

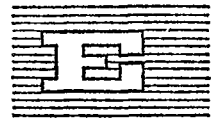
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COMMISSION ON HUMAN RIGHTS

Thirty-eighth session

SUMMARY RECORD OF THE 58th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 10 March 1982, at 9 p.m.

Chairman:

Mr. GARVALOV

(Bulgaria)

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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 dependent countries and territories, including:

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The meeting was called to order at 9.30 p.m.

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

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS (agenda item 12) (continued)
(E/CN.4/1982/L.27, L.26 and L.70)

1. Mr. KOOLJMANS (Netherlands) said that his delegation agreed with the delegation of Canada that the proposals submitted by the Soviet Union in document E/CN.4/1982/L.70 did not constitute amendments to draft resolution E/CN.4/1982/L.27. His delegation sympathized with the idea behind the proposals and would be ready to discuss them in due course in the context of a separate draft resolution. If the Soviet proposals were accepted as amendments and adopted, the Commission would set a bad precedent in allowing delegations to change completely the thrust of draft resolutions. The best course would therefore seem to be for the Commission to vote as soon as possible on the question whether or not the proposals in document E/CN.4/1982/L.70 constituted amendments to draft resolution E/CN.4/1982/L.27.
2. The CHAIRMAN said that as the Commission was short of time and in the process of discussing an important question, he could not give the floor to observers at the present stage.
3. Mr. ZORIN (Union of Soviet Socialist Republics) said that rule 63 of the rules of procedure, concerning amendments, was clear and showed that the amendments submitted by his delegation in document E/CN.4/1982/L.70 were fully in accordance with the requirements for amendments under the rules of procedure. While making some additions, deletions and changes in draft resolution E/CN.4/1982/L.27, his delegation's amendments conformed to the main purpose of the text, namely, the protection of human rights in all countries, and sought only to remove its selective approach.
4. Mr. DIEYE (Senegal), observing that his country was non-aligned and neutral on the substance of the matter, considered that the debate had taken an unfortunate turn, in that the procedural discussion was preventing the Commission from dealing directly with the essential question. The Commission must be able to deal with the protection of human rights everywhere and take the necessary decisions. The principle of non-interference in internal affairs, which was endorsed by the Charter and other international instruments, should not, however, prevent the international community from seeing and reacting to what happened in a given country. Human rights were too important for the international community to close its eyes to violations. There was no need to make comparisons between countries or to insist that measures that were valid in one country were necessarily valid in others, but it was also counter-productive to insist that each country must fully determine the standards and measures to be applied in that country.
5. There was no point in involving the Commission in a sterile procedural debate nor was there any need to try to protect countries or use human rights issues for political purposes. The Commission's concerns were humanitarian and it should be able to take a decision in any specific case. Respect for human rights was the most important point and should not be thwarted by rigid application of the principle of non-interference. He therefore hoped that the Commission would be able to take a speedy decision on the matter under discussion.

6. Mr. COLLIARD (France) proposed, under rule 50 of the rules of procedure, that the debate on the question should be closed.
7. Mr. MUBANGA-CHIPOYA (Zambia) speaking against the French procedural motion, said that the Commission must base its work on legal considerations so as to avoid arbitrary decisions. The situation in Poland seemed on the face of it to be legal, as neither the Constitution, which was the foundation of all domestic law, nor article 4 of the International Covenant on Civil and Political Rights had been violated. It was ironic that, although there were many situations where far worse conditions could be found and had persisted even for centuries - without much reaction by some of the Governments concerned in the present case, those Governments were now raising an unbelievable uproar about Poland and calling for the most drastic measures. There was little official information available to members concerning the situation in Poland and, as lawyers, members could not base their conclusions on reports in the press. Furthermore, the situation in Poland could in no way be compared with the situation in South Africa or Chile. In Chile, for instance, the law itself had been overthrown, which was not the case in Poland.
8. Quite clearly, therefore, the best course was to request more time in order to obtain more facts on the situation before taking any decision. He accordingly proposed, under rules 49 and 51 (c) of the rules of procedure, that consideration of the proposals contained in documents E/CN.4/1982/L.27, L.61 and L.70 should be deferred until the thirty-ninth session of the Commission. Under rule 51 of the rules of procedure his proposal - a proposal to adjourn the debate - would have priority over the French proposal to close the debate.
9. Mr. BEAULNE (Canada), speaking on a point of order, said that the proposal made by the representative of Zambia was not in order since, under rule 50, permission to speak on the motion, i.e. the French proposal, should be accorded only for the purpose of opposing the closure and not for making new proposals.
10. The CHAIRMAN said that the Zambian representative's proposal was part of his argument against closing the debate, i.e. that it was better to adjourn the debate.
11. Mr. JESS JANI (Zimbabwe) said that his delegation also opposed the closure of the debate. The Polish delegation had informed the Commission that the measures taken by its Government were legal in that the Polish Constitution, like most constitutions, made provision for such measures. Furthermore, the Polish Government had notified the Secretary-General of the measures taken, as called for in article 4 of the International Covenant on Civil and Political Rights. There would therefore seem to be no legal grounds for attacking the Polish position. The Polish delegation did not seek to deny that such measures had been taken but merely affirmed that the measures were not illegal and were consistent with international agreements. Surely a country could act in accordance with its own Constitution?
12. His delegation felt that draft resolution E/CN.4/1982/L.61 further complicated an already complicated situation and appealed to the Byelorussian delegation to withdraw it. In any case, his delegation would vote against it. The same applied to the amendments in documents E/CN.4/1982/L.70 submitted by the Soviet Union. His delegation favoured the Zambian proposal to adjourn the debate and would vote against draft resolution E/CN.4/1982/L.27 if it came to a vote at the current session. His delegation saw no need to rush to condemn the Polish Government and favoured giving that Government time, as it had requested, to improve the situation.

13. Mr. SALAH-BEY (Algeria) considered that the Commission should decide on the procedural situation. It would seem, under rule 49, that a motion to adjourn the debate could be submitted at any time and that under rule 51 (c) such a motion had priority over a motion to close the debate. He requested the Chairman to call on the Commission to take a decision on the procedural proposals.
14. Mr. AKRAM (Pakistan), speaking on a point of order, said that although his delegation was neutral on the substance of the matter under discussion, it felt that the Commission must follow the rules of procedure carefully. Under rule 51 (c) the debate could be adjourned but the Commission would still have to vote on the draft resolutions and amendments. A motion requiring that no decision should be taken on the proposals should properly be submitted under rule 65, paragraph 2, of the rules of procedure. Since it was his impression that the representative of Zambia had intended to move that no decision should be taken on the proposals, the Zambian motion should perhaps be submitted under rule 65, since under rule 51 (c) it would not have the intended effect. He requested clarification from the representative of Zambia.
15. Mr. BEAULNE (Canada), speaking on a point of order, said that the Chairman had given Zambia the floor to speak against a procedural motion to close the debate; it did not seem proper that a separate procedural proposal could be submitted while supposedly speaking on the original motion.
16. Mr. MUBANGA-CHIPOYA (Zambia) said that it was his wish to postpone the entire matter, including voting on the proposals, until the thirty-ninth session because of the current lack of information on the subject. He hoped that his proposal submitted under rule 49 would achieve that aim.
17. Mr. SCHIFTER (United States of America) said that, if the Commission was to take up the Zambian proposal, two speakers should be allowed to speak in favour of it and two against.
18. Mr. TERREFFE (Ethiopia) said that his delegation supported the Zambian proposal. The Commission had already spent too much time on the matter and there was very little material available on the subject. To continue consideration of the matter in any form would be inconsistent with the principles of non-alignment and the Charter.
19. Mr. KOOLJMANS (Netherlands) concurred with the representative of Pakistan on the procedural aspect of the problem but would agree to a vote on the Zambian proposal. He was somewhat surprised at the comments made by the representative of Zambia, since draft resolution E/CN.4/1982/L.27 requested the Secretary-General to take measures to enable the Commission to discuss the situation in Poland more fully at the thirty-ninth session. There was complete agreement that there was not enough material available for a discussion at the current session and the draft resolution sought to ensure that sufficient material was gathered for the following session. The Commission had often been criticized for failure to act in a timely fashion on available reports attesting to serious violations of human rights, and the draft resolution attempted to avert just that kind of criticism. His delegation opposed the Zambian proposal, although it agreed with the reasons that the Zambian representative had adduced for his proposal.

20. Mr. MUBANGA-CHIPOYA (Zambia), speaking on a point of order, said that the representative of the Netherlands had perhaps misunderstood his statement. Draft resolution E/CN.4/1982/L.27 appeared to be prejudiced in that it proposed certain specific measures without any basis for such action. The request for more information was only part of the draft resolution.

21. Mr. LANG (Federal Republic of Germany) opposed the Zambian proposal and urged the Commission to vote on the French proposal to close the debate on the matter, especially since the required two speakers had already spoken against that proposal, as called for under the rules of procedure.

22. The CHAIRMAN invited the Commission to vote on the Zambian proposal to adjourn the debate on the matter, including the votes on draft resolutions E/CN.4/1982/L.27, L.61 and L.70.

23. At the request of the representative of the United States of America, the vote was taken by roll-call.

24. The United Kingdom, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Ethiopia, Ghana, India, Poland, Syrian Arab Republic, Union of Soviet Socialist Republics, Yugoslavia, Zambia, Zimbabwe.

Against: Australia, Canada, Costa Rica, Denmark, Fiji, France, Germany, Federal Republic of, Greece, Italy, Japan, Netherlands, Panama, Peru, Philippines, Rwanda, Senegal, Togo, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Abstaining: Argentina, China, Cyprus, Gambia, Jordan, Mexico, Uganda, Zaire.

25. The procedural motion proposed by Zambia was rejected by 20 votes to 13, with 8 abstentions.

26. The CHAIRMAN invited the Commission to consider the French procedural motion to close the debate on the item.

27. Mr. SCHIFTER (United States of America), speaking on a point of order, said it was his understanding that the French proposal had to do with the closure of the debate and that the Commission would still have to deal with the question whether or not the proposals in document E/CN.4/1982/L.70 constituted amendments to draft resolution E/CN.4/1982/L.27.

28. Mr. MAKSIMOV (Byelorussian Soviet Socialist Republic) said it was his understanding that there would also be a vote on the draft resolution submitted by his delegation in document E/CN.4/1982/L.61.

29. The CHAIRMAN confirmed that there would be a vote on draft resolution E/CN.4/1982/L.61 after the vote on draft resolution E/CN.4/1982/L.27.

30. At the request of the representative of the Netherlands, a vote was taken by roll-call on the motion proposed by France.

31. Zambia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Australia, Canada, China, Costa Rica, Denmark, Fiji, France, Gambia, Germany, Federal Republic of, Ghana, Greece, Italy, Japan, Mexico, Netherlands, Panama, Peru, Philippines, Rwanda, Senegal, Togo, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia.

Against: Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Ethiopia, Poland, Syrian Arab Republic, Union of Soviet Socialist Republics, Zambia, Zimbabwe.

Abstaining: Algeria, Argentina, Cyprus, India, Jordan, Pakistan, Uganda, Zaire.

32. The motion proposed by France was adopted by 25 votes to 9, with 8 abstentions.

33. The CHAIRMAN invited the Commission to vote on the question whether or not the Soviet proposals in document E/CN.4/1982/L.70 constituted amendments to draft resolution E/CN.4/1982/L.27 in accordance with the rules of procedure.

34. At the request of the representative of the United States of America, the vote was taken by roll-call.

35. Zaire, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Ethiopia, Poland, Syrian Arab Republic, Union of Soviet Socialist Republics, Zambia.

Against: Australia, Brazil, Canada, China, Costa Rica, Denmark, Fiji, France, Gambia, Germany, Federal Republic of, Ghana, Greece, Italy, Japan, Mexico, Netherland, Panama, Peru, Philippines, Rwanda, Senegal, Togo, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Zimbabwe.

Abstaining: Argentina, Cyprus, India, Jordan, Pakistan, Uganda, Yugoslavia, Zaire.

36. The Commission decided by 26 votes to 9, with 8 abstentions, that the Soviet proposals in document E/CN.4/1982/L.70 did not constitute amendments to draft resolution E/CN.4/1982/L.27.

37. The CHAIRMAN invited the Commission to consider draft resolution E/CN.4/1982/L.27.

38. Mr. SOLA VILA (Cuba) said his delegation wished to suggest that the words "an interim report to the Economic and Social Council for consideration at its first regular session for 1982, and" should be deleted from paragraph 6 of the draft resolution. It would seem that there was insufficient time for any kind of objective report to be submitted to the Council at its first regular session for 1982.

39. Mr. KOOLJMANS (Netherlands) said that the sponsors of the draft resolution could accept the Cuban amendment.

40. Mr. BHAGAT (India), speaking in explanation of vote before the vote, said that the representative of Poland had stated the reasons for the imposition of martial law in his country and had alluded to the efforts being made by his Government to restore normalcy as soon as possible. Furthermore, the Polish Government had informed the Secretary-General of the derogation of certain rights guaranteed under the International Covenant on Civil and Political Rights, as called for in article 4 of that Covenant.

41. It was accordingly necessary to consider whether the imposition of martial law in itself constituted a violation of human rights. There were many countries whose constitutions provided for the imposition of reasonable restrictions on civil liberties and rights in certain exceptional circumstances so that the Government could fulfil one of its essential tasks, namely, to preserve the integrity of the nation and society. Where such constitutional provisions existed, the Commission should exercise the utmost caution in taking upon itself the responsibility of questioning the judgement of the Government of a Member State in implementing its own constitutional provisions. A completely different situation was posed by the "extra-constitutional" imposition of martial law, following a military coup, for instance, or situations where martial law had come to have a more or less permanent character. The Commission should not, however, in the name of human rights, question the exercise of legitimate constitutional functions. If the Commission were to determine that the imposition of martial law was in itself a violation of human rights, all régimes governing under martial law would have to be considered as violators of human rights.

42. His delegation was not persuaded that the draft resolution as proposed was appropriate and would help to improve the situation in Poland. The future of Poland must be decided by the people of that country without any external interference and his delegation would accordingly vote against the draft resolution.

43. Mr. OPUNNU (Uganda) said that the debate on the draft resolution strongly reflected East-West rivalry and the generally deteriorating international situation. His delegation did not wish to contribute to that deterioration or to participate in an episode in East-West rivalry. It would therefore abstain in the vote on the draft resolution, as it had in the preceding procedural votes.

44. Mr. COLLIARD (France) said that his delegation would vote in favour of the draft resolution. It should be understood that France wished in no way to increase the difficulties facing the Government of Poland but merely desired the earliest possible restoration of full respect for human rights in that country. It would, of course, maintain the humanitarian and food aid it provided to Poland. In the opinion of his delegation, the draft resolution did not represent interference in the internal affairs of Poland. The Commission clearly had a duty to gather information before taking a decision on the situation in Poland; that information would complement the information already received from such impartial sources as the ICRC and ILO.

45. Mr. ZORIN (Union of Soviet Socialist Republics) said that his delegation had already expressed its position on the draft resolution, which lacked serious basis and ran counter to the Charter and the international principles regarding interference in the internal affairs of States recently confirmed by the General Assembly. The draft resolution would not help the Polish people to solve its problems and would complicate relations between the Polish Government and other Governments. His delegation had sought through its amendments to eliminate the hypocritical partiality in the draft resolution, to avert confrontation and to reduce tension; it would now vote against the draft resolution.
46. Mr. FOLI (Ghana) said that the draft resolution could not be divorced from its context, namely, the economic sanctions that were being applied against Poland and other countries. As an African, he considered it insulting to be asked to support such measures relating to the situation in Poland, whereas with regard to South Africa, where such sanctions were unquestionably justified, the sponsors of the draft resolution had expressed great reluctance to take similar action. The Polish people had done its best under domestic and international law to contain a difficult situation. The Commission must encourage Poland in its efforts to return to normal and must not complicate an already very difficult problem. Third world countries, where such difficulties occurred frequently, should note the implications of the draft resolution. His Government did not wish to be a party to the bias underlying the draft resolution nor did it wish to interfere in the internal affairs of Poland. It would therefore vote against the draft resolution.
47. Mr. MARTINEZ (Argentina) said that his delegation would abstain in the vote on the draft resolution, as it had in the preceding procedural votes. The Commission was not competent to consider, under the agenda item in question, specific cases of human rights situation in specific countries. His delegation had already explained its position on that question during the debates on items 11 and 12.
48. Mr. JESS JANI (Zimbabwe) said that the forthcoming vote did not seem, strictly speaking, to be a vote on the human rights situation in Poland. The Polish Government had done everything possible under national and international law to meet its international obligations while dealing with a difficult situation. Those calling for sanctions against Poland had persistently refused to impose sanctions against South Africa, for instance, where the most violent forms of repression and human rights violations had long been a daily occurrence. Whereas the South African Government had broken all international rules and principles, the Polish Government had acted legally. It would seem to be a serious contradiction to attack a Government whose position was not at variance with international law. In that respect, the draft resolution showed its partiality by making no reference to the fact that the Polish Government had abided by the provisions of international law. His delegation would therefore vote against the draft resolution.

49. Mr. AL-BAROUDI (Syrian Arab Republic) said that his delegation rejected any comparisons between the situation in Poland and that under the racist régimes in Pretoria and Tel Aviv, both of which had repeatedly been condemned in international forums for their flagrant violations of human rights and international law. No such policies or practices existed in Poland. His delegation would therefore vote against the draft resolution, which represented interference in the internal affairs of Poland.

50. Ms. DEREMENDJIEVA (Bulgaria) said that the draft resolution lacked any humanitarian or human-rights foundation and was politically motivated, as had been shown by the debate. Her delegation would vote against the draft resolution. If, however, the draft resolution was adopted, in order to be consistent the Commission should henceforth adopt, apart from its country-oriented approach, an issue-oriented approach towards all countries where martial law was in force and should decide whether that in itself constituted a violation of human rights. The Commission would then become a court in which every country could be judged on its implementation of the provisions of the Universal Declaration and the International Covenants.

51. Mr. MAHONEY (Gambia) said that the Commission must base its approach on universal respect for human rights and must remain above political expediency. While the draft resolution was thoughtful and expressed commendable humanitarian concerns, the statement by the Polish delegation suggested that the Polish Government genuinely sought to restore normalcy as soon as possible. His delegation would therefore abstain in the vote.

52. Mr. KABARITI (Jordan) said it was difficult to draw the line between interference in the internal affairs of a country and concern about the violations of human rights that might be occurring in that country. His delegation was not convinced that there had been massive violations of human rights in Poland and felt in any case that the Commission's task should be to promote a solution to any difficulties that arose in that regard, without complicating the issue. His delegation would therefore abstain in the vote on the draft resolution, as it had on the procedural motions.

53. Mr. SENE (Senegal) said that his delegation was anxious that the Commission should work out effective and appropriate machinery and procedures for dealing globally with violations of human rights wherever they might occur. It should therefore not be seen as interference in internal affairs if the Commission expressed concern that the human rights situation in a specific country might deteriorate. The Commission must react to situations where respect for human rights seemed to be threatened, especially where a state of emergency had been imposed, trade union rights curtailed and emergency powers enacted. It was his delegation's earnest hope that the Polish people would soon return to a genuinely free path of development without interference from any quarter. The international community, for which the Commission was a sort of moral conscience, must assist Poland in returning to normal.

54. The representative of Poland had said that martial law had been imposed under the relevant provisions of the Constitution in order to avert civil war, anarchy and economic chaos. Furthermore, the Polish Government had responded to inquiries by the Director-General of ILO and had said that trade union activity would be restored as soon as the reasons for its suspension no longer prevailed, and that there would be a place in Poland for self-managed and genuinely independent trade unions. His delegation welcomed the positive attitude shown by the Polish Government.

55. The Commission must remain objective and not use double standards by stressing one situation at the expense of others that were perhaps more serious. His delegation appreciated the European concern at the situation in Poland but asked that Europeans show similar understanding for the problem of apartheid and colonial occupation in southern Africa. The Commission must follow the situation in Poland in a spirit of solidarity, tolerance and justice, and seek, with the co-operation of the Polish Government, to do all it could to assist that Government in restoring full enjoyment of human rights. It was clear, therefore, that the Polish Government must have time to solve the enormous economic and social problems facing it. The Commission was not an international court but must, in order to preserve its integrity and authority, deal with all situations, including the situation in Poland, with serenity, wisdom and respect for human values. His delegation would therefore vote for the draft resolution

56. Mr. ADOYI (Togo) said that human rights were universal and the Commission must be free to consider the human rights situation in all countries in the interests of justice and peace. His delegation would therefore vote for the draft resolution.

57. Mr. MUBANGA-CHIPOYA (Zambia) said his Delegation continued to believe that there was no basis for adopting the draft resolution now before the Commission. The Polish Government, facing a dire economic situation, had adopted certain drastic measures that were necessary for the survival of the State but, in so doing, it had satisfied domestic and international legal requirements. His delegation did not intend to serve as a rubber stamp for political purposes and would vote against the draft resolution.

58. The CHAIRMAN invited the Commission to vote on draft resolution E/CN.4/1982/L.27.

59. At the request of the representative of the Federal Republic of Germany, the vote was taken by roll-call.

60. India, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Australia, Canada, Costa Rica, Denmark, Fiji, France, Germany, Federal Republic of, Greece, Italy, Japan, Mexico, Netherlands, Peru, Philippines, Senegal, Togo, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Against: Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Ethiopia, Ghana, India, Poland, Syrian Arab Republic, Union of Soviet Socialist Republics, Yugoslavia, Zambia, Zimbabwe.

Abstaining: Argentina, Brazil, Cyprus, Gambia, Jordan, Pakistan, Panama, Rwanda, Uganda, Zaire.

61. Draft resolution E/CN.4/1982/L.27 was adopted by 19 votes to 13, with 10 abstentions.

62. Mr. LOPATKA (Poland), speaking in explanation of vote, said that the resolution just adopted by the Commission constituted a violation of Article 2, paragraph 7, of the Charter, article 4 of the International Covenant on Civil and Political Rights, and the Economic and Social Council resolutions which established the terms of reference of the Commission. For those reasons, his Government was forced to

consider the resolution as unlawful, null and void, politically harmful and morally two-faced. His Government declared its refusal to co-operate in the implementation of the resolution, which, having been imposed on the Commission, constituted flagrant interference in the internal affairs of an independent State Member of the United Nations.

63. In Poland, there were and would be no mass and gross violations of human rights, which alone could justify consideration by the Commission. The introduction of martial law had been motivated by the supreme national interest and the need to avert a civil war, economic anarchy and disruption of the State structure. Martial law introduced temporary limitations on some of the rights of citizens in full accordance with the requirements of article 4 of the International Covenant on Civil and Political Rights, to which Poland was a party. None of the measures derogating from the obligations under the Covenant involved discrimination on the grounds of race, colour, sex, language, religion or social origin. The measures introduced by the Polish Government were therefore not inconsistent with its international obligations and the resolution had no justification.

The meeting rose at 12.10 a.m.