

Violations of international human rights

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"DISAPPEARANCES" AND POLITICAL KILLINGS: HUMAN RIGHTS CRISIS OF THE 1990s

A MANUAL FOR ACTION

Chapter G-2

"Disappearances" and extrajudicial executions as violations of international human rights

Pre-Publication Version

July 1993

Chapter G-2

"Disappearances" and extrajudicial executions as violations of international human rights

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This is a pre-publication version of Chapter G-2 of the Amnesty International report *"Disappearances" and Political Killings: Human Rights Crisis of the 1990s - A Manual for Action*. Reference is made in this chapter to **Chapter G-6**, "Action through the United Nations and regional institutions", which is being issued in a pre-publication version at the same time.

Chapter G-2

"Disappearances" and extrajudicial executions as violations of international human rights

1. The rise of international human rights standards

"Everyone has the right to life, liberty and security of person."
-Universal Declaration of Human Rights, Article 3

"Disappearances" and extrajudicial executions are not only acts of extreme cruelty, violating the laws of the countries where they are perpetrated; they also violate international standards on human rights. The development of these standards since the Second World War has been one of the great achievements of the world community. These standards have proved invaluable to organizations defending human rights in different countries.

The United Nations (UN), formed at the end of the war, was concerned with human rights from the outset. In the **Charter of the United Nations**, adopted in 1945, the member states of the UN pledged to work for the achievement of "universal respect for, and observance of, human rights ..." - a great new goal.ⁱ Three years later those rights were spelled out in the **Universal Declaration of Human Rights** ("Universal Declaration"), adopted without dissent and proclaimed by the UN General Assembly on 10 December 1948. Its 30 articles list the rights to which everyone is entitled, set forth "as a common standard of achievement for all peoples and all nations".ⁱⁱ

The adoption of the Universal Declaration was an immensely important event. By adopting it, the governments of the world, represented at the UN, agreed that everyone is entitled to fundamental human rights.ⁱⁱⁱ These rights apply everywhere, not just in those countries whose governments may choose to grant them. It follows from this that all governments must protect the rights of people under their jurisdiction, and that a person whose human rights are violated has a claim against the government which violates them.^{iv} Furthermore, the fact that governments together adopted the Universal Declaration means that violations of human rights are of concern to all governments, not just to the governments of the countries where they occur.

The Universal Declaration states that "Everyone has the right to life, liberty and security of person" and that no one shall be subjected to torture or to arbitrary arrest or detention.^v These rights had been violated on a massive scale in the Second World War, and a major goal in the UN's human rights effort was to ensure that such atrocities should not be repeated.^{vi}

Since 1948, international standards for the protection of human rights have been strengthened through the adoption of successive instruments^{vii} in the UN. The drafting of such instruments is always a matter of intense discussion over what should or should not be included. Amnesty International and other human rights organizations have persistently urged governments to adopt texts giving the strongest possible protection against human rights violations.

In 1966 the UN adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.^{viii} These two key instruments elaborate on many of the rights contained in the Universal Declaration. The **International Covenant on Civil and Political Rights** reiterates the right to life, liberty and security of person and prohibits, in particular, the arbitrary deprivation of life - a characteristic of the killings described in this report.^{ix}

Over the next decades, the UN adopted further international instruments on particular types of human rights violations or on human rights in relation to particular professions or in particular circumstances. Two of these, adopted recently, are of special importance:

- The **Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions** (cited below as the "Principles on Extra-Legal, Arbitrary and Summary Executions"). These were drafted by the UN Committee on Crime Prevention and Control, adopted by the Economic and Security Council in 1989 and endorsed by the General Assembly the same year. (The term "extra-legal, arbitrary and summary executions" embraces what Amnesty International refers to as extrajudicial executions.)^x

- The **Declaration on the Protection of All Persons from Enforced Disappearance** ("Declaration on Disappearances"),^{xi} adopted without a vote by the General Assembly in 1992 after consideration by the UN Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities.^{xii}

Together with the human rights treaties adopted regionally and the international humanitarian law which regulates the conduct of armed conflict (see below), these international instruments firmly establish the prohibition of "disappearances" and extrajudicial executions and specify detailed measures for their prevention.

2. The prohibition of "disappearances" and extrajudicial executions under international standards

"No state shall practise, permit or tolerate enforced disappearances."

-UN Declaration on the Protection of All Persons from Enforced Disappearance ("Declaration on Disappearances"), Article 2

"Governments shall prohibit by law all extra-legal, arbitrary and summary executions ... "

-UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Article 1

"Disappearances" and extrajudicial executions are clear violations of fundamental rights proclaimed in the

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earliest human rights instruments adopted by the UN.^{xiii} More recently, the prohibition has been spelled out in the two instruments cited above.

Article 3 of the Universal Declaration of Human Rights states: "Everyone has the right to life, liberty and security of person." These rights are violated when "disappearances" and extrajudicial executions are perpetrated.

- Extrajudicial executions clearly violate the right to life. Other rights also are often violated in cases of extrajudicial executions: often, for example, the victims are made to "disappear" or tortured before being killed.^{xiv}
- "Disappearances" violate the right to liberty and security of person as well as the right not to be subjected to torture or cruel, inhuman or degrading treatment as provided under Article 5 of the Universal Declaration. They also violate or constitute a grave threat to the right to life.^{xv}

The rights to life, liberty and security of person are reiterated in the International Covenant on Civil and Political Rights. Any state party to the International Covenant which permits its officials to engage in "disappearances" or extrajudicial executions has violated the obligations which it agreed to fulfil in becoming a party to this treaty.

Article 6 of the International Covenant, providing for the right to life, states further: "No one shall be arbitrarily deprived of his life." This prohibition of the arbitrary deprivation of life is important because it helps to distinguish extrajudicial executions from killings which are not, or have not yet been, forbidden^{xvi} under international human rights standards such as killings resulting from the use of reasonable force in law enforcement (see below, section 3), killings in armed conflict not forbidden under the international laws that regulate the conduct of such conflicts (see section 4), and the use of the death penalty in cases where internationally established procedural safeguards and restrictions are observed.^{xvii}

The International Covenant on Civil and Political Rights has the formal force of a treaty: a state's act in becoming a party to it is in effect a promise to other states parties to abide by its provisions. Although the Universal Declaration does not have the formal force of a treaty, and is therefore not legally binding in and of itself, it has become so widely recognized and accepted since its adoption that it should be regarded as obligatory for all states.^{xviii} Whether or not they are parties to the International Covenant, all states must be regarded as obliged to refrain from "disappearances" and extrajudicial executions as violations of the rights to life, liberty and security of person.

The United Nations adopted its first resolutions expressing general concern about "disappearances" and extrajudicial executions in 1978 and 1980 respectively.^{xix} Further discussions over the years led to the adoption of the Declaration on Disappearances and the Principles on Extra-Legal, Arbitrary and Summary Executions, spelling out the prohibition of "disappearances" and extrajudicial executions as quoted above, and providing that "disappearances" and extrajudicial executions must not be committed at any time, including a state of war, a threat of war, internal political instability or any other public emergency.^{xx}

3. Prohibition of arbitrary killings by law enforcement officials

"Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."

- UN Code of Conduct for Law Enforcement Officials, Article 3

The work of a law enforcement official is fraught with danger. Sometimes an officer is obliged to use force, and sometimes the use of force results in a killing. Some killings by law enforcement officials are unavoidable because of the officers' need to protect their own lives and their mission to protect the lives of others. But as this report shows, many officers in different countries have carried out killings which are unlawful and deliberate.

Some killings are done in secret. Others are presented as lawful, the outcome of the justifiable use of force by officers in the performance of their law enforcement duties. How should such claims be assessed?

An important international standard on the use of force in law enforcement was established by the UN General Assembly in 1978 when it adopted the **Code of Conduct for Law Enforcement Officials**. Article 3 of the Code sets forth two important principles:

- Force should be used "only when strictly necessary". The official Commentary included in the Code says that the use of force should be "exceptional", that force should be used only "as is reasonably necessary under the circumstances" and that it should be used for only two purposes, "the prevention of crime" and "effecting or assisting in the lawful arrest of offenders or suspected offenders".
- The force used should be proportional to the objectives (it should be used only "to the extent required" for the performance of law enforcement officials' duty). The Commentary acknowledges the "principle of proportionality" laid down in national laws and says that the Code should not be taken to authorize the use of force which is "disproportionate to the legitimate objective to be achieved".

The Commentary singles out the use of firearms for special attention. The use of firearms is to be considered "an extreme measure"; every effort should be made to exclude their use, especially against children. The purposes for which firearms may be used are narrower than for the use of force overall: in general, firearms should not be used "except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender".^{xxi}

These principles set forth in the Code of Conduct were developed further in the UN **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**, adopted in 1990. Here the use of firearms is restricted to a series of situations involving the "imminent threat of death or serious injury" or "grave threat to life", and "only when less extreme means are insufficient" to achieve the objectives specified. Furthermore, the "intentional lethal use of firearms" is to be made "when strictly unavoidable in order to protect life." The phrase "strictly unavoidable" implies that lesser means should be used first and that firearms should not be used before lesser means have proved insufficient to protect life.^{xxii}

The Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and

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Firearms by Law Enforcement Officials provide detailed standards against which the facts of a particular killing can be assessed. If the actions of the officer who committed the killing exceeded the limits laid down in these instruments, the killing should be considered arbitrary and in violation of the prohibition of arbitrary deprivation of life as established in Article 6 of the International Covenant on Civil and Political Rights.^{xxiii}

4. Prohibition of "disappearances" and extrajudicial executions in war

"Grave breaches [of the Convention] ... shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing ..."

- Geneva Conventions of 1949^{xxiv} (referring to international armed conflicts)

"...the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to [persons taking no active part in the hostilities]: (a) violence to life and person, in particular murder of all kinds..."

- Article 3 common to the Geneva Conventions of 1949 (referring to non-international armed conflicts)

Public dismay at the sufferings inflicted in warfare has given rise since the mid-19th century to efforts to restrict the horrors of war through international law. One branch of the laws of armed conflict which have been developed through these efforts deals with the protection of actual or potential victims of war; it is often referred to as the "international humanitarian law" of armed conflict. Its most recent expression is in the four **Geneva Conventions** of 1949, supplemented by the two **Additional Protocols** adopted in 1977.^{xxv} The Geneva Conventions and the Additional Protocols are binding on all states which become parties to them.

The Geneva Conventions set forth detailed rules of behaviour to protect actual or potential victims of war. Each Convention covers a specific class of "protected persons" - wounded and sick members of the armed forces on land; wounded, sick and shipwrecked members of the armed forces at sea; prisoners of war, and civilians respectively.

The Geneva Conventions do not outlaw war, but they provide that people not involved in the fighting are to be treated humanely. Enemy soldiers may be killed in combat, but a soldier who has been captured or, having laid down their arms, seeks to surrender, or has been put out of action through sickness, wounding or shipwreck, is protected by the Geneva Conventions and must not be killed. Nor may a country at war kill civilians protected by the Fourth Geneva Convention - nationals of an adversary country who are in its territory or a territory occupied by it.^{xxvi}

Extrajudicial executions constitute "wilful killings" and are thus "grave breaches" of the Geneva Conventions under the provisions cited above, if perpetrated in an international armed conflict against persons protected by the Conventions.^{xxvii} "Disappearances" also violate various provisions of the Conventions.^{xxviii}

Like earlier formulations of the laws of armed conflict, the Geneva Conventions of 1949 apply to international conflicts - wars between nations - but in an important innovation, Article 3, a text common

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to all four Conventions, extends to "armed conflict not of an international character"^{xxxix} a list of fundamental rules for the protection of persons not, or no longer, taking an active part in the hostilities, which each party to the conflict is "bound to apply, as a minimum". "(V)iolence to life and person, in particular murder of all kinds" is prohibited "at any time and in any place whatsoever with respect to the above-mentioned persons".

Thus the prohibition of wilful killing of protected persons in *international* wars is extended to the prohibition of killing of people who have ceased taking or do not take an active part in hostilities^{xxx} in *internal* armed conflicts - a category of conflict which can be taken to include some of the worst situations of "disappearances" and political killings. Furthermore, under the terms of common Article 3, this prohibition of deliberate and arbitrary killings in internal armed conflicts applies not only to government forces but to all parties to such conflicts including armed opposition groups. This prohibition is binding on all states parties to the Geneva Conventions; according to common Article 3, other parties to an internal conflict are also bound to apply its provisions, and several such parties in recent conflicts have formally declared that they will do so.

The Geneva Conventions are widely accepted as binding standards of behaviour which must be observed in armed conflict.^{xxxi} No government would claim that it has the right to kill prisoners of war or civilians protected under the Geneva Conventions. At the same time, parallel to the development of the laws of armed conflict, successive human rights instruments adopted by the UN have made it clear that certain fundamental human rights, such as the right to life and with it the prohibition of arbitrary deprivation of life, must be respected in time of war as in peacetime.^{xxxii}

The laws of armed conflict and the human rights standards developed at the UN reinforce each other. "Disappearances" and extrajudicial executions are prohibited at all times.

5. War crimes, crimes against humanity and genocide

Under certain circumstances "disappearances" and extrajudicial executions may constitute war crimes, crimes against humanity, or acts of genocide. These phrases convey strong condemnation, but what is important in terms of bringing those responsible to justice are the legal consequences if a crime is included in one or another of these categories.^{xxxiii}

Legal consequences of war crimes, crimes against humanity and genocide include the following:

- The crimes are not subject to any statute of limitations.^{xxxiv}
- The alleged perpetrators cannot claim asylum in another country.^{xxxv}
- Other states may be able, or may even be required, to bring the perpetrators to justice if they are outside the country where the crime was committed and regardless of the nationality of the perpetrator or the victim.^{xxxvi}
- The perpetrators cannot escape conviction by claiming that they were acting under orders.^{xxxvii}

The three categories apply to different circumstances.

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- **War crimes** consist of violations of the laws of armed conflict. They include the crimes defined as "grave breaches" of the Geneva Conventions of 1949, including "wilful killing" of protected persons as well as "unlawful confinement" and "unlawful deportation or transfer" of protected civilians (see above, section 4).^{xxxviii}
- **Crimes against humanity** can be committed either in wartime or in peacetime.^{xxxix} They include the crimes listed as such in the Charter of the International Military Tribunal set up at the end of the Second World War to try major war criminals of the European axis (the Nuremberg Tribunal), including "murder, extermination, ... deportation and other inhumane acts committed against any civilian population". Since then the concept of crimes against humanity has broadened.^{xl} The definition of crimes against humanity would appear to include both the systematic practice of "disappearances" and the systematic practice of extrajudicial executions.^{xli}
- **Genocide** is a type of crime against humanity.^{xlii} Under the Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention"), adopted by the UN in 1948, genocide consists of acts intended "to destroy, in whole or in part, a national, ethnical, racial or religious group, as such", including killing members of the group, causing them "serious mental or bodily harm", or forcibly transferring their children to another group, whether such acts are committed in time of peace or war. This definition would include both extrajudicial executions and "disappearances" if committed with the intention specified above.^{xliii}

Despite the many hundreds of thousands of "disappearances" and extrajudicial executions perpetrated since the Second World War, governments have hitherto made little use of the provisions of international law on war crimes, crimes against humanity or genocide in combating these practices. In May 1993, however, the UN Security Council decided to establish an International Tribunal to prosecute persons responsible for war crimes, crimes against humanity, genocide and other violations of the laws and customs of war in the former Yugoslavia.^{xliv} The Tribunal had not started its work at the time of writing of this report.

6. Regional standards

Complementing the worldwide scope of the United Nations, governments in different regions of the world have created organizations where their representatives meet to discuss matters of regional concern, including human rights. Three of these "regional intergovernmental organizations" have adopted human rights treaties which are legally binding on the states in those regions which become parties to them.^{xlv} They are the **European Convention for the Protection of Human Rights and Fundamental Freedoms** ("European Convention on Human Rights"), which was signed in 1950 and entered into force in 1953; the **American Convention on Human Rights**, which was adopted in 1969 and entered into force in 1978; and the **African Charter on Human and Peoples' Rights**, which was adopted in 1981 and entered into force in 1986.^{xlvi}

Like the International Covenant on Civil and Political Rights, all three treaties provide for the right to life and, in particular, the right not to be arbitrarily deprived of life. All three provide for the right to liberty and security of person, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment and the right not to be subjected to arbitrary arrest or detention. "Disappearances" and extrajudicial executions are clearly prohibited, just as they are under the Universal Declaration of Human Rights.^{xlvii}

Each of the three regional treaties provides for the establishment of institutions to supervise its implementation. The activities of these and other regional institutions in combating "disappearances" and extrajudicial executions are described in Chapter G-6.

7. National law

Even if international human rights standards had not been developed, "disappearances" and extrajudicial executions would be unlawful. They violate national law.

Extrajudicial executions violate national laws proscribing murder and other unlawful homicide. Depending on the details of the case, a "disappearance" violates national laws such as those against unlawful detention and kidnapping or abduction. Other laws also are often violated in cases of "disappearances" and extrajudicial executions.

Many countries now have constitutional provisions spelling out basic human rights. "Disappearances" and extrajudicial executions violate certain of these rights, and thus violate these constitutions.

What this all means is that officials who order, carry out, conspire to carry out, acquiesce in, or cover up "disappearances" or extrajudicial executions are violating their countries' own laws. Government officials responsible for "disappearances" and extrajudicial executions are violating the very laws which they are supposed to uphold.

8. The implementation of international standards

We now come to one of the key questions of this report. "Disappearances" and extrajudicial executions violate internationally established human rights - yet these horrendous practices continue. How can they be stopped? To put it another way: how can international standards prohibiting "disappearances" and extrajudicial executions be implemented? How can principles be turned into action? What should be done to ensure that the rules established by the UN and regional intergovernmental organizations and the rules of international humanitarian law are respected?

The UN should not be thought of as merely a source of rules on human rights. The need for action is inherent in the existence of the United Nations. One of the purposes of the UN, listed in Article 1 of the UN Charter, is "To achieve international cooperation ... in promoting and encouraging respect for human rights", while in Article 56 of the Charter, all UN member states "pledge themselves to take joint and separate action" in cooperation with the UN for the achievement of "universal respect for, and observance of, human rights". One of the first results of this international cooperation was the adoption of the Universal Declaration of Human Rights, setting forth basic standards. It is a list of rules, but action also is contemplated; the Preamble to the Universal Declaration calls for every individual and organ of society "by teaching and education to promote respect for these rights" and "by progressive measures, national and international, to secure their universal and effective recognition and observance".

The International Covenant on Civil and Political Rights, setting forth rights which are violated in the perpetration of "disappearances" and extrajudicial executions, includes a requirement that states parties to the Covenant implement the standards contained in that treaty. Under Article 2, each state party undertakes "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the

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rights recognized in the present Covenant". Each state party also undertakes to adopt the "legislative or other measures" needed to give effect to the rights recognized in the Covenant. Moreover, each state party undertakes to ensure that anyone whose rights are violated "shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity".

The first substantial resolutions adopted by the UN on "disappearances" and extrajudicial executions set forth specific actions which governments should take. Resolution 33/173 on disappeared persons, adopted by the General Assembly on 20 December 1978, called upon governments "to devote appropriate resources" to searching for the disappeared, "to undertake speedy and impartial investigations", and to ensure that law enforcement and security agencies are "fully accountable", including "legal responsibility for unjustifiable excesses" which might lead to disappearances.^{xlviii} Two years later, a resolution on extra-legal executions adopted by the Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders called on all governments "to take effective measures to prevent such acts".^{xlix}

In its efforts to secure the implementation of human rights standards, the UN has taken a number of approaches.

- It has adopted **instruments** specifying measures which governments should take to protect human rights and prevent specific types of violations. Thus, for example, both the Declaration on Disappearances and the Principles on Extra-Legal, Arbitrary and Summary Executions call on the authorities to conduct impartial investigations into complaints and reports of these abuses, to bring the alleged perpetrators to trial and to establish specific safeguards for the prevention of these abuses. The measures specified in these instruments are phrased as rules ("Governments shall prohibit...", "Each State shall ensure..."), constituting further standards which in turn have to be implemented.
- It has called for the instruments and the provisions therein to be **made known**, to be included in the **training** of the relevant officials, and to be incorporated in **national legislation**.
- It has established **institutions** and **procedures** to monitor compliance with the standards, to make recommendations and to take action.
- It has made resources available through UN **public information** offices and **technical assistance** programs.

These approaches provide many opportunities for non-governmental organizations wishing to combat "disappearances" and extrajudicial executions. One must not forget, however, that the basic responsibility for action is with governments. Just as governments are acting unlawfully in ordering "disappearances" and extrajudicial executions or allowing them to be perpetrated, so governments must be pressed to end this lawless situation and uphold human rights. First and foremost, it is a matter of political will.

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Notes

Appendices

International Instruments Relating to the Prohibition of "Disappearances" and Extrajudicial Executions

Appendix 1. Universal Declaration of Human Rights (extracts)

Article 3

Everyone has the right to life, liberty and security of person.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Appendix 2. International Covenant on Civil and Political Rights (extracts)

Article 6 (extract)

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. ...

Article 7 (extract)

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. ...

Article 9 (extract)

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. ...

Appendix 3. Geneva Conventions (extracts)

a. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949

Article 50 (extract)

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment...¹

b. The four Geneva Conventions of 12 August 1949

Article 3 common to the four Geneva Conventions (extract)

In the Case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture...

Appendix 4. Code of Conduct for Law Enforcement Officials (extract)

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary

a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a

¹This identical language appears in the First Geneva Convention, Article 50, the Second Geneva Convention, Article 51, and the Third Geneva Convention, Article 130. The Fourth Geneva Convention, Article 147, contains the same text with the additional word "present" before the word "Convention" ("... protected by the present Convention").

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principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportional to the legitimate objective to be achieved.

c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

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Appendix 5. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders on 7 September 1990)

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Appendix 6. Declaration on the Protection of All Persons from Enforced Disappearance (adopted by the UN General Assembly without a vote on 18 December 1992 in resolution 47/133)

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Appendix 7. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (adopted by the UN Economic and Social Council on 24 May 1989 in resolution 1989/65 and endorsed by the UN General Assembly on 15 December 1989 in resolution 44/162)

i Charter of the United Nations, Articles 55-56. Article 1 of the Charter establishes that one of the purposes of the United Nations is "(t)o achieve international co-operation...in promoting and encouraging respect for human rights".

ii Universal Declaration, Preamble.

iii "Everyone is entitled to all the rights and freedoms set forth in this Declaration..." (Universal Declaration, Article 2).

iv Article 8 of the Universal Declaration of Human Rights proclaims the right of everyone to an effective remedy before the national courts for violations of such fundamental rights as have been "granted him by the constitution or by law". The International Covenant on Civil and Political Rights goes further by providing for the right to an effective remedy for violations of the internationally recognized human rights set forth in the Covenant. See below, section 8.

v The provisions of the Universal Declaration and other international instruments relating to "disappearances" and extrajudicial executions are reproduced in the appendices to this chapter. The texts of the Universal Declaration and the two International Covenants are widely available; they are reproduced, for example, in "The International Bill of Human Rights", *Human Rights Fact Sheets* series, No. 2, UN Centre for Human Rights, Geneva, 1988, and in UN Centre for Human Rights, *Human Rights; A Compilation of International Instruments*, UN Sales No. E.88.XIV.1, United Nations, New York, 1988.

vi As Nigel S. Rodley has written, "assaults on the inherent dignity of human beings were recognized as being relevant to the stability of the international order" in the linking of references to the determination of the peoples of the United Nations "(t)o save succeeding generations from the scourge of war" and "to reaffirm faith in fundamental human rights". Rodley points out that after the Second World War "It became clear to the Allied Powers who founded the United Nations that no peace could be secure where governments were free to break and obliterate their own people. Where there is no restraint at home, no limit to the exercise of official power, there need be none such abroad either. And law could not just rest at addressing the behaviour of a state beyond its frontiers. International law could no longer just be the law regulating behaviour between states, it had also to concern itself with what went on within them." Nigel S. Rodley, *The Treatment of Prisoners under International Law*, UNESCO, Paris, Clarendon Press, Oxford, 1987, pages 1-2.

vii In this report, the term "international instrument" refers to documents setting forth rules of behaviour which have been officially adopted by the UN or other intergovernmental organizations such as the Organization of American States or the Council of Europe. They range from resolutions *recommending* certain behaviour to treaties which *require* states parties to comply with them. The term "international standard" is used in this report to refer to the rules of behaviour contained in international instruments.

viii The two International Covenants entered into force in 1976.

ix An important feature of the International Covenant on Civil and Political Rights is that it establishes a Human Rights Committee to supervise the implementation of the Covenant. An important related treaty is the first Optional Protocol to the Covenant which provides for individuals to submit complaints to the Human Rights Committee of violations of the rights set forth in the Covenant. These and other mechanisms for the international enforcement of human rights are described in Chapter G-6. As of 6 April 1993, 116 states were parties to the International Covenant and 67 were parties to the first Optional Protocol. Amnesty International regularly urges all states to become parties to the Covenant and the first Optional Protocol, as well as to its second Optional Protocol, which provides for the abolition of the death penalty.

x While most of the leading instruments on human rights have emerged through the UN Commission on Human Rights, several important instruments including the Principles on Extra-Legal, Arbitrary and Summary Executions have been developed by UN bodies responsible for criminal justice matters - the former Committee on Crime Prevention and Control and the quinquennial Congresses on the Prevention of Crime and the Treatment of Offenders. The Congresses bring together police and prison officials, prosecutors, judges and other national officials dealing with criminal justice, as well as non-governmental organizations. Human rights instruments adopted through these bodies can be considered to have the backing, not only of governments, but more specifically of the officials who are professionally responsible in their countries for seeing that the law is carried out. (For more information on the UN criminal justice program and its work on human rights, see Manuel Lopez-Rey, *A Guide to United Nations Criminal Policy*, Cambridge Studies in Criminology, No. 54, Gower, Aldershot, UK and Brookfield, Vermont, USA, 1985; Rodley, *op. cit.*)

The initiative for the drafting and adoption of the Principles on Extra-Legal, Arbitrary and Summary Executions came from non-governmental organizations, particularly the Minnesota Lawyers International Human Rights Committee, which had developed a model protocol for the investigation of suspected extrajudicial executions. Amnesty International contributed suggestions on measures for the prevention of extrajudicial executions. The background to the development of the Principles is described in UN Centre for Social Development and Humanitarian Affairs, *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, United Nations, New York, 1991, UN Sales No. E.91.IV.1. The *Manual* also contains important standards for the investigation of suspected extrajudicial executions.

xi "Disappearances" are usually referred to in UN texts as "enforced disappearances" (or "enforced or involuntary disappearances" in earlier texts).

xii The initiative for the Declaration came from a number of non-governmental organizations which believed there was a strong need for an international instrument to address specifically this grave form of human rights violation. The Declaration was drafted by the Working Group on Detention of the Sub-Commission on Prevention of Discrimination

and Protection of Minorities. The UN Working Group on Enforced or Involuntary Disappearances contributed suggestions. The fact that the Declaration was adopted by the General Assembly without a vote is a sign of strong agreement, in that no UN member state wanted to go on record as opposing it.

Other important UN instruments relevant to the prevention of "disappearances" and extrajudicial executions include the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and endorsed by the UN Economic and Social Council in 1957, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in 1988. For the text of the Standard Minimum Rules, see *Human Rights; A Compilation of International Instruments*, *op. cit.* The text of the Body of Principles is reproduced in the *Amnesty International Report 1989*, Amnesty International Publications, London, 1989, Appendix IX.

xiii Article 1 of the Declaration on Disappearances states that any act of enforced disappearance "is condemned as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights ...". The 1989 UN resolution whereby the Principles on Extra-Legal, Arbitrary and Summary Executions were adopted states that "... extra-legal, arbitrary and summary executions contravene the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights" (Economic and Security Council resolution 1989/85 of 24 May 1989 on the effective prevention and investigation of extra-legal, arbitrary and summary executions).

xiv In that the victim is executed without any judicial proceedings, he or she can be said to have been deprived of the right to a fair and public trial as provided in the Universal Declaration of Human Rights, Article 10. More broadly, an extrajudicial execution entails the violation of all human rights, since a person deprived of the right to life is no longer able to exercise any other right.

xv These rights are cited in Article 1 of the UN Declaration on Disappearances. The Declaration also cites the right to recognition as a person before the law. Like the right to life and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right to recognition as a person before the law may never be derogated from under the International Covenant on Civil and Political Rights (see below, note 32).

xvi One scholar, in a discussion of the meaning of "arbitrary" deprivation of life, has proposed four principles which can be invoked to assess claims that a deprivation of life is justified under international standards. First, the deprivation must purport to have a legal basis; second, it must be a proportionate response in the circumstances; third, the question of justification of a deprivation of life must be subject to an independent judicial process; fourth, deprivation of life may be justified only in defence of life. C.K. Boyle, "The Concept of Arbitrary Deprivation of Life", in B.J. Ramcharan, ed., *The Right to Life in International Law*, Nijhoff, Dordrecht, the Netherlands, 1985, pages 221-244.

xvii International safeguards and restrictions on the death penalty are set forth in Article 6 of the International Covenant and in the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984 (reproduced in *Human Rights; A Compilation of International Instruments*, *op. cit.*) However, Amnesty International holds that the death penalty itself violates the right to life as well as the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment. See Amnesty International, *When the State Kills... The Death Penalty v. Human Rights*, Amnesty International Publications, London, 1989. Article 6 of the International Covenant, while not prohibiting the death penalty, states that "Nothing in this article shall be invoked to delay or to prevent" the abolition of the death penalty.

xviii According to the Proclamation of Teheran, adopted and proclaimed by the International Conference on Human Rights, convened by the UN in Iran in 1968, "The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community" (emphasis added; for the text of the Proclamation of Teheran, see *Human Rights; A Compilation of International Instruments*, *op. cit.*) Moreover, the fact that the Universal Declaration has been accepted by so many states gives it considerable moral and political weight. The provisions of the Universal Declaration have been cited as the justification for numerous UN actions and have inspired or been used in many international conventions and national constitutions and laws. See "The International Bill of Human Rights", *op. cit.*, pages 8, 16-20; also "Human Rights; Questions and Answers", UN Department of Public Information, New York, 1987.

xix See Chapter G-6, sections 4, 5.

xx Declaration on Disappearances, Article 7; Principles on Extra-Legal, Arbitrary and Summary Executions, principle 1.

xxi The text of the Code of Conduct for Law Enforcement Officials is reproduced in *Human Rights; A Compilation of International Instruments*, *op. cit.* Article 3 and the Commentary to it are reproduced in the appendices to this chapter.

xxii For further discussion of international standards on the use of force by law enforcement officials, see Amnesty International, *Political Killings by Governments*, Amnesty International Publications, London, 1983, pages 90-92; Rodley, *op. cit.*, 1987, pages 148-152, 282.

The Basic Principles also contain valuable provisions on the issuing of firearms and on controls over their use. See the appendices to this chapter for the text of the Basic Principles.

xxiii The link between the disproportionate use of force and the arbitrary character of a killing was established by the

Human Rights Committee set up under the International Covenant on Civil and Political Rights in the case of *Guerrero (Camargo) v. Colombia* (45/1979). The case concerned a woman who was one of seven people shot dead by police in a house in Colombia in 1978. In its decision issued in 1982 the Committee found that the police action "was apparently taken without warning to the victims and without giving them any opportunity to surrender...", and it found "no evidence that the action of the police was necessary in their own defence or that of others, or that it was necessary to effect the arrest or prevent the escape of the persons concerned". The Committee concluded that the police action "was disproportionate to the requirements of law enforcement in the circumstances of the case and that she was arbitrarily deprived of her life contrary to article 6 (1)" of the International Covenant. (*Report of the Human Rights Committee*, UN General Assembly, Official Records, 37th session, Supplement No. 40 (A/37/40), 1982, Annex XI, paragraphs 13.2, 13.3; Rodley, *op. cit.*, pages 149-150)

xxiv This identical language appears in the First Geneva Convention, Article 50, the Second Geneva Convention, Article 51, and the Third Geneva Convention, Article 130. The Fourth Geneva Convention, Article 147, contains the same text with the additional word "present" before the word "Convention" ("... protected by the present Convention").

xxv Like the Universal Declaration of Human Rights, the Geneva Conventions of 1949 were an outgrowth of the horrors of the Second World War. Additional Protocol I of 1977 develops the protection of victims of international armed conflicts, while Additional Protocol II develops and supplements the provisions for the protection of victims of internal armed conflicts contained in common Article 3 of the Geneva Conventions.

For an account of the development of international humanitarian law and its philosophical basis, see Geoffrey Best, *Humanity in Warfare: The Modern History of the International Law of Armed Conflicts*, Weidenfeld and Nicolson, London, 1980. For an introduction to the Geneva Conventions and Additional Protocols, see Frits Kalshoven, *Constraints on the Waging of War*, International Committee of the Red Cross, Geneva, 1987.

xxvi The death penalty is not excluded, but its use is surrounded by stringent restrictions and safeguards, including a six months' delay in the carrying out of a death sentence. The provisions of the Geneva Conventions and the Additional Protocols relating to the death penalty are reproduced in Amnesty International, *When the State Kills... The Death Penalty v. Human Rights*, *op. cit.*, Appendix 6 pages 247-249.

xxvii "Grave breaches" of the Geneva Conventions are war crimes. See below, section 5.

xxviii The "disappearance" of a prisoner of war would violate various provisions of the Third Geneva Convention, including the prisoner's right to notify his or her family and the Central Prisoners of War Agency (in practice, the Central Tracing Agency of the International Committee of the Red Cross, located in Geneva) immediately upon capture or transfer to another camp (Article 70), the right of correspondence (Article 71), and - ultimately - provisions for the prisoner's release and repatriation after the cessation of active hostilities (Article 118). The "disappearance" of a civilian protected by the Fourth Geneva Convention would probably be considered "unlawful confinement" and possibly also "unlawful deportation or transfer", constituting a grave breach of the Convention (Rodley, *op. cit.*, page 198). (The scope of transfers prohibited in the Fourth Geneva Convention is enlarged in Article 85 of Additional Protocol I of 1977.) Other acts prohibited in the Geneva Conventions may also be involved in cases of "disappearances", including "wilful killing, torture or inhuman treatment", which are forbidden as grave breaches of the four Conventions. If these provisions did not suffice, "disappearances" as well as extrajudicial executions would be banned under Article 1, paragraph 2 of Additional Protocol I: "In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."

xxix The notion of "non-international" or internal armed conflict typically applies to armed confrontations between governmental armed forces and organized, armed opposition groups which occur exclusively within the territory of a particular state. Such conflicts also include those in which two or more armed factions within a country engage in hostilities without the involvement of governmental forces, such as when the established government has dissolved or is too weak to intervene.

xxx Persons protected by common Article 3 include wounded, sick or captured combatants as well as civilians taking no active part in the hostilities.

xxxi The vast majority of states are parties to the Geneva Conventions, and the majority are parties to the Additional Protocols. As of 10 March 1993, 177 states were parties to the Conventions, 121 to Additional Protocol I and 112 to Additional Protocol II. (A list of states parties to the Conventions and the Additional Protocols is published each year in the Annual Report of the International Committee of the Red Cross (ICRC), available from the ICRC in Geneva.) UN bodies have cited the Conventions and Additional Protocols and have urged states to ratify or be guided by them. See "International Humanitarian Law and Human Rights", *Human Rights Fact Sheets* series, No. 13, UN Centre for Human Rights, Geneva, 1988.

xxxii Under Article 4 of the International Covenant on Civil and Political Rights, states parties may derogate from certain obligations under the Covenant "(i)n time of public emergency which threatens the life of the nation", but no derogation is permitted from Article 6, which provides for the right to life and prohibits the arbitrary deprivation of life; from Article 7, prohibiting torture and cruel, inhuman and degrading treatment or punishment; or from Article 16, guaranteeing the right to recognition as a person before the law. The UN has adopted resolutions affirming that fundamental human rights must be respected in situations of armed conflict. The UN Declaration on Disappearances

(Article 7) and the UN Principles on Extra-legal, Arbitrary and Summary Executions (principle 1) state that circumstances such as a state of war, threat of war, internal political instability or other public emergency must not be invoked as a justification for "disappearances" or for extra-legal, arbitrary or summary executions.

xxxiii A crime in any of these categories is a crime under international law. Different bodies of international law designate various crimes as crimes under international law and specify how they should be prosecuted.

xxxiv The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted by the UN General Assembly in resolution 2391 (XXIII) of 26 November 1968, provides that no statutory limitation shall apply to war crimes or crimes against humanity as defined in the Convention, or to genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide. The text of the Convention on the Non-Applicability of Statutory Limitations is reproduced in *Human Rights; A Compilation of International Instruments, op. cit.*

xxxv The Declaration on Territorial Asylum, adopted by the UN General Assembly in resolution 2312 (XXII) of 14 December 1967, states: "The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity..." Similarly, the 1951 UN Convention relating to the Status of Refugees excludes from the category of refugees covered by the Convention "any person with respect to whom there are serious reasons for considering that: (a) He has committed a crime against peace, a war crime, or a crime against humanity..." The texts of these two instruments are reproduced in *Human Rights; A Compilation of International Instruments, op. cit.*

xxxvi On crimes against humanity, there are provisions for cooperation between states in the Principles of International Co-operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes against Humanity adopted by the UN General Assembly in resolution 3074 (XXVIII) of 3 December 1973 (the text is reproduced in *Human Rights; A Compilation of International Instruments, op. cit.*) The Principles state that the alleged perpetrators shall "as a general rule" be tried "in the countries in which they committed those crimes", but they do not exclude trial in another country.

xxxvii This principle was established by the Nuremberg trials. For further discussion of the legal consequences of "disappearances" and extrajudicial executions under international law, see Rodley, *op. cit.*, pages 154-158, 205-207.

xxxviii The Geneva Conventions have special provisions regarding the crimes designated as "grave breaches" of the conventions. States parties to the Conventions are required to provide effective penal sanctions in law for these crimes, to "search for persons" alleged to have committed or ordered them, and to bring the alleged offenders, regardless of nationality, before their own courts or to hand them over for trial to another state party (Kalshoven, *op. cit.*, page 68). In other words, grave breaches of the Geneva Conventions are subject to universal jurisdiction - the possibility of bringing those responsible to justice wherever they are.

xxxix The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity applies to crimes against humanity "whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly". Thus, in adopting this Convention, the General Assembly expressly recognized as a principle of international law that crimes against humanity could be committed in peacetime.

Although the above-mentioned International Military Tribunal interpreted its jurisdiction over crimes against humanity under its Charter to extend only to crimes committed during time of war, nothing in the Charter, the Judgment of the Tribunal or the two 1946 UN General Assembly resolutions endorsing the principles of law established in the Charter and the Judgment of the Tribunal should be read to suggest that crimes against humanity cannot be committed during peacetime. Other military tribunals set up after the Second World War under Allied Control Council Law No. 10 to try Axis defendants convicted some of them for crimes against humanity committed before the Second World War. Furthermore, international conventions against *apartheid* and genocide, both of which are considered crimes against humanity, apply to acts committed during peacetime as well as wartime.

xl The 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity includes genocide and inhuman acts resulting from *apartheid* in the list of crimes against humanity. See also M. Cherif Bassiouni, *Crimes against Humanity in International Law*, Nijhoff, Dordrecht, the Netherlands, 1992.

According to the UN Secretary-General's report on the legal basis for establishing an international war crimes tribunal for the former Yugoslavia, "Crimes against humanity refer to inhumane acts of a very serious nature, such as wilful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. In the conflict in the territory of the former Yugoslavia, such inhumane acts have taken the form of so-called 'ethnic cleansing' and widespread and systematic rape and other forms of sexual assault including enforced prostitution." (UN Security Council, *Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993)*, UN document No. S/25704, 3 May 1993, paragraph 48).

The Statute of the International Tribunal on war crimes in the former Yugoslavia, as set forth in the same document (paragraph 49) and approved by the Security Council in resolution 827 of 25 May 1993, lists under the heading *Crimes*

against humanity "the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecutions on political, racial and religious grounds; (i) other inhumane acts."

xli In a resolution adopted on 17 November 1983, the General Assembly of the Organization of American States declared that "the practice of the forced disappearance of persons in the Americas....constitutes a crime against humanity" (Spanish: "que la práctica de la desaparición forzada de personas en América....constituye un crimen de lesa humanidad") (Resolution 666 (XIII-0/83) on the Annual Report of the Inter-American Commission on Human Rights). This position was supported by the Parliamentary Assembly of the Council of Europe, which in resolution 828 adopted on 26 September 1984 called for the adoption of a UN declaration recognizing enforced disappearances as a crime against humanity. However, the final text of the UN Declaration on Disappearances goes only so far as to say that the systematic practice of enforced disappearances are is "of the nature of" a crime against humanity.

xlii Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, Article I (b).

xliii One weakness of the Genocide Convention is that political and other groups are not included among the listed categories of potential victims. For an account of the drafting of the Convention, see Leo Kuper, *Genocide*, Penguin Books, London, 1981.

xliv Security Council resolution 827 (1993), adopted unanimously on 25 May 1993. The categories of crimes covered by the Tribunal are set forth in Articles 2-5 of the Tribunal's Statute as approved by the Security Council (*Report of the Secretary-General*...., *op. cit.*, S/25704).

Amnesty International has made a series of recommendations aimed at enabling the Tribunal to carry out its task fairly and effectively. See Amnesty International, "Memorandum to the United Nations: The question of justice and fairness in the international war crimes tribunal for the former Yugoslavia", AI Index: EUR 48/02/93, April 1993. In Amnesty International's view, the Tribunal should be a step towards establishing a permanent international criminal court able to try cases involving gross violations of human rights and the international humanitarian law of armed conflict wherever they occur (see Chapter G-6, section 11).

xlvi Two other regional intergovernmental organizations have begun drafting human rights instruments. The League of Arab States is drafting an Arab Charter on Human Rights in the form of a treaty with a supervisory body, but it has not yet been adopted. The Organization of the Islamic Conference has drafted the Cairo Declaration of Human Rights in Islam, which is a declaration of principles rather than a legally binding treaty. It has been approved at the foreign minister level but has not been approved at the head of state level. Both instruments in their current form would provide significantly less protection for human rights than other regional and international instruments.

xlvi The regional organizations corresponding to these treaties are the Council of Europe, the Organization of American States (OAS) and the Organization of African Unity (OAU). All states belonging to the Council of Europe either are parties to the European Convention on Human Rights (having ratified or acceded to it) or have signed it, indicating their intention to become parties. As of mid-May 1993, 24 member states of the OAS had ratified or acceded to the American Convention on Human Rights and 49 OAU member states were parties to the African Charter on Human and Peoples' Rights.

xlvi "Disappearances" and extrajudicial executions are also forbidden under the American Declaration of the Rights and Duties of Man. Article 1 of the American Declaration states: "Every human being has the right to life, liberty and the security of his person." The Declaration was adopted in 1948 at the international conference in Bogotá which created the Organization of American States (OAS). The rights set forth in it are normative standards for all OAS member states whether or not they are parties to the American Convention on Human Rights.

xlviii For the text of this resolution, see Amnesty International USA, *'Disappearances': A Workbook*, Amnesty International USA, New York, 1981, Appendix, pages 167-168.

xlix See Chapter G-6, section 5.