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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION
TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR
FOREIGN OCCUPATION

Note by the Secretariat

1. It may be recalled that at its thirty-seventh session the Commission on Human Rights, by resolution 11 (XXXVII) of 6 March 1981, decided to keep the situation of Kampuchea under review as a matter of priority at its thirty-eighth session under the item entitled "The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation". In this resolution, the Commission on Human Rights requested the Sub-Commission on Prevention of Discrimination and the Protection of Minorities to review, at its thirty-fourth session, any further material on the human rights situation in Kampuchea which becomes available and to submit it with appropriate observations and recommendations to the Commission at its thirty-eighth session. The Sub-Commission at its thirty-fourth session considered the question of the human rights situation in Kampuchea under its agenda item 6: "Question of the violations of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependence countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII)". At its 897th meeting, on 18 August 1981 the Sub-Commission entrusted Mr. Asbjørn Eide with the task of reviewing the material on Kampuchea. On 10 September 1981, the Sub-Commission adopted resolution 13 (XXXIV) by which it requested the Secretary-General to transmit to the Commission at its thirty-eighth session the further materials reviewed by Mr. A. Eide, together with summary records of the Sub-Commission's consideration of the matter and "reiterates its recommendation to the Commission on Human Rights to keep the situation of human rights in Kampuchea under continuing review with a view to restoring full respect for human rights and fundamental freedoms as speedily as possible in Kampuchea." The review of Mr. Eide is reproduced in the following paragraphs. His introductory statement to the Sub-Commission is contained in document E/CN.4/Sub.2/SR.912. The summary records of the Sub-Commission's consideration of the question are contained in documents E/CN.4/Sub.2/SR.912, E/CN.4/Sub.2/SR.913, E/CN.4/Sub.2/SR.914 and E/CN.4/Sub.2/SR.915 which are also before the Commission in connection with the consideration of the present matter.

A. Introduction

2. On 6 March 1981, the Commission on Human Rights adopted resolution 11 (XXXVII) by which it reiterated its condemnation of the gross and flagrant violations of human rights that had occurred as well as the gross and flagrant violations of human rights which continue to occur in Kampuchea; affirmed that the primary violation of human rights in Kampuchea at the present is the persistence of foreign occupation which prevents the people of Kampuchea from exercising their right of self-determination; and requested the Sub-Commission on Prevention of Discrimination and the Protection of Minorities to review, at its thirty-fourth session, any further material on the human rights situation in Kampuchea which becomes available and to submit it with appropriate observations and recommendations to the Commission at its thirty-eighth session. This resolution was adopted by 26 votes to 9, with 6 abstentions.

3. In performing the task assigned to him by the Sub-Commission pursuant to resolution 11 (XXXVII) the Rapporteur had at his disposal two files assembled and updated on the human rights situation in Kampuchea. The first contains a series of official documents submitted by States, non-governmental organizations and private sources. The second comprises a set of press clippings. During the discussions in the Sub-Commission, various members and observers representing interested parties expressed their views on the matter.

B. Description and list of the documents analysed 1/

4. Pursuant to resolution 11 (XXXVII), the documents listed below 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) Nineteen letters from the Government of Democratic Kampuchea, transmitted between 9 September 1980 and 10 July 1981; 2/

(b) Thirteen letters from the Government of Viet Nam, transmitted between 8 September 1980 and 2 June 1981; 3/

(c) A note verbale and a letter from the Government of the People's Republic of China dated 13 September 1980, and 16 December 1980 respectively; 4/

(d) Three letters from the Government of the Lao People's Democratic Republic transmitted between 5 January 1981 and 1 June 1981; 5/

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

2/ A/34/434, A/35/462, A/35/573, A/35/644, A/35/647, A/35/649, A/36/71, A/36/78, A/36/81, A/36/84, A/36/91, A/36/93, A/36/121, A/36/230, A/36/131, A/36/299, A/36/307, A/36/366, A/36/367.

3/ A/35/424, A/35/431, A/35/274/Add.1, A/35/517, A/35/547, A/35/554, A/35/569, A/C.3/35/11, A/C.3/35/12, A/36/68, A/36/97, A/36/189, A/36/300.

4/ A/35/450, A/35/782.

5/ A/36/63, A/36/86, A/36/293.

(e) Two letters from the Government of the Philippines dated 14 April 1981 and 19 June 1981, respectively; 6/

(f) A note verbale from the Government of the Hungarian People's Republic, dated 19 September 1980. 7/

Official United Nations documents other than those containing submissions from Governments

(a) Draft Report of the International Conference on Kampuchea; 8/

(b) Declaration and Resolution of the International Conference on Kampuchea. 9/

Documents submitted by the following non-governmental organizations

(a) World Conference on Religion and Peace (WCRP); 10/

(b) World Federation of Democratic Youth. 11/

The Rapporteur also consulted letters and publications from private sources received by the Division of Human Rights between 27 December 1980 and July 1981.

C. The allegations

5. The Rapporteur wishes to make it clear that he has approached his task from the perspective of human rights. Allegations about expansionism and aggressive warfare, as well as other issues not immediately related to human rights, have therefore not been examined. The documentation studied is to a large extent contradictory since it derives from various sources having conflicting interests and contains profoundly divergent perspectives and analyses.

6. The documentation from the Government of Democratic Kampuchea for the most part describes alleged atrocities in the conduct of anti-guerilla warfare by the Vietnamese forces. There are allegations of the use of chemical weapons, spraying chemicals and poison gas bombing, and of the distribution of poisoned medicines and foods. Further, it is claimed that there has been extensive pillage and arson of villages suspected of co-operation with Red Khmer forces. It is also alleged that there has been looting and acts of vandalism against Kampuchea's national artistic and cultural heritage. It is claimed that torture has been practised and summary executions carried out. Finally, there are claims of diversion of humanitarian assistance.

6/ A/36,202, A/36/337.

7/ A/C.3/35/2.

8/ A/CONF.109/L.1.

9/ A/CONF.109/L.1/Add.1.

10/ "Two U.N. General Assembly notes on Kampuchea", by Homer A. Jack, "A Khmer United Front and other Political Developments" by David R. Hawk, "Religion in Kampuchea Today", by David Hawk, "Up-date: Kampuchea/Cambodia", by Homer A. Jack, "An International Conference on Kampuchea", by Homer Jack.

11/ Declaration of the WFDY on the Convening of an International Conference on Kampuchea.

7. The documents submitted by the Government of Viet Nam, and through them the Government of the People's Republic of Kampuchea, largely contain further evidence of the brutalities of the Red Khmer in the period 1975-1978, and the long-range effect of those brutalities. There are, first of all, allegations about the mass murders perpetrated in the period mentioned. The allegations focus, among other things, on the efforts to eliminate the national cultural heritage by the massacre and ill-treatment of those who had become involved with the Khmer culture. It is alleged that artists were massacred mercilessly by the most cruel means. Only 10 per cent of the artists survived. The allegations further describe the long-range effect on children of the policies adopted by the Red Khmer after the enforced removal from Phnom Penh and other cities in Kampuchea. The material provided gives a frightening insight into one of the most reckless social experiments ever made. Children were divided into various groups of workers and lived under conditions where little was known about hygiene. Their diet was extremely deficient. There are also allegations, in this documentation, about the diversion of humanitarian assistance by Thai officials and foreign go-betweens.

8. Finally, the documentation contains views on the principle of self-determination, alleging that the Kampuchean people exercised their right to self-determination by liberating themselves, with Viet Nam's backing, from genocide.

9. The allegations from the People's Republic of China focus on border conflicts and alleged Vietnamese aggressive actions. The allegations by the Government of the Lao's People's Democratic Republic focus on what are described as expansionist policies by States outside Indochina. The Government of the Philippines, on behalf of the ASEAN States, alleges that Viet Nam violates the principle of territorial integrity and self-determination of the Kampuchean people.

10. The documents submitted by non-governmental organizations substantiate the allegations made by both sides. The United Nations documents contain the discussions of the Sub-Commission, the Commission on Human Rights, and other bodies, and in particular the report and conclusions of the United Nations Conference on Kampuchea, underlining that the right to self-determination is now violated and that self-determination must be restored.

D. Conclusions and recommendations

11. It is impossible, on the basis of the material, to pass any final judgement on the veracity of the allegations. Some observations can nevertheless be made, on the plausible assumption that at least a part of the allegations from the contending parties are true.

12. Regarding the allegations by the Government of Democratic Kampuchea that the Vietnamese forces in their present anti-guerilla warfare engage in atrocities of various kinds, the relevant standards to apply are those contained in the humanitarian law applicable in armed conflict.

13. Guerilla-anti-guerilla wars of the past have tended to be rather brutal in nature. The Vietnamese people itself was for many years the victim of such a war. The conduct of that war substantially influenced the negotiations, from 1974 to 1977, of the Diplomatic Conference on the Reaffirmation and Development of Humanitarian Law Applicable in Armed Conflict. Provisions were adopted which aimed at the prevention of excesses in counter-guerilla warfare. It is to be regretted that Viet Nam in its Kampuchea military action seems not to apply those constraints which were adopted to prevent future sufferings of the kind the Vietnamese people had experienced.

14. Leaving this issue aside, the main conclusion which can be drawn from the material is that the human rights problem in Kampuchea has not been solved. The tragedy which has befallen Kampuchea has gone through several stages and has changed in character, but the human rights situation remains highly unsatisfactory. There have been at least three main stages of that tragedy.

15. The first was the Indochina war which spilled over from Viet Nam more than 10 years ago. That war caused serious dislocation and significantly weakened the social and political fabric of Kampuchean society.

16. When the war ended in 1975, a new period started in which the Kampuchean society came under the direction of the Khmer Rouge. What started as a sweeping reorganization of that society ended as a nightmare. To quote Mr. Bouhdiba in his previous report to the Commission: (E/CN.4/1437, 19 January 1981).

"Nothing should erase the memory of the horrible genocide perpetrated by the Khmer Rouge between 1975 and 1978, which lies at the root of everything that has happened in the last five years"

17. The third stage was the armed intervention by Viet Nam in 1978, and the continued Vietnamese military presence and armed interference in the affairs of Kampuchea. The documentation shows that armed conflicts continue in some regions, that dislocation of people therefore still takes place and that the flow of internal and external refugees remain a substantial humanitarian problem.

18. On the basis of the material at hand, there is no way of assessing the extent to which the rule of law and respect for human rights have been re-established outside the war zones. The extent to which the practice of arbitrary arrest, detention without trials, or extra-judicial executions have been halted, cannot be stated. But we can assume that as long as the right to self-determination is not respected, many of these, and other, human rights will continue to be violated.

19. The Kampuchean people is today the victim of what Mr. Bouhdiba in the above-mentioned report called a "nebulous legal situation". To use his words:

"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".

20. This "nebulous legal situation" continues to exist, but unless the situation is normalized by one way or another there is not much hope that human rights can be satisfactorily realized.

21. It may be for other United Nations bodies to determine how the situation can be normalized. The United Nations Conference on Kampuchea, held in New York in July 1981 (the report and conclusions of which are among the documentation collected) gave priority to the realization of the principle of self-determination for the Kampuchean people.

22. What the human right organs of the United Nations (including this Sub-Commission) can do is to express its views on what seems to be required from a human rights perspective.

23. This could contain the following elements:

(a) Implementation of the right of self-determination of the Kampuchean people. Everyone agrees that this, under the circumstances, is the most fundamental human right. But self-determination, as a human right has several components, all of which have to be respected.

(b) First, it should be emphasized that the right to self-determination is not a right to self-destruction. It is not the right of a small group to impose its will on the majority, however convinced that group might be of its righteousness - whether that conviction is based on perversion of religious beliefs or of materialistic ideologies.

(c) The right to self-determination belongs to a people, to the whole of that people and therefore to every individual as part of that people. Everyone is equally entitled to participate in the exercise of self-determination. The sole purpose of self-determination is to respect and promote all human rights for every member of the people.

24. The following recommendations are suggested:

That the rights of the Kampuchean people to self-determination should be secured;

That, therefore, a political process be set in motion by which the people of Kampuchea can choose their own representatives in a free and open atmosphere, safeguarded by the United Nations;

That all foreign forces be withdrawn and all local armed conflict be brought to a halt, under United Nations supervision;

That all outside Powers declare their intention not to interfere with the political process by which the Kampuchean people select their own representative leaders, so that they can break with the tragedy of the past and begin the task of national reconciliation;

That the right of all Kampuchean refugees to return be unconditionally accepted and that the international community pledges, through the United Nations to provide the interim assistance required for the new Kampuchean authorities to safeguard the basic social and economic rights of all its inhabitants.