

Action through the UN and regional institutions

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

A MANUAL FOR ACTION

Chapter G-6

**Action through the United Nations
and regional institutions**

Pre-Publication Version

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Chapter G-6

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Chapter G-6

Action through the United Nations and regional institutions

1. Intergovernmental action: hopes and obstacles

The United Nations (UN) was formed in the hope that through this organization, governments could work together to resolve their differences peacefully and avoid war, of which memories in 1945 were only too painful. Human rights were a concern from the outset. Human rights had been violated on a massive scale in the Second World War, and violations of human rights had been integral to the policies which brought about the war. Such atrocities were not to be repeated in the new order which the UN was intended to create. The UN Charter contains an implicit assertion which was made explicit in the Universal Declaration of Human Rights three years later: the observance of human rights is of fundamental importance for the stability of the international order.¹

Since 1945 the UN has taken several kinds of action on human rights:

- It has adopted treaties, resolutions and other instruments setting forth **standards** on human rights and on the measures to be taken to prevent or remedy violations of these rights. (See Chapter G-2.) (This area of activity is often called "standard-setting".)
- It has adopted resolutions expressing concern about **human rights violations in particular countries** and requesting the government in question to take remedial action.
- It has set up subsidiary **bodies** and **procedures** for dealing with human rights or has entrusted special assignments to **individual experts** (often called "Special Rapporteurs") or **working groups** of individual experts from outside the UN Secretariat. Depending on their terms of reference, action taken through these means has included studying allegations of human rights violations (sometimes through on-site investigations) and reporting back to the UN, and raising allegations of individual cases of human rights violations with the government concerned.
- It has set up **programs** for disseminating information about human rights, conducting training sessions and seminars, and advising governments on human rights matters.
- It has made **studies** of human rights topics, often paving the way for later action.

During the past few years another kind of action has been added:

- Setting up on-site operations to **monitor** and press for the observance of human rights as part of a

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peace process designed to prevent or end fighting within a country, or independently of UN peacekeeping activities.

Since the Second World War, intergovernmental organizationsⁱⁱ whose concerns include human rights have been set up in several regions of the world. Three of them - the **Organization of American States**, the **Council of Europe** and the **Organization of African Unity** - have adopted regional human rights treaties (see Chapter G-2, section 6). Other regional intergovernmental organizations whose concerns include human rights are the **European Community**, the **Conference on Security and Cooperation in Europe**, the **League of Arab States**, the **Organization of the Islamic Conference**, the **Commonwealth** and the **Francophonie**. These organizations are enabled to take action on human rights issues in countries in their regions, and sometimes they have acted on human rights issues in countries outside the region also. (In Asia and the Pacific, no similar organizations have yet been created.)

Questions of human rights come up at periodic meetings of UN bodies and regional intergovernmental organizations. Some of these bodies meet annually, some more often. At such meetings the members of these bodies (usually governmental representatives) decide what action to take.

The most important UN organs, those with the greatest decision-making power, are political bodies composed of UN member states, and the representatives of those states who attend them act on the basis of instructions from their home capitals. Many subsidiary tasks are entrusted to individuals or groups of individuals acting in their personal or professional capacity (they are usually called "**independent experts**"). Although some independent experts are in fact obliged by their governments to follow instructions, many are able to bring their own convictions and expertise to bear on a problem without having to sacrifice principle to state interests. Thanks to this independence and to their high qualifications, individual experts and expert groups have made many important contributions to the UN work for human rights.

In the development of activities on human rights in the UN and regional intergovernmental organizations, a key role has been played by "**non-governmental organizations**" (NGOs) - voluntary organizations, human rights groups, professional associations and other non-official organizations. NGOs have eloquently made known their concerns, calling for action. They have supplied the UN with details of many thousands of cases of horrific human rights violations. They have come up with proposals for action which were later adopted in the UN. They have contributed to standard-setting.

At the main UN meetings where human rights matters are considered, NGOs are very much in evidence, voicing their concerns and urging governments to act. Many NGOs having an international scope have been recognized under UN rules as being in "consultative status" with the UN Economic and Social Council, giving them the right to make statements at certain times during the meetings. Even if an NGO is not in consultative status with the Economic and Social Council, its representatives can attend as members of the public and can submit information through established UN procedures as described below.

Governments are naturally loath to have the UN or other inter-governmental organizations take any action implying that they have been deficient in their obligation to respect human rights. From a government's point of view, a public statement by a UN body that human rights have been violated can cause problems. Because of the authority of the UN and the implied censure from other governments, such a statement will be welcome to the government's opponents. It can make other governments wary of close dealings with the government concerned, affecting diplomatic relations, foreign aid and trade. If a UN body takes some action such as the appointment of a Special Rapporteur on the situation of human rights in the

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country, the matter will come up again at future sessions of the same body, causing further problems.ⁱⁱⁱ On the other hand, UN attention to particular human rights issues may provide assistance to those within a government who seek to abolish abusive practices, as well as support to victims seeking domestic remedies to human rights violations.

Lacking the means to force a government to comply with its recommendations, the UN works either by persuasion behind the scenes (through confidential communications) or through public action with the attendant implied threat of embarrassment. Governments intent on violating human rights will work hard to block either form of action. If a UN body is considering a draft resolution stating or implying that a country has violated human rights, the government and its allies will try to weaken the resolution or prevent its passage^{iv}. If human rights violations are being considered under a confidential procedure, the government will try to have the item dropped. The government and its representatives will deny the accusations, denounce those who make them, and fail to cooperate with requests for information from UN bodies. When new instruments for the protection of human rights are being considered for possible adoption, various governments will try to weaken their provisions, fearing that these may one day be used to embarrass them or curtail their powers.^v

Many people blame the UN for being ineffective. As a general rule, it is not the UN which is at fault: the fault is with its member states, violating human rights, which manoeuvre strenuously to block action, and other member states who side with them, putting perceived national interest ahead of agreed human rights requirements.^{vi} The UN should be seen credited for its victories for human rights - partial victories often, but victories nonetheless, sometimes in the face of strong resistance from some of its member states.^{vii}

Discussions of human rights matters in the UN often amount to a battle between certain governments wishing to take action and others determined to block progress. Nationally, governments which engage in "disappearances" and extrajudicial executions ensure impunity by undermining the country's remedial institutions; internationally they escape criticism by undermining the capacity of the UN to act.

2. UN Commission on Human Rights

The **Commission on Human Rights** is the main UN body dealing primarily with human rights. It consists of representatives of 53 UN member states elected to three-year terms. The Commission meets annually in Geneva for six weeks, beginning in late January or early February. The Commission takes certain decisions on its own, while on other matters it forwards its recommendations to its parent body, the Economic and Social Council, for decision.^{viii}

The Commission on Human Rights was established in 1946 under the terms of the UN Charter.^{ix} Its first great achievement was the preparation of a draft text of the Universal Declaration of Human Rights, followed by draft texts of the two International Covenants on human rights.

In the 1970s the Commission began turning its attention to categories of severe human rights violations (beginning with torture) and situations of human rights violations in specific countries. On "disappearances" and extrajudicial executions, two of the Commission's key actions have been the establishment of the Working Group on Enforced or Involuntary Disappearances in 1980 and the Special Rapporteur on summary or arbitrary executions in 1982 (see below). Other important actions have included the appointment of Special Rapporteurs on specific countries and the confidential review of country situations under the so-called "1503 procedure".

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The fact that the UN can now act in response to individual complaints of human rights violations is a considerable advance. Soon after the UN was established, people began writing to it claiming that their human rights or the rights of others had been violated, but in 1947 the Commission on Human Rights resolved that it had no power to take any action on any complaint, and its view was endorsed by the Economic and Social Council later in the year.^x This lamentable decision remained in force until 1967, when the Economic and Social Council, in resolution 1235 (XLII), established a procedure on the basis of which the Commission holds a public debate each year focusing on situations of gross human rights violations.^{xi} Parallel to this new possibility for public action, a confidential procedure for action in response to complaints was established three years later in Economic and Social Council resolution 1503 (XLVIII).

Under the "**1503 procedure**" (so called after the number of the Economic and Social Council resolution which established it), the Working Group on Communications of the Commission on Human Rights' Sub-Commission on Prevention of Discrimination and Protection of Minorities meets each year before the Sub-Commission's annual session to review the complaints of human rights violations received by the UN and select those which "appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms" to be referred to the Sub-Commission.^{xii} The Sub-Commission then meets in closed plenary session and decides which of these situations to refer to the Commission on Human Rights.

At its next session the Commission on Human Rights, acting on the recommendations of its Working Group on Situations, listens in closed session to the statements of government representatives on the country situations under review and decides what action to take. Such actions may include conducting a "thorough study" of the situation; setting up an *ad hoc* investigatory body; establishing "direct contacts" with the government through a representative of the Commission or of the UN Secretary-General; dropping its examination of the situation; or transferring its consideration of the situation to the Commission's public procedure, where the Commission can take public action (see below). The 1503 procedure does not provide redress for individual victims of human rights violations.

After the Commission each year has finished its confidential consideration of country situations under the 1503 procedure, the Chairman of the Commission announces publicly which country situations remain under consideration and which have been dropped from consideration. Since 1980 several countries with bad records of "disappearances" and/or extrajudicial executions have been examined under the 1503 procedure.^{xiii}

The comments made by members of the Commission on Human Rights under the 1503 procedure can constitute pressures on the government concerned, but because the procedure is confidential at all stages, it is impossible to judge what effect if any these pressures have in stopping "disappearances" and extrajudicial executions. People who submit complaints under the procedure are never informed what action if any has been taken in response.

Sometimes consideration under the 1503 procedure is followed by **public action** by the Commission on Human Rights, and consideration under the 1503 procedure does not preclude public action being taken at the same time. Forms of public action may include passing a resolution which expresses concern and recommends remedial measures, and the appointment of a Special Rapporteur who may visit the country to examine the situation and report back to the Commission the next year, ensuring further discussion. These authoritative expressions of UN concern reinforce the efforts of human rights organizations to stop human rights violations in a country.

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In 1992, for instance, the Commission decided to transfer its consideration of **Myanmar** from the confidential 1503 procedure to the public procedure. (Amnesty International had submitted information under the 1503 procedure and had campaigned in 1990-91 to draw attention to its concerns in Myanmar, including thousands of people being shot dead by soldiers.) Under the public procedure, the Commission adopted a resolution (number 1992/58) expressing concern at "the seriousness of the human rights situation in Myanmar" and deciding to appoint a Special Rapporteur on Myanmar. Speaking immediately before the passage of the resolution, the observer from Myanmar told the Commission that the resolution was totally unacceptable, unbalanced, negative and a blatant attempt to interfere in Myanmar's internal affairs.

In 1993 the Special Rapporteur on Myanmar recommended that an international human rights monitoring team be allowed access to the Myanmar border area "in light of the seriousness of the refugee and repatriation problem, and the grave threat this situation poses to the physical integrity of Myanmar ethnic and racial minorities..." (There were reports of many "disappearances" and arbitrary executions, he noted; some 250,000 Muslims had been forced to flee the country, and the Myanmar authorities were not permitting the UN to monitor the safety of those who had been repatriated, giving rise to "fears of a resurgence of cyclical repression of these Myanmar Muslims".)^{xiv} The Commission on Human Rights did not act on this recommendation, but decided (in resolution 1993/73) to extend the mandate of the Special Rapporteur for another year.

Another example is that of **Sudan**, considered under the 1503 procedure between 1991 and 1993, when the Commission decided to transfer its consideration to the public procedure. Since the 1989 military coup Amnesty International had been publicizing serious and widespread human rights violations in Sudan, including "disappearances" and extrajudicial executions. In a resolution adopted in 1993 (number 1993/60), the Commission called among other things for the authorities to investigate the deaths of Sudanese employees of foreign relief organizations and decided to appoint a Special Rapporteur on Sudan.

In 1993 the Commission on Human Rights also adopted resolutions on, among other countries, **Togo** (number 1993/75), the former **Yugoslavia** (1993/7) and **Zaire** (1993/61). Each of these resolutions referred to situations in which extrajudicial executions have been perpetrated, although none of the resolutions referred to killings explicitly. The Commission also adopted a resolution on **Iraq** in 1993 (number 1993/74) requesting the UN Secretary-General to send human rights monitors "to such locations as would facilitate improved information flows and assessment", a proposal first made by Amnesty International in 1991. But the members of the Commission on Human Rights have failed over the years to agree to take action on other persistent situations of "disappearances" and extrajudicial executions, including those in Colombia and Peru.

The meetings of the Commission on Human Rights are public, except when it meets in closed session under the 1503 procedure. Non-governmental organizations in consultative status with the Economic and Social Council may be present in the meeting room as observers; others wishing to follow the sessions may watch from the public gallery as may the news media. Many human rights organizations attend these meetings to urge the members of the Commission to defend human rights in different countries^{xv}.

3. UN Sub-Commission on Prevention of Discrimination and Protection of Minorities

The **Sub-Commission on Prevention of Discrimination and Protection of Minorities** is a subsidiary body of the Commission on Human Rights. Unlike its parent body, its 26 members (elected to four-year terms) are independent experts serving in their individual capacity. Originally formed in 1947 to deal with the two issues described in its title, the Sub-Commission has expanded its role over the years to become one of the most productive UN bodies dealing with human rights.

Starting in 1954, the Sub-Commission has made a series of **studies** on specific human rights questions.^{xvi} Typically the task is entrusted to a member of the Sub-Commission. Using information from governments and other sources, the author analyzes the problem in depth and makes recommendations such as measures to be taken or a new instrument to be developed. Sub-Commission studies of importance for the prevention of "disappearances" and extrajudicial executions have included those on the independence of the judiciary (by L.M. Singhvi and by Louis Joinet), on states of emergency (by Nicole Questiaux and by Leandro Despouy), on amnesty laws (by Louis Joinet), and the study now in progress on the right to compensation (by Theo van Boven).

The Sub-Commission has also prepared **drafts** of instruments on human rights for eventual adoption by the UN, although the drafts are sometimes weakened when they come under scrutiny by higher UN bodies attended by official representatives of governments.^{xvii} The UN Declaration on the Protection of All Persons from Enforced Disappearance ("Declaration on Disappearances") is an example.

Another important function of the Sub-Commission is to refer situations of gross violations of human rights to the Commission on Human Rights under the "1503 procedure", as described above. The Sub-Commission also adopts **resolutions** concerning human rights violations in particular countries.

The Sub-Commission meets annually for four weeks, beginning in early August. As with the Commission on Human Rights, its meetings are public except when it meets in closed session under the 1503 procedure. Non-governmental organizations in consultative status with the UN Economic and Social Council may be in the meeting room as observers and may make statements, while others wishing to follow the session may watch from the public gallery as may the news media. Many human rights organizations from around the world attend each year to observe the meetings and urge the Sub-Commission members to take up their concerns.

4. UN Working Group on Disappearances

In the half century since the founding of the United Nations, "disappearances" are generally considered to have emerged as a serious human rights problem with the advent of this terrible practice in Guatemala in 1966.^{xviii} It was not until the late 1970s that the problem came under sustained discussion at the UN, chiefly through the reports of the Commission on Human Rights' Working Group on the situation of human rights in Chile (where many people "disappeared" after the 1973 coup) and in response to the reports of "disappearances" in Argentina which began to reach the outside world after the military coup of 1976. In 1978 the UN General Assembly adopted a resolution which among other things requested the Commission on Human Rights "to consider the question of disappeared persons with a view to making

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appropriate recommendations".^{xix} The Commission at its next session (1979) was unable to resolve its members' divergent views on what to do about the problem, but the Sub-Commission on Prevention of Discrimination and Protection of Minorities, meeting later in the year, came up with a proposal to create a group of experts empowered to contact the governments concerned. In 1980, after a tense debate, the Commission on Human Rights decided to establish a **Working Group on Enforced or Involuntary Disappearances**.^{xx} Since then this group (referred to below as the "Working Group on Disappearances") has become one of the most innovative UN bodies dealing with human rights violations.

The Working Group on Disappearances consists of five people serving as experts in their individual capacity. The group has a broad mandate "to examine questions relevant to enforced or involuntary disappearances of persons". In carrying out its mandate, the group is to "seek and receive information from Governments, intergovernmental organizations, humanitarian organizations and other reliable sources". It reports annually to the Commission on Human Rights.^{xxi}

Since its inception the Working Group on Disappearances has developed a range of activities.

- The group meets to receive and examine **reports on individual cases of "disappearances"** submitted by relatives of missing persons or organizations acting on their behalf. After determining whether these reports comply with certain formal criteria, the Working Group transmits individual cases to the governments concerned, requesting them to carry out investigations and to inform the group about their results.
- In order to avoid any delays in its endeavour to save lives, the Working Group has devised an **"urgent action procedure"** by which its chairman is authorized between sessions of the group to transmit reports to governments in cases of "urgent reports...requiring immediate action".^{xxii}
- If a government responds, the Working Group may send the response to the original complainant for their comments.
- In response to growing intimidation and harassment of relatives, lawyers and members of human rights organizations, the Working Group has recently established a procedure of **"prompt intervention"** in "cases of intimidation or reprisal concerning relatives of missing persons, lawyers in cases of disappearance, witnesses to such cases, non-governmental organizations which regularly provide the Working Group with information on disappearances, and persons involved in the identification of corpses found in unmarked graves which are alleged to be those of missing persons."^{xxiii}
- In transmitting cases to governments, the Working Group mentions the possibility of a **visit** by members of the group to the country concerned. Such visits have been described by the Working Group as "a preferred option for assessing the overall situation of disappearances in a given country".^{xxiv} Its most recent reports on country visits contain analyses of the institutional and legal framework which facilitates the perpetration of "disappearances", along with evaluations of the successes and shortcomings of governmental initiatives to tackle the problem.^{xxv} The Working Group's reports on country visits can lead to attempts in the Commission on Human Rights to take further action regarding the countries in question.

Since its formation the Working Group has visited Peru (in 1985 and 1986), Guatemala (in 1987), Colombia (in 1988), the Philippines (in 1990) and Sri Lanka (in 1991 and 1992).

- The Working Group meets representatives of governments of the countries to which it has sent cases.

It has also held **meetings with representatives of national groups** and international human rights organizations concerned about "disappearances". In its annual reports to the Commission on Human Rights the Working Group gives an account of what was said at these meetings, and in its first two reports it annexed reports or excerpts of statements by national groups.^{xxvi}

- The Working Group has made valuable **comments** on general aspects of "disappearances", such as the problem of impunity and the need for effective *habeas corpus* procedures.^{xxvii} It has contributed to the development of international standards on the prevention of "disappearances", including the UN Declaration on Disappearances.

The Working Group's annual **reports** to the Commission on Human Rights give many details of the Group's activities. The reports convey a sense of the problem worldwide, although the number of cases received by the Working Group is inevitably only a fraction of the true total of "disappearances" perpetrated. In its report for 1992, for example, the Working Group disclosed that it had received allegations of "disappearances" from 58 countries since its formation in 1980 and that it was currently following up 31,106 unresolved cases. During 1992, it had continued to process a backlog of some 12,000 reports submitted to it in 1991 and had received some 10,000 new cases from 36 countries. The report contained individual entries on 58 countries with information on its efforts to obtain clarification from the governments concerned, including statistics for each country on the number of new cases, the number of outstanding cases and the number of cases clarified by the government's responses or by non-governmental sources.^{xxviii}

The Working Group has repeatedly stressed the right of families to learn what has happened to their relatives. In line with this humanitarian concern, the group has refrained from accusing governments, adopting instead a non-judgmental approach to secure the cooperation of governments in clarifying the facts.^{xxix} Yet the group has not refrained from naming the governments contacted and giving details of cases in its reports to the Commission on Human Rights. The ability to combine humanitarian action with public disclosure is a tribute to the skill of the Working Group over the years.

5. UN Special Rapporteur on summary or arbitrary executions

UN attention to the problem of extrajudicial executions came slightly later than on "disappearances". The first substantial action was the adoption of resolution 5 on "extra-legal executions" by the Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders in 1980. In this resolution the Congress deplored and condemned the killing of political opponents or suspected offenders by governmental agencies or others acting with their support, and called on governments to prevent such acts.^{xxx} By then the massive killings perpetrated in Uganda, Democratic Kampuchea (Cambodia) and other countries in the 1970s were becoming widely known.^{xxxi} Later in 1980, the General Assembly adopted a resolution on "arbitrary or summary executions" urging UN member states to observe internationally recognized procedural safeguards and restrictions in death penalty cases.^{xxxii} These two concerns - extrajudicial executions and executions in death penalty cases in violation of international standards - came together in 1982 when the Commission on Human Rights decided to recommend the appointment of a Special Rapporteur to examine questions related to "summary or arbitrary executions". The recommendation was accepted by the Economic and Social Council later in the year and the first Special Rapporteur, S. Amos Wako, was appointed.^{xxxiii}

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Since 1982 the **Special Rapporteur on summary or arbitrary executions** has developed a range of activities similar to those of the Working Group on Disappearances:

- Receiving complaints of extrajudicial executions and of executions or death sentences in violation of international standards, and **sending the complaints** to the government concerned with a request for clarification;
- Sending **urgent messages** to the government concerned in cases of "an imminent extrajudicial, summary or arbitrary execution [or] death threats";^{xxxiv}
- **Visiting** countries where there have been allegations on matters within his mandate, and reporting to the Commission on Human Rights on his findings and recommendations. The Special Rapporteur has visited Suriname (in 1984 and 1987), Uganda (in 1986), Colombia (in 1989) and Zaire (in 1991). In 1992, together with the UN Special Rapporteur on the former Yugoslavia, he visited the former Yugoslavia, and in the first half of 1993 he visited Rwanda and Peru;
- **Commenting** on general aspects of the problem of extrajudicial executions;
- Contributing to the development of **international standards** for the prevention of extrajudicial executions.

Like the Working Group on Disappearances, the Special Rapporteur submits a long **report** to the Commission on Human Rights each year, full of details of his activities. His report for 1992, for example, contained individual entries on 75 countries with information on his communications with the governments concerned, often giving details of individual cases. Although many governments did not reply to his inquiries, others did, indicating for example that they had arrested and brought charges against people allegedly responsible for "disappearances" and killings and had provided police protection for people receiving death threats concerning whom the Special Rapporteur had made inquiries.^{xxxv} In several of the country entries the Special Rapporteur offered his own observations on the replies received from governments and on the measures taken by them. These observations indicate that the Special Rapporteur will not be satisfied by a government merely giving vague general answers to specific allegations of extrajudicial executions.^{xxxvi}

The Working Group on Disappearances and the Special Rapporteur on summary or arbitrary executions are often referred to as "**theme mechanisms**". In contrast to the Special Rapporteurs on individual countries appointed by the Commission on Human Rights, they deal with issues or "themes" on a worldwide basis. Like the Special Rapporteurs on countries, they report back to the Commission, but they also have means of action which are set in motion when reports of human rights violations reach them. (Other theme mechanisms include the Special Rapporteur on torture, created by the Commission in 1985, and the Working Group on arbitrary detention, created by the Commission in 1991.)

6. Human Rights Committee

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As stated in Chapter G-2, section 2, the International Covenant on Civil and Political Rights is a treaty under which the states parties agree to respect and ensure the human rights set forth in it, including certain fundamental rights which are violated when "disappearances" and extrajudicial executions are perpetrated. The first Optional Protocol to the Covenant is a related treaty establishing a procedure whereby individuals can submit written complaints alleging that their rights under the Covenant have been violated. Any state party to the Covenant may become a party to the Protocol.^{xxxvii}

Part IV of the Covenant provides for the establishment of a **Human Rights Committee** whose task is to monitor the implementation of the Covenant. Under the first Optional Protocol, a state party to the Protocol recognizes the competence of the Human Rights Committee to consider complaints from individuals under its jurisdiction claiming that they are victims of a violation by that state of any of the rights set forth in the Covenant.^{xxxviii}

The Human Rights Committee consists of 18 individual experts elected to four-year terms. It meets three times a year in three-week sessions in New York or Geneva.

The Human Rights Committee has two main functions:

- It examines the **periodic reports** which states parties to the Covenant are required under Article 40 of the Covenant to submit on the measures they have taken which give effect to the rights recognized in the Covenant and on progress made in the enjoyment of those rights. Such reports must be submitted one year after a state becomes a party to the Covenant and thereafter every five years.^{xxxix} Each such report is examined at a public session during which the members question the representative of the state submitting the report. (For example, Committee members have asked for information on any laws or regulations concerning the circumstances in which members of the security forces may open fire in such situations as riots, political disturbances, arrests and escapes from prison, on how they were enforced and what safeguards existed against the arbitrary use of firearms.)^{xl} The state's report and summaries of the Committee members' questions and comments and the governmental representatives' replies are available as public documents in the Committee's annual reports.^{xli}
- The Committee also considers **complaints** submitted to it under the first Optional Protocol. If a complaint is found to be admissible, the Committee forwards it to the state concerned, which is required under Article 4 of the Protocol to submit to the Committee within six months "written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State". After considering all the information, the Committee forwards its views on the case to the state party and the person who submitted the complaint.

All documents pertaining to the Committee's work under the Protocol are confidential, and they are examined in closed meetings. The texts of final decisions of the Committee, however, are made public.^{xlii}

Two of the most important decisions of the Human Rights Committee in response to individual complaints of "disappearances" have been those given in the cases of Eduardo Bleier and Elena Quinteros Almeida, who were arrested in Uruguay in 1975 and 1976 respectively and then "disappeared". The cases were brought by the daughter and wife of Eduardo Bleier and by the mother of Elena Quinteros. In both cases (**Bleir v. Uruguay** and **Quinteros v. Uruguay**) the

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Human Rights Committee found that Uruguay had violated Article 9 of the International Covenant on Civil and Political Rights, providing for the right to liberty and security of person. In both cases the Committee held that Uruguay should take effective steps to establish what happened to the victims, to bring to justice those responsible for the "disappearances", to pay compensation for the wrongs suffered, and to ensure that similar violations do not occur in the future.^{xliii}

Another case considered by the Human Rights Committee concerned the extrajudicial execution of 13 prominent civilians and two army officers in Suriname in December 1982; the authorities had claimed they were killed while trying to escape. The case (**Baboeram et al. v. Suriname**) was submitted to the Committee by the relatives of eight of the victims. The Committee found that "the victims were arbitrarily deprived of their lives contrary to article 6 (1) of the International Covenant on Civil and Political Rights". It urged the state of Suriname to take effective steps to investigate the killings, to bring those responsible to justice, to pay compensation to the surviving families and "to ensure that the right to life is duly protected in Suriname".^{xliv}

From time to time the Human Rights Committee also issues **general comments** on various articles of the International Covenant. These comments provide valuable and authoritative interpretations of the meaning and scope of the Covenant's provisions.

Individuals, human rights organizations and the news media may observe all public meetings of the Human Rights Committee. The Committee has no formal procedure for receiving information from individuals and organizations (other than complaints under the first Optional Protocol), but it is possible to send information informally to individual Committee members.^{xlv}

In recent years, national human rights groups have increasingly travelled to New York or Geneva to observe sessions of the Human Rights Committee when their country's periodic report has been under review. By making the Committee members' comments known back at home and encouraging their national news media to attend and report on the proceedings, they can build pressure on states parties to the International Covenant on Civil and Political Rights to comply with their obligations under the Covenant.^{xlvi}

7. UN Centre for Human Rights

The Centre for Human Rights is the branch of the UN Secretariat which provides services for the UN human rights program and for the committees which monitor the implementation of human rights treaties such as the International Covenant on Civil and Political Rights. It is located at the UN headquarters in Geneva, with a small outpost at UN headquarters in New York. Its professional and clerical staff assist UN Special Rapporteurs and expert groups in carrying out their work. They make arrangements for meetings of UN human rights bodies and treaty-monitoring bodies and prepare documents for those meetings. The Centre also coordinates the UN program of advisory services and technical assistance in the field of human rights^{xlvii} and the informational program called the World Campaign for Human Rights.

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The Centre for Human Rights is headed by the Under-Secretary-General for Human Rights, who reports to the UN Secretary-General in New York.

Unfortunately, the United Nations' work for human rights has been hampered for many years by a severe shortage of staff and material resources at the Centre for Human Rights. Established programs fail to meet expectations because the staff at the Centre cannot service them adequately. Both the Working Group on Disappearances and the Special Rapporteur on summary or arbitrary executions have drawn attention to this problem in their latest reports.^{xlviii}

Under-funding is a chronic problem in the UN, but the human rights program has suffered especially. Each year at the Commission on Human Rights, UN member states agree on a program of activities, but at the General Assembly later in the year they fail to provide adequate resources for it. By withholding funds, member states effectively ensure that the UN human rights program will be limited.^{xlix} As one author has written, the General Assembly has clearly "kept Secretariat staff who are responsible for the protection of human rights on a tight budget leash."¹ A significant increase in financial and staffing support is needed if the UN human rights program is to fulfil its crucial role in defending human rights around the world.^{li}

8. How to send complaints of "disappearances" and extrajudicial executions to the UN

As mentioned above, the UN was unable for many years to act on the basis of complaints of human rights violations submitted to it by individuals because member states refused to give the Commission on Human Rights the power to take such action. Today it can act, thanks to the establishment of mechanisms such as the Working Group on Disappearances and the Special Rapporteur on summary or arbitrary executions. Individuals can also complain to the Human Rights Committee if their human rights have been violated by a state which is a party to the International Covenant on Civil and Political Rights and to its first Optional Protocol. They can also complain to the Inter-American Commission on Human Rights, the European Commission on Human Rights or the African Commission on Human and Peoples' Rights if the violation was committed by a member state of the Organization of American States, the Council of Europe or the Organization of African Unity (see below, section 10).^{lii}

The following table shows the chief avenues by which allegations and complaints of "disappearances" and extrajudicial executions may be submitted to the UN.

The address of the UN Centre for Human Rights is:

Centre for Human Rights
UN Office at Geneva
1211 Geneva 10
Switzerland
Facsimile: +41 22 733 98 79

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Telex: 41 29 62

Cable address: UNATIONS Geneva

A person considering sending an individual complaint or other information on "disappearances" or extrajudicial executions to the UN or another international or regional inter-governmental institution will want to consider a number of factors, including the urgency of the matter, the desired outcome and the chances of success.^{liii}

Table: Avenues for submission of "disappearances" and extrajudicial executions to the UN

Subject	Complaint can be sent to	Who can send a complaint	Information to be sent	Action to be taken
"Disappearance"	Working Group on Enforced or Involuntary Disappearances, c/o UN Centre for Human Rights (see address above)	Family or friend of victim, or an organization acting on their behalf	Name of victim; date and place of "disappearance"; who is believed responsible; information on steps taken to determine the victim's fate or whereabouts	The Working Group tries to determine the fate and whereabouts of the missing person. If a complaint is admissible, the Working Group sends it to the government asking for a response. In urgent cases the Working Group acts immediately.
Extrajudicial execution, threat of extrajudicial execution	Special Rapporteur on summary or arbitrary executions, c/o UN Centre for Human Rights	Any person or group with reliable knowledge of the facts	Names of victims or intended victims; date, place, circumstances and background of killings; who is believed responsible	If the information appears credible, the Special Rapporteur sends it to the government asking for clarification. In urgent cases he acts immediately.
"Disappearances", extrajudicial executions and other acts indicating a pattern of gross human rights violations	UN Centre for Human Rights	Any person or group with clear evidence of the facts	The relevant facts; list of human rights violated; information on exhaustion of domestic remedies ¹	Consideration by the Commission on Human Rights under the confidential "1503 procedure". This procedure is not designed to redress individual grievances. ²

1A communication will not be admitted if it runs counter to the principles of the UN Charter, if it shows political motivations, or (usually) if it uses abusive language. Anonymous communications are inadmissible, as are those based only on reports in the news media. Domestic remedies must have been exhausted unless it can be shown convincingly that solutions at the national level would be ineffective or unreasonably protracted.

2All communications alleging human rights violations received by the UN are processed under the 1503 procedure unless they fit under a more specific mechanism such as

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<p>"Disappearances", extrajudicial executions</p>	<p>Committee on Human Rights, c/o UN Centre for Human Rights</p>	<p>A person with authority to act on behalf of the victim, where the victim's human rights have been violated by a state party to the first Optional Protocol to the International Covenant on Civil and Political Rights³</p>	<p>The relevant facts; information on exhaustion of domestic remedies</p>	<p>After examining the information submitted by the complainant and the government, and giving each side a chance to comment on the other's arguments, the Human Rights Committee issues a public statement of its views on the merits of the complaint. It may recommend redress or other remedial or preventive measures.</p>
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the Working Group on Disappearances or the Special Rapporteur on summary or arbitrary executions. A person submitting information under the 1503 procedure will receive an acknowledgement from the UN Secretariat but nothing thereafter. If a communication meets the established criteria, the Secretariat sends a copy to the government concerned, inviting it to respond. Because of the confidentiality of the procedure, it is impossible to learn which of the communications submitted are ultimately considered when the Commission on Human Rights examines a country situation.

³The Human Rights Committee cannot examine a complaint if the same problem is being examined under another international procedure of investigation or settlement such as the European Commission on Human Rights or the Inter-American Commission on Human Rights (but not the UN Commission on Human Rights or its Working Groups and Special Rapporteurs). Furthermore, certain states parties to the first Optional Protocol have made reservations saying that the Human Rights Committee cannot consider a complaint against them if the same matter has already been examined by another such international procedure.

9. Human rights monitoring operations and other UN activities

One of the most promising UN initiatives in recent years has been the establishment of **on-site human rights monitoring operations**.

- Some of these are components of **peacekeeping** operations designed to implement peace agreements among hitherto warring parties. Such components can help to end human rights abuses for which governments or other sides in a conflict are responsible. They can help to repair the damage done, and to strengthen or build institutions to protect human rights. They are a way of forging the link between human rights and peace which was recognized in the preamble to the Universal Declaration of Human Rights, as mentioned at the beginning of this chapter^{liv}.
- Other human rights monitoring operations have been established independently of UN peacekeeping activities.

The UN has recently conducted or made plans to conduct operations in a number of countries where "disappearances" or political killings have been perpetrated:

- One of a series of agreements between the Government of **El Salvador** and the opposition *Frente Farabundo Martí para la Liberación Nacional* (FMLN), Farabundo Martí National Liberation Front, ending the armed conflict between them was an Agreement on Human Rights, signed in July 1990. This document incorporated a commitment to stop political killings and "disappearances". Under the Agreement the two parties pledged themselves to take all necessary steps immediately "to avoid any act or practice which constitutes an attempt upon the life...of the individual" and "to eliminate any practice involving enforced disappearances".

The Agreement provided for the establishment of a UN human rights monitoring mission whose purpose is to investigate violations of human rights committed after its establishment and "to take any steps it deems appropriate to promote and defend such rights". The Agreement gave the mission wide powers including the power to receive complaints from any individual or group in El Salvador and the power "(t)o visit any place or establishment freely and without prior notice". The two parties agreed to grant the mission whatever facilities it might need and to ensure the security of its members or of others who gave it information.^{lv}

The human rights monitoring mission in El Salvador was launched in 1991 with an international staff of human rights observers, legal, military and police advisers and administrative support staff working from regional offices around the country. Between August 1991 and January 1993 the mission received and declared admissible 273 complaints concerning summary executions or arbitrary killings, 382 complaints of death threats and 32 complaints of possible "disappearances". It pursued individual cases, making its own inquiries and raising the cases with judges, police and military officers, the office of the Attorney General, and FMLN commanders as appropriate.

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In its published reports the mission recommended immediate measures as well as institutional reforms needed to protect human rights in El Salvador.^{lvi} However, many of these recommendations had not been implemented as of early 1993.^{lvii}

- The Agreement on a Comprehensive Political Settlement of the Cambodia Conflict gives an extensive role to the UN Transitional Authority in **Cambodia** (UNTAC) during a transitional period which began in October 1991 and was to continue until a new government is formed after elections. UNTAC's mandate includes general human rights oversight, and it is empowered to carry out the investigation of human rights complaints and take corrective action.^{lviii}
- The UN Mission for the referendum in **Western Sahara** (MINURSO) has among its tasks the organization of a referendum in cooperation with the Organization of African Unity. The settlement plan requires the UN Special Representative to take all steps to ensure the release of all political prisoners before the referendum campaign. In accordance with this requirement, Amnesty International has urged the UN to address "disappearances" of Western Saharans which remain unclarified.
- It was announced in February 1993 that agreement had been reached for the deployment by the UN and the Organization of American States of a joint International Civilian Mission in **Haiti** (MICIVIH) to monitor respect for human rights. This large mission is expected to play an important role in tackling the serious human rights problems, including many killings, which have persisted in Haiti especially since the military coup of September 1991.
- In March 1993 the UN Commission on Human Rights decided to request the UN Secretary-General to send monitors to areas where they could independently verify the human rights situation in **Iraq**.^{lix}

Amnesty International and others have recommended the establishment or strengthening of UN on-site human rights monitoring in several other countries:

- Following the conclusion in October 1991 of a General Peace Agreement between the Government of Mozambique and the opposition *Resistência Nacional Moçambicana* (RENAMO), Mozambique National Resistance, Amnesty International called for strengthened human rights promotion and monitoring in the UN peacekeeping operation in **Mozambique** (ONUMOZ). Amnesty International welcomed the UN Secretary-General's proposal for the deployment of UN police monitors to monitor the neutrality of the Mozambican police. It also suggested the establishment of an independent human rights monitoring body.^{lx}
- In resolution 1993/86, adopted on 10 March 1993, the UN Commission on Human Rights requested the UN Secretary-General to assist his Special Representative for **Somalia** in developing a long-term program of advisory services, with a view to reestablishing the rule of law in the country. The Commission also urged the Secretary-General to establish a unit within the UN operation in Somalia to assist in the promotion and protection of human rights. Amnesty International has proposed the creation of an independent group of civilian human rights monitors in Somalia to receive and investigate complaints of human rights violations and where appropriate to transmit them to the relevant UN or other authority for further investigation and prompt corrective action.^{lxi}

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- Amnesty International has also called for the establishment of a substantial on-site human rights investigative and monitoring operation in the former **Yugoslavia**.^{lxii}

The director of the UN human rights monitoring mission in El Salvador has described human rights verification as

"a systematic investigatory procedure designed to gather objective evidence to corroborate the existence of human rights violations. It is carried out through a process comprising various phases: first, the receipt of complaints or the reporting of a violation on the Mission's own initiative; second, the investigation or inquiry proper, which comprises a detailed follow-up of the facts, police and judicial investigations and the exercise of the Mission's fact-finding powers; third, if the facts are corroborated and it is found that there was no violation of human rights, the case is closed, but if verification reveals the opposite, recommendations are made either for compensating the injury done or for rectifying the situation which gave rise to or facilitated the violation; fourth, throughout the process, active verification involves using the Mission's good offices to contribute to the transparency and efficiency of police investigations, due process, safety of witnesses, etc., and its power of initiative to assist in overcoming existing situations of human rights violations."^{lxiii}

Additional important functions are monitoring the implementation of recommendations and reporting publicly on the findings and activities of monitoring missions.

In addition to human rights monitoring operations and the avenues for action described earlier in this chapter, there are several other channels through which the UN can take action on human rights matters:

- Through his "**good offices**" role, the Secretary-General can approach governments (usually confidentially) over cases or situations of human rights concern.^{lxiv}
- The **Security Council** can take action, including the adoption of resolutions concerning particular countries.
- The Secretary-General can send **fact-finding missions** to troubled areas, including areas where human rights have been violated. His increasing use of such missions is a step towards an early-warning procedure, which might enable the UN to act more expeditiously to defuse and contain conflict.^{lxv}

10. Action through regional institutions

As mentioned in Chapter G-2, section 6, governments in different regions of the world have created organizations where their representatives meet to discuss matters of regional concern, and in three regions there are human rights treaties similar to those adopted through the UN, under which "disappearances" and

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extrajudicial executions are forbidden. Several of these regional organizations and their subordinate bodies have taken action against "disappearances" and extrajudicial executions, sometimes in response to complaints concerning individual cases.

- The **Organization of American States** (OAS) comprises 35 states in the Americas. Its General Assembly meets at least once each year. One function of the General Assembly is to adopt new human rights treaties which can then be ratified by OAS member states. At present the General Assembly is considering a draft convention on "disappearances".^{lxvi}

The **Inter-American Commission on Human Rights** was established in 1960 and is the OAS body primarily responsible for promoting the observance and protection of human rights.^{lxvii} It consists of seven independent experts elected to four-year terms. As set forth in the American Convention on Human Rights, the Inter-American Commission has the power to prepare a report on the human rights situation in any OAS member state on its own initiative, and to make recommendations to governments on the measures they should take to secure the observance of human rights. It may visit countries to make on-site observations of the human rights situation with the agreement of the government concerned.^{lxviii}

The Inter-American Commission also receives petitions, which as stated in the American Convention may be lodged by "(a)ny person or group of persons, or any nongovernmental entity legally recognized in one or more [OAS] member states", alleging that a member state has violated its human rights obligations.^{lxix} Such complaints are admissible only if domestic remedies have been exhausted and the matter has not been previously studied by the Commission or another international organization and is not being examined "in another international proceeding for settlement".^{lxx} After examining and investigating the matter, the Commission may make a decision on the merits of the complaint, together with recommendations to the state concerned.^{lxxi}

Another important OAS body is the **Inter-American Court of Human Rights**. This court, established under the American Convention on Human Rights, consists of seven judges elected to six-year terms. Unlike the Inter-American Commission, whose decisions are not binding on OAS member states, the Inter-American Court of Human Rights can issue binding rulings in individual cases referred to it by the Inter-American Commission or by a state party to the American Convention on Human Rights, if the state concerned has made a declaration that it accepts the jurisdiction of the Court in such cases. Individual petitioners cannot invoke the Court's jurisdiction.^{lxxii}

- The **Council of Europe** comprises all Western European states and an increasing number of Eastern European states which began to join it after the end of the Cold War. Its Committee of Ministers and its Parliamentary Assembly can make recommendations about what they consider the governments of member states should do to prevent human rights violations. Both sometimes also adopt statements concerning human rights violations outside the territories of the member states.

All Council of Europe member states are parties to the European Convention on the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights") or have signed the Convention, indicating their intention to become parties. This Convention provides for the establishment of a **European Commission of Human Rights** consisting of one member from each state party to the European Convention. The Commission is empowered

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to hear complaints from individuals alleging that the human rights set forth in the Convention have been violated. If the Commission is not able to reach a friendly settlement, it will make a decision on the case and then could also refer it to the **European Court of Human Rights** (also established under the Convention) if the state concerned has accepted the jurisdiction of the Court.^{lxxiii}

- The **Organization of African Unity** (OAU) comprises nearly all the states of continental Africa and the adjoining islands. The corresponding human rights treaty is the African Charter on Human and Peoples' Rights, adopted by the OAU in 1981. Almost all OAU member states are parties to the African Charter.

The African Charter provides for the establishment of an **African Commission on Human and Peoples' Rights** "to promote human and peoples' rights and ensure their protection in Africa" (Article 30). This Commission consists of 11 individual experts elected to six-year terms. Like the Human Rights Committee set up under the International Covenant on Civil and Political Rights, the African Commission reviews periodic reports submitted by states parties on the measures they have taken to implement the Charter. The Commission is also required under Article 55 of the African Charter to consider complaints from individuals and organizations and to send its confidential observations on these complaints to the OAU Assembly of heads of state and government, which meets once a year in June. If the complaints "apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights", the OAU Assembly may then request the Commission to undertake an in-depth study and issue a factual report with conclusions and recommendations. Unlike the American and European systems, there is no human rights court which the Commission can ask to issue a binding decision, but the Commission has potentially far greater powers to promote and protect human rights than the other regional institutions.^{lxxiv}

Several other intergovernmental organizations are already active in human rights matters or are likely to become increasingly active, although most of them have not yet addressed the problems of "disappearances" and political killings.

- The **European Community** (EC) is the outgrowth of several organizations established after the Second World War to coordinate the economic activities of member states and create a common market among them. Twelve countries, all in Western Europe, currently belong to the EC.

EC institutions include a Commission, a Council of Ministers and a European Parliament whose members are elected directly by the voters of EC member states.

The governments of EC member states often act together on human rights matters outside the EC by issuing joint statements which may express concern and call for specific measures to be taken by the government in question.^{lxxv} The European Parliament also is very active. It adopts resolutions on human rights within and outside the EC, and its members can raise human rights concerns in visits of European Parliament delegates to third countries. In urgent cases, resolutions can be passed quickly under the European Parliament's procedure for urgent matters.^{lxxvi} The European Parliament also has a system for examining petitions from EC citizens concerning human rights.^{lxxvii}

- The **Conference on Security and Co-operation in Europe** (CSCE) comprises all countries in Europe, central Asian republics which have emerged from

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the former USSR, the USA and Canada. At present the CSCE is creating new institutions and mechanisms in response to the changes in East-West relations of the past decade. The recently established biennial human dimension implementation meeting, where all CSCE states will focus on the implementation of their human rights commitments, should be able to deal with serious human rights violations such as "disappearances" and extrajudicial executions in member states.

One of the CSCE's recent activities has been to send fact-finding missions and longer-term monitoring missions to areas of political turbulence. The existence of these missions should be used by the CSCE Committee of Senior Officials to press for adherence to human rights obligations in the countries to which the missions are sent.

- The **League of Arab States** (often referred to as the Arab League) is a 21-member intergovernmental organization founded in 1945, with its headquarters in Cairo. In 1968 it established a permanent Arab Commission on Human Rights consisting of governmental representatives. It has defined its mandate broadly to include all matters relating to human rights on the Arab or international level. Perhaps its most important contribution so far has been the preparation of a draft Arab Charter on Human Rights. The current draft, which has not yet been approved by the League of Arab States, falls short of other international and regional standards.
- The **Organization of the Islamic Conference**, based in Jeddah, Saudi Arabia, was established in 1971 and has over 40 member states. It conducts summit conferences at the head of state level roughly every three years and annual meetings at the foreign minister level. Its Charter does not expressly refer to human rights, but it has raised human rights violations against Muslims in non-member states at the UN Security Council and the UN General Assembly. It also adopted in August 1990 at the foreign minister level the Cairo Declaration on Human Rights in Islam.^{lxxviii} The Cairo Declaration, which has not been approved at the head of state level, is significantly weaker than other international and regional standards.
- The **Commonwealth** is an intergovernmental organization of 50 states, including the United Kingdom and its former colonies or states with other ties to the UK. It meets every two years in Commonwealth Heads of Government Meetings which issue final communiqués addressing human rights matters as well as other issues. Its Secretariat, located in London, has a Human Rights Unit which provides assistance to Commonwealth countries in promoting human rights. The Commonwealth has a group of observers in South Africa which monitors human rights violations.
- The **Francophonie** comprises 32 member states, including France, plus associate member states and two Canadian provinces. It meets at the head of state level every two years and is dedicated to political and cultural issues related to Francophone countries. The *Agence de coopération culturelle et technique* (ACCT), Cultural and Technical Cooperation Agency, based in Paris, acts as its Secretariat. The ACCT has provided assistance to strengthen judicial institutions and has organized conferences related to human rights.

11. Towards a stronger UN role

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"...if standards and procedures [on human rights] exist for normal situations, the United Nations has not been able to act effectively to bring to an end massive human rights violations. Faced with the barbaric conduct which fills the news media today, the United Nations cannot stand idle or indifferent. The long-term credibility of our Organization as a whole will depend upon the success of our response to this challenge."

- UN Secretary-General Boutros Boutros-Ghali, 1992^{lxxxix}

UN standards and mechanisms for the eradication of "disappearances" and extrajudicial executions have proliferated in the past 15 years. Much effort has gone into these developments, yet the killings and "disappearances" persist in the face of obstruction or indifference by many governments. The UN is often criticized for its weakness, but it cannot be strong if its member states are unwilling. The best human rights standards will be meaningless if governments flout them. The best human rights machinery will be powerless if governments refuse to cooperate.

Governments accused of "disappearances" and extrajudicial executions have obstructed UN action in various ways:

- Failing to respond to queries on individual cases, or responding with inaccurate or incomplete information. For example, the Special Rapporteur on summary or arbitrary executions noted in his report for 1992 that 28 countries did not respond at all to the allegations he transmitted to them that year. Three of these countries - Haiti, South Africa and Zaire - had not provided any information since the establishment of the Special Rapporteur in 1982;^{lxxx}
- Harassing and vilifying individuals and organizations who inform the UN about human rights violations, and attempting to exclude them from participating in the work of the UN;^{lxxx}
- Attempting to prevent the UN from taking any public action on human rights in their country;
- Refusing to allow the UN to send a representative to their country to inquire into human rights matters;^{lxxxii}
- Trying to prevent or discontinue their country's human rights situation being considered under the confidential "1503 procedure".

The annual sessions of the Commission on Human Rights have been replete with disappointments for individuals and organizations who travel to Geneva to press their human rights concerns. Time and again governments with abysmal human rights records have been able to win the support of enough other governments, acting in their perceived self-interests, to block action. Through such concerted obstruction, the UN system for human rights protection is undermined. Not only does a government intent on "disappearances" and extrajudicial executions undermine its own institutions for ensuring the rule of law, it seeks to paralyse the machinery which the UN has created to protect human rights internationally, evading accountability at home and censure abroad.

There is much that could be done to strengthen the existing UN institutions for the protection of human rights. For example, the "theme mechanisms" such as the Working Group on Disappearances and the Special Rapporteur on summary or arbitrary executions should set time limits for responses from governments,

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which should be much shorter in the case of urgent appeals. If there is no reply or no cooperation within the time limit, the theme mechanism should be able to treat information which it has received from reliable sources as valid and act upon it. When a considerable number of serious allegations have been raised with a government or where a pattern of violations is revealed and the government persistently refused to cooperate, the full dossier should be transmitted to the Commission on Human Rights for further action. Also, the theme mechanisms should continue to work on relevant cases after they have been clarified or after the immediate danger has passed, in order to ensure that victims and their dependants are offered redress and are not penalized for having made or been the subject of a complaint to the UN.^{lxxxiii}

Over the years, the work of UN bodies dealing with "disappearances" and extrajudicial executions has improved, and it is to be hoped that further improvements will follow.^{lxxxiv}

Yet despite the improvements, the UN has thus far had little impact in curtailing serious patterns of "disappearances" and political killings. As the Special Rapporteur on summary or arbitrary executions wrote in his report for 1992, "10 years of the existence of a [UN] mandate on extrajudicial, summary or arbitrary executions have not led to the abolition of the phenomenon."^{lxxxv} Governments may be willing to cooperate over a few cases, but the political cost of disregarding UN requests and appeals is still not high enough to make them reverse their illegal and immoral policies.

Despite the advances of the past 50 years, the UN human rights program has fundamental shortcomings. Because of the intransigence or indifference of many member states, the UN today is critically failing to address some of the most fundamental violations of human rights which are still occurring on a horrifying scale around the world, including "disappearances" and extrajudicial executions.

At the World Conference on Human Rights convened by the UN in Vienna in June 1993, in an attempt to strengthen UN human rights work, Amnesty International called for a major initiative in the form of the establishment of a UN **Special Commissioner for Human Rights**. This would be a high-level position with sufficient authority and responsibility to respond to human rights problems on his or her own initiative, including emergencies and possible impending crises. The Special Commissioner would maintain an overview of all UN human rights activities and their relation to other program areas; formulate and oversee the human rights components of other UN operations such as peace-keeping activities; ensure that appropriate attention is given to human rights concerns in any country; and develop programs on neglected issues. The Special Commissioner would not be expected to replace existing UN mechanisms but rather to draw on their expertise and resources in carrying out his or her own mandate effectively.^{lxxxvi}

Another means of strengthening the international protection of human rights would be the creation of an **international criminal court** able to try people allegedly responsible for "disappearances", extrajudicial executions and other serious human rights violations.^{lxxxvii}

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Notes

i Nigel S. Rodley, *The Treatment of Prisoners under International Law*, UNESCO, Paris, Clarendon Press, Oxford, 1987, page 1. The Preamble to the Universal Declaration of Human Rights says that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". Earlier, the preamble to the Charter of the United Nations had expressed the determination of the peoples of the United Nations "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person . . ."

In a similar vein, linking human rights with peace and development, the UN Secretary-General wrote in 1992: "Respect for human rights is clearly important in order to maintain international peace and security and to achieve social and economic development." (UN Secretary-General, *Report on the Work of the Organization from the Forty-sixth to the Forty-seventh Session of the General Assembly; September 1992* (UN document No. A/47/1), Department of Public Information, United Nations, New York, paragraph 109)

ii Intergovernmental organizations are international organizations formed by governments, and through which governments can hold consultations and take joint positions and joint actions.

iii As Iain Guest has written, the UN system is ponderous, and the machinery for taking up human rights violations is often slow to get started, but once it starts, "it cannot be turned off at a stroke." (Iain Guest, *Behind the Disappearances; Argentina's Dirty War against Human Rights and the United Nations*, University of Pennsylvania Press, Philadelphia, 1990, page 101)

iv For example, at the 1992 session of the UN Commission on Human Rights, Portugal and 27 other countries introduced a draft resolution condemning "the unjustifiable action by the armed forces of Indonesia that cost the life of many innocent and defenceless citizens in East Timor", a reference to the massacre at Dili, East Timor on 12 November 1991 in which some 100 peaceful demonstrators had been shot dead by Indonesian troops. Most Asian governments opposed the draft resolution. The Japanese representative made a statement to the Commission referring to the Indonesian Government's "sincere attitude towards the international community's concern" over the incident, while Australia said that the advance report of the Commission of Inquiry set up by the Indonesian Government was "encouraging", although Amnesty International, in a statement made available to Commission members, had said that the Commission's mandate and methods of work were fatally flawed and that its findings were unacceptable. (Both Japan and Australia have important trading links with Indonesia.) After long and intense negotiations the resolution was withdrawn.

Later in the year the Commission's Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution on East Timor, and in 1993 the Commission adopted a resolution (number 1993/97) regretting the failure of the Indonesian Government to identify clearly those responsible for the Dili killings, and urging the government to invite UN Special Rapporteurs and Working Groups to visit East Timor, including the Special Rapporteur on summary or arbitrary executions and the Working Group on Disappearances. (Such visits, if allowed, would be important advances in view of the resistance of the Indonesian Government in submitting to international scrutiny of its human rights behaviour in East Timor.) Before the resolution was adopted, Indonesia complained that it was being "targeted" by the Commission and decried the "unfairness" of several articles of the resolution. One of the governments most active behind the scenes in trying to weaken or defeat the resolution was the United Kingdom, a country which had recently been trying to arrange a lucrative deal to sell military aircraft to Indonesia.

v A case in point is the UN Declaration on the Protection of All Persons from Enforced Disappearance. When the first draft emerged in 1990 from the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, a body of independent experts, it contained several important provisions which were weakened or dropped as the text passed through the successive stages of consideration by governmental representatives. Thus the first draft included a statement that the systematic practice of enforced disappearance is "a crime against humanity" and made the perpetration of "disappearances" subject to universal jurisdiction. These provisions would have strengthened the provisions for bringing the perpetrators of "disappearances" to justice. During the later stages of discussion the latter provision was dropped, while the former was replaced by a statement in the preamble to the Declaration that the systematic practice of enforced disappearance is "of the nature of" a crime against humanity, a phrase which carries far less legal weight than the original formulation. The text finally adopted by the General Assembly in 1992 is weaker than the original but still contains many valuable provisions, most of which were first proposed by NGOs.

vi For a detailed account of the efforts of the Argentinian ambassador in Geneva between 1976 and 1983 to block UN action on "disappearances" in Argentina, see Guest, *op. cit.*

vii For proposals on the improvement of the UN's work for human rights, see below, section 11.

viii The Economic and Social Council is one of the principal organs of the UN (the others are the General Assembly, the Security Council, the Trusteeship Council, the International Court of Justice and the Secretariat). Under Article 62 of the UN Charter the Economic and Social Council is empowered to "make recommendations for the purpose of promoting respect for, and observance of, human rights . . ." The Economic and Social Council may decide a matter on its own, or it may forward its recommendations to the General Assembly for decision.

ix Under Article 68 of the UN Charter, the Economic and Social Council had been directed to set up a commission "for the promotion of human rights".

xJohn P. Humphrey, the first Director of the UN Division on Human Rights, later wrote that the UN "had been receiving great numbers" of communications alleging violations of human rights "from people and organizations in many countries." Humphrey had a list prepared and drew the attention of the Commission on Human Rights to its existence. One member wanted the Commission to discuss those complaints which came from non-governmental organizations in consultative status with the Economic and Social Council, but other members (including the USA and the USSR) opposed having the Commission review individual complaints. The Economic and Social Council resolution which endorsed the Commission's view that it had no power to act on the basis of complaints also established a complicated procedure to be followed by the Secretariat in handling the communications, a procedure characterized by Humphrey as "probably the most elaborate wastepaper basket ever invented". (John P. Humphrey, *Human Rights & the United Nations: A Great Adventure*, Transnational Publishers, Dobbs Ferry, New York, USA, 1984, page 28; Howard Tolley, Jr., *The U.N. Commission on Human Rights*, Westview Press, Boulder, Colorado, USA, 1987, page 17.)

xiEconomic and Social Council resolution 1235 (XLII) authorized the Commission to examine information received by the UN on "gross violations of human rights and fundamental freedoms" and to make recommendations on such situations. Under the terms of resolution 1235 (XLII), this examination and action were to have been based on the communications received by the UN alleging violations of human rights, but since the establishment of the "1503 procedure" in 1970, complaints of human rights violations have been processed under the latter procedure except for those which are referred to one of the "theme mechanisms" such as the Working Group on Enforced or Involuntary Disappearances. The public action contemplated in resolution 1235 (XLII) is now dealt with annually by the Commission on Human Rights under agenda item 12. Under this agenda item Commission members can formally request the Commission to take action on human rights problems in specific countries. For a history and discussion of the "1235 procedure", see Philip Alston, "The Commission on Human Rights", in Philip Alston, ed., *The United Nations and Human Rights; A Critical Appraisal*, Clarendon Press, Oxford, 1992, pages 126-210, at pages 155-173.

xiiAll communications about alleged human rights violations received by the UN are processed by the UN Secretariat under the confidential procedure established by Economic and Security Council resolutions 728 (XXVII) F of 1959 and 1503 (XLVIII), except those which fit under a more specific UN procedure. Under resolution 728 (XXVII) F, copies of all communications are sent to the government concerned without divulging the identity of the author, and the government may send a reply to the Commission on Human Rights. From 1972 to 1987 over 350,000 communications and several thousand government replies were received by the UN and forwarded to the Working Group on Communications for consideration. For further information see "Communications Procedures", *Human Rights Fact Sheets* series, No. 7, UN Centre for Human Rights, Geneva, 1989 (available free of charge from the UN Centre for Human Rights); Amnesty International, "Summary of selected international procedures and bodies dealing with human rights matters", AI Index: IOR 30/01/89, August 1989.

xiiiSuch countries have included Afghanistan (reviewed in 1980-83), Argentina (1980-84), Bolivia (1980-81), Ethiopia (1980-81), Uganda (1980-81), Indonesia (1980-81, 1983-85), Chile (1981), El Salvador (1981), Guatemala (1981), Haiti (1981-86, 1989-90), the Philippines (1984-86), Iraq (1988-89), Honduras (1988-89), Somalia (1989-93), Myanmar (1988-92), Chad (1991-93) and Sudan (1991-93). For a list of 30 governments subjected to review under the 1503 procedure between 1978 and 1986, see Tolley, *op. cit.*, page 128.

xivUN Commission on Human Rights, 49th session, *Report on the situation of human rights in Myanmar...*, UN document No. E/CN.4/1993/37, 13 February 1993, paragraphs 228-236, 242.

xvThe periodical *Human Rights Monitor* gives details of planned agendas and reports on the results of UN human rights meetings. It is published by International Service for Human Rights [French: Service International pour les Droits de l'Homme], 1 rue de Varembe, P.O. Box 16, 1211 Geneva 20 cic, Switzerland.

xviAccording to John P. Humphrey, the idea of doing studies came from a staff member in the UN Division of Human Rights. The program of studies made the Sub-Commission "one of the most useful organs in the United Nations", Humphrey wrote. (Humphrey, *op. cit.*, page 168)

xviiSee above, note 5.

xviiiAmnesty International USA, *'Disappearances'; A Workbook*, Amnesty International USA, New York, 1981, pages 1, 22-24

xixThe text of the resolution is reproduced in *'Disappearances'; A Workbook*, Appendix.

xxRodley, *op. cit.*, pages 193-197.

xxiCommission on Human Rights resolution 20 (XXXVI) of 29 February 1980.

xxiiUN Commission on Human Rights, 37th session, *Report of the Working Group on Enforced or Involuntary Disappearances*, UN document No. E/CN.4/1435, 26 January 1981, paragraph 30. In 1992, for example, the Working Group transmitted 348 cases to governments under the urgent action procedure, of which 53 were clarified during the year. (UN Commission on Human Rights, 49th session, *Report of the Working Group on Enforced or Involuntary Disappearances*, UN document No. E/CN.4/1993/25, 7 January 1993, paragraph 23)

xxiii UN Commission on Human Rights, 48th session, *Report of the Working Group on Enforced or Involuntary Disappearances*, UN document No. E/CN.4/1992/18, 30 December 1991, paragraph 25. In resolution 1991/70, adopted without a vote on 6 March 1991, the Commission on Human Rights had urged governments "to refrain from all acts of intimidation or reprisal, in any form, against private individuals and groups who seek to co-operate with the United

Nations and representatives of its human rights bodies, or who have sought to avail themselves of procedures established under United Nations auspices for the protection of human rights and fundamental freedoms". The resolution requested representatives of UN human rights bodies "to help prevent the occurrence of intimidation or reprisal as well as prevent that access to United Nations human rights procedures be hampered in any way". The Working Group's "prompt intervention" procedure was developed in response to this request.

In 1992 the Working Group on Disappearances sent "prompt intervention" appeals to the governments of six countries - Brazil, Colombia, Ecuador, Guatemala, Honduras and Peru. See Commission on Human Rights, 49th session, *Cooperation with representatives of United Nations human rights bodies; Report of the Secretary-General...*, UN document No. E/CN.4/1993/38, 8 February 1993, paragraph 20.

XXIV UN Commission on Human Rights, 46th session, *Report of the Working Group on Enforced or Involuntary Disappearances*, UN document No. E/CN.4/1990/13, 24 January 1990, paragraph 352.

XXV In its report on a visit to Sri Lanka in 1991, the Working Group made detailed recommendations on the measures which the government should take to prevent "disappearances" and clarify the fate of the "disappeared". (UN Commission on Human Rights, 48th session, *Report of the Working Group on Enforced or Involuntary Disappearances; Addendum; Report on the visit to Sri Lanka...*, UN document No. E/CN.4/1992/18/Add.1, 8 January 1992, paragraph 204)

XXVI As Iain Guest has written, the appendices served as "tangible proof" that relatives of victims "had taken their own campaign to the United Nations and that the United Nations had responded." Displayed at local meetings of relatives' groups back at home, the reports "acted like glue. They had unified a human rights movement across Latin America and linked it to friends outside." (Guest, *op. cit.*, page 359)

xxvii In 1992 the Working Group wrote to governments and non-governmental organizations asking for their comments on a series of suggested measures needed to overcome impunity for "disappearances". The results are summarized in the Working Group's report for 1992. (UN document No. E/CN.4/1993/25, paragraphs 46-49 and Annex I)

xxviii *Ibid.*, paragraph 4 and country entries.

xxix See Rodley, *op. cit.*, pages 208-214.

xxx In its operative paragraphs, this resolution states that the Congress:

- "1. *Deplores and condemns* the practice of killing and executing political opponents or suspected offenders carried out by armed forces, law enforcement or other governmental agencies or by paramilitary or political groups acting with the tacit or other support of such forces or agencies;
2. *Affirms* that such acts constitute a particularly abhorrent crime the eradication of which is a high international priority;
3. *Calls upon* all Governments to take effective measures to prevent such acts;
4. *Urges* all organs of the United Nations dealing with questions of crime prevention and human rights to take all possible action to bring such acts to an end."

The text of the resolution is reproduced in Rodley, *op. cit.*, Annex 7.

XXXI Attempts had been made by governments and non-governmental organizations to raise concerns about killings in Uganda and Kampuchea at the Commission on Human Rights, but the Commission did not take action. See Amnesty International, *Political Killings by Governments*, Amnesty International Publications, London, 1983, pages 43, 48.

XXXII Resolution 35/172 of 15 December 1980. The text of the resolution is reproduced in Amnesty International, *When the State Kills... The Death Penalty v. Human Rights*, Amnesty International Publications, London, 1989, Appendix 9.

xxxiii S. Amos Wako, a Kenyan lawyer, was Secretary-General of the Inter-African Union of Lawyers. When he resigned as Special Rapporteur in 1992 after his appointment as Attorney General of Kenya, Bacre Waly Ndiaye, a Senegalese lawyer, was appointed Special Rapporteur.

XXXIV UN Commission on Human Rights, 49th session, *Extrajudicial, summary or arbitrary executions; Report by the Special Rapporteur*, UN document No. E/CN.4/1993/46, 23 December 1992, paragraph 26.

Like the Working Group on Disappearances, the Special Rapporteur has sent urgent appeals also in response to allegations of "acts of intimidation or reprisal in violation of the right to life against those cooperating with United Nations human rights procedures and their legal advisors and against relatives of victims of human rights violations" (*ibid.*, paragraph 27). In 1992 he sent such appeals to the governments of 12 countries - Brazil, Chile, Colombia, Cuba, El Salvador, Guatemala, Honduras, Israel, Mexico, Peru, Rwanda and Sri Lanka (E/CN.4/1993/38, *op. cit.*, paragraph 23).

xxxvi *Ibid.*, paragraphs 133-139, 226, 425.

xxxvii *Ibid.*, paragraph 183.

xxxviii To ensure human rights protection, Amnesty International regularly urges states to become parties to both instruments. The UN also periodically calls for states to become parties to these instruments. Thus, UN General Assembly resolution 46/113, adopted on 17 December 1991 without a vote, states that "The General Assembly ...

(a)gain urges all States that have not yet done so to become parties to ... the International Covenant on Civil and Political Rights and to consider acceding to the Optional Protocols to the International Covenant on Civil and Political Rights ... "

xxxviiiThe texts of the International Covenant and the first Optional Protocol may be found in "The International Bill of Human Rights" and in *Human Rights; A Compilation of International Instruments* (cited in Chapter G-2).

xxxixFor a description of the reporting process and the issues to be considered under each article of the Covenant, see UN Centre for Human Rights, *Manual on Human Rights Reporting under Six Major International Human Rights Instruments*, United Nations, New York, UN Sales No. E.91.XIV.1, 1991.

xlSee Dominic McGoldrick, *The Human Rights Committee; Its Role in the Development of the International Covenant on Civil and Political Rights*, Clarendon Press, Oxford, 1991, page 331.

xliThe Report of the Human Rights Committee is published each year as Supplement No. 40 to the Official Records of the UN General Assembly.

xliaA short description of the work of the Human Rights Committee is given in "Human Rights Machinery", *Human Rights Fact Sheets* series, No. 1, UN Centre for Human Rights, Geneva, 1988, pages 12-14. For a more detailed description of the procedure for examining individual complaints, see UN Centre for Human Rights, *United Nations Action in the Field of Human Rights*, United Nations, New York, UN Sales No. E.88.XIV.2, 1988, paragraphs 100-115.

xliliThe Bleier and Quinteros decisions are given respectively in *Report of the Human Rights Committee*, UN General Assembly, Official Records, 37th session, Supplement No. 40 (A/37/40), 1982, Annex XI and 38th session, Supplement No. 40 (A/38/40), 1983, Annex XXII. For an analysis of the decisions, see Rodley, *op. cit.*, pages 192-93, 199, 201, 203 and 205.

In the case of Elena Quinteros, who the Committee found had been tortured, in violation of Article 7 of the International Covenant on Civil and Political Rights, the Committee found that her mother also, who had brought the case, "is a victim of the violations of the Covenant, in particular of article 7, suffered by her daughter". This conclusion flowed from the Committee's understanding of "the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts." As Rodley has observed, "In so far as 'in these respects' the mother 'is a victim of the violations...suffered by her daughter', it appears to follow that the article 7 violation of Elena Quinteros's rights stemmed from her 'disappearance' itself, as well as the torture in the detention centre. In any event, the decision gives formal recognition that the close family of the victim of a 'disappearance' is also subjected to torture or other ill-treatment." (Rodley, *op. cit.*, page 201)

As the Uruguayan Government had not taken the steps called for by the Human Rights Committee, the relatives of Eduardo Bleier and Elena Quinteros resubmitted the cases to the Committee in 1988. The Committee has not yet published its new views on the two cases. In 1993, however, during the Committee's review of Uruguay's periodic report under the Covenant, Committee members criticized Uruguay for curtailing the ability of victims of human rights violations to obtain redress.

xliv*Report of the Human Rights Committee*, UN General Assembly, Official Records, 40th session, Supplement No. 40 (A/40/40), 1985, Annex X, pages 187-195.

xlvWhen the periodic report of a state party to the International Covenant on Civil and Political Rights is about to be examined by the Human Rights Committee, well documented information on human rights violations in that country may be useful to Committee members in preparing to question the country's representative. Information should be addressed to the Committee member by name, whose title should be given as "Member of the Human Rights Committee", and sent to him or her c/o Human Rights Liaison Office, United Nations Headquarters, New York, NY 10017, USA if the Committee is to meet in New York and c/o the UN Centre for Human Rights if the meeting is to be in Geneva. It is advisable to send copies to each member of the Committee and to ensure that they arrive no later than one week before the session so that the pre-session working group which prepares questions for the full Committee can take this information into account. It is also possible to offer information informally to Committee members during periods when the Committee is in session (although not during the actual meetings). For information on the agendas of future Human Rights Committee meetings and the results of meetings held, see *Human Rights Monitor* (cited above).

xlviRecommendations for strengthening the work of the Human Rights Committee are contained in Amnesty International, "World Conference on Human Rights; Facing up to the failures: proposals for improving the protection of human rights by the United Nations", AI Index: IOR 41/16/92, pages 30-39 and in Torkel Opsahl, "The Human Rights Committee", in Alston, ed., *op. cit.*, pages 369-443. See also the recommendations in UN General Assembly, 47th session, Effective implementation of international instruments on human rights... Note by the Secretary-General, UN document No. A/47/628, 10 November 1992.

xlvii See "Advisory Services and Technical Assistance in the Field of Human Rights", *Human Rights Fact Sheets* series, No. 3, UN Centre for Human Rights, Geneva, 1988.

xlviii The Working Group on Disappearances, for example, noted in its report for 1992 that "the staff servicing the group is not only less than half the size it was in 1980, when the Group started, but it also deals with a task which has grown exponentially over the past 12 years." In 1992 the Working Group transmitted twice as many cases to governments as in 1991, but some 8,000 cases still awaited consideration by the Working Group staff. "At present, the

Working Group understands that the members of its staff have reached a point where they can no longer cope with the workload. This means that, unless additional personnel is assigned to the Working Group, an ever-increasing proportion of the cases received by the Group will not be analyzed, processed and transmitted. The older the backlog, the less likelihood there is that the fate and whereabouts of the disappeared will ever come to light. The dialogue with Governments and non-governmental organizations will be seriously hampered and the Group's main humanitarian function seriously jeopardized. The Group's credibility is bound to dwindle and its activities, as a result, will tend to become marginalized. Unless decisive action is taken...the achievements of the Group since 1980 may be dissipated irretrievably." (*Op. cit.*, E/CN.4/1993/25, paragraphs 521-523)

The Special Rapporteur on summary or arbitrary executions wrote in his report for 1992 that in order to discharge his mandate effectively, including country visits, he would need three professional staff and a full-time secretary, rather than the one professional staff then provided by the Centre for Human Rights. He also called attention to the need for better computer facilities at the Centre (*op. cit.*, E/CN.4/1993/46, paragraphs 700-701).

xlIX Sometimes budget cuts are aimed at specific parts of the human rights program which are understandably disliked by the member states under scrutiny. Iain Guest has told the story of how in 1981 Argentina, which had been prominently mentioned in the first report of the Working Group on Disappearances, persuaded a UN budgetary advisory committee to cut \$54,900 from the human rights budget. According to Guest, this was the exact amount needed to finance the Working Group for the next year along with the UN investigation on Chile. Fortunately the Director of the UN Division on Human Rights learned what had happened and was able to persuade member states to reinstate the sum at a later stage in the General Assembly's consideration of the budget. (Guest, *op. cit.*, page 308)

l Tolley, *op. cit.*, page 217.

li For a discussion of the functioning of the Centre for Human Rights and the activities of the Secretary-General in human rights matters, see Theo van Boven, "The Role of the United Nations Secretariat", in Alston, ed., *op. cit.*, pages 549-579.

lii There are other avenues also for the submission of complaints. For example, if there is reliable evidence that a person was tortured, a complaint can be sent to the Committee against Torture if the state concerned is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and has made a declaration recognizing the competence of that Committee to consider individual complaints under Article 22 of the Convention. Such complaints should be sent to the Committee against Torture, c/o the UN Centre for Human Rights.

liii For further information on sending communications to the UN, see UN Centre for Human Rights, *Human Rights Fact Sheets* series, No. 6, "Enforced or Involuntary Disappearances"; No. 7, "Communications Procedures"; No. 11, "Summary or Arbitrary Executions". For more on sending information to UN and other international and regional bodies, see Amnesty International, "Summary of selected international procedures and bodies dealing with human rights matters", *op. cit.*

When considering whether to submit a complaint to the Human Rights Committee or a regional human rights body, it is advisable to consult others, including lawyers, who have had experience in doing so. Organizations which can advise on this matter include

Interights

5-15 Cromer Street

London WC1H 8LS

United Kingdom

Telephone: +44 71 278 3230

Facsimile: +44 71 278 4334

and

International Human Rights Law Group

1601 Connecticut Avenue NW, Suite 700

Washington DC 20009

USA

Telephone: +1 202 232 8500

Facsimile: +1 202 232 6731

liv In the case of El Salvador, for example, human rights was a component in the peace process, as established in the Geneva Agreement of 1990 which stated that the purpose of the process was "to end the armed conflict by political means as speedily as possible, promote the democratization of the country, *guarantee unrestricted respect for human rights* and reunify Salvadorian society" ("Geneva Agreement", section 1, in *El Salvador Agreements: The Path to Peace*, United Nations, New York, Department of Public Information, DPI/1208, 1992, page 1; emphasis added).

A 1993 report by the UN Observer Mission in El Salvador (ONUSAL) commented that the inclusion of respect for human rights in the Geneva Agreement reflected an understanding between the two warring parties of "the interrelationship that exists between the ending of the armed conflict, the consolidation of democracy and respect for the human rights of the population." This understanding "does not assimilate peace with the elimination of the armed conflict." Instead, it recognizes "that the achievement of peace is structurally linked to the adoption of a complex series

of undertakings, constitutional and institutional reforms and the adjustment of individual and social conduct, with a view to replacing the culture of violence created by 11 years of armed conflict by a culture of human rights." (UN Commission on Human Rights, 49th session, *Note by the Secretary-General*, UN document No. E/CN.4/1993/96, 22 February 1993, paragraph 3)

Iv "San José Agreement on Human Rights", paragraphs 1, 13-15, in *El Salvador Agreements...*, *op. cit.*, pages 7-12. The mission did not, however, have the power to enforce its recommendations.

Ivi See the first, second and third reports of ONUSAL containing the first, second and third reports of its Human Rights Division, and the fifth and sixth reports of the Director of the ONUSAL Human Rights Division, submitted to the UN General Assembly and the UN Security Council (A/45/1055-S/23037, 16 September 1991, paragraphs 7-10; A/46/658-S/23222, 15 November 1991, paragraphs 18-43; A/46/876-S/23580, 19 February 1992, paragraphs 31, 32; A/46/955-S/24375, 12 August 1992, paragraphs 12, 19, 26; A/47/912-S/25521, 5 April 1993, annex, page 64).

Ivii The UN Independent Expert on El Salvador, appointed in pursuance of a decision of the UN Commission on Human Rights, reported that as of early 1993 most of the recommendations of the UN human rights verification mission had not been implemented. (UN Commission on Human Rights, 49th session, *Report of the Independent Expert on El Salvador...*, UN document No. E/CN.4/1993/11, 9 February 1993, paragraphs 224-241, 268) See also Americas Watch, "El Salvador; Peace and Human Rights: Successes and Shortcomings of the United Nations Observer Mission in El Salvador (ONUSAL)", *News From Americas Watch*, vol. 4, No. 8, 2 September 1992.

Iviii Article 16 of the Comprehensive Political Settlement of the Cambodia Conflict, adopted at the Paris Conference on Cambodia in October 1991, states that UNTAC "shall be responsible during the transitional period for fostering an environment in which respect for human rights shall be ensured". Annex 1 to the Comprehensive Political Settlement sets forth UNTAC's human rights mandate in greater detail.

By the end of 1992 the Human Rights Component of UNTAC had a professional staff of 10 in the capital, Phnom Penh; some of these officers dealt with monitoring and investigation while others were responsible for training, education and information. A correspondent was assigned to each of the 21 provinces. As of November 1992 the Human Rights Component had received 14 complaints involving wrongful death and had conducted investigations into abductions and killings. (UN Commission on Human Rights, 49th session, *Situation in Cambodia; Report of the Secretary-General*, E/CN.4/1993/19, 14 January 1993, paragraphs 10-11, 15-19) However, the Human Rights Component was not given access to areas controlled by the Party of Democratic Kampuchea, the "Khmer Rouge".

lix This decision was taken in resolution 1993/74, adopted by the Commission on Human Rights on 10 March 1993. In 1991 Amnesty International had called on the UN to establish an on-site monitoring operation in Iraq to prevent further killings and torture by governmental forces. In 1992 the UN Special Rapporteur on Iraq recommended to the Commission on Human Rights that a team of human rights monitors be sent to Iraq. He reiterated the recommendation in his 1993 report to the Commission.

Ix Amnesty International, "Mozambique; The role of the United Nations in the protection of human rights under the General Peace Agreement", AI Index: AFR 41/01/93, January 1993.

Ixi "Somalia; Update on a disaster - Proposals for human rights", AI Index: AFR 52/01/93, April 1993.

Ixii Oral statement to the exceptional session of the UN Commission on Human Rights, 30 November - 1 December 1992, AI Index: EUR 48/31/92.

Ixiii Sixth report, *op. cit.*, A/47/912-S/25521, paragraph 41.

Ixiv For a brief discussion, see van Boven, *op. cit.*, pages 556-559. See also B.G. Ramcharan, *Humanitarian Good Offices in International Law; The Good Offices of the United Nations Secretary-General in the Field of Human Rights*, Nijhoff, The Hague, the Netherlands, 1983. In resolution 33/173 of 20 December 1978 on disappeared persons, cited earlier in this chapter, the UN General Assembly urged the Secretary-General "to continue to use his good offices in cases of enforced or involuntary disappearances of persons".

Ixv Guidelines on UN fact-finding missions are contained in the Declaration on Fact-Finding by the United Nations in the Field of the Maintenance of International Peace and Security, adopted by the UN General Assembly on 9 December 1991 in resolution 46/59.

Ixvi A draft Inter-American Convention on the Enforced Disappearance of Persons was prepared by the Inter-American Commission on Human Rights in accordance with a decision of the OAS General Assembly and was published in 1988. Since then the draft has been revised several times. Amnesty International and other human rights organizations have urged that the text of the Convention should contain the strongest possible provisions for the eradication of "disappearances".

Ixvii On the history of the formation of the Inter-American Commission and the later establishment of the Commission as a principal organ of the OAS under the amended OAS Charter, see Inter-American Commission on Human Rights, *Ten Years of Activities; 1971-1981*, Organization of American States, General Secretariat, Washington, 1982, pages 5-7.

Ixviii In the area of "disappearances" and extrajudicial executions, one of the most important on-site investigations conducted by the Inter-American Commission was its visit to Argentina in September 1979. The Commission received 5,580 complaints of "disappearances", most of which had not reached it before. Its devastating report, published in 1980, described the formation of special units in the armed forces which carried out "disappearances" and said that the authorities "could not have been ignorant of the events as they were occurring and did not adopt the necessary measures

to terminate them". The report was angrily rejected by the Argentinian Government. (*'Disappearances'; A Workbook*, *op. cit.*, pages 12, 138-141; Guest, *op. cit.*, pages 176-177)

lix These obligations involve the observance of the human rights recognized in the American Convention on Human Rights or (for states which are not parties to the American Convention) the American Declaration on the Rights and Duties of Man.

lxx For example, by the Human Rights Committee set up under the International Covenant on Civil and Political Rights.

lxxi American Convention on Human Rights, Articles 41, 44-51; Dinah L. Shelton, "The Inter-American Human Rights System", in Hurst Hannum, ed., *Guide to International Human Rights Practice*, second edition, University of Pennsylvania Press, Philadelphia, 1992, pages 119-132. The article by Shelton gives details on the admissibility of petitions to the Inter-American Commission.

lxxii Shelton, *op. cit.*, pages 129-130.

lxxiii The procedure for submission and consideration of complaints before the European Commission on Human Rights is described in Kevin Boyle, "Europe: The Council of Europe, the CSCE, and the European Community", in Hannum, ed., *op. cit.*, pages 133-158.

lxxiv The African Commission held its first session in 1987 and has only recently begun reviewing states' reports. The Commission has received over 100 individual complaints under Article 55, but it did not send any of these complaints to the OAU Assembly urging that it request the Commission to conduct an in-depth study until its 13th session in March and April 1993. As the work of the Commission develops, it is to be hoped that a strong role will emerge for it in the protection of the individual against "disappearances", extrajudicial executions and other human rights violations in Africa. See Amnesty International, "The Organization of African Unity and Human Rights", AI Index: IOR 63/01/91, 1991; Cees Flinterman and Evelyn Ankumah, "The African Charter on Human and Peoples' Rights", in Hannum, ed., *op. cit.*, pages 159-170.

lxxv These statements are issued in the name of the EC and its member states. Recent statements have referred to extrajudicial executions and arbitrary and deliberate killings by opposition forces in Sri Lanka (22 October 1990), the killing of demonstrators in Dili, East Timor by Indonesian forces (13 February 1992), mass killings and "ethnic cleansing" in former Yugoslavia (5 October 1992) and killings in Rwanda (15 February 1992).

Such joint statements are adopted within the framework of the European Political Cooperation, which is a process of information, consultation and common action among the EC member states. The country holding the rotating presidency of the EC Council of Ministers is in charge of the European Political Cooperation and plays a key role in initiatives taken within its framework.

lxxvi Recent European Parliament resolutions have referred among other things to killings of members of the Tuareg ethnic group in Mali (adopted on 9 July 1992), killings of street children in Colombia (12 March 1992) and Guatemala (9 April 1992), political killings in the Philippines (9 April 1992), "disappearances" in Morocco (27 May 1993), and the assassination of a deputy mayor in Peru by the opposition group the *Partido Comunista del Perú "Sendero Luminoso"*, Communist Party of Peru "Shining Path" (12 March 1992).

lxxvii On individual petitions, see Boyle, *op. cit.*, 1992, pages 154-155. For a discussion of action by EC institutions on human rights inside and outside the EC, see Andrew Clapham, *Human Rights and the European Community: A Critical Overview*, Nomos, Baden-Baden, 1991.

lxxviii UN document No. A/Conf.157/PC/35; also published as UN document No. A/45/421.

lxxix *Report on the Work of the Organization... September 1992*, *op. cit.* (A/47/1), paragraph 101.

lxxx *Op. cit.*, E/CN.4/1993/46, paragraph 692.

lxxxi In one incident described by Iain Guest, the Argentinian representative tried to block Emilio Mignone, director of the Argentinian Centre for Legal and Social Studies, from addressing the UN Commission on Human Rights on behalf of the International Commission of Jurists in 1982. The Argentinian representative told the Commission that Mignone, whose daughter had "disappeared" in 1976, "was arrested in Argentina earlier this year on the serious charge of violating state security. He has even called for sanctions against his own government!" After a recess of several hours, the Commission decided to let Mignone speak. (Guest, *op. cit.*, pages 329-331 and Chapter 24, note 22)

lxxxii For example, the Working Group on Disappearances stated in 1984 that it would like to visit Guatemala, whose many "disappearances" had been reported, but there was no response to its request until a constitutional government took power in 1986, and it was finally in 1987 that the Working Group visited the country (*Report of the Working Group on Enforced or Involuntary Disappearances; Addendum; Report on a visit to Guatemala...*, UN document No. E/CN.4/1988/19/Add.1, paragraphs 1-2).

In the 10 years since the establishment of the Special Rapporteur on summary or arbitrary executions in 1982, the first Special Rapporteur was able to visit only four countries. Since 1992 the pace of visits has increased (see above, section 5). In his report for 1992 the Special Rapporteur reiterated the importance of on-site visits and said he would continue to seek invitations. (*Op. cit.*, E/CN.4/1993/46, paragraphs 35-37, 88-91, 695)

lxxxiii These and other recommendations are presented in Amnesty International, "World Conference on Human Rights; Facing up to the failures...", *op. cit.*, pages 26-30.

lxxxiv One important step has been for Special Rapporteurs and Working Groups to return to countries which they

have visited before, in order to see how their recommendations are being addressed and to offer further advice and observations. A good example is the 1992 follow-up visit to Sri Lanka by three members of the Working Group on Disappearances who had visited the country the year before. In the report on their second visit, the three experts noted that the number of "disappearances" had declined but was still of serious concern, and that few of the detailed recommendations offered in their first report had been implemented. (UN Commission on Human Rights, *Report of the Working Group on Enforced or Involuntary Disappearances; Addendum; Report on the visit to Sri Lanka... (5-15 October 1992)*, UN document No. E/CN.4/1993/25/Add.1, 30 December 1992, paragraphs 126-131)

Other improvements are reflected in the report for 1992 of the Special Rapporteur on summary or arbitrary executions. In requesting governments to clarify cases, the Special Rapporteur now supplies a list of the details needed (an innovation which should encourage governments to be more specific in their replies), and he has taken the initiative to work more closely with other UN mechanisms and procedures dealing with subjects related to his mandate. (*Op. cit.*, E/CN.4/1993/46, paragraphs 79, 694, 696)

Despite the improvements, the efforts of the Working Group and the Special Rapporteur will still fall short of expectations if UN member states fail to provide the necessary funds, do not heed their recommendations, or impose crippling restrictions on their activities. For example, the Special Rapporteur can act only on the basis of information formally submitted to him, and has more than once been unable to act "in a situation where there were serious grounds to believe that extrajudicial, summary or arbitrary executions were being committed in certain countries, sometimes even on a large scale and, on occasion, covered by extensive reports in the [news] media, concerning which he had not received any allegations" (*op. cit.*, E/CN.4/1993/46, paragraph 14).

lxxxv *Op. cit.*, paragraph 706.

lxxxvi Amnesty International's proposal for a Special Commissioner is developed in "World Conference on Human Rights; Facing up to the failures...", *op. cit.*, pages 5-23.

In the Vienna Declaration and Programme of Action, adopted on 25 June 1993, the World Conference on Human Rights recommended to the General Assembly at its next session that it begin "as a matter of priority consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights".

lxxxvii There have been many attempts in this century to establish a permanent international criminal court. After the Second World War the International Law Commission was asked to draft a statute for an international criminal court, but the Cold War stifled progress. The end of the Cold War and the move to establish an International Tribunal for the former Yugoslavia (see Chapter G-2 (5)) revived interest in the idea. In resolution 47/33, adopted on 25 November 1992 without a vote, the UN General Assembly requested the International Law Commission to work on preparing a draft statute of an international criminal court, and to submit a progress report to the General Assembly in 1993. (The International Law Commission, established by the General Assembly in 1947, is an expert body which has as its object the progressive development of international law and its codification.)