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COMMISSION ON HUMAN RIGHTS

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD WITH PARTICULAR REFERENCE
TO COLONIAL AND OTHER DEPENDANT COUNTRIES AND TERRITORIES

THE SITUATION OF HUMAN RIGHTS
IN KAMPUCHEA

Note by the Secretariat

In its resolution 29(XXXVI) the Commission of Human Rights decided to keep the situation in Kampuchea "under review as a matter of priority, and requested a member of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities to review at the thirty-third session of the Sub-Commission any further material on the subject which may become available and to submit it together with appropriate recommendations to the Commission at its thirty-seventh session".

At the thirty-third session the Sub-Commission on Prevention of Discrimination and Protection of Minorities designated Mr. Abdelwahab Bouhdiba to undertake the review. On 12 September 1980, the Sub-Commission adopted resolution 24(XXXIII) by which it requested the Secretary-General to transmit to the Commission, at its 37th session the "materials reviewed by Mr. Bouhdiba, together with the summary records of the Sub-Commission's consideration of the matter at its thirty-third session, including Mr. Bouhdiba's statement to the Sub-Commission. It recommended to the Commission to "keep the situation of human rights in Kampuchea under continuing review and to consider inviting the Secretary-General to designate a Special Representative to assist in restoring full respect for human rights and fundamental freedoms as speedily as possible in Kampuchea".

The review by Mr. Bouhdiba is reproduced in the following paragraphs. His introductory statement to the Sub-Commission is contained in document E/CN.4/Sub.2/SR.878. The summary records of the Sub-Commission's consideration of the question are contained in documents E/CN.4/Sub.2/SR.876 and E/CN.4/Sub.2/SR.893 which are also before the Commission in connection with the consideration of the present item.

A. Introduction

1. It is appropriate to begin by recalling the text of resolution 29(XXXVI) of 11 March 1980, by which the Commission on Human Rights, after noting that Kampuchea was still under foreign occupation and that the conflict was continuing, thus preventing the people of Kampuchea from exercising their inalienable right to self-determination, and after condemning all the violations of human rights which have occurred in Kampuchea, as well as the invasion and occupation of parts of the country by foreign forces, requested a member of the Sub-Commission to review at the thirty-third session any further material on the subject which might become available and to submit it together with appropriate recommendations to the Commission at its thirty-seventh session. This resolution was adopted by 20 votes to 9, with 6 abstentions (thus reflecting a broad measure of agreement among the members of the Commission).

2. In performing the task assigned to him by the Sub-Commission by virtue of resolution 29 (XXXVI) and with the efficient assistance of the Division of Human Rights, the rapporteur assembled two files. The first contains a series of official documents submitted by States, international agencies and non-governmental organizations. The second comprises a series of press clippings, which the rapporteur consulted but did not take into account. Moreover, during the discussions in the Sub-Commission, various members of the Sub-Commission and observers representing particular States or non-governmental organizations expressed their views on the matter. Finally, the representative of the Socialist Republic of Viet Nam handed over to the rapporteur personally a number of notes which were added to the file.

B. Description and list of the documents analysed 1/

3. The documents listed below became available after the adoption of resolution 29 (XXXVI) and were classified in the following way, depending on their origin:

Documents submitted to the United Nations by Governments

Official letters addressed to the United Nations by Governments with a request that they should be circulated during the General Assembly and at meetings of the Security Council:

(a) Fifteen letters from the Government of Democratic Kampuchea, transmitted between 11 January and 5 August 1980;

(b) Thirteen letters from the Government of Viet Nam, transmitted between 8 April and 4 August 1980;

(c) Three letters from the Government of the People's Republic of China, transmitted between 26 June and 4 July 1980;

(d) One letter from the Government of Thailand, dated 1 July 1980;

(e) One note verbale with annexes submitted by the Permanent Mission of the United States of America and dated 23 July 1980.

1/ These documents are available to any member of the Sub-Commission who wishes to consult them.

Documents submitted by the following non-governmental organizations

- (a) World Conference on Religion for Peace;
- (b) Commission of the Churches on International Affairs (World Council of Churches);
- (c) International Committee of the Red Cross.

Official United Nations documents other than those containing material submitted by Governments

- (a) Report of the Economic and Social Council: Meeting on Humanitarian Assistance and Relief to the Kampuchean People;
- (b) Note by the Secretary-General: Meeting on Humanitarian Assistance and Relief to the Kampuchean People;
- (c) Letter from the Secretary-General to the Chargé d'Affaires of the Permanent Mission of Thailand.

C. The allegations

4. The Special Rapporteur wishes to make it clear that he has approached his task exclusively from the standpoint of human rights. Matters pertaining to the internal policy of a particular State do not fall within his terms of reference, nor do they come within the prerogatives of the Sub-Commission. The documentation studied is necessarily contradictory, since it derives from various sources having conflicting interests and contains profoundly divergent analyses.

5. In the first place, the Government of Democratic Kampuchea makes a series of allegations against Viet Nam, accusing it of mass executions, the rape and subsequent execution of large numbers of girls and the misappropriation and diversion of international and bilateral humanitarian assistance intended for civilians and refugees but actually distributed to the Vietnamese army. It is alleged that famine is carefully and systematically fostered by the authorities occupying Kampuchea in order to disrupt production with a view to maintaining a permanent state of insecurity obliging Cambodians to seek refuge abroad. Thus, at least 150,000 Kampucheans are said to have taken refuge in Thailand. Several million other people are also said to have taken refuge in that country - i.e., displaced persons. These displaced persons cannot benefit from humanitarian assistance, which is diverted by the Vietnamese administration to Phnom Penh, where the authorities sell it for gold. Finally, Viet Nam is accused of the forced enlistment of young Kampucheans to serve in the army supported by the Vietnamese occupying authorities.

6. The documents submitted by the Government of Viet Nam accuse the régime of Pol Pot, Ieng Sari and Khieu Samphan of having committed genocide by killing 3 million Kampucheans during their rule. The Thai authorities are said to be guilty of giving refuge to Pol Pot, his friends and his troops, who use the territory of Thailand as a base for attacking Kampuchea and preventing its peaceful reconstruction. The Vietnamese Government also accuses Thailand of using humanitarian assistance as a mere pretext for luring the population of Kampuchea into Thai territory so as to constitute a reserve of manpower capable of helping Pol Pot and his friends to continue their activities against Kampuchea.

Viet Nam explains its position on humanitarian assistance, which under no circumstances should be used for political or military purposes. In its opinion, voluntary return is a mere ruse to camouflage the introduction into Kampuchea of troops loyal to Pol Pot. Viet Nam stresses the bilateral humanitarian assistance which it has provided to Kampuchea to help it to survive.

7. Thirdly, in the documents submitted by the Government of China, the Vietnamese are accused of committing incursions into Thai territory with the aim of destroying human life and property.

8. Fourthly, in the documents furnished by the United States of America, reference is made to serious violations both in Vietnamese-controlled and Khmers Rouges-controlled areas. The Vietnamese are perpetrating atrocities, while the Khmers Rouges are carrying out mass killings. Humanitarian assistance is said to be diverted by both sides. Moreover, it is alleged, the structure of agricultural production cycles is being destroyed with injurious consequences which will not only be felt in the very near future but will be very serious in the long term, since agricultural production has been completely disrupted; there is therefore reason for very serious concern over the situation which is likely to develop in the coming months. The spectre of famine and malnutrition is still very real. Finally, according to the Americans, international assistance is basically benefiting the administration and army officers, and the fundamental problem of the survival of the Khmer people remains unresolved.

9. The documents submitted by non-governmental organizations and the United Nations reports confirm the seriousness of the situation and its tragic nature. They confirm that the Kampuchean people has recently experienced one of the major tragedies of the twentieth century: massive loss of human life, destruction of the country and its productive resources and atrocious sufferings inflicted on every stratum of the population. The problem now is to restore minimum living conditions for almost 5 million people. The catastrophe is of such dimensions that long-term assistance is needed for the reconstruction of the country. The United Nations is calling upon the international community to provide assistance. At the present time (August 1980) some 160,000 refugees are in neighbouring countries, mainly in Thailand, and the assistance which was provided very promptly in extremely difficult conditions by the United Nations High Commissioner for Refugees and by the International Red Cross, while playing a vital role in alleviating sufferings, nevertheless remains very inadequate. Since 1975, at least half a million Indo-Chinese have been helped to resettle elsewhere. However, requirements for assistance of all kinds remain enormous.

CONCLUSIONS AND RECOMMENDATIONS

The catastrophe which has befallen the people of Kampuchea is without precedent in our century, except for the horror of nazism - barbaric genocide, millions dead, millions maimed, hundreds of thousands of children scarred, probably for the rest of their lives, millions of families destroyed, famine, disease, etc.

Each of the two parties involved accuses the other, and it is very likely that each is justified in the allegations which it makes against the other, as the information contained in the documents submitted by third States, international agencies and non-governmental organizations tends to confirm.

In any event, nothing should erase the memory of the horrible genocide perpetrated by the Khmers Rouges between 1975 and 1978, which lies at the root of everything that has happened in Kampuchea during the past five years. Condemnation of the armed intervention by Viet Nam and Viet Nam's interference in the affairs of Kampuchea should not mask or cause to be forgotten the crimes of the Khmers Rouges, which have nothing to do with Marxism, revolutionary ideology or the legitimate right of each country to choose its own régime and its own form of government.

Interference, particularly armed interference, in the internal affairs of other countries and the military occupation of the territories of third countries are inadmissible. Moreover, the safeguarding of human rights cannot be invoked as a pretext for violating other human rights.

From this point of view, Commission on Human Rights resolution 29 (XXXVI) is a model of balance and good sense.

Unfortunately, the situation on the spot has not developed favourably, basically because of what might be termed the nebulous legal position whereby the United Nations continues to recognize a régime which it has condemned and which would no longer appear to have any serious hold on the country and does not recognize a régime which it condemns just as much but which controls the territory.

This political and legal situation does not call for more extensive analysis by the Rapporteur or by the Sub-Commission. It comes within the exclusive jurisdiction of other United Nations bodies. However, as long as it continues, there will be difficulties and violations of human rights. In the circumstances, there is no alternative but to comply with the following two requirements:

Non-violation of the fundamental principles of the Charter;

All possible efforts to alleviate the sufferings of a people which has been martyred for too long.

To help the people of Kampuchea out of their long nightmare, the least bad political solutions should be chosen and humanitarian assistance should be increased and speeded up. The following four principles can be adopted:

1. Principle of self-determination for the people of Kampuchea

This is an inalienable, fundamental and absolute right which can in no way be considered to have been exercised so far. Only enjoyment of this basic human right can clear up the nebulous legal position. It will be for the appropriate United Nations organs to strive to establish the means for ensuring effective enjoyment of this right to self-determination.

2. Principle of the return of refugees to their region of origin.

This is the only way of settling displaced persons in a durable manner. Not only is return a right but, in practical terms, it prevents the situation from becoming chronic and from deteriorating. Of course, return should be on a voluntary basis, and the permanent agencies should ensure its free character and prevent it from being used for non-humanitarian purposes.

3. Humanitarian assistance to refugees and displaced persons should be maintained and speeded up. A tribute should be paid to the efficient and admirable assistance provided by UNHCR and the Red Cross, in particular, in extremely difficult conditions.

4. Assistance in the reconstruction of Kampuchea is hardly less vital. Not only people but also nature have been seriously affected. The disruption of economic and agricultural production cycles, in particular, calls for in-depth analysis and sustained effort. UNDP, WFP and sources of multilateral and bilateral assistance should co-ordinate their efforts to work out a medium-term programme.

It is very important that the Secretary-General of the United Nations should continue his untiring efforts and maintain his good offices. Without the tireless and efficient assistance provided by the United Nations and other international organizations with a humanitarian calling, the scale of the catastrophe would certainly have been greater.

In the meantime, the Sub-Commission should appeal to the various parties involved to exercise self-restraint so as not to impede current and future humanitarian activities and to provide unstinting support to all those who are working in the field to alleviate the sufferings of the Khmer people.