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SUMMARY RECORD OF THE 42nd MEETING*
(Second part)

Held at the Palais des Nations, Geneva,
on Tuesday, 1 March 1983, at 3 p.m.

Chairman: Mr. OTUNNU (Uganda)
later: Mr. GONZALEZ DE LEON (Mexico)

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* The first part of the summary record of the meeting was issued as document E/CN.4/1983/SR.42.

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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 (agenda item 12) (continued) (E/CN.4/1983/16-20, 22 and Add.1, 33, 43, 47, 51-53, 55; E/CN.4/1983/L.10, L.37, L.38, L.48, L.53, L.58; E/CN.4/1983/NGO/2, 4, 8-15, 21, 25, 27-31, 38, 39, 41, 42, 45, 46)

1. Mr. ZAHIRNIA (Observer for Iran) said that international solidarity must be displayed towards refugees regardless of any political considerations. Not only must adequate protection and emergency relief be provided for the victims of massive exoduses but every means must be used to eliminate the root causes of such exoduses. Again, the Commission should ask all Governments to accede to the Convention and the Protocol relating to the Status of Refugees. In the case of his own country, refugees and expelled persons were arriving from States which had not ratified those instruments.
2. Iran was interested in studies of massive exoduses because the enormous influx of refugees, particularly from Afghanistan and from Iraq, presented his Government with problems which must be solved with the assistance of the international community. Indeed, the new phenomenon of the expulsion of people from Iraq entailed dangerous repercussions. It had been the constant practice of Iraq both in 1971-1973 and in 1980-1983 to expel its citizens to Iran in the most inhuman manner, en masse and individually. In that connection the Government of Iran wished to thank UNHCR for arranging to send a programming mission to Iran on behalf of such persons.
3. One inherent aspect of the concept of nationality was the right to settle and to reside in the territory of the State of nationality, a right often embodied in constitutional law. Under accepted principles of international law, the admission of aliens was a matter for the discretion of each State. It followed that expulsion of a national to another State might be effected only with the consent of the foreign State in question; otherwise, a foreign State which had not given its consent could demand that the State of nationality should refrain from expelling the person or re-admit him or her, in keeping with the State's duty to allow nationals to reside on its territory. That duty had become part of international law and also derived from the very concept of nationality. It was based on territorial supremacy and failure to fulfil it would disrupt orderly, peaceful relations within the community of nations by creating potential obligations for other States and encroaching on their jurisdiction. The question had become topical when Germany had expelled groups of nationals after 1933, a situation which had later led to the conclusion of international agreements on the subject.
4. In the matter of Iraqi nationality, it would be remembered that articles 32 and 33 of the 1923 Treaty of Lausanne provided for entitlement to opt for Iraqi nationality and, as from 1926, conferred Iraqi nationality on all persons habitually resident in Iraqi territory. Hence, in the case of the 130,000 Iraqis expelled in 1972 and 1973 and in 1980, the international obligation of the Iraqi Government was absolute, because Iraq had never objected to the provisions in question and its Nationality Law of 1924, as amended in 1925 and 1926, had in fact been adopted in conformity with the nationality provisions of the Treaty of Lausanne, thus recognizing that all the expelled persons were Iraqis. Furthermore, the interim Constitution of Iraq, as amended in 1965, safeguarded the right of residence and right to private property, and the Convention on the Reduction of Statelessness stipulated that no person or group of persons could be deprived of their nationality. Not one single person among the many thousands expelled from Iraq had claimed Iranian nationality.
5. To raise unfounded claims that, 60 years after they had acquired Iraqi nationality, the persons expelled were Iranian was a violation of international law. The situation was aggravated by the fact that many of the persons concerned were elderly and had been expelled in a deserted area of the frontier in winter time.

6. Lastly, some 30,000 Iraqi Kurds had taken refuge in Iran in 1975 but their numbers had increased with the commencement of the Iraqi war. In that connection, his Government was appreciative of the assistance provided by ICRC for 12,000 Iraqi Kurds in Ziveh. In addition, approximately 1,000 Iraqi officers and soldiers had sought asylum in Iran.
7. Mr. CANKOREL (Observer for Turkey) said that a reference had been made to his country in the report on massive exoduses to the effect that what had happened in Cyprus in 1974 with the Turkish invasion was a mass exodus/displacement of the worst kind (E/CN.4/1983/33, annex 1, p.13). That misrepresentation of the situation in Cyprus was a flagrant denial of the facts and a distortion of the truth. The invasion which had resulted in the bloody coup that had toppled the Cypriot Government had not come from Turkey. The sole purpose of Turkey's intervention had been to put an end to the unprecedented bloodshed among the Turkish and Greek Cypriots. Evidence of that was contained in the Security Council records for July 1974. The authors of the comment in question also distorted the truth by disregarding the tens of thousands of Turkish Cypriots who, denied their basic rights, had been obliged to leave their country, particularly between 1964 and 1974.
8. His statement should be placed on record in order to give a fuller and more balanced account of the situation in Cyprus, in view of the absence of a representative of the victims of arbitrary executions in Cyprus up to 1974 and of the people forced to engage in a massive exodus, namely, the Turkish Cypriot community.
9. Mr. PILOT (World Council of Indigenous Populations) said that his people, the Innu, numbered 9,000 lived in the north north-east of sub-arctic North America. Their territory had been taken over by the Europeans, who had discovered its riches, had decided that the indigenous people should be Europeanized and placed them in reservations, and separated from their way of life and their origins so that their land could be exploited. His people had a duty to fight against that domination and reassert their rights over their land. Their situation was like that of the people of Namibia and South Africa, for they suffered from Bantustanization and were dependent on a colonial regime. They were considered by that regime as a source of cheap labour and their national wealth had been pillaged. Between 1975 and 1980, \$Can 4.2 billion had been leached from that land in the Churchill Falls project alone.
10. In respect of the right to self-determination, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities had emphasized respect for national unity and territory and, for his own part, he wished to inform the Commission that his nation continued to occupy its own land despite foreign constraints, but the existing situation of ethnocide should be investigated urgently before further harm was done.
11. Mr. ROBEL (World Confederation of Labour) said that concern appeared to exist everywhere to promote and protect human rights, as could be seen from the resolutions adopted by various United Nations bodies with a view to taking effective steps against such violations. Yet as time passed, human rights and fundamental freedoms were being violated more and more often and with ever greater violence. In addition to the lasting and repugnant situations of apartheid, colonialism, foreign occupation and numerous types of domination giving rise to oppression, inequality and poverty, violations of human rights took the form of arrests, arbitrary imprisonment, torture, summary execution, massacres, mass exoduses and expulsions from countries of refuge. Any means was suitable, provided it served the interests of the authorities. Such violations had become institutionalized in some places and were not exclusive to any given region or to any social, political or economic system. It was easier to count the countries in which human rights were respected in some measure than to enumerate those which violated them. Indeed, dramatic situations existed in many countries on which the Commission had not received reports.

12. It was plain that the prime causes were political, economic, social and cultural factors. Regrettably in a number of cases the authorities had not followed up suggestions made to them with a view to restoring rights and freedoms, and the request by the General Assembly to engage in co-operation with the Commission had met with little response. The authorities of some countries expressed a concern to protect human rights, yet did not bring their measures into line with the principles contained in the international instruments on human rights. Even when reforms were envisaged they were mishandled and subject to pressures from the oligarchy which sought to conserve its own interests, as was the case in El Salvador and Poland.

13. The contrast between the undertaking by States to respect human rights and fundamental freedoms and their actual practice was striking. Neither the countries nor the financial circles that dominated the world showed any inclination to make changes. The principles of the Charter and the Universal Declaration of Human Rights were universal only in theory and merely benefited the privileged classes in industrialized and developing countries alike. Governments reduced human rights to a system of legal procedures, using them to attack countries with opposing views. The confidential procedures adopted by the United Nations simply led to ineffectual results. The activities of the United Nations, which was dominated by government interests, could only be superficial and discredit the Organization.

14. The Confederation was aware of the difficulties facing the United Nations with regard to human rights, including the lack of political will on the part of member Governments. Truly, there were two worlds - that of the rich oppressor, concerned to maintain privileges and violate rights to do so, and that of the poor, who were demanding their lawful rights. The structures of the United Nations were not consonant with the facts or with the mandate of its different bodies. There was a lack of objective information on human rights situations in the world, because some Governments were not prepared to supply information or receive missions, something which was partly mitigated, however, by the contribution of the non-governmental organizations, whose role within the United Nations should be enhanced.

15. It was to be hoped that improvements would be made in the methods, procedures and facilities of the United Nations. It must develop a complete and objective system of information, so as to draw up a periodic report on the situation of human rights in the world, like the periodic reports on the economic and social situation. The United Nations could also constitute a terrain for teams whose role would be to give precise descriptions of human rights situations and thus enable the United Nations to take action in time. The Organization should also create the post of a permanent High Commissioner for Human Rights whose activities would not be tied to a political mandate. He appealed to the Commission to take steps for concrete measures to end violations of human rights, particularly in the countries which were the object of resolutions on the item under discussion.

16. Mr. MacDERMOT (International Commission of Jurists) said it was regrettable that no special rapporteur had been appointed to look into the situation in Guatemala. The repeated refusal of the Guatemalan Government to accept the persons proposed called into question its willingness to co-operate. Since the previous June, the International Commission of Jurists had continued to receive reports of attacks on villages by Government troops. One report, published by his organization in 1979, had attributed the source of the repression to the narrowly perceived economic interests of the larger landowners and had said that the violence was endemic in a socio-economic system that sought to maintain a majority of the population in serfdom. The civil strife had reached alarming proportions and it was deplorable that the Government of Israel had chosen to supply arms to Guatemala at a time when the United States and other countries had refused to do so.

17. The report of the Special Rapporteur on El Salvador (E/CN.4/1983/20) made it clear that armed confrontations and widespread violence continued; over 5,000 political murders had been reported in 1982. He could not fail to endorse the recommendation of the Special Rapporteur for a dialogue between the Government and all the political forces of the country, including those of the left-wing opposition.
18. With regard to Poland, it was unfortunate that the Polish Government had refused to co-operate with the Special Rapporteur. It was to be hoped that the Commission would urge the Government of Poland to reconsider that decision, which made it impossible for an impartial observer to make an independent assessment of the situation.
19. Again, the Government of Equatorial Guinea had not made sufficient use of the advice of the Special Rapporteur when drafting its new Constitution. His organization had circulated a document containing an analysis of the text (E/CN.4/1983/NGO/4), showing that it might be used to create a form of personal rule which would seriously undermine the human rights it was supposed to protect. The Commission should keep the situation under review until free elections were held.
20. The outspoken report and the recommendations on summary and arbitrary executions (E/CN.4/1983/16) were particularly welcome and the Commission should certainly extend the Special Rapporteur's mandate.
21. With regard to the report on states of emergency (E/CN.4/Sub.2/1982/15), discussed under item 10, it was pertinent to recall the extent to which such situations had resulted in gross violations of human rights. The International Commission of Jurists had itself been carrying out a parallel study on states of emergency and would be publishing it in the near future.
22. Efforts to deal with the problem of human rights and massive exoduses were welcome, but care must be taken to ensure that certain basic principles and established practices were not eroded. Persons falling within the definition of refugees contained in the 1951 Convention and the 1967 Protocol should be protected by the principle of non-refoulement and should be granted asylum, but persons not coming strictly within those definitions should also be afforded protection. In that connection, the practice developed by the Government of the United States of handing over Haitians arrested on the high seas to representatives of their own country violated internationally accepted norms, and the persons concerned were denied any effective right of appeal. In addition, a pattern of harrassment and abuse towards returned refugees had been found in Haiti. The International Commission of Jurists would be issuing a report on that country in the near future.
23. Mr. NCHAMA (International Movement for Fraternal Union among Races and Peoples) said that the very interesting report on summary and arbitrary executions (E/CN.4/1983/16) should also have covered the situation in Equatorial Guinea, where human rights were still being violated. The authorities claimed that the situation was legal and normal following the constitutional referendum in 1982, although the International Commission of Jurists had pointed out in a report (E/CN.4/1983/NGO/4) that no representatives of the people or of political, trade union, social or community organizations had participated in preparing the text of the Constitution; the political parties were banned and many opposition leaders were still in exile. Protests against the situation had been suppressed by force. The International Commission of Jurists had compared the situation to the one in 1980, when Chile had adopted a new Constitution which contained similarly arbitrary provisions.

24. In Equatorial Guinea nothing had changed since 1979, when President Obiang Nguema had come to power, and the country continued to suffer from systematic violations of human rights. It was important that any advisory services organized by the United Nations to help the Government restore human rights and fundamental freedoms should take account of the ideas of the United Nations in promoting and protecting the human rights embodied in the International Covenants on Human Rights. The new Constitution violated many articles of the Covenants and of the Universal Declaration of Human Rights itself by denying the right to strike by maintaining the workers in slavery or restricting the right of habeas corpus. It allowed anyone to be arbitrarily detained and detainees to be tortured. Some articles of the text contradicted one another or left matters unresolved. Indeed, the Constitution was nothing more than the assertion of a dictatorship. Human rights were founded on democracy and the task of promoting and protecting them was part of the struggle against oligarchies in power. The Commission should use its advisory services on behalf of the right to self-determination and not to confirm the powers of dictators.

25. Ms GAER (International League for Human Rights) said that she first wished to draw attention to the plight of Dr. Andrei Sakharov, who had played such a significant role in advancing broad initiatives for the benefit and even the survival of mankind, but would himself want the Commission to discuss the fate of many other people imprisoned in the Soviet Union. It was imperative that the Commission should use its good offices to secure Dr. Sakharov's release from exile, before it was too late.

26. Her organization was deeply concerned about the enactment of laws that institutionalized violations of human rights and often eliminated recourse to the judicial system. South Africa practised the outrage of apartheid. In 1982 it had enacted new laws for silencing the press, the continued detention without trial, torture, and restrictions on citizenship and on travel inside and outside the country. Chile had moved in the same direction in that its new Constitution conferred theoretical rights on individuals and then deprived them of those rights under transitional article 24, which gave "exceptional powers" to the President to restrict freedom of movement, suspend or restrict rights of assembly, order the arrest and detention of individuals in secret places, expel certain persons from the country and order the forcible relocation of individuals (internal exile). In Poland, the emergency Trade Union Statute had become the law of the land and restricted the ability to establish trade union organizations without prior Government authorization, prohibited the establishment of more than one union in a single enterprise, curtailed the right to organize regional and national trade union organizations, dissolved all former unions and severely limited the right to strike. Indeed, the question arose of whether the statute was intended to protect the rights of the workers or to curtail them.

27. The institutionalization of repressive laws could only be countered by action by the international community. The International League for Human Rights urged the Commission to continue to review such matters whenever and wherever they arose, irrespective of geography, political bloc or ideology.

28. Mr. HANESSIAN (Procedural Aspects of International Law Institute/International Human Rights Law Group) noted that, in her study on states of the emergency (E/CN.4/Sub.2/1982/15), the Sub-Commission's Special Rapporteur had urged that measures enacted during declared periods of emergency should be monitored in the light of the rights enumerated in the International Covenant on Civil and Political Rights, article 4, paragraph 2.

29. His organization wished to bring to the attention of the Commission instances in which special laws or emergency measures had gone beyond what might be considered strictly necessary in the particular situation involved. Malaysia had experienced a state of emergency since 1960, along with the corresponding abuses, and restrictive measures had been institutionalized in Turkey since the imposition of martial law in 1980. The International Human Rights Law Group had visited Sri Lanka in 1982 and 1983 and had found that the Terrorism Act had become a lasting part of Sri Lankan law even though the state of emergency had been lifted; it was not only ineffective but counter-productive in alienating the Tamil people and curtailing their civil and political rights.

30. Admittedly, the Republic of Korea was to be commended for releasing a number of political prisoners and restoring political rights, but the formal lifting of martial law should not mask the continuing violations of human rights. Similarly, in Poland martial law was no longer operative, but some aspects of it had been institutionalized, particularly matters pertaining to the rights of workers. He called for an investigation of the human rights situation in Poland and also urged the Government of Guatemala to co-operate with the Commission once a special rapporteur was appointed.

31. All nations had an interest in furthering the Commission's work in protecting human rights, something which could not be fully realized without acceptance by all Governments of the will of the Commission as expressed in its resolutions.

32. Mr. ALVAREZ VITA (Observer for Peru), speaking in exercise of the right of reply, said that the European press had been concerned in recent months about the situation of spurious refugees, namely, persons who sought to establish themselves in more affluent parts of the world and, for that purpose, claimed to be suffering from political persecution in their own country. Peru's Constitution provided for the protection of human rights and allowed citizens to appeal to the courts at all levels, both national and international. His country was ruled by law, had a democratic Government, elected by universal suffrage, and enjoyed unrestricted freedom of expression. The system of democracy, however, was being attacked by small but violent groups which had created a delicate situation in the region of Ayacucho, admittedly a region that was backward, although that was no justification for the crimes committed. It was the terrorists who had violated human rights in that area and the armed forces had had to be called in under the emergency.

33. The action of the Government was concerned not only with restoring public order but also with promoting intensive social and economic development. Unfortunately, the situation, which was being investigated by the judiciary and by a special commission, had been obscured by the statement by the International Federation of Human Rights. The independence of the Peruvian judiciary was well known, as could be seen from a recent case in which the courts had ruled in favour of a foreigner who had brought an action for habeas corpus against the Minister of the Interior. The Federation had also misrepresented the Anti-terrorist Act and he was prepared to submit the text of the Act to prove his point.

34. With regard to the social and economic situation, the Federation should have mentioned the efforts Peru was currently making to surmount the economic crisis. It was not true that the Human Rights Commission of the Peruvian Parliament had reported violations of human rights; it had officially stated that the country maintained a position of full respect for human rights.

35. Again, the representative of the Federation had referred to problems between the Peruvian Government and the Catholic Church, but the Church was not made up of the clergy alone and it should not be used for political ends. If the representative in question was aware of Peru's real position with regard to human rights, he would not have made statements which contrasted with the attitude of the delegation of the Holy See towards the situation in Peru. It was true that priests in Peru enjoyed political rights, as did other citizens, but the new Canonical Code was quite clear on the pastoral conduct of the ministers of the Catholic Church in matters of a political nature.

36. His country was not afraid of the truth and welcomed valid criticism that called attention to possible errors and made it possible to conquer all obstacles.

37. Mr. HERDOCIA (Nicaragua), speaking in exercise of the right of reply, said a Nicaraguan citizen living in the United States had maintained that the counter-revolution in Nicaragua was instigated by the United States and that the Sandinista Government had taken advantage of international assistance in order to destabilize Nicaragua and put pressure on the Miskito Indians. It was not clear whether the person in question was defending the Miskito Indians or attacking the United States. For those who wished to know more about what was happening in Nicaragua, it should be noted that numerous bodies had visited the country and reported on the situation there; none of them had been turned away. A very recent report by the World Council of Indigenous Populations had stated that its mission had been allowed to go wherever it wished, that health services had greatly improved, education programmes were being promoted in Spanish, Miskito and English, and indigenous persons held high Government posts. Similarly, a United Nations Seminar in Managua in 1981 had visited all the areas it had wished.

The meeting rose at 7.55 p.m.