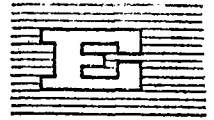


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Agenda item 19

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION  
AND PROTECTION OF MINORITIES ON ITS TWENTY-NINTH SESSION

Note verbale dated 15 March 1977 from the Permanent Representative of Argentina to the United Nations Office at Geneva, addressed to the Director of the Division of Human Rights

The Permanent Mission of the Argentine Republic to the International Organizations at Geneva presents its compliments to the Director of the Division of Human Rights and encloses a copy of the statement of the observer for Argentina, Ambassador Gabriel Martínez, in connexion with item 19 of the agenda for the thirty-third session of the Commission on Human Rights.

It is requested that, as was agreed at the 1427th meeting, this statement be circulated as an official document of the Commission.

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Statement by the Government of Argentina in connexion with resolution 2 C (XXIX) of the Sub-Commission

1. Treatment of the question.

The Government of Argentina wishes to refer to resolution 2 C, contained in document E/CN.4/1218 and relating to item 12 of the agenda of the Commission on Human Rights for its thirty-third session, a resolution which it has formally rejected and continues to reject in toto.

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It deems it particularly important to inform the Commission of the procedure followed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in dealing with and in voting on this resolution. Reference must also be made to the substance of the resolution which, quite apart from being based on inaccurate assertions, falls outside the competence of the Sub-Commission.

In view of the decision of the Working Group of the Sub-Commission not to refer cases or documentation relating to Argentina to the Sub-Commission for consideration under the heading of violations of human rights, the experts from Italy and France began to circulate a draft resolution which, they indicated, was not designed to criticize or level any charges against the Government of Argentina but to assist it in a matter which they recognized as being within the competence of the Office of the High Commissioner for Refugees.

The observer for Argentina, speaking on behalf of his Government, at the time when the then draft resolution was under consideration, clearly stated his disagreement with the procedure employed by the expert Sub-Commission and denied its competence to deal with the matter of substance. In stating that the Government of Argentina expressed its disagreement, I should point out to this Commission that it was able to do so only in the last five minutes of the discussion and immediately prior to the vote.

The possibility of the observer for Argentina adequately presenting his views on the draft resolution was decisively restricted by the attitude of the then Chairman of the Sub-Commission (the expert from Austria), who required strict adherence to a period of three minutes, subsequently extended by two "grace" minutes, for the Government of Argentina to make known its views on a document which concerned it directly.

Such an attitude, in a sub-commission of experts, towards the representative of a Government of a Member of the United Nations was in patent contrast to the freedom with which the sponsors were able to express themselves in respect of that country and, what is even more regrettable, to the latitude given to a non-governmental organization which devoted its entire intervention to launching an altogether politically motivated attack on the country. This was contrary to both the spirit and the letter of resolution 1296 (XLIV) of the Economic and Social Council, particularly its paragraphs 2 and 36 (b), an aspect to which further reference will be made later. In the relevant Sub-Commission record (E/CN.4/Sub.2/SR.767/Add.1, page 8, paragraph 51) the observer for Argentina is reported as saying that he "greatly regretted being allowed so little time to make his statement".

## 2. The scope of the resolution.

As for the actual content of the resolution, it is perhaps worth while giving a brief summary of the analysis made of it by the observer for Argentina - who as has already been mentioned - was unable to present it orally but was constrained to communicate it in writing, after the vote had taken place.

The first preambular paragraph expresses the concern of the Sub-Commission at "reports" from which it would appear that human rights are in jeopardy in Argentina. In connexion with this statement, the Government of Argentina and, I believe, the members of this Commission are not aware of the existence of any such report or reports which are in keeping with the procedure established in resolution 1503 (XLVIII) and the

other pertinent resolutions of the Economic and Social Council and/or Commission on Human Rights. I have already mentioned that the Working Group did not think it necessary to transmit to the Sub-Commission the communications it had received concerning my country. From the statements made by some of the members in the Sub-Commission, it would seem that they have been dealing with information - much of it of newspaper origin - which is far from being reliably attested and which cannot possibly be accorded the title of "report" as the term is used in United Nations circles. Consequently, the basis for the resolution, which has caused the Sub-Commission to be so "deeply concerned", as the first preambular paragraph has it, is highly dubious and questionable.

The second preambular paragraph introduces a concept which, in view of its potential political or legal implications, seriously alarms the Government of Argentina. The use of the words "fugitives from other countries in the region" is, in fact, quite incomprehensible. "Fugitives" from what and from whom? Does this paragraph mean to include fugitives from ordinary justice, whose situation and legal circumstances in foreign territory are clearly regulated by national and international law?

This confused and dangerous concept of "fugitives" is of no possible application to the problem to which the resolution claims to refer and could, in fact, lead to such broad interpretations as to endanger the basic standards of international co-existence.

The second paragraph also uses the terminology of article 3 of the Universal Declaration of Human Rights, to which the third preambular paragraph of the resolution expressly refers. In connexion with the Universal Declaration of Human Rights, it is appropriate to reaffirm that this is a unique document to which the Government of Argentina has acceded unambiguously and which it respects in its entirety. Consequently, the Government has distinct doubts as to the importance and significance of a partial quotation from a document which is basic to international co-existence in the modern world. The rights "to life, liberty and security of person" are guaranteed in Argentina not only by the country's relatively recent accession to the said Declaration but also because they are enshrined in the very text of its Constitution, adopted in 1853 and still in force.

Argentina agrees fully with the reaffirmation in this forum of "the leading role traditionally played by Latin American countries in the ..... development of the notion and practice of the right of asylum". In the Latin American context, the Argentine Republic has been and is one of the greatest proponents and defenders of the institution of asylum. It has traditionally granted asylum to an enormous number of Latin Americans confronted with situations of political conflict in their countries of origin. It is also worth recalling that, during and after the Second World War, it generously applied the institution to a multitude of Europeans from countries whose laws have never recognized this right.

Nevertheless, the significance of the said preambular paragraph in the context of the resolution is unclear, particularly because there is no corresponding operative paragraph - unless perhaps it was the intention of the sponsors, through this resolution, to universalize this great Latin American institution. If such were the intent, Argentina could not but welcome it, but, as is mentioned above, it is strange that there is no call in the operative part of the resolution for the general and universal application of the right of asylum.

The first operative paragraph of the resolution refers to the application of human rights to persons who are "now deprived of their human rights". The vagueness of this statement is highly alarming. As is well known, the Government of Argentina and the Argentine people are passing through a crisis, a crisis provoked by the fanatical and cunning activities of terrorist organizations dedicated to the destruction of the national institutions and the national being. Violence, often unleashed with external support, should not be a phenomenon new to the members of this Commission. Consequently, the Government of Argentina wonders whether the first operative paragraph refers to the violation and deprivation of all the universal human rights and fundamental freedoms caused by the terrorism to which I have referred, or whether it is intended to express - without any reliable information - a value judgement concerning the responsibility of the State to its people.

Although there is no country which is immune from violations of human rights, no doubt can be accepted - in the absence of concrete and reliably attested cases - as to the behaviour of a Government which has declared and continues to declare its full respect for human rights and which is applying the full resources of the law to re-establish order. Consequently, the Government of Argentina reserves the right - enjoyed by every State Member of the United Nations - to reply to specific cases when these are presented in due form and in accordance with the existing procedure, as has been repeatedly stated in this Commission during the present session by most of its members.

The second operative paragraph refers to the appeal to Governments made by the United Nations High Commissioner for Refugees to offer resettlement facilities to persons who now have refuge in Argentina. Prior to this appeal by the High Commissioner, the Government of Argentina had made a clear call for bilateral and international assistance in the matter. The results of its approaches and of the High Commissioner's appeal have not been too satisfactory. Since 1973, more than 500,000 Latin Americans have entered my country. Of these, according to his own statements, the High Commissioner, is concerned with the resettlement in third countries of 16,000 refugees. To date, the countries that have offered facilities and the number of persons who are prepared to accept them are quite small. As we have repeatedly pointed out in various forums, it is rather strange and contradictory that the concern expressed by the sponsors of the resolution has not been reflected in more generous offers from their respective Governments and that, in some cases, this concern seems to have generated no response whatsoever.

The Government of Argentina also wonders, in connexion with operative paragraphs 2 and 3 of the resolution, whether interference in the specific activities of other organs of the United Nations system may not seriously disturb work which is based on co-operation between the Member States and the Organization, particularly when the Government in question ensures and extends the necessary collaboration to the competent organizations of the system. The third paragraph likewise seems to go beyond the powers of the Sub-Commission. Under the established rules, the report of the United Nations High Commissioner for Refugees is transmitted by the Economic and Social Council to the General Assembly.

With regard to the competence of the Sub-Commission to approve decisions of this kind, when draft resolution 2 C was submitted the observer for Argentina clearly indicated that the procedure followed was not that laid down in resolution 1503 (XLVIII) and other pertinent resolutions of the Economic and Social Council and the Commission on Human Rights. In support of the position of the Government of Argentina, it is sufficient to quote the views of the Chairman of the Sub-Commission, Mr. Martínez Cobo of Ecuador, who, at the 753rd meeting, on 19 August 1976, stated that: "The Commission in paragraph 2 of its resolution 8 (XXIII), had clearly requested the Sub-Commission to prepare a report

containing information on violations of human rights and fundamental freedom from all available sources. Until the previous year, the Sub-Commission had been content to submit its report on facts which it considered grave". Since then, it had thought that it could also submit resolutions, a decision with which, as Mr. Martínez Cobo expressly stated, he did not agree.

Some members of the Sub-Commission had thought it advisable to define still further the competence of the Sub-Commission, in relation to the type of decisions that the Sub-Commission was empowered to adopt in connexion with the item Question of the violation of human rights (resolution 8 (XXIII)). Thus Mr. Smirnov of the Soviet Union had stated that Economic and Social Council resolution 1235 (XLII), taken in conjunction with resolution 728 F (XXVIII) and resolution 1503 (XLVIII), clearly laid down the procedures to be followed in considering communications relating to violations of human rights and fundamental freedoms. A very precise framework had thus been established for the Sub-Commission's work. The main task of the Sub-Commission was to examine communications revealing flagrant violations of human rights in cases in which a policy of discrimination was practised (E/CN.4/Sub.2/SR.753, page 4).

Various other members of the Sub-Commission also expressed the view that: "With regard ... to the question of violation of human rights anywhere in the world, and particularly in colonial territories, ... the Sub-Commission should, in accordance with Commission resolution 8 (XXIII), confine itself to drawing attention in its report to those cases which called for inquiry, without adopting resolutions before the necessary investigation had been made".

None of those arguments were taken into account in connexion with the resolution referring to Argentina.

### 3. The subject.

With respect to the substance of the resolution, the expert from Italy, who introduced the text as spokesman for the sponsors, stated that "The draft refrained from any condemnation of the Government concerned" and that the sponsors were "guided solely by humanitarian considerations". He had also stated that "They were also aware of the fact that the Government of Argentina had so far co-operated generously with the United Nations High Commissioner for Refugees" and that "Argentina was not required, under the relevant international instruments, to recognize as refugees" "fugitives from other Latin American countries". Through their spokesman, the sponsors then appealed to the international community "to assist Argentina by offering to admit persons [of that category] at present in that country". Lastly, the sponsors endorsed the High Commissioner's praiseworthy activity and supported "his appeal ... for the resettlement of fugitives from other Latin American countries who were at present in Argentina".

This is the sponsors' interpretation, in their own words, of the contents and scope of the resolution under consideration. Any other possible interpretation based on imperfections of their drafting must be qualified as captious, lacking in seriousness and designed to produce effects or create situations in the Commission which have nothing to do with the resolution submitted.

At the time of the adoption of the resolution, the expert from Costa Rica expressed his strong disapproval of the draft since he considered "that its wording was unclear and that the assertions it contained had no firm basis, as was, indeed, shown by the repetition of the word "appears" in every sentence". He added, moreover, that so far as "fugitives" were concerned, the question was not within the Sub-Commission's competence but was a matter for the High Commissioner for Refugees. Likewise, in connexion with the fact that the fourth preambular paragraph acknowledged that Latin America had traditionally played a leading role in generously recognizing the right of asylum, which had never been fully observed by any other group of countries, even the countries of Europe, he stated that "he therefore could not agree to reference being made to a Latin American country in such vague terms and in such a manner".

The Government of Argentina is particularly concerned that the members of the Commission on Human Rights should be aware of all the formal and substantive objections to the document that have been raised. As was previously mentioned, its observer was able to express them to the Sub-Commission only in writing and after the resolution had been adopted by a procedure which, to say the least, should be described as irregular and improper.

#### 4. The refugee problem.

Pursuant to the provisions of operative paragraph 3 of Sub-Commission resolution 2 C (XXII) the Secretary-General of the United Nations placed at the disposal of the Commission on Human Rights for its thirty-third session some "additional information" prepared by the United Nations High Commissioner for Refugees in connexion with the situation of displaced persons from the Latin American countries who are now in Argentina (E/CN.4/1230).

Before entering into the substance of the matter, the Government of Argentina wishes to emphasize the close co-operation it has always maintained with UNHCR, a co-operation which is repeatedly referred to in the above-mentioned document. In order to clarify the nature of the problem of Latin American displaced persons in Argentina, it is worth drawing attention to some general and particular circumstances.

In the first place, the examples of events and situations in Argentina that may have affected foreigners who sought refuge on its generous soil, should be examined and weighed in the more general context of the conditions and hazards created by terrorism. In recent years, the country had been suffering from the activities of groups engaged in organized delinquency which are causing suffering for the whole population that wishes to live in an atmosphere of security, respect and social peace.

The Government of Argentina has undertaken to combat those activities, in all their manifestations, by all legal means in its power and it is endeavouring fully to re-establish internal security. Despite the progress made in that respect by the forces of order complete and absolute success cannot be expected in the immediate future. It follows therefore that isolated terrorist groups may have been able to cause incidents with international repercussions and are attempting, among other anti-social activities, to give the impression that the Argentine authorities are not affording sufficient protection to aliens and/or their own citizens.

It is a well-known fact that the Government of Argentina has categorically denounced such treacherous acts and has taken all the steps it reasonably can to investigate such incidents and punish those responsible. The Argentine position has been made known officially to UNHCR on several occasions and exceptional security measures have been adopted of which the High Commissioner and his regional representative in Buenos Aires are well aware.

Very many foreigners, reliably estimated at not less than 700,000, are residing irregularly in Argentine territory. Some of them cannot return to their countries of origin or habitual residence for political, religious, racial or other reasons and it is in respect of such persons that the Government of Argentina, once again revealing its traditional breadth of understanding, provided by Decree 1483/76 that the Argentine immigration authorities may not declare illegal the entry and/or presence of aliens who declare themselves to be in the above-mentioned situation. The institution of a special régime for such cases sufficiently is practical evidence of the Argentine attitude towards persons who, even if they have contravened the country's immigration laws, are seeking peace and well-being on its soil.

As a result of the aforesaid measure, many aliens, particularly Latin Americans who, as the High Commissioner has put it, are "illegally in Argentina", have been able to regularize their situation vis-à-vis the Argentine authorities which could not accept the clandestine presence of persons in Argentine territory, not even under the pretext of greater security, since, taking precedence over all individual cases, was their responsibility of guaranteeing the security of the country itself and of all its people. Moreover, illegality, delinquency and terrorism, are concepts that are very frequently connected, as is proved by the fact that a significant number of aliens illegally present in the country have been apprehended while engaged in terrorist activities or when disturbing the peace of the nation.

In that connexion, we have noted with particular interest the statement by the High Commissioner concerning persons who act contrary to the purposes and principles of the United Nations, committing acts of violence against other human beings. If such acts are committed by refugees, they constitute not only an affront to the human conscience, which condemns them, but also an insult to the country in which they live and which, for humanitarian reasons, has given them asylum and offered them an opportunity of beginning a new life.

Despite its reservation concerning the geographical scope of the 1951 Convention, Argentina has traditionally granted and continues to grant generous asylum to a large number of Latin Americans faced with situations of political conflict in their countries of origin or residence, who consider that they cannot return to those countries in safety. The High Commissioner has been seeking to arrange definitive resettlement in third countries for a significant, but proportionately limited number of such foreigners illegally resident in Argentina or having the status of "asylees in transit". Without any recognition of competence being implied, the Government of Argentina, through bilateral and multilateral approaches has taken action both prior to and in concert with the High Commissioner's appeal. It endorses the statement made in the UNHCR information bulletin of February 1977 that the rate of resettlement is too slow and hopes that international solidarity will express itself, not in the form of accessions or declarations, but rather in a prompt acceptance of those persons who, for various reasons, cannot or do not wish to remain

in Argentine territory. I must reiterate here the firm intention of the Government of Argentina to continue co-operating actively in the high humanitarian purposes of the High Commissioner's work which the Government currently has to face but which have not prevented hundreds of thousands of foreigners from deciding, of their own free will, to enter and remain in Argentine territory.

5. Non-governmental organizations.

Lastly, I wish to draw the Commission's attention to the role played by some non-governmental organizations which have been unscrupulously lending their names to a systematic campaign of harassment of the Argentine people and Government. In this connexion, I must state for the record that the Government of Argentina reserves the right to revert to this matter and to examine it in depth, in this forum and/or the Economic and Social Council. Provisions that are expressly relevant in this context have been violated, particularly resolution 1296 (XLIV) which, in its paragraph 36 (b), states that non-governmental organizations are not to abuse their consultative status by "engaging in unsubstantiated or politically motivated acts against States Members of the United Nations contrary to and incompatible with the principles of the Charter". Reference should also be made in this connexion to paragraph 2 of the same resolution which states that the aims and purposes of the non-governmental organization must be in conformity with "the spirit, purposes and principles of the Charter of the United Nations".