to the Commission, revealing his correspondence with various governments on information regarding particular incidents of torture. This approach, also used in the reports of the Special Rapporteur on Executions and the Working Group on Disappearances, “provides a much more vivid picture of the practices alleged to take place in particular countries and places a greater burden on the countries in question to respond adequately to the allegations.”

The Special Rapporteur made a number of recommendations, many of which had also appeared in his earlier reports. Among these were that incommunicado detention be made illegal and that any person found in incommunicado detention be released without delay. He also recommended adoption of a new optional protocol to the Convention against Torture, which would create a monitoring body to inspect prisons and detention facilities. The report noted generally that rules now established by the international community to prevent torture need to be implemented by governments at the national level.

During the year the Special Rapporteur sent seventy urgent appeals to thirty-one countries (receiving replies from only fifteen) and carried out a mission to the Philippines in response to an invitation from that country’s government. The Special Rapporteur also requested information on measures taken by governments on the recommendations made following his visits to other countries last year; only the government of Zaire had sent its observations.

The Special Rapporteur continued this year to have informal discussions with the Chair of the Committee Against Torture. These discussions are intended to avoid duplication of activities between the Committee and the Special Rapporteur, and they also serve to make more effective the working methods of the United Nations against torture.

88. See, e.g., Brody, Parker, & Weissbrodt, supra note 1, at 583.
90. Id. at 89.
91. Id. at 6.
92. Id. at 66.
93. Id. at 87.
94. Id. at 5.
D. Mercenaries

The Special Rapporteur on Mercenaries, Enrique Bernales Ballesteros (Peru), presented his fourth annual report to the Commission on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Special Rapporteur had collected and examined information concerning the use of mercenaries in conflicts arising in the Comoros and the Maldives and in drug trafficking incidents in Colombia. He reported on his visit to the Maldives and on mercenary activities in several nations of southern Africa and Central America. The Special Rapporteur commented generally on problems associated with the protection of human rights in the face of activities of irregular armed groups and drug traffickers.

He urged prompt ratification by all countries of the new International Convention Against the Recruitment, Use, Financing and Training of Mercenaries. He also urged governments to prosecute recruiters of mercenaries in their own countries, to enact legislation to control such activities, and to cooperate with extradition efforts of other countries.

The Commission adopted without a vote a resolution thanking the Special Rapporteur for his report, calling upon countries to ratify or accede to the Convention against Mercenaries, and asking the Special Rapporteur to report again next year to both the General Assembly and the Commission on further developments in his work.

E. Religious Intolerance

The Special Rapporteur on Religious Intolerance, Angelo Vidal d’Almeida Ribeiro (Portugal), presented his fifth annual report to the Commission. Thirty-five countries had responded to the Special Rapporteur’s request for specific information concerning their religious protections and policies. The questionnaire inquired about differential treatment of religious and non-religious associations and of believers and nonbelievers, the treatment of conscientious objectors, and other subjects. Each country’s replies to the

96. Id. at 42.
97. Id. at 42–43. See G.A. Res. 44/34, U.N. Press Release GA/7977 at 590 (1990). To date only eight countries have signed, and two countries have ratified, the Convention.
101. Countries responding included Albania, the Bahamas, Bahrain, Bangladesh, Chile, China, Colombia, Cuba, Dominica, the Dominican Republic, Ecuador, Finland, Germany, Greece, Grenada, and Indonesia.
questions were printed in the Rapporteur's report. Additional responses are anticipated during the coming year, and the Rapporteur intends to provide a final report on the results in his 1992 report. He noted that most governments had denied the existence of religious strife in their countries, a situation that he found to be at odds with reports he had received over the years.\textsuperscript{102}

As in past years, the Special Rapporteur also investigated complaints concerning religious persecution in particular countries. Incidents in twenty-one countries were described in his 1991 report, including any replies received from the responsible governments. The report's most extensive investigations concerned incidents reported in China and Iran.\textsuperscript{103}

During the Commission debate concern was expressed that the Special Rapporteur had ignored violations of religious rights of indigenous peoples, and that information on this subject had not appeared in his report, despite having been submitted.\textsuperscript{104} The Commission, by unanimous resolution, encouraged the Special Rapporteur to respond effectively to credible information received in the future, and to seek the views of the government affected.\textsuperscript{105}

F. New Working Group on Arbitrary Detention

The most important single development at the 1991 session of the Commission was its unanimous decision to recommend the establishment of a new Working Group on Arbitrary Detention.

The background for the decision can be found in a number of previous separate initiatives and false starts.\textsuperscript{106} One such occurred in the 1970s, when Daniel Patrick Moynihan was the US Ambassador to the United Nations and proposed a resolution expressing opposition to the detention of prisoners of conscience. The proposal raised some concern that its adoption would launch the United Nations into an effort to define who might qualify as a prisoner of conscience—even though the statutes of Amnesty International called for it to work for the release of "prisoners of conscience," and this

\textsuperscript{102} See supra note 100, at 120.
\textsuperscript{103} Id. at 68–81, 99–106.
\textsuperscript{106} The authors wish to thank Reed Brody of the International Commission of Jurists for sharing his draft of a report on the establishment of the new Working Group for use in the preparation of this section. His report will appear in a forthcoming issue of the IC/Review.
phrase had been painstakingly developed by Amnesty International over the years. In any case, the Moynihan proposal was never brought to a vote.

Since 1984 the Canadian delegation to the Commission has drawn attention to the rights to freedom of opinion and expression, and every year the Commission has adopted a resolution proposed by the delegation. The resolutions have gradually become more assertive and have called for the release of persons detained for exercising these rights.

In 1988 the British delegation proposed the appointment of a special rapporteur on political prisoners. After consultations, however, the delegation decided to withdraw this proposal and instead, less ambitiously, proposed an alternate resolution calling for the release of political prisoners. The proposal quickly ran into difficulty: The British delegation wanted to define a political prisoner as someone who had been imprisoned for peacefully exercising his or her rights, but several delegations from African countries wanted to assure that members of liberation movements would qualify as political prisoners. In the end, a relatively weak resolution calling for the release of political prisoners was adopted by consensus, using the British definition of a political prisoner. The British delegation tried again in 1989, but failed, to convince the Commission to adopt a resolution which would bring any closer the appointment of a special rapporteur.

After the 1989 session the British delegation gave up its efforts in this field. Even though it was reportedly suggested at the time that the Commission might find it less difficult to accept a special rapporteur on arbitrary detention, that idea was apparently not pursued.

A parallel effort began in 1988, when Danilo Türk (Yugoslavia) initiated a study for the Sub-Commission on freedom of expression, which considered the imprisonment of individuals for their exercise of this freedom. In 1989 Türk proposed that Louis Joinet (France) join the study, which is ongoing.

Some human rights advocates hoped that the Türk/Joinet study would eventually propose the establishment of a thematic procedure for the protection of individuals imprisoned for exercising their right to freedom of expression. The study, however, has encountered and begun to deal with many conceptual problems inherent in freedom of expression, and it has wandered rather far afield from that initial expectation.

Meanwhile, Louis Joinet initiated another study for the Sub-Commission on administrative detention. That study was presented in 1989 but was not considered by the Sub-Commission until 1990. The Sub-Commission accepted the study and transmitted it to the Commission for consideration at

its 1991 session. Joinet's study proposed to the Commission several alter-
native methods to monitor abusive detention, including the creation of a
special rapporteur on administrative detention, a special rapporteur on all
forms of detention, or a working group of five members, each to look at a
different aspect of detention.

Since there was relatively little international consensus about the practice
of administrative detention, and since the practice was quite widespread, it
appeared more likely to establish a thematic procedure. Although the phrase
is explicitly used in Article 9 of the Universal Declaration of Human Rights108
and in Article 9 of the International Covenant on Civil and Political Rights,109
there remained some difficulty in defining "arbitrary detention."

Ultimately, the resolution which was adopted by the Commission in
1991 assigned to the new Working Group "the task of investigating cases
of detention imposed arbitrarily or otherwise inconsistently with relevant
international standards set forth in the Universal Declaration of Human Rights
or in the relevant international legal instruments accepted by the States
concerned . . . ."110

Reed Brody, of the International Commission of Jurists, worked closely
with the French delegation to the 1991 session in developing a proposal for
a thematic procedure on arbitrary detention. They considered whether to
propose a special rapporteur or a working group. Special rapporteurs are
far less expensive than working groups and can pursue their mandates in a
more flexible fashion. Nonetheless, the Working Group on Enforced Dis-
appearances has been very successful, and the appointment of a working
group represents a much greater degree of institutional commitment and
visibility than does that of a rapporteur. Further, the "expansion" and "en-
hancement" debate of the 1990 session indicated that many delegations
from nonaligned countries preferred the working group model because it
permitted regional representation.

Extensive negotiations ensued among the many delegations at the Com-
mission. The French delegation was encouraged by the Commission Chair,
who indicated that he supported the proposal for a new thematic mechanism
and would be willing to submit a Chair's draft to the Commission at his own
initiative if a consensus could be gathered. He also encouraged his delegation
from Peru to assist in achieving consensus on a draft. During the discussions

Doc. A/810 at 71 (1948). Article 9 reads: "No one shall be subjected to arbitrary arrest, detention or exile."
Doc. A/6316 (1966). Article 9(1) reads, in pertinent part: "No one shall be subjected to arbitrary arrest or detention."
the US delegation reportedly proposed once again that the Working Group focus on “political imprisonment and arbitrary arrest, detention, and exile,” but that proposal was not acceptable to the proponents of the resolution.111 The negotiators also discussed at length whether the new Working Group would have jurisdiction to consider complaints by prisoners about the fairness of judicial proceedings. In the end the word “detention” was retained, which would include individuals who were subject either to administrative detention or to sentencing by a court.

The negotiations also focused on the word “arbitrary,” which would include detention in violation of domestic legal procedures as well as international standards, as set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the governments concerned. The negotiators sought to clarify that the Working Group would be concerned with the fact, rather than conditions, of detention by stating that the Working Group would have jurisdiction over “detention imposed arbitrarily.” Finally, the resolution indicates that the Working Group can receive information from “Governments and intergovernmental and nongovernmental organizations, and . . . from the individuals concerned, their families or their representatives.”

The result of the negotiations was a draft resolution, proposed by the Chair of the Commission, for a Working Group on Arbitrary Detention. The draft resolution followed the recommendation of ECOSOC that thematic procedures be given a three-year mandate and was adopted without a vote on 5 March 1991.112

It is expected that the Working Group on Arbitrary Detention will be composed of five experts from the five regional groupings of the United Nations. They are tentatively scheduled to meet for the first time in June or July 1991. Thereafter, the Working Group will probably meet twice per year in May/June and August/September. The new Working Group represents an important step for the United Nations in increasing its protection of a broader range of human rights concerns.

G. Children

In addition to establishing the Working Group on Arbitrary Detention, the Commission continued its development of a thematic procedure begun last year on the rights of children. At its 1990 session the Commission adopted a resolution authorizing a Special Rapporteur on the Sale of Children, Child

111. This US position is reported in Reed Brody’s soon to be published article on the negotiations leading to the adoption of the new Working Group. See supra note 106.

Muntarbhorn noted in his first report that there were ambiguities in both the terms “child” and “sale” and proposed that an expansive view of the term “sale” be adopted, to include any exploitation of the child which entails “the action of another benefiting from the child in violation of his/her rights.”\footnote{116}{Id. at 2.} In the Special Rapporteur’s view, his study should therefore include adoption, child labor, organ transplantation, child prostitution, and child pornography. He noted in particular that an international seminar on child labor in September 1990, organized by Defence for Children International and the International Commission of Jurists, identified twelve contexts in which child labor may occur: armed conflicts; adult criminal activities; forced labor of abducted children; debt bondage; labor in the unorganized sector; labor in the organized sector; child prostitution, pornography, and sexual exploitation; forced marriages; disabled children in the labor force; domestic labor; apprenticeships; and family supervised labor.\footnote{117}{Id. at 3.}

Muntarbhorn noted that human rights problems associated with child labor required in particular an inter-disciplinary approach linking law, policies, and practices.

Does it suffice to stipulate a minimum age for child labor when the family is pushing the child out to work? What social welfare or subsidy is there for the parents to avoid sending the child to work and to encourage him/her to go to school? How attractive is schooling to the child or the parents when there is little to eat at home? One wonders also how and if the private sector has been catalyzed to help exert peer group pressure on members of that sector to prevent abuses.\footnote{118}{Id. at 4.}

Despite Muntarbhorn’s strong bid to include discussions of child labor in his mandate, certain members of the Commission expressed concern over
the duplication of work with other UN organs which may result. The Commission nonetheless welcomed his preliminary assessment and instructed him to continue to carry out his mandate, "taking into account the conclusions and recommendations in his report. . . ." The Commission also asked the Rapporteur to consider attending and submitting his comments to the Sub-Commission's summer 1991 meetings of the Working Group on Contemporary Forms of Slavery.

The Special Rapporteur's next report will investigate individual cases of abuse brought to his attention, but he does not yet have the authority to visit individual countries or issue urgent appeals on cases he has reviewed. It is likely, however, that his mandate will evolve, much like the other thematic procedures, to include these measures in the future. Certainly, the Rapporteur was encouraged in that direction by the decision of the Commission to extend his mandate for two years.

VII. OTHER ACTIONS OF THE COMMISSION

A. Work of the Sub-Commission

The Sub-Commission on Prevention of Discrimination and Protection of Minorities is a subsidiary body to the Commission that meets every August for four weeks. Various working groups of the Sub-Commission also meet before the August session. The Sub-Commission is composed of twenty-six independent experts, geographically distributed among the five regions of the world. Many important standards and studies used by the Commission have originated in the Sub-Commission, which is also sometimes able to comment upon critical human rights conditions in the world that the Commission is unable to address, due to lobbying and voting bloc alliances. The Sub-Commission's experts are nominated and voted upon by member states of the Commission but are at least formally "independent" and not necessarily representative of their countries' positions. The ability of the Sub-Commission to remain truly independent and not to yield to governmental pressures has sometimes been difficult.

In 1990 the Commission began the practice of electing half of the Sub-Commission's experts every even-numbered year. Hence, no Sub-Commis-
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sion elections were held in 1991. Several controversies arose, however, over the Sub-Commission's work and procedures. While resolutions supporting the Sub-Commission's activities ultimately resulted, there were indications that the body will be expected to improve its procedures and work assignments in the near future or face major reform efforts by the Commission.

1. Secret Ballots

Two years ago, during the summer of the Tiananmen Square demonstrations in China, the Sub-Commission decided for the first time to vote on particular country situations by secret ballot. Last year, during the beginnings of the Persian Gulf conflict, it was again determined that a secret ballot would help to avoid undue pressure upon the Sub-Commission's experts in their voting. The Sub-Commission proposed as a result that a permanent change to its rules of procedure be considered by the Commission in 1991, permitting secret ballots on all country-specific resolutions. To be effective, such a change would have to be approved first by the Commission and then by ECOSOC.

The resulting Commission debate, in which it was decided that the Sub-Commission was permitted only to continue to use a secret ballot on a case-by-case basis but not to make a permanent change to its rules, illustrated both the intensity of feelings at the Commission on this issue and the sophisticated procedural tactics which have begun to play a significant role in many Commission deliberations.

With the Sub-Commission's proposal before the Commission, the Cuban delegation introduced an alternative proposal to refer the matter back to the Sub-Commission for further study. The Cuban proposal would not only have had the effect of blocking the Sub-Commission's efforts to receive prompt consideration of its proposal, but some felt it would also call into question whether the Sub-Commission could utilize the secret ballot procedure at all while the matter was being "studied." By the rules of the Commission, the Cuban resolution was to be considered first and, if adopted, the Sub-Commission proposal could not be deliberated at all.

Anticipating that there might be an effort to amend its resolution, the Cuban delegation introduced its draft resolution by announcing certain amendments of its own. The delegation from France then proposed five

126. The Cuban delegation agreed to take note of the Sub-Commission's resolution 1990/4 (which had approved a secret ballot procedure by a strong majority, twenty to two, with two abstentions) and to delete a prior reference to the drafting of new rules of procedure for the Sub-Commission. Cuba also agreed to clarify the manner in which the Sub-Commission was to report back to the Commission—namely, that the Sub-Commission's Chair would report to the Commission next year.
amendments to the Cuban resolution. Cuba agreed to accept the first and third amendments but votes were eventually necessary on the second and fifth amendments (the fourth amendment was withdrawn), which were adopted. The effect of the four adopted amendments was to replace entirely the Cuban resolution with a compromise proposal permitting the Sub-Commission to continue using the secret ballot.

Cuba initially objected to the French amendments by claiming that they were not amendments at all, but rather constituted a new proposal that must wait for a separate vote. Some countries agreed, but many others said they were impatient with the arguments and desired instead to discuss the pros and cons of the secret ballot itself. The Cuban motion to block the French amendments was thus defeated by a very close vote, seventeen in favor, nineteen against, and six abstentions.

The variety of delegations who participated in the subsequent debate and the number of countries who indicated they were listening to the debate before making their decisions on how to vote were unusual. The proponents of the secret ballot argued that, due to the politically sensitive nature of the Sub-Commission’s consideration of human rights violations in specific countries, the secret ballot was necessary to protect the independence of Sub-Commission members from political pressure. Opponents either doubted that there had been pressure in the past or believed that the Sub-Commission’s experts should be strong enough not to succumb to such pressure.

Once finally voted upon, the disputed French amendments were adopted by votes of twenty-five for, six against, and twelve abstentions (second amendment) and twenty-three for, three against, and seventeen abstentions (fifth amendment). The final amended resolution, to propose to ECOSOC that the Sub-Commission be allowed to use a secret ballot when a majority so decides, passed by a vote of twenty three for, four against, with fifteen abstentions.

127. The first amendment added a specific reference to favorable provisions in a legal opinion from the International Court of Justice that had originally been noted by the Sub-Commission in its proposal. The second amendment noted that secret ballots might sometimes be required to “strengthen the independence” of the Sub-Commission experts on controversial matters involving serious human rights violations. The third amendment proposed that a more general reference (not implying the criticism originally contained in the Cuban resolution) be made to various legal opinions of the UN Legal Counsel’s office on this subject. The fourth amendment proposed that another preambulatory paragraph in the Cuban proposal be deleted (this amendment was later withdrawn). The fifth amendment replaced in their entirety the operative provisions of the Cuban resolution and substituted the new French proposal, to permit the Sub-Commission to vote on country-specific resolutions by secret ballot “when it so decides by a majority of those present and voting.”

128. Contributing to the debate were the delegations of Cuba, France, China, Belgium, Australia, India, the Philippines, Senegal, Pakistan, Ethiopia, Colombia, Germany, Canada, Portugal, and Zambia.
2. Criticism

Every year the Commission reviews the substantive work of the Sub-Commission and adopts various resolutions proposing, approving, or commenting upon its work. Nearly half of all members of the Commission intervened this year to present their views.\textsuperscript{129} The final resolutions and decisions were again quite supportive of the Sub-Commission, authorizing, for example, continued work on the right to a fair trial,\textsuperscript{130} freedom of opinion and expression,\textsuperscript{131} rights of indigenous peoples,\textsuperscript{132} independence of the judiciary,\textsuperscript{133} child labor,\textsuperscript{134} the environment,\textsuperscript{135} transnational investment in South Africa,\textsuperscript{136} minorities,\textsuperscript{137} and states of emergency.\textsuperscript{138}

The Commission, however, also encouraged the Sub-Commission to study ways and means of making its work more effective,\textsuperscript{139} and several delegations were very critical of the proliferation and duplication of its efforts. Others criticized the inability of the Sub-Commission to complete long-term projects and the inordinate amount of time spent on country-specific situations.

Among the changes suggested by various delegations: a reduction in the number of studies; removal of country-specific discussions from the Sub-Commission’s agenda; appointment of a rapporteur d’avis or commentator for each study (to offer more comprehensive comments); assignment of studies among experts more evenly, so that some do not have more responsibilities than others; allocation of more time to studies of economic and social rights; adoption each year of a “global” report on human rights.

\textsuperscript{129} At least nineteen countries intervened including Austria, Bangladesh, Brazil, Canada, China, Colombia, Cuba, Ethiopia, Germany, Hungary, India, the Netherlands, the Philippines, Poland, Portugal, the United Kingdom, the United States, and the Soviet Union.
situations, rather than country-specific resolutions (this idea was opposed by many delegations); concentration of more attention on "positive solutions" to human rights problems rather than criticisms of these problems; a requirement that the Sub-Commission report to the Commission only every two years rather than every year (it was argued that insufficient progress seems to be made over a one-year period); establishment of an open-ended working group next year at the Commission to undertake a comprehensive review of the next Sub-Commission report; establishment of intensive intersessional contacts each year between the Bureaus of the Commission and Sub-Commission, to improve coordination; a prohibition on members of Commission delegations serving as experts of the Sub-Commission; a study of ways in which the Sub-Commission could function more effectively as a think tank of ideas and proposals; encouragement of NGOs and observer governments to limit their speeches to more relevant remarks; and better coordination with the UN Crime Branch in Vienna.

The Sub-Commission's recent decision, however, to reduce from five months to three months the period required to permit government responses to 1503 complaints was not criticized (it was believed by many that the longer five month period had created serious problems of "staleness," since more than a year would then have elapsed before specific countries' situations were brought to the attention of the Commission).

B. The World Conference

The Commission resolved wholeheartedly to endorse efforts to prepare for a 1993 World Conference on Human Rights, scheduled a Conference preparatory meeting in Geneva in September 1991, and recommended objectives and procedures which should be considered in organizing the Conference.\(^4\)

The resolution was sponsored by Morocco but had what is believed to be the largest number of co-sponsors (ninety) ever collected for a resolution of the Commission. It is perhaps more significant to note, however, that the resolution did not enjoy widespread co-sponsorship support from many Middle Eastern and Islamic countries, despite Morocco's bid as host of the Conference and the fact that the prior conference, in 1968, was held in Teheran.\(^1\) Hungary has also made a bid to become the Conference host.\(^2\)

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141. Among those countries who did not co-sponsor the resolution but who were listed in the Commission's list of attendees were: Afghanistan, Albania, Algeria, Bahrain, Bangladesh*, Bhutan, Brunei, Cambodia, Czechoslovakia*, Ecuador, Ethiopia*, Gabon, Honduras, Leb-
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and Jan Martenson, Under-Secretary-General for Human Rights, has been appointed as Conference Secretary-General.143

Many consider the Conference to come at a time of major transition in the focus of international human rights work, from standard-setting to implementation. There is a concern, however, that the preparatory steps to date have not been significant enough to ensure that the Conference will be a productive forum for discussing and resolving current human rights problems.

Among subjects which have been discussed for the Conference: means for strengthening the Advisory Services program of the United Nations; greater efforts towards regional and national methods of implementing international human rights standards; increased investigatory and budgetary resources for human rights projects; greater emphasis on economic and social rights; and enhancement of the World Public Information Campaign for Human Rights.144 At least one delegation at the Commission also indicated an intention to raise the issue of “dual-role experts” (the phenomenon of individuals serving as both “independent experts” on the Sub-Commission and as their country’s representative at the Commission, General Assembly, or other UN body) at the World Conference Preparatory Meeting.145

Whether and to what extent nongovernmental organizations will be permitted to participate in the World Conference is a matter of some debate. The standard rules for UN conferences have not generally permitted NGOs to formally participate through, for example, the presentation of written and oral interventions. Nor did the 1968 Teheran Conference allow such par-

142. In a statement to the Commission on 18 February 1991, the Minister for Foreign Affairs of Hungary offered to host the Conference. U.N. Press Release HR/2734 (1991). Morocco was also known to have lobbied to be host country and, indeed, was able to assemble an impressive list of co-sponsors for its resolution on the World Conference. At least one report indicates, however, that Morocco has since indicated it is not interested in hosting the Conference. See Zoller, supra note 46, at 12.


144. In a press release issued 19 February 1991, the preliminary goals for the World Conference were announced to include: (a) to review and assess progress and identify obstacles to the enjoyment of human rights since the adoption of the Universal Declaration of Human Rights; (b) to examine the relationship between economic/social/cultural rights and civil/political rights; (c) to improve implementation of human rights standards; (d) to evaluate the effectiveness of existing UN mechanisms in the field of human rights; (e) to recommend concrete proposals for improving existing human rights monitoring and implementation mechanisms; and (f) to recommend methods of assuring adequate financial support for UN human rights activities. UN Press Release HR/2738 (19 Feb. 1991).

145. This comment was raised by Colombia during the Commission’s debate on the secret ballot procedure for the Sub-Commission.
HUMAN RIGHTS QUARTERLY

C. Delay of the Draft Declaration on Disappearances

In 1990 the Sub-Commission adopted a draft Declaration on the Protection of All Persons from Enforced or Involuntary Disappearances and transmitted it to the Commission on Human Rights, with the recommendation that it be endorsed and transmitted to the Economic and Social Council and the General Assembly for final adoption.

The twenty-two-article draft not only prohibits disappearances but sets forth various measures which states should take to ensure that disappearances do not occur, and, if they do occur, what measures should be taken to investigate and punish them. The draft has several key points: the “systematized” practice of enforced or involuntary disappearance is characterized as “a crime against humanity”; the absolute character of the prohibition of disappearance is reaffirmed, as several non-derogable rights are involved; habeas corpus shall not be suspended as a means of identifying the whereabouts of detainees; detainees shall be held in officially recognized places of detention and be brought promptly before a judge; states shall thoroughly investigate alleged disappearances and protect witnesses; a state in which a person accused of an act of disappearance is found must either bring to

146. However, NGOs were permitted to attend the 1968 Conference and are normally permitted to attend other UN conferences in an “observer” or “public” gallery of the conference room.
147. See Zoller, supra note 46, at 12.
148. Id.
trial or extradite the accused ("universal jurisdiction"); disappearances are
to be considered extraditable offenses; and no statute of limitations or am-
nesty may apply.

Several delegations at the Commission expressed concerns about aspects
of the draft declaration, including the provision for universal jurisdiction and
that making disappearances a crime against humanity. The Commission
decided to establish an open-ended working group, which will meet in
November 1991 to consider the draft declaration, in the expectation that
the declaration will be ready for adoption by the Commission in 1992.149

D. Fair Trial

The Sub-Commission proposed to the Commission that Stanislav Cherni-
chenko (Soviet Union) and William Treat (United States) be authorized to
pursue a study on the right to a fair trial. The right to a fair trial has been a
norm of international human rights law for at least forty years. A substantial
jurisprudence has developed elaborating and interpreting this right, but rela-
tively little research has been undertaken to analyze its developing content.
The Commission received a preliminary paper by Chernichenko and Treat
which reviewed the treaties and other instruments defining attributes of the
right to a fair trial. A resolution was adopted without a vote recommending
to the Economic and Social Council that the study by the two Rapporteurs
be pursued.150

E. Advisory Services

The Commission welcomed the increasing number of requests from gov-
ernments for support in the field of human rights.151 They also welcomed
the establishment of an advisory group to help the Under-Secretary-General
with human rights projects.152 In particular, the Commission adopted resolu-
tions on a program of advisory services and technical assistance in Guate-
mala, Equatorial Guinea, and Paraguay.153

There is increasing disappointment, however, over the practice of dis-
cussing, under the advisory services item of the Commission's agenda, coun-

152. Id.
153. Id. at 2.
tries who clearly have serious human rights problems. In addition to allowing an artificial “victory” to countries keeping themselves under this agenda item rather than the country-specific item 12, this practice threatens to undermine the advisory services item's credibility and stigmatize it for countries that genuinely seek such services. The additional recent criticisms from donor countries that voluntary funds were being used in counterproductive ways has, however, apparently been resolved through more careful accounting and allocation of projects.

Where advisory services have been made available to governments who repeatedly fail to use such funds or who fail to invite advisory services personnel to their country, there has been increasing discussion that perhaps NGOs in those countries should be offered such funds.

F. Draft Declaration on Minorities

A draft declaration on the rights of persons belonging to national, ethnic, religious, and linguistic minorities had been discussed for several years at the Commission. In 1990 the open-ended Working Group established to review this matter finally issued a draft declaration, which it then submitted to national governments for their comments. Comments were received from twelve countries, as well as various intergovernmental and nongovernmental organizations. A parallel effort to agree upon standards at the Conference on Security and Cooperation in Europe (CSCE) has enjoyed more success; the CSCE's Vienna Concluding Document of 1989 contains stronger and perhaps more useful commitments for the protection of minorities than does the Commission draft. An additional CSCE conference on minorities was scheduled to be held in Geneva during the summer of 1991.

The Commission Working Group will meet for two additional weeks in December 1991 in an attempt to conclude a second reading of the draft declaration. Chief among the concerns expressed about the present draft: whether to define the term “minority,” and, if so, what the appropriate definition should be; whether the draft should be strengthened, beyond measures to simply prevent discrimination, to promote and enhance the


155. The CSCE Meeting was to be of experts on national minorities from the member governments of the CSCE. The meeting was scheduled as a part of the conclusions and recommendations in the CSCE's “Charter of Paris for a New Europe,” signed on 21 November 1990. See Press Release, International Service for Human Rights, CSCE: Meeting of Experts on National Minorities—Geneva, 1–19 July 1991 (Mar. 1991).

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separate identities of minorities through the preservation of separate cultures and languages; and whether minority rights should be thought of only as collective rights or also as individual rights.\textsuperscript{157}

The Commission in a related resolution also endorsed further work by the Sub-Commission on ways and means to facilitate the peaceful and constructive solution of problems involving minorities.\textsuperscript{158}

G. Other

In other actions, the Commission adopted resolutions on hostage-taking, the independence of the judiciary, internally displaced persons, mass exoduses, the right to development, human rights and the environment, toxic wastes, the debt burden, the mentally ill, and the imprisonment of UN staff members. Additionally, the Commission expressed concern about the impact of drug-traffickers and armed groups on the protection of human rights. It urged ratification of the Convention against Torture, the Convention on the Rights of the Child, the Convention against Mercenaries, and the Convention on Migrant Workers. A new Special Rapporteur was appointed to study the right to property.\textsuperscript{159} And the Commission reaffirmed that UN efforts for human rights should be guided by principles of non-selectivity, impartiality, and objectivity, and should not be used for political ends.

VIII. CONCLUSION

The 1991 session was productive for the Commission on Human Rights. The new Working Group on Arbitrary Detention and the country rapporteurs on Iraq, Iraqi-occupied Kuwait, and Cuba should furnish important reports to next year’s session. The developing mandate of the Special Rapporteur on the Sale of Children and the Secretary-General’s report on internally displaced persons may also result in new thematic subjects or broader mandates before the Commission in coming years. The enlargement of the Commission next year will undoubtedly affect the Commission’s ability to adopt certain types of resolutions—most notably country-specific resolutions. Finally, the upcoming World Conference on Human Rights may prove to be an important and effective forum for discussing and improving human rights monitoring mechanisms.