

United Nations
**GENERAL
ASSEMBLY**

THIRTY-SEVENTH SESSION

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THIRD COMMITTEE
47th meeting
held on
Thursday, 18 November 1982
at 10.30 a.m.
New York

UN/DA COLLECTION

SUMMARY RECORD OF THE 47th MEETING

Chairman: Mr. CALERO RODRIGUES (Brazil)

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Distr. GENERAL
A/C.3/37/SR.47
23 November 1982

ORIGINAL: ENGLISH

The meeting was called to order at 10.40 a.m.

AGENDA ITEM 84: ELIMINATION OF ALL FORMS OF RELIGIOUS INTOLERANCE (A/37/3 (Part I), A/37/392, A/37/542)

AGENDA ITEM 85: HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS: REPORT OF THE SECRETARY-GENERAL (A/37/330 and Add.1)

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AGENDA ITEM 87: INTERNATIONAL COVENANTS ON HUMAN RIGHTS (A/37/3 (Part I), A/37/551, A/37/609)

- (a) REPORT OF THE HUMAN RIGHTS COMMITTEE (A/37/40)
- (b) STATUS OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: REPORT OF THE SECRETARY-GENERAL (A/37/406)
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AGENDA ITEM 88: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (A/37/3 (Part I), A/37/551)

- (a) UNILATERAL DECLARATIONS BY MEMBER STATES AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT: REPORT OF THE SECRETARY-GENERAL (A/37/263 and Add.1)
- (b) DRAFT CODE OF MEDICAL ETHICS: REPORT OF THE SECRETARY-GENERAL (A/37/264 and Add.1 and Add.2)

1. Mr. RAMCHARAN (United Nations Centre for Human Rights), introducing the items under consideration, said that the question of religious intolerance was one which had long engaged international attention and to which the United Nations had given consideration for many years. At the thirty-sixth session of the General Assembly, the Third Committee had examined the draft of a Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and that Declaration had been adopted by the General Assembly on 25 November 1981 (resolution 36/55). By decision 36/412, the General Assembly had decided to include in the provisional agenda of its thirty-seventh session an item entitled "Elimination of all forms of religious intolerance".

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(Mr. Ramcharan)

2. Since 1968, many United Nations resolutions had been adopted and substantive work had been carried out in the United Nations and the specialized agencies on the question of human rights and scientific and technological developments. In resolution 36/56, the General Assembly had stressed the importance of the implementation by all States of the provisions and principles contained in the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, and had requested the Commission on Human Rights to give special attention to the implementation of the provisions of that Declaration. The item had been studied by the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Commission had eventually adopted resolution 1982/4, by which it once again requested the Sub-Commission to undertake, as a matter of priority, a study on the use of the achievements of scientific and technological progress to ensure the right to work and development and decided to examine that study at its thirty-ninth session.

3. The Commission on Human Rights had for some years been giving attention to a draft convention on the rights of the child, on the basis of proposals made initially by the Government of Poland. At its thirty-eighth session, it had once again appointed an open-ended working group to discuss the draft convention and that body had thus far considered and drawn up the preamble to the draft convention, and text for articles 1 to 12. The Commission had noted with satisfaction the progress made by its open-ended working group and had decided to continue work on the draft convention at its next session in 1983, as a matter of priority, with a view to completing the convention at that session.

4. Since the adoption of General Assembly resolution 36/58 concerning the International Covenants on Human Rights, five more States, namely, Bolivia, Egypt, Saint Vincent and the Grenadines, the Solomon Islands, and Viet Nam, had ratified or acceded to the International Covenant on Economic, Social and Cultural Rights, four more States, namely, Bolivia, Egypt, Saint Vincent and the Grenadines, and Viet Nam, had ratified or acceded to the International Covenant on Civil and Political Rights, and two more States, namely, Bolivia and Saint Vincent and the Grenadines, had acceded to the Optional Protocol to the International Covenant on Civil and Political Rights. The two Covenants had therefore been ratified or acceded to by 75 and 72 States respectively, and the Optional Protocol by 28 States.

5. The General Assembly, in resolution 36/59, had invited Member States to submit further comments and observations on the elaboration of a second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and it had requested the Secretary-General to submit to it at its thirty-seventh session a report containing the views expressed by Governments. That report was contained in document A/37/407 and Add.1.

6. In 1975, the General Assembly had adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It had also requested the Secretary-General to inform it in annual reports of such unilateral declarations as might be deposited by Member States. Document A/37/263 contained declarations made by France, Rwanda, Saint Vincent and the Grenadines, and Sri Lanka.

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(Mr. Ramcharan)

7. By resolution 34/168, the General Assembly had requested the Secretary-General to circulate the draft Code of Medical Ethics to Member States, the specialized agencies concerned, and interested intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council, for comments and suggestions. By resolution 35/179, the General Assembly had renewed its request for comments and had decided to consider the question at its thirty-seventh session with a view to adopting the draft principles of medical ethics. The comments received were contained in document A/37/264 and Add.1 and 2.

8. Lastly, under agenda item 12, the Committee would be taking up a subitem on the United Nations Voluntary Fund for Victims of Torture. The report of the Secretary-General in that connection would be before the Committee. In accordance with resolution 36/151, the Secretary-General had appointed four members to the Board of Trustees of the Fund and would be considering the appointment of the fifth member.

9. Mr. van WELL (Federal Republic of Germany), speaking on agenda item 87 (d), said that as the author of a draft optional protocol to the International Covenant on Civil and Political Rights concerning the abolition of capital punishment, his delegation appreciated the contributions of all those Member States whose comments and suggestions had appeared in document A/37/407 and Add.1. He was especially grateful to all those who supported the elaboration of an optional protocol. While realizing that a number of countries could not eliminate capital punishment from their penal codes, he was gratified that those countries did not intend to block the consideration of an optional protocol. He was also pleased that the number of executions in some countries had declined sharply in the past few years.

10. While believing that mankind had reached the stage at which it should be able to dispense with capital punishment, his delegation did not wish in any way to pronounce judgement on those legal systems that maintained capital punishment. Its aim was to create an international instrument whereby those countries wishing to do so could undertake openly to abolish capital punishment, or not to reintroduce it. It respected each State's sovereign decision, based on differing historical influences, legal traditions and religious persuasions, whether or not to accede to the optional protocol. Thus, those who were not in a position to consent to the abolition of capital punishment would not be placed at any legal disadvantage by his country's initiative. He simply hoped that they would not oppose the elaboration of an optional protocol, so that those States wishing to abolish capital punishment or not to reintroduce it would be able to make their convictions known in an internationally binding manner.

11. He felt that his country's initiative had also helped keep alive international discussion on the limitation and abolition of capital punishment, and he hoped that even those countries not in a position to abolish capital punishment regarded such discussion as a good thing, considering the enormous hazards of rash or excessive application of capital punishment.

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(Mr. van Well, Federal
Republic of Germany)

12. The United Nations appeared to be the most appropriate forum for the presentation of his country's proposal, which was in keeping with earlier and repeatedly expressed endeavours and goals of the United Nations, including General Assembly resolutions 2857 (XXVI) and 32/61. Moreover, the Human Rights Committee had stated that the right to life had often been interpreted too narrowly and, in paragraph 6 of annex V of its report, said it followed from article 6 of the Covenant that States should restrict the use of that punishment to the "most serious crimes" and that all measures of abolition should be considered as progress in the enjoyment of the right to life. All in all, he felt that his delegation's proposal was well balanced and did not run counter to the interests of any Member State.

13. With regard to further steps, his delegation hoped that the Committee would adopt a resolution for the elaboration of a second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. However, he recognized that such a decision required further consideration on the part of some delegations. He therefore proposed that the General Assembly should adopt a procedural resolution requesting the Commission on Human Rights, as the most appropriate and experienced body, to consider the idea of drafting a second optional protocol at its thirty-ninth session, taking into account the documents considered by the General Assembly on the subject and the comments of Governments thereon, and to submit a report to the General Assembly at its thirty-eighth session. In the light of the Commission's report and the views expressed by Governments, the General Assembly should continue to discuss the elaboration of a draft optional protocol with a view to considering what further steps might be taken. His delegation hoped that its proposal, which was procedural in nature, would meet with the approval of the Committee, and it appealed to all delegations for their support.

14. Mr. WALKATE (Netherlands), speaking on agenda item 87, said that the monitoring of the implementation of the International Covenant on Economic, Social and Cultural Rights was complicated by the provision in article 2, paragraph 1, that the rights recognized in the Covenant should be realized progressively. Those charged with the monitoring were therefore not provided with clear and fixed criteria such as those in the Covenant on Civil and Political Rights. Understandably, it had taken the Economic and Social Council some time to set up suitable machinery for assessing the progress made by States parties in discharging their obligations under the Covenant. It was therefore gratifying that the Economic and Social Council had been able to review the arrangements for monitoring its implementation and had decided, by resolution 1982/33, that the 15 members of the Group of Experts should be elected by it from among the States parties to the Covenant, thereby eliminating an awkward situation in which States not parties could be called upon to judge the progress made by States parties. Of equal importance was the decision to require member States of the Group to designate "qualified persons" as representatives and to give the Group a mandate to make suggestions and recommendations of a general nature based on the consideration of

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(Mr. Walkate, Netherlands)

reports submitted by States parties. The new composition and arrangements for the Group could be the beginning of a development which would put it on the same level as the Human Rights Committee.

15. Praising the report of the Human Rights Committee and the work of its members, he said that the report should be read in combination with that Committee's summary records, which, in his delegation's view, were of high quality. Those records reflected the intensity of the dialogue between the members of the Committee and representatives of States parties. He was also pleased that the Human Rights Committee had decided to discuss, *inter alia*, the debate in the Third Committee on its reports, thus following the good example of the Committee on the Elimination of Racial Discrimination.

16. The general comments on specific articles of the Covenant contained in the current and the preceding report were the beginning of an authoritative commentary on the Covenant based on the experience gained in its implementation.

17. Stressing the importance of proper publicity for the work of the Human Rights Committee, he said he fully agreed with the reasons for the Committee's belief, stated in the letter from the Chairman of the Human Rights Committee in document A/C.3/37/6, that availability of its public documents was necessary to ensure the maximum effectiveness of its work. He welcomed the measures proposed by the Secretary-General in document A/37/490 for improving publicity and thereby making the work of the Human Rights Committee more widely accessible and greatly facilitating the activities of governmental officials, academic researchers and lawyers in the defence of human rights. He stressed the importance of the press releases published during the Human Rights Committee's session and suggested that, when that Committee met away from Headquarters, press releases in English should be made available simultaneously at New York.

18. With regard to the reporting system, he expressed satisfaction with the more flexible approach towards periodicity reflected in the Human Rights Committee's decision in annex IV of its report. The Human Rights Committee appeared to have benefited from the experience in the case of the Convention on the Elimination of All Forms of Racial Discrimination, where a hard-and-fast rule concerning periodicity was creating increasing difficulties.

19. The idea that the protection of human rights was a matter of common concern, not one of purely internal interest, was reflected in article 4, paragraph 3, of the Covenant. It was with that provision in mind that his Government had solemnly appealed to all States parties, at their fourth meeting on 17 September 1982, to take special care that in times of public emergencies those rights and freedoms enumerated in article 4, paragraph 2, from which no derogation might be made were fully protected. States of public emergency and quasi-emergency and situations which revealed gross violations of human rights were a source of continuous and deep concern for his Government, which followed with particular interest the developments in Uruguay, one of the States parties which had availed themselves of the right to declare a public emergency. It had been greatly encouraged by the co-operation which the Government of Uruguay had extended to the Human Rights

(Mr. Walkate, Netherlands)

Committee by engaging in an extensive and long dialogue. It had also taken due note of the modest liberalization of the freedom of expression, assembly and association carried out by the Uruguayan Government during the past year, thereby enabling some political parties to prepare themselves, in a limited manner, for popular elections in the near future. However, he was disappointed to read in paragraph 270 of the report of the Human Rights Committee that the requirements of article 4 of the Covenant, as well as of the relevant articles of the Constitution itself, had not been complied with. His delegation would like to be assured that, in Uruguay there were no violations of article 7 or article 10 of the Covenant and, more particularly, that the perpetrators of any such violations were being prosecuted. He hoped that the Government of Uruguay would be prepared to apply the Covenant in full, including article 4, and lift the state of emergency in the near future.

20. The provision of article 4, paragraph 2, of the Covenant applied a fortiori to States parties where a public emergency clearly existed but had not been formally declared or brought to the attention of other States parties. It was therefore with the greatest anxiety that his Government had followed the Iranian Government's continuous and massive violations of the most fundamental human rights and freedoms, which were unconditionally and unambiguously safeguarded in the Covenant. The Human Rights Committee's consideration of the report of Iran not only revealed a contempt for the members of that Committee on the part of the representative of Iran but also disclosed that country's disregard for international law and for universally accepted human rights norms. It was tragic to see a State submit that in fact it no longer recognized the primacy of international law. Having taken note of the numerous reliable reports on the situation in Iran, he wondered what provisions of the Convention were still being upheld by a Government which engaged in arbitrary arrests and detentions, torture, and arbitrary and summary executions, even of young children. Such wanton destruction of human life and dignity was extremely difficult, if not impossible, to reconcile even remotely with the spirit and letter of the Covenant. The Human Rights Committee, quite rightly, had not even tried to do so.

21. The Human Rights Committee's report showed once again how powerless it was in the face of flagrant violations of human rights and of the Covenant. It was the task of the General Assembly to give that Committee all the moral and political support it could and, at the same time, to call to account those responsible for such violations.

22. Mr. COHEN (Israel), speaking on agenda item 84, said that in its resolution 36/55 the General Assembly had solemnly and unanimously adopted a universal Declaration, which many had expected to become an important instrument in eliminating the ancient and abhorrent evils of racial intolerance and persecution. The Jewish nation had had particularly compelling reasons to hope that the Declaration would function as an important component in the system of conventions and declarations on human rights. The State of Israel was constantly alert to protect the basic rights and freedoms of Jewish minorities all over the world, wherever discriminatory measures hampered and harassed them.

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(Mr. Cohen, Israel)

23. He therefore found it regrettable that up to the present time, one year after the adoption of the Declaration, no progress had been made. On the contrary, the situation regarding religious freedom for Jews in many countries, particularly in the Soviet Union and some Arab and Islamic States, had deteriorated. Jews still suffered from repression, limitations on their movements, and the denial of their right to emigrate. Indeed, in a number of Member States, Jews were now completely deprived of the very rights set forth in article 6 (a), (d) and (e) of the Declaration. In most cases such discrimination was not only religious but also national and cultural in character. His delegation would therefore refer in detail to the question of such discrimination against Jewish minorities when the Committee came to discuss agenda item 12.

24. Mrs. GUELMAN (Uruguay), referring to the remarks made by the representative of the Netherlands, said that her country fully complied with articles 7 and 10 of the International Covenant on Civil and Political Rights. The decision of a State party to avail itself of the right of derogation provided for under article 4 of the Covenant fell within the exclusive competence of the State concerned. Moreover, the general political comments about Uruguay made by the representative of the Netherlands did not correspond to the realities of the situation. Last, she stressed that Uruguay participated in the work of all international forums concerned with human rights, maintained a bilateral dialogue with other countries and was one of the 28 States to have ratified the Optional Protocol to the International Covenant on Civil and Political Rights.

The meeting rose at 12.05 p.m.