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COMMISSION ON HUMAN RIGHTS
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Thirty-fifth session
Item 2 of the provisional agenda

ADOPTION OF THE AGENDA

Summary of information regarding consideration by
United Nations organs of the question of the
establishment of a post of United Nations
High Commissioner for Human Rights

Note by the Secretary-General

1. It will be recalled that by resolution 12 (XXXIV) of 10 September 1981, the Sub-Commission decided to inform the Commission that, in the view of the Sub-Commission, the establishment of a post of United Nations High Commissioner for Human Rights would be highly valuable in advancing the promotion and protection of human rights in the world. By decision 3 (XXXIV) the Sub-Commission decided to consider at its thirty-fifth session the positive role a High Commissioner for Human Rights as a United Nations Official should play in the full enjoyment of human rights, and requested the Secretary-General to provide to the Sub-Commission all relevant information on the establishment of the Office of the High Commissioner for Human Rights. By resolution 1982/22 of 10 March 1982, the Commission requested the Sub-Commission to formulate a first study on possible terms of reference for the mandate of a High Commissioner for Human Rights, taking into account the provisions of the Charter of the United Nations and of pertinent international instruments concluded under United Nations auspices, the concepts contained in General Assembly resolution 32/130 of 16 December 1977, as well as the practice of the United Nations system for the promotion and protection of human rights, and to submit its proposals to the Commission on Human Rights at its thirty-ninth session. The Commission further decided to resume consideration of the question of the establishment of a post of United Nations High Commissioner for Human Rights at its thirty-ninth session.

2. The present summary of information has been prepared by the Secretary-General in accordance with decision 3 (XXXIV) of the Sub-Commission in order to facilitate the preparation of the first study asked for by Commission resolution 1982/22. This note mentions briefly in chronological order various United Nations decisions and documents which appear to be of direct relevance to the question of the establishment of a post of United Nations High Commissioner for Human Rights. In accordance with editorial directives, the document is not exhaustive.

3. An early proposal by Uruguay for the establishment of an Office of Attorney-General for Human Rights, submitted at the fifth session of the General Assembly in 1950 1/ and at the seventh session of the Commission on Human Rights in 1951, 2/ is sometimes considered as having certain similarities with more recent proposals concerning a United Nations High Commissioner for Human Rights. The General Assembly had called upon the Economic and Social Council to request the Commission on Human Rights to take that proposal into consideration in its study of questions relating to petitions and implementation. The Uruguayan proposal contemplated that the Attorney-General would collect and examine information concerning the observance of the Covenant on Civil and Political Rights. He would have been authorized to initiate consultations with States parties on any case or situation which, in his opinion, might be inconsistent with the Covenant and to make recommendations for its effective implementation. His authority would have included receiving and examining complaints, from individuals, national and international non-governmental organizations and intergovernmental organizations, addressed to him, as well as those addressed to the Secretary-General or any other organ of the United Nations. The Attorney-General would have been authorized to negotiate with the State party concerned, to refer complaints to the Human Rights Committee, and to conduct on-the-spot inquiries. The Commission decided to attach the Uruguayan proposal as an annex to the report of its seventh session. 3/ The proposal was also annexed to the reports of the eighth, 4/ ninth 5/ and tenth session 6/ of the Commission on Human Rights.

1/ A/C.3/L.93

2/ E/CN.4/549 and Corr.1.

3/ E/1992

4/ E/2256

5/ E/2447

6/ E/2573

4. A new item entitled "Creation of the post of United Nations High Commissioner for Human Rights" was included in the agenda of the twentieth session of the General Assembly, in 1965, and a proposal for the creation of such a post was submitted by Costa Rica. 7/ The Assembly, by its resolution 2062 (XX), requested the Economic and Social Council to transmit the proposal to the Commission on Human Rights for study of all aspects of the matter and for report, through the Council, to the General Assembly at its twenty-first session.

5. At its twenty-second session, in 1966, after considering the agenda item "Question concerning implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery", the Commission on Human Rights adopted resolution 4 (XXII) in which it welcomed the proposal to establish a United Nations High Commissioner for Human Rights and recognized the importance of that proposal. The Commission established a Working Group to study all relevant questions, in the light of an analytical and technical study to be prepared by the Secretary-General.

6. The Commission, at its twenty-third session (1967), had before it, inter alia, the report of the Working Group, 8/ the study prepared by the Secretary-General, 9/ and a note by the Secretary-General, 10/ as well as the text of a communication from the Union of Soviet Socialist Republics. 11/ Upon the proposal of Austria, Costa Rica, Dahomey, the Philippines and Senegal, 12/ the Commission adopted on 22 March 1967 resolution 14 (XXIII) recommending to the General Assembly, through the Council, the establishment of a post of United Nations High Commissioner for Human Rights.

7. The Economic and Social Council, in resolution 1237 (XLII), recommended to the General Assembly the adoption of the draft resolution for the establishment of an Office of the United Nations High Commissioner for Human Rights. In resolution 1238 (XLII), the Council requested the Secretary-General to bring resolution 1237 (XLII) and the amendments submitted by the United Republic of Tanzania, 13/ together with pertinent documentation representing the various points of view expressed, to the attention of Member States, the ILO and UNESCO, to invite their views on the question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery, and to submit a report embodying the replies of Governments in time for consideration by the General Assembly during its twenty-second session.

8. From its twenty-second to its twenty-seventh sessions, the General Assembly did not have sufficient time to consider the question. At its twenty-eighth session, the General Assembly, under the item "Creation of the post of United Nations High Commissioner for Human Rights", adopted resolution 3136 (XXVIII) of 14 December 1973 in which it reaffirmed its conviction that further measures should be considered to ensure universal realization of human rights and fundamental

7/ A/5963

8/ E/CN.4/934

9/ E/CN.4/AC.21/L.1 and Corr.1

10/ E/CN.4/AC.21/L.2

11/ E/CN.4/AC.21/L.1/Add.1

12/ For a summary of debates, see Report of the Commission twenty-third session, E/4322, paras. 481-509. The texts of amendments submitted by the Ukrainian SSR (E/CN.4/L.979), the USSR (L.981) and a draft resolution prepared by the United Arab Republic and Yugoslavia (L.980) were reproduced in the report.

13/ E/AC.7/L.526 and Corr.1.

freedoms. 13bis/ It decided to keep under review the consideration of "alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms" and decided to include in the provisional agenda of its thirtieth session an item so entitled.

9. At its twenty-ninth session in 1974, the General Assembly, under that new item, adopted resolution 3221 (XXIX) of 6 November 1974 inviting Member States, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status to transmit to the Secretary-General information and views on alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms. The Secretary-General was requested to submit to the General Assembly a concise analytical report based, in particular, on those information and views.

10. Accordingly, at the thirtieth session of the General Assembly, the Secretary-General submitted a report 14/ which described procedures established by the United Nations for the protection and promotion of human rights. It further contained an illustrative survey of proposals for the international protection and promotion of human rights which had been submitted to United Nations organs since 1945 and in respect of which a final decision has been deferred or which have been withdrawn or not pressed to a vote. One section of this report was devoted to the question of a United Nations High Commissioner for Human Rights. 15/

11. In response to the General Assembly's request, in paragraph 3 of resolution 3451 (XXX), the Secretary-General prepared a further report 16/ summarizing the views expressed during the discussions of the item "alternative approaches" at the thirtieth session of the General Assembly. 17/ This further report focused broadly on the same issues as the initial report contained in document A/10235.

12. After considering this report at its thirty-second session, the General Assembly, by its resolution 32/130 of 16 December 1977, decided that the approach to future work within the United Nations system with respect to human rights questions should take into account a number of basic concepts. The Assembly asked the Commission on Human Rights to engage at its thirty-fourth session in 1978 in an over-all analysis of alternative approaches and ways and means within the United Nations system for a more effective promotion and protection of human rights.

13. Furthermore, at the thirty-second session of the Assembly, in the course of the consideration of this item, the Third Committee had before it a draft resolution 18/ concerning the establishment of a United Nations High Commissioner for Human Rights. The General Assembly took note of the

13 bis/ See A/9074 and A/9393.

14/ A/10235.

15/ Ibid., paras. 77 to 87.

16/ A/32/178.

17/ A/C.3/SR.2168, 2169, 2171 and 2172; A/10404.

18/ A/C.3/32/L.25/Rev.1. See Official Records of the General Assembly, thirty-second session, annexes, agenda item 76, document A/32/423.

decision of the Third Committee, contained in the Committee's report, 19/ not to vote on that draft resolution on the understanding that the said proposal and all the documents related thereto which were before the Third Committee during the thirty-second session of the General Assembly, as well as the opinions advanced in the course of the debate on the said proposal, would be transmitted to the Commission for consideration at its thirty-fourth session.

14. Meanwhile, the Commission on Human Rights had been considering for several years, under its item "Further promotion and encouragement of human rights and fundamental freedoms", broad issues of structure, programming and procedures similar to those examined by the General Assembly under the item "alternative approaches". The Commission had already made, up to its thirty-fourth session, a number of recommendations under this item partly based upon reports by the Secretary-General. At its thirty-fourth session in 1978, the Commission engaged, under the item "Further promotion" in the over-all analysis requested by General Assembly resolution 32/130, and it adopted resolution 26 (XXXIV) on this subject. The question of the High Commissioner for Human Rights was not, however, referred to in that resolution.

15. The General Assembly, 20/ taking note of the Commission's interim report on its over-all analysis, requested the Commission, by its resolution 33/105 of 16 December 1978, to take into account the views expressed in the debates at the thirty-second and thirty-third sessions of the General Assembly, including those concerning the question of a High Commissioner for Human Rights. 21/ The General Assembly further adopted resolution 33/54 regarding co-ordination within the United Nations system in the field of human rights and 33/104 on the over-all analysis.

16. In resolution 22 (XXXV) adopted by the Commission on Human Rights on 14 March 1979, a reference was made to the General Assembly's invitation in resolution 33/105, but the Commission acknowledged that it had reached no agreement on the question of a High Commissioner for Human Rights.

17. At its thirty-fourth session in 1979, the General Assembly, considering that the open-ended Working Group of the Commission on Human Rights on the over-all analysis had been unable to make a thorough evaluation of the proposal to create a post of United Nations High Commissioner for Human Rights, decided to consider at its thirty-fifth session the question of the creation of such a post under the item entitled "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms" (resolution 34/48 of 23 November 1979). 22/

19/ Ibid., para. 23.

20/ At the Assembly's thirty-third session, the Permanent Representative of Costa Rica had requested the inclusion in the provisional agenda of an item entitled "Creation of the post of United Nations High Commissioner for Human Rights". In his explanatory memorandum (A/33/142), he referred to the latest proposal on this subject contained in document A/C.3/32/L.21/Rev.1 and to the procedural decision taken by the Third Committee at the thirty-second session (A/32/423, para. 23). This request was not approved.

21/ See report of Third Committee (A/33/473).

22/ See report of Third Committee (A/34/704).

18. In the course of the debates at the Commission's thirty-sixth session (1980) on "Further promotion", some exchanges of views took place on the question of a High Commissioner. 23/ However, no mention of the issue was included in the resolutions adopted (22 (XXXVI) and 28 (XXXVI)) which mainly dealt with means of improving the effectiveness of the Commission on Human Rights through intersessional bureau meetings and with the adequacy of the resources of the Division of Human Rights.

19. By resolution 35/175 of 15 December 1980, 24/ the General Assembly, taking note of the proposal to create a post of United Nations High Commissioner for Human Rights and considering that it deserved a thorough consideration, asked the Commission on Human Rights to examine this proposal at its thirty-seventh session (1981) under the item "Further promotion", and to submit to the General Assembly at its thirty-sixth session (1981), through the Council, a report on its work under that item, taking into account, notably, the views expressed at the Commission on the proposal to create a post of United Nations High Commissioner for Human Rights. The General Assembly decided itself to consider that question at its thirty-sixth session under the item "Alternative approaches".

20. At the thirty-seventh session of the Commission on Human Rights in 1981, a brief reference was made to the High Commissioner issue in the report of the Working Group on the over-all analysis, 25-26/ but no mention of the problem was made in the Commission's resolution or decisions.

21. The Sub-Commission, at its thirty-fourth session in 1981, adopted under the item on "Violations of human rights" resolution 12 (XXXIV) and decision 3 (XXXIV) concerning the question of the High Commissioner 27/ which were cited in paragraph 1 of the present note.

22. On 14 December 1981, by resolution 36/135, 28/ the General Assembly requested the Commission at its thirty-eighth session, to consider the question of the creation of a post of United Nations High Commissioner for Human Rights with the attention it deserved, and asked it to present a report to the Assembly at its thirty-seventh session, through the Council, on its debates and decisions. The Assembly decided to continue its consideration of this question at its thirty-seventh (1982) session under the item "alternative approaches", taking into account the report of the Commission on Human Rights and the views expressed at the thirty-sixth session.

23. The Commission, at its thirty-eighth session (1982), adopted on 10 March 1982 resolution 1982/22 whereby it asked the Sub-Commission to carry out a first study of the question. 29/

23/ E/1980/13, para. 232.

24/ See report of Third Committee A/35/721.

25-26/ E/1981/25, para. 220.

27/ E/CN.4/1512, chapter on "The question of violations of human rights".

28/ See report of Third Committee (A/36/731).

29/ E/1982/12, para. 399; E/CN.4/1982/SR.31, 33-36 and 56.

24. The most recent version of the proposal for the establishment of a United Nations High Commissioner for Human Rights appears to be the draft resolution submitted to the General Assembly at its thirty-second session by the delegations of Bolivia, Colombia, Costa Rica, Denmark, El Salvador, Gambia, Honduras, Ireland, Italy, Lesotho, the Netherlands, Norway, Panama, Senegal, Spain, Suriname and Venezuela, which were subsequently joined by the delegations of Australia, Canada, Finland, Iceland, New Zealand, Sweden and the United Kingdom (A/C.3/32/L.25/Rev.1).

25. According to the proposal, the General Assembly would decide to establish, under the authority of the Secretary-General, an Office of the United Nations High Commissioner for Human Rights, the Office to be so organized, within the framework of the United Nations, that the High Commissioner would possess the degree of independence and integrity required for the discreet and impartial performance of his functions. The High Commissioner would assist in promoting universal and effective respect for human rights as set forth in the Charter, the Universal Declaration and other instruments of the United Nations and, in particular promote understanding of the human rights inherent in the new international economic order. Without prejudice to the functions of organs already in existence or which might be established for the promotion and protection of human rights, the High Commissioner would in particular render assistance to any State at its specific request; maintain relations with the Secretary-General, all United Nations agencies and other international organizations and give them advice to ensure co-ordination in the human rights field; and report to the General Assembly annually. The High Commissioner would give the most careful consideration to the economic and social situation and the cultural and religious values of the different countries. The High Commissioner would be appointed by the Secretary-General and confirmed by the General Assembly for a term of five years and his emoluments would be financed under the United Nations regular budget.

26. Since 1965, the question of the establishment of a United Nations High Commissioner for Human Rights has given rise to a thorough debate at the General Assembly, the Council, the Commission on Human Rights and the Sub-Commission. Detailed knowledge of the views exchanged could be drawn from a reading of the reports of the Third Committee and the Commission on Human Rights and of the records of meetings cited in the present note.

27. Without attempting in any way to be exhaustive in respect of so complex a debate, it might be useful to recall briefly some of the main opinions expressed at various times in United Nations organs on this issue. 30/

28. In support of the proposal, the conviction was expressed that such an institution would significantly contribute to the promotion and protection of human rights throughout the world and that it would usefully complement the existing machinery. It was said that the entry into force of the Covenants and other instruments, although important, was quite far from making the High Commissioner

30/ Summaries or compilation of views on the subject were previously submitted by the secretariat on various occasions. See for instance documents A/9074, A/10235, paras. 77 to 87, and A/32/178, paras. 107-111.

superfluous, because it was thought inter alia that these instruments might be ratified only by part of the membership of the United Nations. The High Commissioner, in contrast to other organs, would be in a position, under his terms of reference, to act in a very flexible and timely manner, with the discretion and tact required in various situations, including urgent cases. He would in no way impose his will upon Governments, but enjoy the necessary latitude to collect information, carry on consultations, and report to the General Assembly, with a view to protecting human rights in the most effective manner.

29. Those who opposed the draft resolution felt, inter alia, that, in accordance with the principles of the Charter, functions such as those proposed for the High Commissioner should not be entrusted to any individual, since they were the collective responsibility of Member States in their co-operative endeavour to promote respect for human rights. It was feared that the institution would lead to undue interference in domestic affairs. Reliance should be placed rather on the existing organs of the United Nations. The need to concentrate on the successful application of the Covenant was emphasized. It was felt that, possibly, the functions contemplated for the High Commissioner, or parts thereof, could be entrusted to the Secretary-General. Another objection was that the machinery would be contrary to the Charter principle of the sovereign equality of States, since it would appear that States which had not ratified human rights conventions would be subject to the jurisdiction of the High Commissioner to the same extent as those which were bound by treaty obligations. Only through an international convention, it was felt, could a machinery such as that of the High Commissioner be established.

30. The Secretariat is prepared to furnish more detailed information to the Sub-Commission if it so wishes in the fulfillment of its mandate under Commission resolution 1982/22.