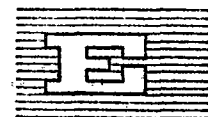


UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CH.4/SR.1510
9 March 1979

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Thirty-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1510th MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 7 March 1979, at 4 p.m.

Chairman:

Mr. BEAULME

(Canada)

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*/ The summary record of the second part (closed) of the meeting appears as document E/CH.4/SR.1510/Add.1.

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GE.79-11383

The meeting was called to order at 4.15 p.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES, INCLUDING: (agenda item 12) (continued)

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS

(b) STUDY OF SITUATIONS WHICH REVEAL A CONSISTENT PATTERN OF GROSS VIOLATIONS OF HUMAN RIGHTS AS PROVIDED IN COMMISSION RESOLUTION 8 (XXIII) AND ECONOMIC AND SOCIAL COUNCIL RESOLUTIONS 1235 (XLII) AND 1503 (XLVIII): REPORT OF THE WORKING GROUP ESTABLISHED BY THE COMMISSION AT ITS THIRTY-FOURTH SESSION (continued) (E/CN.4/1295, /1296, /1317 and /1335; E/CN.4/Sub.2/414 and Add.1-9)

1. Mr. MAZAUD (Assistant Director, Division of Human Rights) said that ever since the Commission had decided in 1967 to consider every year the question of the violation of human rights and fundamental freedoms in any part of the world, it had had occasion to refer to particular situations in given countries or regions, to express concern about those situations and to propose remedial measures.

2. It was within the framework of such discussions that the question of the human rights situation in Democratic Kampuchea had been raised at the Commission's thirty-fourth session, at which several delegations had submitted a draft resolution proposing that a special rapporteur should conduct a thorough investigation of that situation. After a debate in the course of which certain members expressed the view that the information available was not sufficient to warrant such an investigation, the Commission had adopted without a vote a decision to request the Secretary-General to transmit to the Government of Democratic Kampuchea, for its comments, the documents and summary records of the thirty-fourth session of the Commission relating to the human rights situation in that country, and to transmit the response of the Government of Democratic Kampuchea, together with all the information that might be available about the situation, to the Commission at its thirty-fifth session, through the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

3. Pursuant to that decision, the Sub-Commission had had before it at its thirty-first session over 1,000 pages of material including not only information transmitted by Governments and non-governmental organizations, but also a note from the Ministry of Foreign Affairs of Democratic Kampuchea. After considering the documentation before it, the Sub-Commission had requested its Chairman, or such member of the Sub-Commission as the Chairman might decide to appoint, to analyse those materials, together with the comments and observations made by the Sub-Commission and other relevant materials which might be received by the Secretary-General before the thirty-fifth session of the Commission, and to present his analysis to the Commission. Mr. Bouhdiba (Tunisia), Chairman of the Sub-Commission, had decided to undertake the analysis himself, and that analysis was to be found in document E/CN.4/1335, which Mr. Douhdiba would introduce personally.

4. With regard to the question of human rights in Cyprus, the Commission had been considering the matter since its thirty-first session in 1975. In 1978, although it had not held a general debate on the question, it had adopted resolution 17 (XXXIV) in which it had reiterated its previous calls for the full restoration of all human rights to the population of Cyprus, in particular to the refugees, and had requested the Secretary-General to provide the Commission at its thirty-fifth session with information relevant to the implementation of its resolution. The report of the Secretary-General in pursuance of resolution 17 (XXXIV) of the Commission (E/CN.4/1323) contained information on the efforts of the Secretary-General and his special representative in Cyprus to solve various aspects of the Cyprus problem, and in particular the problem of missing persons in that country. It also contained information on that subject supplied by the Governments of Cyprus, Greece and Turkey and by the Turkish Cypriot community. In addition, it contained the text of General Assembly resolution 33/172 concerning missing persons in Cyprus. In that resolution, the General Assembly urged the establishment of an investigatory body under the chairmanship of a representative of the Secretary-General with the co-operation of the International Committee of the Red Cross, a body in which the representative of the Secretary-General would be empowered, in case of disagreement, to reach a binding independent opinion which would be implemented. To date, no action had been taken on the resolution for the reasons stated in paragraphs 10 and 11 of the Secretary-General's report.

5. The Sub-Commission on Prevention of Discrimination and Protection of Minorities had, for its part, adopted a resolution on the same question, namely, resolution 8 (XXXI), in which it demanded the full restoration of all human rights to the whole population of Cyprus, expressed its grave concern at the continuing plight of the displaced persons in Cyprus and requested the Commission to review at its thirty-fifth session the implementation of the resolution.

6. Lastly, the Committee on the Elimination of Racial Discrimination, at its eighteenth session, had adopted a decision in which it reiterated its grave concern at the fact that Cyprus, a State Party to the International Convention on the Elimination of All Forms of Racial Discrimination, was being prevented from fulfilling its obligations under that Convention in a part of its territory, and expressed the hope that the Government of Cyprus would soon be able to exercise its full responsibility in that respect and that the "unacceptable" state of affairs in Cyprus would soon be brought to an end.

7. In the course of the discussions on item 12 as a whole at the Commission's thirty-fourth session, several delegations had expressed concern about the risk of duplication and overlapping of activities in the application of existing United Nations procedures for dealing with communications concerning violations of human rights. To meet that point, the Commission, in resolution 16 (XXXIV), had requested the Secretary-General to prepare an analysis of the procedures in question. That analysis had been submitted to the Commission in document E/CN.4/1317, which contained a brief description of the various existing United Nations procedures for dealing with communications concerning

human rights, but concentrated primarily on the main procedure implemented by the Commission, as defined by the Economic and Social Council in resolution 1503 (XLVIII), and the new procedure which had been established under the Optional Protocol to the International Covenant on Civil and Political Rights and was within the competence of the Human Rights Committee. It appeared that the scope, mechanisms and results of the two procedures were fundamentally different. The Human Rights Committee itself had determined that the procedure set up under Council resolution 1503 (XLVIII) did not constitute a procedure of international investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol, since it was concerned with the examination of situations which appeared to reveal a consistent pattern of gross violations of human rights, and a situation was not the same matter as an individual complaint submitted in accordance with the Optional Protocol. The analysis in document E/CN.4/1317 showed that, from the legal standpoint, there was no danger of conflict between the two procedures. From the practical standpoint, however, there was a danger that difficulties might arise during the initial sorting of communications that had to be undertaken by the Secretariat in order to channel them towards one or other of the applicable procedures. The analysis contained certain suggestions in that respect (paras. 32-35) which, if found acceptable, by the Commission, would facilitate the task of the Secretariat and would doubtless prevent overlapping and duplication.

8. In a desire to ensure observance of the rule of confidentiality which applied to decisions on questions relating to Council resolution 1503 (XLVIII), the Sub-Commission had decided at its thirty-first session that it would be advisable for the Sub-Commission itself and for its Working Group on Communications to use the secret-ballot method for voting. Accordingly, in resolution 7 B (XXXI), it had requested the competent United Nations bodies to amend the rules of procedure to that effect.

9. With regard to the same rule of confidentiality, and following the publication in a newspaper of an article which had prompted strong reactions by several of its members, the Sub-Commission, in resolution 10 (XXXI), had expressed its concern at the continued violations of the aforesaid rule and had requested the Secretary-General to conduct a thorough investigation into the violations of the rule of confidentiality and in particular the publication of the article in question, and to devise and bring into effect appropriate measures to prevent such violations. The Secretary-General had been requested to report to the Commission on the results of the investigation and in respect of the measures recommended. The report would be presented orally to the Commission.

10. With regard to the documents distributed under agenda item 12, he drew attention to the reports submitted by ILO and UNESCO on the nature and effect of any racial discrimination of whose existence they had knowledge in their respective spheres of competence (E/CN.4/1332 and Add.1). Lastly, he informed the Commission that it would shortly receive document E/CN.4/923/Add.12 containing a list of the decisions taken by United Nations bodies in 1978 in respect of violations of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries and

territories. The late distribution of that document was due to the extension of the thirty-third session of the General Assembly, since it had seemed desirable to include all the relevant decisions of the Assembly.

11. Mr. BOUHDIBA (Chairman, Sub-Commission on Prevention of Discrimination and Protection of Minorities) introduced the analysis of the documents submitted to the Sub-Commission and the Commission on the situation of human rights in Democratic Kampuchea (E/CN.4/1335), which he had prepared on behalf of the Sub-Commission pursuant to decision 9 (XXXIV) of the Commission.

12. In view of the developments in the situation in Democratic Kampuchea, it was at present difficult to know what would become of the analysis and what practical measures could be taken on the basis of its findings. He had confined himself strictly to an objective analysis of the contents of the documents submitted to the Commission and the Sub-Commission, and had tried to summarize the main points raised in the documents. The analysis related to over 1,000 pages of documents which were extremely varied in terms of source and content but were all distressing. Some of the documents - namely, the submissions from the Governments of Canada, Norway, the United Kingdom, the United States and Australia - had been communicated on an official basis and already comprised an analysis of the facts adduced. A second group of documents comprised the submissions from non-governmental organizations, namely, Amnesty International and the International Commission of Jurists, which also comprised analyses. Lastly, there were the reactions - one could hardly call them replies - of the Government of Democratic Kampuchea in the form of a note and telegram.

13. The first source of the information contained in the documents was evidence given by refugees. Their allegations had of course been neither confirmed nor disproven since at no stage had it been possible to conduct a direct on-the-spot investigation, but 113 men and 5 women of different social backgrounds had described, in a detailed and often harrowing manner, events which they had experienced. The second source consisted of official submissions from Governments which had received evidence and reports of various kinds. The third consisted of submissions from non-governmental organizations which had tried to take action directly, by using their influence with Governments or by submitting reports to the United Nations. Lastly, there were documents, studies and press articles prepared by experts whose political and personal commitments were varied but who had decided to place their expertise and knowledge at the disposal of the United Nations.

14. With regard to the credibility of the information, it should be noted that, despite discrepancies and one-sidedness in the evidence, cross-checking enabled a number of assertions to be made. Moreover, only the salient facts and characteristic violations had been used for the purposes of the analysis and anything that had seemed marginal or questionable had been excluded.

15. He then summarized the various accusations; he preferred the word accusations because it was used in many of the documents analysed and seemed appropriate in the content of the extremely serious facts which were described in the documents and had already aroused the feelings of the international community, the Commission and the Sub-Commission. Five serious accusations had been made concerning events that had taken place on the day following the capture of Phnom Penh on 17 April 1975; they concerned the forcible and precipitate evacuation of the population of Phnom Penh and other urban centres without regard to age or health - even hospital patients had been forced to leave and some had died on the journey; the compulsory resettlement of the population in frequently hostile or uninhabited rural areas and the organization of the population into forced labour brigades; the imposition upon the entire population of a draconian discipline with respect to their work that was intolerable and contrary to the provisions of the Charter, and the imposition of strict control, backed by severe penalties, over their freedom of movement; the launching of a systematic programme aimed at the destruction of certain categories of persons who had formerly been associated with the defeated régime or had belonged to higher social, economic or educational categories; and lastly, the launching of a sustained and systematic programme designed to destroy all traditional religious and family life, to eradicate previous values and to transform economic or social practices.

16. He next analysed in detail the accusations relating to the various articles of the Universal Declaration of Human Rights.

17. The main allegations - in other words, the most frequent, the most violent in tone and the most serious - concerned the right of everyone to life, liberty and security of person (Universal Declaration art. 3); they related to the precipitate and forcible evacuation of Phnom Penh, and the execution in cold blood of large numbers of persons - adults, old people, young people, sick people, entire population groups - within the framework of a policy of purges that had been minimized but not denied by the authorities. It was extremely difficult to give an exact estimate of the number of victims, but the documents showed that at least 100,000 persons had been executed and that at least 1 million had died as a result of lack of food or care, physical exhaustion brought about by the extremely severe labour régime that had been imposed, and epidemics that had not been halted in time. Some of the documents made unbearable reading. It was as if a systematic massacre had been organized, either on orders from the highest authorities or as a result of initiatives over which varying degrees of control had been exercised. The allegations had been implicitly rejected by the Government of Democratic Kampuchea, which had described them as "defamation" and "slander". The Deputy Prime Minister of Democratic Kampuchea had denied the allegations in May 1977 and June 1978, while admitting that 3,000 persons had died in Phnom Penh itself.

18. Many documents described violations of article 5 of the Universal Declaration, which provided that no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment. They described extremely cruel and refined methods of torture, which had been followed by popular celebrations designed to demoralize and intimidate the population.

19. Similarly, articles 6 to 11 of the Universal Declaration concerning recognition of persons before the law, the right to equal protection of the law, the right to effective remedy by the competent national tribunals for acts violating fundamental rights, protection against arbitrary arrest, detention or exile, the right to a fair and public hearing, the right to be presumed innocent until proved guilty, etc. had been flouted. In that connexion, the documents gave details, including certain legal details, particularly on the articles of the Constitution of Democratic Kampuchea relating to the administration of justice and the appointment of judges; it was held that those articles were questionable from the legal standpoint and, moreover, were not implemented.

20. Article 12 of the Universal Declaration, which prohibited interference with privacy, had been systematically violated. The evidence described, in particular, the suppression of all privacy and family life as a result of the organization of a labour régime in which the long or permanent separation of families was an established feature.

21. In addition, the citizens of Democratic Kampuchea had been deprived of the rights established in articles 13, 16, 18, 19 and 23 to 26 of the Universal Declaration (freedom of movement; the right to marry; free and full consent of the intending spouses; the right to freedom of thought, conscience and religion; the right to freedom of opinion and expression; the right to free choice of employment, rest and leisure; the right to a standard of living adequate for health and well-being; the right to education), and of the right to take part in the government of their country (art. 21), despite the fact that article 6 of the Constitution of Democratic Kampuchea provided that the members of the Kampuchean People's Representative Assembly were to be elected by the people in direct general elections by secret ballot, held throughout the country every five years.

22. That situation, which was intended to amount to a fait accompli, constituted nothing less than autogenocide.

23. The last part of the analysis, chapter VI, related to the position of the Government of Democratic Kampuchea with regard to the allegations - a position which had been outlined in the note from that Government dated 22 April 1978. The Government of Democratic Kampuchea had called upon the United Nations to reject the allegations as "the slander and calumny of hoodlums, traitors and stateless persons". It referred to the difficulties involved in the take-over and flattered itself on having solved a number of problems, including the elimination of malaria and illiteracy, and the supply of foodstuffs to the population. It stated that it did not murder, as the imperialists, expansionists and annexationists with their slander and calumny had tried to make people believe. The Government's reply was not really a reply, in terms of either substance or form, since the Government did not refute the terrible allegations levelled against it and produced no convincing arguments. It merely tried to discredit those who had submitted the documents.

24. In his analysis, he was not putting an ideology on trial or criticizing a political régime as such. Contrary to normal practice, he had not submitted any conclusions or suggestions, the reason being that the changing situation in Kampuchea made it impossible to propose a constructive solution that would satisfy the expectations of national and international public opinion. However, the events described in the documents were extremely serious - the most serious that had occurred anywhere in the world since nazism. Of course, there was no proof that they had occurred, since there had been no investigation by the United Nations, but the various accounts were consistent down to the last detail. Even if the events now belonged only to history, it was neither possible nor prudent to pass over them in silence or simply to lay the matter aside.

25. The first step should be to expose the facts. The Commission could take note of the documents, to ensure that they were not forgotten, and keep the question on its agenda. It could also draw the events to the attention of the international community in order to ensure that they were not repeated in that part of the world or anywhere else.

26. He thanked the members of the Commission for their attention and expressed the hope that co-operation between the Commission, composed of representatives of States, and the Sub-Commission, composed of experts participating in a personal capacity, would be systematically strengthened.

27. The CHAIRMAN thanked the Chairman of the Sub-Commission for his statement.

The public meeting rose at 5.15 p.m.