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COMMISSION ON HUMAN RIGHTS

Thirty-eighth session

SUMMARY RECORD OF THE 33rd MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 23 February 1982, at 4.30 p.m.

Chairman: Mr. GARVALOV (Bulgaria)

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The meeting was called to order at 4.50 p.m.

QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS, INCLUDING:

- (a) PROBLEMS RELATED TO THE RIGHT TO ENJOY AN ADEQUATE STANDARD OF LIVING;
THE RIGHT TO DEVELOPMENT
- (b) THE EFFECTS OF THE EXISTING UNJUST INTERNATIONAL ECONOMIC ORDER ON THE ECONOMIES OF THE DEVELOPING COUNTRIES, AND THE OBSTACLE THAT THIS REPRESENTS FOR THE IMPLEMENTATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (agenda item 8) (continued) (E/CN.4/1334, E/CN.4/1421, E/CN.4/1488, E/CN.4/1489; E/CN.4/1982/NGO/2, E/CN.4/1982/NGO/6, E/CN.4/1982/NGO/8; A/36/462; ST/HR/SER.A/10)

STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS (agenda item 19) (continued) (E/CN.4/1511)

1. Mr. GREKOV (Byelorussian Soviet Socialist Republic) said that his delegation, having already commented on agenda item 8, now wished to address itself to agenda item 19.
2. The implementation of the International Covenants on Human Rights was regarded by his delegation as an important factor in promoting co-operation among States and in fostering respect for human rights and fundamental freedoms.
3. The basic provisions on human rights embodied in the Constitution of the Byelorussian SSR which had been adopted in 1978 were more developed than the corresponding provisions of his country's earlier Constitution. The new provisions brought out more fully the role and functions of the State apparatus in that field and strengthened the guarantees for the all-round development of Soviet man. The new Constitution guaranteed the effective enjoyment of human rights and fundamental freedoms, on a basis of complete equality, by all persons, regardless of origin, social or property status, race, nationality, sex, language, religious belief, type of employment or place of dwelling. It also guaranteed equality in all fields of economic, political, social and cultural life and provided effective means for the legal protection of human rights and fundamental freedoms, in full conformity with the provisions of the International Covenants.
4. He noted with satisfaction that the Byelorussian report to the Human Rights Committee ~~had been given a favourable assessment by that Committee.~~ That report showed the high standard of his country's legislation in the field of human rights and demonstrated how human rights were guaranteed there in everyday life. His delegation believed that States should confine themselves to a single comprehensive report of that kind and not submit any other reports on the same subject to the Human Rights Committee. The single report would then have greater significance.

5. It was a matter for regret that so many countries had so far failed to ratify the International Covenants on Human Rights. He referred, in particular, to certain Western countries which were not averse to discussing human rights abroad, but which did not respect elementary human rights within their own borders and refused to ratify the Covenants. The entry into force of the Covenants had constituted a great step forward in the development of international co-operation on human rights and it was necessary to make those instruments universal in character. The Commission should therefore urge States to ratify the Covenants and implement their provisions.

6. Mr. BRITAH (Observer for Nigeria) said that he would confine his remarks to agenda item 8, which concerned a question of vital importance to the developing world. Its two sub-items were closely interrelated, since the one derived from the other: the problems related to the right to enjoy an adequate standard of living were a manifestation of the effects of the existing unjust international economic order, as had been well shown in the studies on the subject. The other obstacle to the realization of human rights in all countries resulted from the practices of apartheid, racism, colonialism and foreign occupation and domination. The policy of apartheid, in particular, had rightly been described as a crime against humanity and those who collaborated in that policy were equally guilty of the crime.

7. The evil practices which reflected man's inhumanity to man and the existing unjust international economic order were the root causes of some of the most pressing current problems, such as hunger, poverty and disease. A poverty curtain divided the world into a few rich and industrialized countries and the vast majority of developing countries. That unjust order, which was of purely historical origin, had placed a tiny minority of States in a position to determine the fate of the majority. Above all, it had prevented the peoples of the developing countries from realizing their economic and social rights enunciated in various international instruments.

8. Under the present, grossly unjust world economic system, the developed countries not only determined the terms and patterns of trade but also dictated the very tempo of the economic progress of the developing countries, which had no control over the amount they earned through their exports: they had to accept whatever prices the world market offered them, unlike the developed countries, which normally set themselves the prices of their manufactured goods. The uncertainty of their export earnings made it impossible for the developing countries to plan their development programmes with any degree of assurance. While the market prices of their raw materials underwent sharp fluctuations, the prices of manufactured goods climbed steadily. As a result, those countries had to export more and more in order to pay for the import of the same quantity of manufactured goods from the developed countries. They thus continued to suffer from the deterioration in their terms of trade and consequently had to borrow at exorbitant rates in order to pay for the imports which were necessary for the execution of their development plans. Their debt burden had as a result become so huge that the cost of servicing it alone amounted to over 20 per cent of their export earnings.

9. In the matter of acquisition of technology, adequate financial flows from the developed countries or even access to developed markets for their manufactured goods the situation of the developing countries was similar. Even in the case of industries where developing countries enjoyed a clear comparative advantage, artificial barriers had been erected against the export of their manufactures. Similarly, the major international financial institutions were so completely under the control of the developed countries that they had become unresponsive to the needs and aspirations of the developing countries.

10. The resulting situation was not one of interdependence, as one was made to believe, but of complete dependence of the weak upon the strong and of the poor upon the rich. The implications of that alarming situation for the economies of the developing countries were obvious. Those countries were confronted with stagnating growth, huge balance-of-payments deficits, high levels of unemployment and soaring inflation. The existing unjust international economic order had not only denied the peoples of those countries their right to development but it had also aggravated their economic and social conditions.

11. Their situation was still further aggravated by the steady decline, in real terms, of official development assistance. With the exception of the Nordic countries, the developed countries had still to meet the official development assistance target of 0.7 per cent of their GNP. Yet in a world where a vast majority of peoples were suffering from hunger, disease and poverty, expenditure on armaments was constantly increasing. Should security be sought in the arms race or in the general welfare of the human race? It was for those reasons that the Nigerian Government had been actively involved in United Nations efforts at achieving global disarmament.

12. The report of the recent Seminar on the relations that exist between human rights, peace and development (ST/HR/SER.A/10) had drawn attention once again to the interrelationship between expenditure on armaments and economic and social development. His delegation endorsed the conclusions and recommendations of that Seminar.

13. So long as the existing unjust international economic order endured, the international community would be failing in its task of securing economic and social justice for the developing countries. Limited concessions and palliatives such as aid could not get those countries out of their plight. That could only be done by a fundamental restructuring of the existing patterns of international economic relations and the implementation of the new international economic order, which would enable the developing countries to raise the level of living of their people and would be of benefit to developed and developing countries alike.

14. Mr. KEISALO (Observer for Finland) said that he wished to comment mainly on the report of the New York Seminar (ST/HR/SER.A/10), which was in some respects an unusual document. Seminars arranged under the advisory services programme usually dealt with more specific subjects, and they also usually had a regional focus. The New York Seminar had dealt with a very general subject, and for that reason the participants had been drawn from all parts of the world.

15. The report contained a number of interesting ideas which could serve as a source of inspiration for further work in many United Nations bodies. It could be taken to represent an average political compromise between different tendencies in the United Nations - a feature which gave the report more justification than did its contents alone. The report was not in all respects satisfactory, however; the Seminar had not achieved all the results his delegation had expected and its report had its share of superfluous jargon and trivialities.

16. In Finland, it had been hoped that the Seminar would contribute to a conceptual clarification that could be useful in the formulation of United Nations programmes and instruments. It was widely recognized that the concepts of human rights, development and peace were so general and broad in scope that they

overlapped to a great extent and the report rightly emphasized the fundamental point that those concepts belonged together. At the same time, it would have been helpful to give more precise indications to facilitate the setting of priorities, the formulation of policies and the application of appropriate measures.

17. His delegation also felt that there remained some terminological confusion both in the Seminar report and in other United Nations documents. If, for example, one said that a State had the right to development and that a human being had the right to development, one obviously meant two different things. As he saw it, concepts such as the right to peace, and particularly the right to development, belonged primarily on the level of States: all States had the right to peace and to development. Those concepts, however, were not easily linked to individual human beings. Human beings could claim a right to live in peace. The human right to development meant, as he believed, the right of the individual to participate fully in, and benefit from, the process of development.

18. The right to development of nations and peoples was laid down in the Charter of Economic Rights and Duties of States. The very name of that instrument showed that it dealt with collective rights, which were different from human rights. It was his delegation's understanding that development could take place only where human beings were respected; development must not be considered a precondition for human rights.

19. His delegation largely agreed with recommendations (8) and (9) of the Seminar (ST/HR/SER.A/10, paragraph 219, numerals (8) and (9)). He drew attention, in particular, to the recommendations made under (8) (e) and (8) (f), which stressed the need to give greater attention to human rights aspects in development plans and strategies at both the national and the international levels.

20. The work of the Commission on Human Rights itself was, in his Government's view, an important contribution to both development and peace. The advisory services programme was a particularly constructive and useful part of United Nations work in the field of human rights. His delegation looked forward to further reports on seminars and other activities undertaken under that programme.

21. Mr. YOUSEF (Observer for Iraq), referring to agenda item 8, said that the two reports in documents E/CN.4/1488 and E/CN.4/1489 were most useful in that they examined human rights problems from a global standpoint and shed light on obstacles to the realization of human rights and fundamental freedoms.

22. The work done by the Working Group of governmental experts on the right to development constituted a basis for the preparation of an international instrument concerning that right. His delegation considered that a highly important task and it fully supported the conclusions of the Working Group.

23. His delegation also appreciated the activities of the International Commission of Jurists in the area of promotion of the right to development. He stressed that that right was based on the dialectic correlation between sovereignty and equality. In the nineteenth century, international law had divided countries into two main groups: civilized countries and non-civilized countries. Only the former, which had included the European countries, had enjoyed the right to equality. After

the First World War and the establishment of the League of Nations, that classification in international law had been abolished. Following the Second World War, the Charter of the United Nations had stressed the principle of equality among nations, small and large, and the right of peoples to self-determination. However, that principle of equality did not extend beyond a formal legal framework and did not deal with the real situation of the international community. Nor did it consider the real inequality which existed between States and the disproportionate responsibility in the organization of the international community.

24. The rules of international law had constituted the superstructure of the capitalist economic system, often called liberal, which had governed economic relations between States. As a result, artificial concepts of legal equality had developed and the fact of economic inequality had not been recognized from the outset. That inequality had therefore grown and the rule of equality between countries which were unequal in their development had become a fraud or deception, since equality in sovereignty was not limited to legal equality. It also meant economic equality, which was an integral part of legal sovereignty and gave an economic dimension to equality: equality in development. The concept of sovereignty had thus evolved from a simple, formal and limited juridical concept to a vast and global vision related to economy and development.

25. The specialized agencies had then raised the thorny problem of inequality between States, which was actually a new facet of the old nineteenth-century classification, with a small difference: the civilized countries had become rich and developed, while the non-civilized countries had become the developing countries.

26. The United Nations had adopted many instruments in the form of resolutions, declarations and international conventions, all of which had drawn attention to the correlation between genuine legal sovereignty and economic equality. They had sought to deal with the phenomenon of formal equality and to create a specific equality by means of a modern international law which might be called an interventionist international law. From the joining of international law and interventionist economic law had emerged what was known as international law of development. It was worth noting that international law of development had become a specific reality in modern international law, and jurists merely studied its dimensions and compulsory nature.

27. The realization of the right to development was regarded as one of the objectives of the Charter of the United Nations. General Assembly resolutions, in particular resolution 33/48, maintained that the right to development was an inalienable right and that its exercise was a form of self-determination. In that connection, he referred to article 2 of the Declaration on the Granting of Independence to Colonial Countries and Peoples and article 1 of the International Covenant on Civil and Political Rights. For the people of a country to exercise the right of self-determination, it was not sufficient for the country to attain independence and to become a State. The right had a continuing dynamism so long as the people which exercised it did not fall into a state of apathy. Moreover, the right to development implied the right to work for greater economic independence and the establishment of an equation between sovereignty and equality.

28. Science and technology played a decisive role in development. Certain facts had seemed to indicate that the great advances made in those fields were going to be used for purposes which were entirely in contradiction with the objectives of the United Nations and the principles of human rights. The United Nations had therefore established the following two norms. First, it was necessary to place science and technology in the service of mankind and development and to abolish the economic, social, and cultural gap that existed between countries. Secondly, scientific advances should not be used in a manner detrimental to mankind.

29. Article 13 of the Chapter of Economic Rights and Duties of States provided that every State had the right to benefit from the advances and developments in science and technology for the acceleration of its economic and social development and the General Assembly and the Commission on Human Rights had reaffirmed the need for science and technology to be used in such a way as to promote human rights and to avoid any harmful effects for man.

30. Nuclear energy played a decisive role in the realization of the right to development. Various General Assembly resolutions and international conventions stressed the importance of using nuclear energy for peaceful purposes and the need to regulate such use.

31. Iraq adopted a positive attitude to development questions in general and regarded man as an objective of the scientific and technological revolution. His Government attached great importance to the use of nuclear energy for peaceful purposes, and the over-all objective of Iraq's development plans was to free man so that he could exercise his right to development, which was a fundamental human right.

32. Mr. MacDERMOT (International Commission of Jurists) said that his organization had in the past six years held seminars on human rights in Africa, Asia, and South and Central America. Three of those seminars had discussed the right to development and the relationship between human rights and development, particularly in the rural areas where the great majority of the population of the developing countries lived. Reports on some of those meetings had been made available to the Commission.

33. On the basis of the conclusions of its regional seminars and of a world-wide conference held at The Hague in April 1981, which had brought together members of ICJ and development experts from the third world to discuss development, human rights and the rule of law, his organization had become firmly convinced of the close relationship between human rights and development. At one time, development experts had sought to exclude all considerations of human rights from the formulation and application of development policy, on the ground that they should be guided solely by economic considerations. That was a remarkable attitude, since there was no decision with greater political implications for a country or with greater implications for human rights than the choice of development model.

34. The task of defining the scope and content of the right to development was of great importance. There was a need for a concept of development which included the promotion of human rights and a concept of human rights which included the right to development, both as an individual right and as a collective right. As a collective right it should exist at all levels, but first and foremost it was a right of peoples.

35. At the international level the right to development was a right of States. At the national level it was, of course, a duty rather than a right of States and its beneficiaries were individuals. However, individuals would realize that right above all through the groups and collectives to which they belonged.

36. The right to development was based on the concept of participation and solidarity. At the national level, the keynote was participation: that meant that the intended beneficiaries of development participated in the formulation, application and monitoring of development programmes and that those responsible for development policies were accountable to them. That, in its turn, implied exercise of the basic civil and political rights of freedom of association and freedom of expression. It had been rightly said that the individual should be the subject as well as the object of development. Implementation of the right required the adoption of policies based on self-reliance; respect for all human rights under the rule of law; and the access of both individuals and States to the necessary material and non-material resources, in particular education, information and technology.

37. At the international level, the key concept was solidarity and co-operation among nations. Since, under article 1 of the International Covenant on Economic, Social and Cultural Rights, the State had the right to choose its development policy, the right to development implied international co-operation in order to remove obstacles to the self-determined and self-reliant development of peoples; achieve international peace and halt the arms race; eliminate all forms of foreign domination, as well as apartheid and all other forms of racial discrimination; establish a new international economic order; and monitor the activities of transnational corporations to ensure that they promoted the interests of the peoples of the countries in which they operated.

38. The question of the legal status of the right to development was not a simple matter. The law establishing legal rights was of two kinds - lex ferenda and lex lata. Lex ferenda consisted of statements of principle which did not give rise to immediately enforceable rights but laid down goals which the community concerned had set itself. Lex lata consisted of specific legal provisions which established clearly defined rights and identified both those entitled to benefit from them and those responsible for assuring them. Such laws should also provide an effective legal remedy to ensure their enforcement.

39. The first task of the Commission was to formulate, with the assistance of its Working Group, a draft declaration which would contain the essential concepts defining the scope and content of the right to development. When such a declaration had been approved by the General Assembly, it would be for the Member States to work out the necessary international agreements and enact the necessary national legislation to make the right to development legally effective.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS THIRTY-FOURTH SESSION (agenda item 20) (continued)
(E/CN.4/1512; E/CN.4/1982/NGO/5)

40. Mr. BEAULNE (Canada) welcomed the fact that the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in drawing up its latest report (E/CN.4/1512), had been mindful of the recommendations in Commission resolution 17 (XXXVII). The report was clearer than previous ones and the first chapter was devoted entirely to matters which the Sub-Commission wished to refer to the Commission. Furthermore, in compliance with the Commission's wishes, the Sub-Commission had placed as item 3 on the agenda for its next session a review of the status of activities of the Sub-Commission and the latter's relationship with the Commission and other United Nations bodies. Members of the Sub-Commission should reflect on that matter and should endeavour to organize their work so that the Commission was better able to apprehend its general direction. The activities of the Sub-Commission were threefold: to prepare studies on prevention of

discrimination and protection of minorities and submit to the Commission recommendations arising therefrom; to discharge the duties in respect of violations of human rights which had been entrusted to it under Economic and Social Council resolutions 1235 and 1503 and Commission resolution 8 (XXXVII) and lastly, to discharge such other tasks as the Economic and Social Council and the Commission might refer to it.

41. Studies were an essential element of the Sub-Commission's activities. Unfortunately, although a large number of studies were currently under way, no consolidated list of them appeared in the Sub-Commission's report. He asked the Secretariat to draw the Sub-Commission's attention to the desirability of including such a list as an annex to its next report.

42. The Sub-Commission had as yet taken no steps to comply with the request of the Commission in its resolution 28 (XXXVII) that the Sub-Commission should consider what future action might be desirable in order to reinforce the right and responsibility of individuals and organs of society to strive for the promotion and observance of rights recognized in the Universal Declaration of Human Rights. In that connection, the Sub-Commission had clearly failed in its duty to undertake any task which was referred to it by the Commission.

43. He commended the Sub-Commission for its excellent report on the exploitation of child labour (E/CN.4/Sub.2/479) and he hoped it would submit to the Commission a draft programme of follow-up action in that field.

44. He supported the Sub-Commission's proposal, in its draft resolution I for the Commission, that a Working Group on Indigenous Populations should be set up to meet annually. However, it was to be hoped that the Sub-Commission would not on that account fail to complete the study of the problem of discrimination against indigenous populations which had been under way for a decade and that the final version could be submitted to the Commission in 1983.

45. His delegation fully shared the Sub-Commission's view, expressed in its resolution 12 (XXXIV), that the establishment of a post of United Nations High Commissioner for Human Rights would be highly valuable. In its resolution 8 (XXXIV), the Sub-Commission drew attention to the fate of the Baha'i Community in Iran. In view of the information contained in the Secretary-General's report (E/CN.4/1517), the Commission could not remain silent about that situation. By its resolution 7 (XXXIV), the Sub-Commission had decided to discuss the right of everyone to leave any country, including his own. It was right that the Sub-Commission should return to that issue, because there had so far been no satisfactory follow-up to the 1963 study on the subject.

46. Mrs. Questiaux was to be congratulated on her interim report on the implications for human rights of the situations known as states of siege or emergency. It was to be hoped that, although she had felt obliged to resign from the Sub-Commission on becoming a member of the French Government, she would nevertheless complete the report, since it dealt with an important subject which the Commission should also consider.

47. He wondered whether it might not be desirable to take advantage of the expertise of members of the Sub-Commission by giving them more regularly responsibility for the preparation of draft international instruments on human rights, including guiding principles and other legal texts, to assist the Commission in its work.

48. Finally, he wished to remind members of the Sub-Commission that they were elected in their personal capacity as experts. Neither they nor their alternates were considered to be government representatives. However, the independence of certain alternates, who retained their posts in the permanent missions of their countries at Geneva was open to question. The experts on the Sub-Commission must bear in mind the need for appointment of alternates who did not change that body's character. It would be desirable for the Sub-Commission to work out rules of conduct on the subject.

The meeting rose at 6 p.m.