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Institution:	Inter-American Commission on Human Rights
File Number(s):	Cases Nos. 1702, 1748 and 1755
Session:	Thirty-Fifth Session (20 - 30 May 1975)
Title/Style of Cause:	Unknown v. Guatemala
Doc. Type:	Resolution
Decided by:	President: Dr. Andrés Aguilar (Venezuela) Vice-President: Dr. Carlos A.Dunshee de Abranches (Brazil) Members: Professor Manuel Bianchi (Chile); Dr. Gabino Fraga (Mexico); Dr. Justino Jimenez de Aréchaga (Uruguay); Mr. Robert F.Woodward (United States); Dr. Genaro R. Carrio (Argentina)
Dated:	29 May 1975
Citation:	Unknown v. Guat., Cases 1702, 1748 and 1755, Inter-Am. C.H.R., OEA/Ser.L/V/II.37, doc. 20, corr. 1 (1975)
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[1] Case No. 1702, presented in a communication dated February 5, 1971, denounces a number of events allegedly in violation of human rights in Guatemala and, in particular, the death of a number of individuals during the "state of siege" declared in that country as of November 12, 1970. Case No. 1748, presented in a communication dated July 28, 1972 also denounces the status of human rights in Guatemala and specifically, the death or disappearance of 296 individuals between November 1971 and the first months of 1972. Case No. 1755, presented through a communication dated September 30, 1972, denounces the arbitrary arrest of a number of individuals in Guatemala City on September 26, 1972, and the lack of effective result on the writs of habeas corpus submitted by the interested parties to the competent judicial authorities.

[2] As for case 1702 the Commission, in a note dated May 10, 1971, requested the Government of Guatemala to provide the corresponding information. That request was repeated on November 6 of that year and on March 30, 1972.

[3] As for case 1768 the Commission, in a note dated September 6, 1972, requested the Government of Guatemala to provide the appropriate information.

[4] In a note of October 18, 1972, the Government has asked to provide information on case 1755.

[5] At its thirty-first session (October 1973) the Commission examined these cases together with the response filed by the Government of Guatemala on September 4, 1973 (I-OEA-12) and decided to process these cases jointly, by combining them for processing and decision; it also decided to appoint Dr. Genaro R. Carrio as rapporteur for these cases, to formulate the appropriate recommendations on handling thereof.

[6] In keeping with the recommendation made by the rapporteur, the Commission, through a cable dated November 1, 1974, requested the Government of Guatemala (in accordance with Article 11.c of its

Statute) to agree to allow the rapporteur to gather the necessary data on-site, in order to expedite his work and to present the Commission a report that would enable the Commission to reach a decision as to the merit of these denunciations, based on all necessary facts.

[7] Through a cable dated November 3, 1973, the Government of Guatemala denied the request.

[8] In accordance with its Regulations, the Commission provided the claimant the text of the request made to the Government of Guatemala and the text of the Government's reply.

[9] Subsequent to the request for permission, the Commission received new communiques from the claimant with regard to the status of one of the individuals arrested in Guatemala, whose name appears on the list of individuals presumed dead or missing, which was transmitted to that country with a note dated September 6, 1972, requesting information, in accordance with Articles 42 and 44 of its Regulations.

[10] In view of the serious and urgent nature of the new denunciations, the Commission addressed the Government of Guatemala on December 19, 1973, to request information on those denunciations. The Government of Guatemala replied to that note on March 4, 1974 (Note 755), stating that the individual with regard to whom the denunciations had been made "had not been arrested by the National Police in Chimaltenango, nor by any other police corps."

[11] With this new information, the Commission continued to study cases 1702, 1748 and 1755 during its thirty-second session (April 1974).

The Commission had at hand, as a working document, a draft report prepared by the Secretariat on the state of human rights in Guatemala. That report (doc.5-32) is in part comprised of background information, the denunciation received which the above-cited cases comprise, classified according to the human rights allegedly violated; the requests for information filed with that Government and the responses received from it.

The Commission instructed Dr. Genaro R. Carrio, rapporteur for the cases in question, to examine the status of these cases in order to determine the status of their processing and to formulate the recommendations that he deemed appropriate, especially as to the advisability of again requesting the Government of Guatemala to permit an on-site investigation of the denunciations received.

The rapporteur presented an oral report; based on the recommendations he made, the Commission decided, by a majority, with the opposing vote of Dr. Andres Aguilar, not to reiterate to the Government of Guatemala its request for permission to visit its territory. However, at that same session it was unanimously decided to address a new communication to the Government of Guatemala stating the observations of the CIDH on the Guatemalan Government's denial to allow the Commission to visit its territories and on the statements that the Minister of Foreign Affairs made to the press with regard to that request for permission.

Pursuant to these decisions, the Commission instructed the rapporteur for case 1702, 1748 and 1755 to prepare a draft resolution, in application of the provisions contained in paragraph 1 of Article 51 of the Regulations. At the same time it requested the Chairman of the Commission to send a note to the Government of Guatemala prior to the conclusion of the present session with regard to the observations made by the CIDH on that Government's refusal to allow a subcommittee to visit that country.

[12] Pursuant to the decision to address the Government of Guatemala with regard to that Government's refusal to allow the CIDH to visit its territory, the Commission sent a note to that Government on April 16, 1974.

[13] As for the draft resolution on cases 1702, 1748 and 1755, the Commission, based on the material prepared by the rapporteur, approved the following resolution (OEA/Ser.L/V/II.32, doc.21 rev.1, April 17, 1974):

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

WHEREAS:

[i] In February 1971 a claim was filed before the Commission allowing that since November 1970, the date on which Guatemala was declared to be under a state of siege, not less than 700 murders have taken place because of political reasons, perpetrated by elements which, according to the denunciation, "enjoy full government protection and therefore act with total impunity." The denunciations received, made by labor and private political organizations, make reference to a waive of terror attributed to police and military forces in Guatemala and mention the names of a number of individuals who, it states, were murdered.

[ii] In May 1971, the Commission requested the Government of Guatemala to provide information. Because of its failure to respond, the request was repeated in November 1971 and in March 1972. The reply arrived on April 24, 1972. The Government of Guatemala stated that it was in no way an accessory to the murders committed and it maintained that those murders were imputable to radical factions engaged in destroying one another. It added that when the security forces capture those responsible for those crimes, they will bind them to justice. It did not provide any specific information on the concrete cases included in the original denunciations mentioned above.

[iii] The Commission addressed the entities filing the denunciations and informed them of the reply filed by the Government of Guatemala. One of these entities provided material information through transmittal of two lists. One of the lists names 57 individuals who allegedly have disappeared or have been captured, as well as the date of their alleged disappearance or arrest and a brief account of the specific circumstances of the event. The other list, less precise, is entitled "List of Individual Missing" and names 248 individuals, the dates on which they are alleged to have disappeared and the source of the information being transmitted.

[iv] Those lists were sent to the Government of Guatemala in September 1972, which responded on December 1 of that year. In its reply it provided information with regard to only 8 of the individuals named on the first of these lists. It provided no concrete information on the other individuals mentioned in the two lists. It made general observations on individuals who are missing without a trace and added that there are cases where it has been discovered that these individuals have never disappeared and other cases, too numerous to mention, where the investigations continue and will continue until the whereabouts are established." From the reply filed by the Government of Guatemala one concludes that all judges in criminal courts in Guatemala have been asked to provide information as to the whereabouts of the individuals alleged to have been arrested or to have disappeared and that to date, only two of those judges have replied.

[v] In view of that response, in April 1973 the Commission decided to request the Government of Guatemala to kindly provide, as soon as possible, the following information:

- a) A list, with Christian name and surname, of those individuals being referred to when the Government states that "there are cases where it has been discovered that these individuals have never disappeared and others, too numerous to mention, where the investigations continue and so forth";
- b) A copy of the replies filed by all the criminal court judges to the officials who addressed them in

order to request from them information on the individuals alleged to be missing or to have been arrested, and

c) Concrete data and the current status of the investigations aimed at determining whether these individuals are being held under arrest and in general, at establishing their whereabouts. All that information was requested in connection with all those individuals whose names appear on the lists that the Commission had sent to the Government of Guatemala. The new request for information was filed through a note dated June 15, 1973.

[vi] The Government of Guatemala replied on September 4, 1973. The reply essentially stated the following two facts:

a) That it felt that its earlier reports were sufficiently extensive and explicit, so that it also felt that there was no further information to provide, and

b) that in connection with the request for data on the progress being made in the investigations, "it is not possible to reveal names and circumstances, because this would nullify the investigation, enabling those responsible to go into hiding, once alerted, so that a reply to the respective points made in the note sent by the Commission was not possible.

[vii] Bearing in mind the gravity of the denunciations, the high number of individual cases that these involve and the negative attitude of the Government of Guatemala, at its thirty-first session the Commission decided to request permission of that Government to allow a subcommittee to conduct an on-site investigation (Articles 11 in fine of the Statute and Article 51 in fine of the Regulations). That permission was requested through a telegram dated November 1, 1973, and denied through a cable dated November 3, 1973.

[viii] Article 51 of the Regulations of the Commission, the text of which was quoted in the note sent to the Government of Guatemala, provides that "the occurrence of the events on which information has been requested will be presumed to be confirmed if the government referred to has not supplied such information within 180 days of the request." In our case, on June 15, 1973, the Government of Guatemala was asked to provide specific information on the alleged disappearance or arbitrary arrest of more than 300 individuals, whose names and surnames were specified for that Government. The Government of Guatemala had to provide information on the other individuals concerned, and on the progress of the investigations aimed at determining their whereabouts. It is therefore appropriate to apply the presumption of confirmation provided for under Article 51 of the Regulations with regard to the events involving all those other individuals included in the lists sent to the Government of Guatemala with the note dated June 15, 1973, and with regard to whom no concrete and specific information was provided in the note sent by that Government on September 4, 1973. That is, to presume that those individuals have disappeared as a consequence of arbitrary acts in violation of the rights upheld in Article I of the American Declaration of the Rights and Duties of Man and that agents of the Guatemalan Government or individuals protected or tolerated by that Government have not been uninvolved in these acts.

[ix] Article 9 (bis) b of the Statute of the Commission empowers the Commission to make recommendations to the Government of any state, when it deems it appropriate, "with the objective of bringing about more effective observance of fundamental human rights." Article 56 of the Regulations provides that if violation of one or more rights contained in Article 51 of the Regulations is confirmed (in other words, those upheld by Articles I, II, III, IV, XVII and XXV of the American Declaration of the Rights and Duties of Man), the Commission shall prepare a report on the case and make appropriate recommendation to the Government concerned.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

[i] In application of the provisions contained in Article 51 of the Regulations, to presume confirmation of the events referred to in paragraph 8 of the preamble with the implications expressed therein.

[ii] To declare that all the events presumed to be confirmed are serious violations of the right to life, liberty and personal security upheld in Article I of the American Declaration of the Rights and Duties of Man.

[iii] To recommend to the Government of Guatemala that:

- a) It encourage and conduct, with the urgency that the case requires, an investigation aimed at determining, based on rigorous evidence, whether the events presumed to be true have in fact taken place, and, should this be the case, at singling out and punishing those individuals responsible and
- b) It report to the Commission before September 30 on the status of that investigation.

[iv] To report this decision to the claimants.

[14] This resolution was transmitted to the Government of Guatemala on June 3, 1974, and to the claimants on June 4, 1974.

[15] At its thirty-fourth session (October 1974), the Commission confirmed that the period provided for under that resolution for the Government of Guatemala to report on the measures it had taken in response to the recommendations contained in that document for the purposes set forth in Article 57 of the Regulations, had expired. It decided the following:

- a) to include those cases in the Annual Report to the General Assembly of the OAS, and
- b) to address a note to the Government of Guatemala informing it of its decision and of the status of the processing of the case.

[16] This decision (point b) was not carried out in view of the fact that on October 14, 1974, the Government of Guatemala addressed a note to the Commission, the pertinent parts of which are presented below:

"I have the honor to refer to the note dated June 3, 1974, which you sent to Jorge Arenales Catalan, then Minister of Foreign Affairs of this Republic. The note made reference to cases 1702 and 1748 being processed in that Commission, stating that the Commission had continued its examination of those cases during the course of its thirty-second session, held in Washington from April 8 to 18, 1974, and that the Commission had approved the resolution which was appended to that note.

"As you know, there was a constitutional change in government in Guatemala, which took place on July 1 of this year, whereby the President, General Carlos Manuel Arana Osorio, turned over the Office of the President to the candidate elected by the people, General Kjell Eugenio Laugerud Garcia. It was at that point that I took over the Office of Foreign Affairs.

With regard to one note sent by that Commission to the Government of Guatemala, referred to earlier, I find myself facing a situation which I feel will be difficult to settle in favor of the requests made by the Commission. In effect, the paragraphs contained in the preamble of the resolution refer to a number of events that took place under the previous Government and to a series of denunciations on the disappearance of individuals; the previous Government was responsible for the investigation into these matters and the search for the individuals concerned.

Under these circumstances I consider it inappropriate to comment on the four operative paragraphs of the resolution on cases 1702 and 1748 approved by the Commission at its 400th meeting held on April 17, 1974. Notwithstanding, the Government of Guatemala continues to make very possible effort clarify the

events denounced and has instructed the appropriate authorities to make the necessary inquiries."

[17] The Commission replied to that note on December 17, 1974. The text of its response is as follows:

"We have the honor to refer to the note sent by Your Excellency on October 14, 1974 (No. 2532) on the resolution adopted by the Inter-American Commission on Human Rights on April 17, 1974, on cases 1702 and 1748, being processed under this Commission.

The Commission appreciates the willingness on the part of the Government of Guatemala and especially, on Your Excellency's part to settle these cases in a manner compatible with the difficult circumstances facing the new Constitutional Government, mentioned in your note, and in keeping with the high principles that inspire the efforts being made by the Commission.

In view of the fact that Your Excellency states that the Government of Guatemala, as an effort toward correct administration of justice, "continues to make every possible effort to clarify the events denounced and has instructed the appropriate authorities to make the necessary inquiries, "the Commission feels that in this way the current Government of Guatemala would be carrying out the recommendation made in operative paragraph 3 of the resolution adopted on April 17 and that, within a reasonable period of time, Your Excellency could inform the Commission on the status and/or results of the inquiries those authorities are to make, aimed at determining, on the basis of rigorous evidence whether the events presumed to be confirmed have taken place, and if true, at singling out and punishing those individuals responsible.

Therefore, the Commission has agreed not to include, for the moment, the cases in question in its Annual Report to the General Assembly to the Organization, while awaiting such information as Your Excellency may be able to provide on the cases in question."

[18] At the thirty-fifth session (May 1975), the Commission considered for the last time the status of the processing of these cases in light of the resolution adopted on April 17, 1974, and noting that the Government of Guatemala had not replied to the note of December 17, 1974 reporting on the measures that had been taken in response to the recommendations contained in that resolution, it instructed the rapporteur for these cases, Dr. Genaro R. Carrio, to prepare a draft resolution with such observations as he deems appropriate, an application of the provisions contained in Article 57 of the Regulations.

[19] Based on the draft prepared by the rapporteur, the Commission approved the following resolution on cases 1702, 1748 and 1755 (OEA/Ser.L/V/II.35, doc.9 rev. 1, of May 29, 1975) at that session.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

HAVING SEEN the resolution on cases 1702, 1748 (Guatemala) (doc.21-32 rev. 1) adopted at its second session, in which it resolved:

[i] To presume the confirmation of the occurrence of the allegations, in application of Article 51 of the Regulations.

[ii] To recommend to the Government of Guatemala that:

a) with the promptness that the case requires it promote and carry an investigation directed to determine in a rigorously authentic manner whether the acts presumed to have occurred have been committed and, if so, to determine and punish those responsible, and

b) it inform the commission before September 30, 1974 on the status of the investigation, and

WHEREAS:

[i] The Commission decided at its thirty-second session (April 1974) to include these cases in the Annual Report to the General Assembly, pursuant to Article 57 of the Regulations, in the event that the information indicated in that resolution had not been submitted.

[ii] On October 14, 1974 the Government of Guatemala cited the change of administration that had taken place on July 1, 1974 and stated that, for that reason, the resolution of the Commission "refers a series of events that occurred during the previous government and to a series of denunciations regarding the disappearance of persons the investigation and search for whom was incumbent upon that government."

This last reason cannot be considered worthy of attention, taking into account the juridical continuity of the State of Guatemala, notwithstanding changes of administration.

Nevertheless, as the above-mentioned note states that the new administration was continuing "to make every possible effort to shed light on the allegations," the Commission, by note of December 17, 1974, informed the Government of Guatemala that, in view of the fact that that statement could be interpreted as if the "present Government of Guatemala would be complying with the recommendation formulated in point 3 of the resolution of April 17," it had decided not to include for the moment these cases in the Annual Report to the Assembly, awaiting the information that the Government of Guatemala might furnish on the cases.

[iii] A more than reasonable period has elapsed since that time and no information has been received from the Government of Guatemala relative to the announced investigation.

#### RESOLVES:

[i] To call the attention of the Government of Guatemala to the fact that these acts constitute serious violations of the rights to life, liberty and personal security; to a fair trial; of protection from arbitrary arrest and to due process of law, set forth in Articles, I, XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man.

[ii] To include this resolution in its Annual Report to the General Assembly of the Organization of American States, pursuant to Article 9 (bis) c, iii of the Statute and Article 57 of the Regulations.

[iii] To transmit the resolution to the Government of Guatemala and to claimants.

[20] This Resolution was brought to the attention of the Government of Guatemala on August 12, 1975. It was transmitted to the claimants on December 12, 1975.