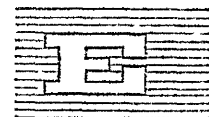


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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD,
WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER
DEPENDENT TERRITORIES

Report on the situation in Poland presented by
Under-Secretary-General Patricio Ruedas

GE.84-11288

INTRODUCTION

1. On 10 March 1982, the Commission on Human Rights adopted by 19 votes to 13, with 10 abstentions, resolution 1982/26 regarding the situation of human rights and fundamental freedoms in Poland, by which, inter alia, it decided to request the Secretary-General or a person designated by him to undertake a thorough study of the human rights situation in Poland, based on such information as he may deem relevant, including comments and materials the Government of Poland may wish to provide, and to present a comprehensive report to the Commission at its thirty-ninth session.
2. Pursuant to resolution 1982/26, the Secretary-General designated Under-Secretary-General Hugo Gobbi to follow the situation in Poland on his behalf. In the exercise of that mandate, Under-Secretary-General Gobbi submitted a report on the situation in Poland to the Commission on Human Rights at its thirty-ninth session (E/CN.4/1983/18).
3. Following its consideration of the report of Under-Secretary-General Gobbi, the Commission on Human Rights, at its thirty-ninth session, on 8 March 1983, adopted by 19 votes to 14, with 10 abstentions, resolution 1983/30 on the situation of human rights and fundamental freedoms in Poland. By this resolution the Commission, inter alia, decided - in its fifth operative paragraph - "to request the Secretary-General or a person designated by him to update and complete the thorough study of the human rights situation in Poland requested in its resolution 1982/26, based on such information as he may deem relevant, including comments and materials the Government of Poland may wish to provide, and to present a comprehensive report to the Commission at its fortieth session", and - in its sixth operative paragraph - reiterated its request to the Government of Poland "to extend its co-operation to the Secretary-General or the person designated by him". The Commission further decided to continue its consideration of the situation of human rights and fundamental freedoms in Poland at its fortieth session.
4. At its first regular session of 1983, the Economic and Social Council, by decision 1983/145, endorsed by 22 votes to 12, with 18 abstentions, the Commission's decision to request the Secretary-General or a person designated by him to update and complete the thorough study of the human rights situation in Poland requested in Commission resolution 1982/26 of 10 March 1982.
5. Following the adoption of Commission resolution 1983/30, the representative of Poland in the Commission stated that the resolution defied the principle enshrined in the Charter of non-interference in the internal affairs of States; that his delegation reiterated that the resolution just adopted, based on Commission resolution 1982/26, was of no legal force, unlawful and therefore null and void, politically damaging and morally hypocritical, that, in line with its consistent position of principle and as a matter of political and moral decency, Poland would not participate in its implementation in any way, and that, in pursuing its human rights objectives, based on the noblest traditions of its history, Poland pledged its unswerving attachment to the principles of the Charter and other binding international agreements. 1/
6. Objections to the validity of the resolutions of the Commission on Human Rights on the situation of human rights in Poland are matters to be considered primarily by the Commission itself. As for the Secretary-General, inasmuch as he has received a mandate from the Commission, he is required to take action on it.

1/ E/CN.4/1983/SR.52/Add.1, paras. 51 and 52.

7. The Secretary-General, therefore, on 1 August 1983, addressed a letter to the Permanent Representative of Poland as follows:

"I have the honour to refer to resolution 1983/30 of the Commission on Human Rights, which is attached.

"As you will note from paragraph 5 of the resolution, the Commission has decided to request the Secretary-General, or a person designated by him, to update and complete the thorough study of the human rights situation in Poland; requested in its resolution 1982/26, based on such information as he may deem relevant, including comments and materials the Government of Poland may wish to provide, and to present a comprehensive report to the Commission at its fortieth session. At the same time the Commission, in paragraph 5 of the resolution, has reiterated its request to the Government of Poland to extend its co-operation to the Secretary-General or the person designated by him.

"As you are aware, I have, on 21 December 1982, designated Mr. Hugo Gobbi to follow the situation in Poland on my behalf. In view of the above-mentioned resolution of the Commission on Human Rights, I have requested Mr. Gobbi to continue his task.

"I should like to take this opportunity to assure, through you, the Government of the Polish People's Republic, of my determination to carry out the tasks entrusted to me by the Commission on Human Rights in the most impartial and objective manner.

"May I express the hope that the Polish authorities will facilitate Mr. Gobbi's task and extend their full co-operation to him, including the necessary facilities and appropriate visa.

"I would be most grateful to receive your Government's reaction to the requests formulated above in order to enable me to undertake any further action that may be required in the fulfillment of my obligation."

8. On 23 August 1983 the Permanent Representative of Poland replied as follows:

"In connection with your letter of 1 August 1983, I am instructed to communicate to Your Excellency the following:

"The Government of the Polish People's Republic upholds its consistent position concerning the illegal resolution 1983/30 of the Commission on Human Rights. All the underlying reasons thereto have been presented in detail in the letter of Poland's Permanent Representative to Mr. Hugo Gobbi of 6 January 1983 and in the relevant statements of the Polish delegation in the Commission on Human Rights on 28 February 1983, 4 March 1983 and 3 March 1983, respectively.

"As it has previously demonstrated, the Government of Poland wishes to assure you once again, Mr. Secretary-General, of its firm resolve and all goodwill to continue our co-operation on matters of mutual interest, in accordance with the Charter of the United Nations and other legally binding instruments, based on the principle of non-interference in the internal affairs."

9. On 20 September 1983 Mr. Gobbi addressed a letter to the Permanent Representative of Poland to the United Nations Office at Geneva, as follows:

"I have the honour to refer to the letter which the Secretary-General of the United Nations has addressed on 1 August to the Permanent Representative of Poland to the United Nations in New York, informing the Permanent Representative that in view of Commission on Human Rights resolution 1983/30, the Secretary-General has requested me to continue the task assigned to me on 21 December 1982, that is, to follow the situation in Poland on his behalf. I have noted the letter dated 23 August 1983 which the Permanent Representative of Poland in New York addressed to the Secretary-General.

"I should like to take this opportunity to reiterate the assurances I have already given Your Excellency's Government in my letter of 3 January 1983 that I shall naturally carry out the tasks entrusted to me by the Secretary-General in the most impartial and objective manner and to express the hope that in so doing I shall receive the co-operation of Your Excellency's Government, notwithstanding the attitude of principle which the Government of Poland has adopted in respect of Commission on Human Rights resolution 1983/30. May I, in this respect, stress the fact that my mandate has been determined by the Secretary-General, to whom I remain responsible.

"In the annex to this letter I raise a number of points and I would be grateful if Your Excellency's Government were kind enough to provide me with information on those points and/or any comments it might wish to make in this context. The information and comments received from the Government will be fully reflected in my report."

10. The annex referred to took the form of a detailed questionnaire, reproduced hereunder, which Mr. Gobbi addressed to the Polish Government.

Questionnaire

"A. With regard to demonstrations and incidents involving death of persons:

- The frequency of demonstrations, their extent, their locality, their avowed purpose.
- The legality or otherwise of such demonstrations.
- The frequency with which force was necessary in order to restore order.
- The means used by security bodies for restoring order.
- The number of people, if any, detained, put on trial and convicted as a result of their participation in such demonstrations.
- The number of casualties, including deaths, if any, among members of security organs and demonstrators resulting from clashes during demonstrations. In this context information would be appreciated on the results of the investigation undertaken into the death of Ryszard Smagura from Nowa Huta, reported on 1 May 1983 and of Grzegorz Przemyslaw from Warsaw, reported on 13 May 1983.
- Information regarding incidents where places of worship or religious institutions have been broken into by members of the police and other security organs.

"B. With regard to arrests and detentions:

- The number of persons formally arrested or detained since the suspension of martial law in December 1982 for acts which constituted offences under martial law.
- The number of persons formally arrested or detained since the lifting of martial law on 22 July 1983 for acts which constituted offences under martial law.
- The average duration of the period of detention prior to release or to trial for such offences.

"C. With regard to trials and sentences:

- The number of persons put on trial on charges stemming from acts which constituted offences under martial law
 - (a) prior to the lifting of martial law on 22 July 1983 and
 - (b) since that date.
- The number of persons acquitted.
- The number of persons convicted.
- An indication of the average length of sentences resulting from such trials.

"D. With regard to releases:

- The number of persons released as a result of the amnesty provisions set forth by the law on amnesty of 21 July 1983.
- The number of persons still serving sentences after the application of the law on amnesty:
 - (a) the number of persons whose requests for amnesty have been rejected;
 - (b) the number of persons who did not apply for amnesty;
 - (c) the number of persons who are not eligible for amnesty under the new law.

"E. With regard to trade unions and the right to freedom of association:

- Information on the steps that have been taken to implement the commitments contained in the Protocol of Agreement concluded by a Government Commission and the Inter-Factory Strike Committee at Gdansk Shipyard, signed on 31 August 1980, and in particular:
 - Point 1. On the right to establish independent, self-governing trade unions, compatible with ILO Conventions Nos. 87 and 98 which were ratified by Poland.
 - Point 2. On the conditions of proclaiming and organizing strikes;

Point 3. On the freedom of speech, print and publications; and

Point 4. On the freedom of expressing convictions in public and vocational life.

"F. With regard to legislative measures adopted by the Parliament:

- A list of the laws that have been promulgated since the suspension of martial law in December 1982 affecting, in particular, the right to freedom of movement, freedom of expression and freedom of association;
- The acts, if any, which were considered offences under martial law and which are still considered as offences under any other law which is in force."

11. No reply has been received to Mr. Gobbi's letter of 20 September 1983. The Secretary-General was later advised, unofficially, that the Polish authorities considered that the content and format of the questionnaire - addressed, as it was, to a Member State - did not lend itself to a reply.

12. During the course of the past year, a considerable amount of material from various sources on the situation in Poland was collected on behalf of Under-Secretary-General Gobbi by the Centre for Human Rights. Unfortunately, however, following his assumption of the post of Secretary of State in the Ministry of Foreign Affairs of Argentina, Mr. Gobbi requested to be relieved of his responsibilities as the person designated to follow the situation in Poland on behalf of the Secretary-General, and the Secretary-General considered that he had to accede to his wishes. The Secretary-General would like to seize this opportunity to place on record his deep appreciation for the work undertaken by Under-Secretary-General Gobbi, who carried out the mandate conferred upon him with great dedication and skill.

13. In the light of the above, the Secretary-General did not find it possible to give full effect to operative paragraph 5 of Commission resolution 1983/30, which is quoted in paragraph 3 above of this report.

14. However, while adhering to its position with regard to the Commission's resolutions, the Polish Government has been providing frequent and substantial information to the Secretary-General regarding the situation in Poland, including matters related to human rights. This information has included personal contacts, official communications and background data. In the last two years, the Polish Government also provided the opportunity for two officials of the Secretariat to visit Poland separately on official business, once in 1982 (Mr. Emilio de Olivares) and once in 1983 (Mr. Patricio Ruedas). Both visits included conversations on the situation in Poland: in particular, Mr. Ruedas met with representatives of the Government, the Sejm (Parliament), the Patriotic Movement for National Rebirth (a reformer referred to by the anagram of its Polish initials, P.R.O.N.) and the Catholic Church. Also, during the Secretary-General's official visit to Poland from 18 to 21 February 1984, the Polish authorities arranged, at the suggestion of the Secretary-General, for meetings between Mr. Ruedas and a number of Polish citizens representing again the Government, the Sejm, P.R.O.N. and the Catholic Church, but also including representatives of the new trade unions, i.e., those constituted pursuant to the law of 8 October 1982 on trade unions, as well as individuals who had been interned under the provisions of the martial law and subsequently released.

15. In these circumstances, while fully aware of the position of the Polish Government regarding the resolutions of the Commission, the Secretary-General requested Mr. Patricio Ruedas to prepare this report to the Commission on Human Rights. To do so, he drew on information obtained from various sources by or on behalf of Mr. Gobbi during the term of his mandate; provided, as described above, by the Polish Government, or gathered in the course of the personal contacts described in paragraph 14 above.

16. The information and observations contained hereunder attempt to provide a double perspective to the situation in Poland: first, by submitting factual information on developments during the last 12 months and, second, by measuring the evolution of the situation.

LEGISLATIVE DEVELOPMENTS

17. As indicated in Mr. Gobbi's report, the Polish Council of State, by resolution of 12 December 1981, introduced martial law pursuant to the then existing text of Article 33, paragraph 2, of the Polish Constitution, and on 19 December 1982 the Council of State decided to suspend martial law. One of the effects of the suspension was a wide-ranging decision on clemency measures. On 21 July 1983, the Council of State decided to lift entirely martial law with effect from 22 July 1983; the text of the resolution of the Council of State is reproduced in Annex 1. Also on 21 July 1983, the Sejm (Parliament) approved a law granting amnesty in respect of a number of offences - political or other - committed prior to 22 July under the resolution on martial law or under the Polish penal code.

18. The full text of the amnesty law is set out in Annex 2. It comprises several levels of action, including the discontinuation of penal procedures already initiated and partial or total remission of sentences. Age, sex and dependency status, as well as the nature of the offence, affected the application of the amnesty measures.

19. On 20 July 1983, the Parliament adopted amendments to the Polish Constitution. These amendments, which are reproduced in full in Annex 3, provide a constitutional basis for the P.R.O.N. (Article 3), stress the involvement of workers in the Polish state, society and economy (Article 4), guarantee existing private possession of agricultural land (Article 15) and define, in addition to state of war, and martial law, a third category - the state of emergency - which can be instituted by the Council of State "if the internal security of the State is in jeopardy, or in cases of natural disaster" (Article 33).

20. Also on 21 July 1983, the Sejm approved a law on special legal regulations during the period of overcoming its socio-economic crisis, and on amendment of some acts. The special legal regulations, which are of a temporary nature and will be in effect until 31 December 1985, on the one hand seek greater economic stability, for example, by placing some restrictions, in certain categories of enterprises, on the worker's right to change employment, and by providing the possibility to increase working hours to up to 8 hours a day and 46 hours a week if this is considered necessary for the realization of important economic tasks. The regulations also establish temporary limitations (stemming from other laws or from fundamental social interests) on the freedom of workers' self-governing organs to decide on their activities. They further provide for disciplinary measures, ranging up to dismissal or expulsion, as the case may be, for professors, teachers or students undertaking activities not conforming to law or detrimental to the social interest or considered to be against important interests of the State.

21. On 28 July 1983 the Council of State approved amendments to the penal laws. Under Chapter XXXVI of the penal code (Offences against Public Order), Article 278 was rephrased to provide for a penalty of up to three years' imprisonment for "whoever participates in a union of which the existence, structure or purpose remains secret from the state organs or which was dissolved or the legalization of which has been refused". In paragraph 282 of the code, under the same chapter, provision was introduced for imprisonment of up to two years, limitation of liberty, or a fine, for whoever organizes or controls an act of protest carried out against legal rules. In the misdemeanour code, penalties of limitation of liberty, fine or reprimand are provided for public display of posters or bills in unauthorized places. The Polish authorities have commented in this regard that these provisions do not go any further than the corresponding ones of many other Member States, and that furthermore they have always been applied sparingly.

22. On 26 January 1984 the Council of State approved a new press law, which is to come into force on 1 July 1984. It states that the press shall enjoy freedom of speech and print, shall channel the citizens' right to information and to influence public affairs, and shall strengthen the constitutional system of the state. State organs are obligated to provide the press with information on their activities, except for secret matters. The task of a journalist is defined as that of serving the society and the state. The law sets out the conditions for granting permission to publish and for refusing and revoking such permission. It protects criticism, provided it is legal, truthful, honest and compatible with the principles of social coexistence; Article 43 provides for sentences of up to three years' imprisonment for the use of violence or illegal threat to coerce a journalist to publish, or refrain from publishing, press material; and Article 44 provides for limitation of freedom, or a fine, for obstructing or stifling press criticism.

23. The above enumeration is not presented as exhaustive; the Polish authorities informed the Secretariat that 34 important laws were enacted in Poland in 1983 alone, including a law on people's councils and territorial self-government preparatory to the elections to people's councils scheduled to take place in June 1984. The enumeration is provided only to focus on what may be considered as the most important legal developments relevant to the situation of human rights in Poland.

OTHER DEVELOPMENTS

24. After the lifting of martial law on 22 July 1983, the Permanent Representative of Poland addressed the following communication to the Secretary-General:

"I wish to refer to the letters of the Permanent Representative of the Polish People's Republic to the United Nations of 29 January 1982 and of 21 December 1982, in which, pursuant to Article 4 of the International Covenant on Civil and Political Rights, notifications were made, respectively, on a temporary derogation from or limitation of the application of certain provisions of the Covenant and on the gradual termination of the said derogation regarding most of the provisions in question.

"I have the honour to communicate that by virtue of the decree of the Council of State of the Polish People's Republic of 21 July 1983, martial law, which had already been previously suspended, has been entirely lifted as of 22 July 1983. This has been effected as a result of the objective for which it had been proclaimed being fully accomplished, namely, reversing an exceptionally serious public emergency threatening the life of the nation. Thereby, as of 22 July 1983, derogation from Article 14, paragraph 5 and Article 19, paragraph 2 of the Covenant has also terminated.

"Temporary derogation from or limitation of the application by Poland of certain provisions of the Covenant, as previously notified, has thus been definitely terminated.

"I should be grateful if you have this communication circulated among the States Parties to the International Covenant on Civil and Political Rights."

25. On 26 September 1983 the Secretary-General, acting in his capacity as depositary of the International Covenant on Civil and Political Rights, transmitted the above-mentioned communication to all member States of the United Nations.

26. The International Covenant on Civil and Political Rights provides in Article 4 for the possibility, in time of officially proclaimed public emergency, of States Parties thereto to derogate from their obligations "to the extent strictly required by the exigencies of the situation". Article 4 specifies nevertheless that no derogation may be made to the provisions on the right to life (Article 6), on prohibition of torture or cruel, inhuman or degrading treatment or punishment (Article 7), on the prohibition of slavery or servitude (Article 8), on the prohibition of imprisonment for non-fulfillment of contractual obligations (Article 11), on non-retroactivity of penal law or penalties (Article 15), on the recognition of everyone as a person before the law (Article 16) and on freedom of thought, conscience and religion (Article 18). It is especially necessary, therefore, to endeavour to ascertain the extent to which these provisions have been infringed, in the period under review, during or after the period of martial law.

27. No allegations of infringement of Articles 8, 11, 15, 16 and 18 have been received by the Secretariat. However, deaths have occurred in connection with police reaction to demonstrations; the actual number of these deaths is disputed. Also, allegations have been received of severe detention conditions for a number of prisoners.

28. There is no dispute that two persons died in May 1983 in clashes with security forces or as a result of ill-treatment: Ryszard Smagura in Nowa Huta and Grzegorz Przemyski in Warsaw. No known proceedings to clarify the circumstances of Mr. Smagura's death have taken place. In the case of Mr. Przemyski, four persons - two police officers and two nurses - have been indicted for having caused his death, and two doctors have been indicted for professional error. The Secretariat has been informed that trial proceedings began on 3 February 1984, at which time the Court remanded the case to the prosecutor for further inquiry into certain aspects of the case; this procedural decision of the Court has been appealed by the prosecutor to the Court of Higher Instance.

29. Allegations have been received by the Secretariat that 15 other persons have died, during the period covered by this report, as a result of ill-treatment or in unexplained circumstances. These persons are Janina Drabowska, Andrzej Grzywna, Jacek Jerz, Franciszek Kordzis, Ryszard Kowalski, Marek Kucota, Jozef Larysz, Bernard Lyskawa, Jerzy Jozef Marzec, Zdzislaw Miasko, Zenon Reszczynski, Zbigniew Simoniuk, Zbigniew Szymanski, Wlodzimierz Witkowski and Jan Ziolkowski. During the Secretary-General's visit to Poland, he was advised by the Ministry of Justice that they undertook to verify these cases, but that their preliminary view was that at least a great majority of them appeared to bear no relationship whatsoever to the political or human rights situation in Poland.

30. In this regard, Polish authorities at the highest level have informed the Secretary-General, during his recent visit to Poland, that they have insisted, and will continue to insist, on the application of all possible means to prevent any loss of life.

31. Allegations of deficient treatment of detainees have been received in respect of 12 prisoners. In the case of 7 of them the Polish authorities have informed the Secretariat, in some detail, that the allegations made are **groundless**. In the case of one detainee - Antoni Grabarczyk - the Polish authorities have informed the Secretariat that on one occasion, as an exceptional measure, a rubber truncheon was indeed used against him during an attempt to provoke violent unrest in the **place** of detention.
32. As regards arrests, on 24 August 1983 "Trybuna Ludu" reported that a wide-ranging amnesty had been applied by public and military tribunals, public and military prosecutors and the Supreme Court to, as of that date, 8,532 persons detained for both common or political offences. These included 1,403 persons found guilty of political offences and misdemeanour. Of the 8,532 persons to whom amnesty was applied, 844 were released from prison or from investigatory arrest. The remaining 7,688 were affected in other ways; those who were sentenced to penalties other than deprivation of liberty had their sentences remitted; those against whom criminal proceedings were under way had the proceedings discontinued, and some had their penalty of deprivation of liberty reduced by half. Twenty persons accused or convicted of offences against fundamental political interests of the State, or of other offences such as storing weapons or planting bombs, were not granted amnesty; 9 of the 20 were convicted prisoners and 11 were under temporary arrest.
33. Updating these figures, the Polish authorities have informed the Secretary-General that, as at 31 December 1983, amnesty had been applied to 21,898 offenders, including 4,834 perpetrators of political offences. This latter figure comprises 1,206 cases of misdemeanour or petty offences; 365 cases in which convicts have been pardoned, 385 cases in which the penalty of deprivation of freedom has been remitted, 116 cases in which sentences have been halved, 1,630 cases in which penal proceedings have been discontinued and 1,132 cases in which the decision was taken not to institute such proceedings.
34. The Polish authorities further advised the Secretary-General that, as of 18 February 1984, there were 281 detainees for political reasons in Poland; 56 of them had been convicted after due process of law, including 55 for acts committed before the lifting of martial law and 1 for acts committed thereafter. The remaining 225 were being detained temporarily or for investigation: 16 of them for alleged offences committed before the lifting of martial law and 209 for offences allegedly committed thereafter.
35. With regard to freedom of association and trade union rights, it should be recalled that, in his report, Under-Secretary-General Gobbi had indicated that, on 18 October 1982, the Government of Poland had adopted a new law on trade unions which provided for a new trade union structure in the country and abolished all the existing organizations without exception. The Polish Government representatives have stated that the abolition was due to the fact that the organizations concerned had diverged from their trade union objectives and defied the law, and they referred to a ruling of the International Labour Organisation (ILO) Committee on Freedom of Association in 1976 concerning permissible measures taken in a state of emergency affecting trade union affairs. The new trade union law was the subject of a detailed analysis by the ILO in which doubts were expressed concerning its compatibility with ILO Conventions Nos. 87 and 98. ^{2/} The Polish Government representatives have commented, in this regard, that the substantive provisions of the new law were based on a draft text of 1981 which had been consulted with all the then existing trade unions and the ILO.

^{2/} E/CN.4/1983/18, para. 56.

36. The position of trade union rights and freedom of association is currently the subject of an enquiry within the framework of the ILO

37. According to information provided by the Polish authorities and the new trade union leaders, the membership in the new trade unions stood at under two million at the beginning of 1983 and is now in the vicinity of four million, which is close to 40 per cent of Poland's work force. Lengthy consultations were held between Government and representatives of these trade unions on the price hike for foodstuffs announced for early 1984; trade union representatives advised that they had been successful in considerably reducing the level of price increases which had been originally intended. They further indicated that they all were elected by secret vote, and that their representatives had been participating in a number of parliamentary, government and other public bodies which are working on a comprehensive programme of reform in many areas of a political or social nature.

CONCLUSIONS

38. A difficult economic and social situation has existed, and continues to exist, since 1981 in Poland, taxing to the utmost the resources and the stamina of the Polish people and of the Polish Government. Poland is in the process of change. Martial law, imposed in December 1981, lasted formally for 19 months. During that period, numerous arrests were made, including those for political reasons. Furthermore, some Polish citizens died as a result of clashes between demonstrators and the police: at least two, in 1981; at least one in 1982 and at least two in 1983. That the figures are under dispute is not so important as that deaths actually occurred, for one single case is one too much. This is also the view of the Polish authorities, as reported to the Secretary-General.

39. The suspension and, thereafter, the lifting of martial law, as well as the enactment and implementation of the clemency measures and, subsequently, the amnesty law, have produced conditions favourable to a reconciliation between different sectors of Polish society. The figures quoted in paragraphs 34 and 35 above are significant in this regard - particularly if comparison is made between the figure of about 1,500 persons detained for political reasons as of 4 January 1983 (E/CN.4/1983/18, para. 35) and that of 281 detainees - most of them on a temporary basis - as of 18 February 1984. These are certainly encouraging developments, to be seen as such by any independent observer.

40. Some questions can nevertheless be entertained regarding some of the recent (1983) legislation, be it every temporary. Thus, for example, the amendment to the Polish penal code quoted in paragraph 21, above, seems to perpetuate a similar provision which existed in Article 46 (1) of the now defunct martial law. Also the "Special Legal Regulations in the Period of Overcoming the Socio-Economic Crisis", referred to in paragraph 20 above, while temporary in nature, provide for extensive powers to the authorities in several domains, including education. As regards the possible exercise of these powers, the writer of this report is impressed by the spirit of moderation evidenced by all members of the Polish Government who met with him, and is authorized by the Secretary-General to say that he, too, noted favourably that spirit. This has permitted the Secretary-General to state that what he heard in Poland was "very encouraging on all fronts".

41. In operative paragraph 4 of its resolution 1983/30, the Commission on Human Rights called upon the Polish authorities "to realize fully and without further delay their stated intention to terminate the restrictive measures imposed on the

exercise of human rights and fundamental freedoms, particularly in relation to a review of the severe prison sentences imposed in the context of the state of martial law, the lifting of restrictions on the free flow of information, and the repeal of the new restrictions imposed on the Polish people". In the light of the information contained in this report, it seems clear that in at least one very important aspect - the review of prison sentences - effect has been given to the resolution through enactment and implementation of the clemency measures and the amnesty law.

42. The writer of this report wishes to extend his appreciation for the free and frank information provided to him, during his official visits to Poland, by representatives of the Government, the Sejm, P.R.O.N., the Catholic Church and the new trade unions, and by individuals who had been interned under the martial law provisions and later released. If this report can help towards the process of healing and reconciliation of Polish society, towards facilitating the task of the Polish Government in serving the cause of human rights while overcoming the country's current problems, and towards international understanding in this regard, it will have served a useful purpose.

Annex I

RESOLUTION OF THE COUNCIL OF STATE OF
20 JULY, 1983 ON LIFTING MARTIAL LAW

Due to the fact that aims which motivated the instituting and then suspension of martial law have been accomplished, which is manifested by gaining indispensable socio-political stabilisation and improvement of the state of internal security and public order in the country, basing on article 33, item 2 of the Constitution of the Polish People's Republic (Official Gazette of 1976, No. 7, item 36 with later amendments) and in connection to article 2, item 1 of the decree on martial law of 12 December, 1981 (Official Gazette, 1981, No. 29, item 154 and No. 3 of 1982, item 18), the Council of State resolves as follows:

Para. 1. As of 22 July, 1983, on the whole territory of the Polish People's Republic, martial law introduced as of 13 December, 1981 with view to the security of the State, is lifted.

Para. 2. The following lose legal force:

1. Resolution of the Council of State as of 12 December, 1981 on introduction of martial law with view to the security of the State (Official Gazette No. 29, item 155 and of 1982, No. 42, item 276);
2. Resolution of the Council of State of 19 December, 1982 on suspension of martial law (Official Gazette No. 42, item 275).

Para. 3. The resolution becomes effective as of the day of its adoption.

Chairman of the Council of State

Henryk Jabłoński

(Trybuna Ludu, 22 July, 1983)

Annex II

LAW OF 21 JULY, 1983 ON AMNESTY

The Sejm of the Polish People's Republic, guided by the principles of socialist humanism and taking into account:

- progressing normalization of social life and consolidation of the socialist State,

growth of social discipline and improvement of the state of society and public order

in order to create conditions enabling citizens who violated legal order for political reasons or unwillingly - joining in active participation in the country's life and grounds for earlier releases due to age and personal conditions of perpetrators of some crimes, resolves the following

art. 1

Amnesty is applied for the following deeds committed before the day of lifting martial law

1. Crimes against the legal order of martial law described in art. 46 and 48 of the decrees of 12 December, 1981 on martial law (Official Gazette No. 29, item 194 and of 1982 No. 3, item 13) as well as in art. 256 and 257 of Penal Code in connection with art. 49, item 1 of that decree.
2. Crimes connected with militarization described in art. 303-304 para. 1 and 2 as well as para. 3 except for the case of attempted or accomplished escape abroad, art. 305, 306 and 309 of Penal Code,
3. Crimes perpetrated for political reasons or in connection with a strike or a protest action:
 - (a) Against health, described in art. 156 para. 1 and 2, art. 158 para. 1 and art. 160 para. 1 of Penal Code,
 - (b) Against freedom, described in art. 165 para. 1, art. 166 and 167 para. 1, art. 171 para. 1, as well as art. 172 para. 1 of Penal Code,
 - (c) Against dignity and corporal inviolability, described in art. 178 para. 1 and 2, art. 181 para. 1 and art. 182 para. 1 of Penal Code,
 - (d) Against religious practices, described in art. 196 and 197 of Penal Code,
 - (e) Against property described in art. 212 para. 1, art. 214 para. 1 and art. 220 of Penal Code,
 - (f) Against activities of State and social institutions, described in art. 233 and 234 para. 1 as well as in art. 235-237 of Penal Code,
 - (g) Against public order described in art. 270 para. 1, art. 271 and 273 para. 1 and 2 in connection with art. 270 para. 1 or art. 271, art. 275 para. 1, art. 276 para. 1 and 3, art. 278 para. 1-3 as well as art. 279-282a, 284, 235 287 and 238 para. 2 of Penal Code,

(h) Described in art. 6 of the decree of July, 1946 on the establishment of the Main Office for Controlling Press Publications and Entertainment Performances (Official Gazette No. 24, item 210, of 1948 No. 36, item 257, of 1952 No. 19, item 114, of 1953 No. 49, item 232 and of 1981 No. 20 item 59).

4. Offences perpetrated while counteracting strikes or protest actions or other collective violations of public safety and order for political reasons,
5. Unwilful crimes except for those committed in the state of intoxication.

Art. 2

If the perpetrator who had not been accused - till the day of lifting martial law - of the crime described in art. 1 of the law or in chapter XIX of Penal Code, except for the crime described in art. 134 or 135, or in art. 254 in connection with art. 122-124 and art. 126-128 of Penal Code, reports on his own will, by 31 October, 1983 to the organ set up for prosecuting crimes or to Polish diplomatic mission or consular office and states for the record that he will give up criminal activity and reveals the kind of perpetrated deed, time and place of its perpetration - lawsuit is not opened, and the opened one is discontinued.

Art. 3

1. In cases concerning the crimes mentioned in art. 1, perpetrated by women as well as by perpetrators who were under 21 years of age at the moment of committing the deed, lawfully adjudged main and additional punishments, not exacted fines, charges and court costs shall be remitted in full.
2. However, subject to execution are lawful adjudgements on confiscation of possessions, degradation and reduction in military rank, on vindictive damages and adjudged damages.
3. In cases mentioned in section 1 the lawsuit is discontinued. In such case the court adjudges confiscation of tools and other objects which served or were meant for the perpetration of the crime as well as objects acquired directly or indirectly through the crime, and also things the possessing of which is forbidden or demands permit.
4. Regulations of section 1-3 apply respectively in case when remittance of punishment does not take place because of its execution.

Art. 4

1. In cases concerning crimes mentioned in art. 1 committed by perpetrators others than those defined in art. 3.

(1) Lawfully adjudged prison terms up to three years or less severe and additional punishments shall be remitted.

(2) Lawfully adjudged prison terms longer than three years - shall be reduced by half.

2. In cases concerning crimes mentioned in section 1, the lawsuit is discontinued if the circumstances of the case indicate that the court should adjudge punishment which would be remitted.

3. In cases mentioned in section 1, item 1 and in section 2, regulations of art. 3 apply respectively.

Art. 5

In particularly justified cases the Supreme Court - at a motion from the General Prosecutor of the Polish People's Republic - can discontinue lawsuit concerning the crime mentioned in art. 1 even when the circumstances of the case indicate that prison term over three years should be adjudged, concerning the crime described in chapter XIX of Penal Code - except for the crime described in articles 134 and 135 - as well as concerning other crime perpetrated before the day of lifting martial law - or the Supreme Court can remit the valid punishment adjudged for such crime.

Art. 6

1. In cases concerning crimes perpetrated before the day of lifting martial law, other than those described in art. 1, conditioned earlier release can take place already after serving half of the term if the perpetrator:

(1) A woman - is 50, and a man - 60 years old, or

(2) Till the day of the law coming into force, he himself took care of a child under 16 which is the obligation of parents.

2. Regulation of section 1 does not apply:

(1) To the crime described in art. 1 item 1 of the decree of 31 August, 1944 on administration of punishment for Nazi criminals guilty of murdering and torturing civilians and prisoners of war as well as to traitors of the Polish nation (Official Gazette of 1945 No. 69, item 377, of 1947 No. 65, item 390, of 1948 No. 18, item 124 and of 1949 No. 32, item 238) as well as to other war crimes and crimes against humanity;

(2) To crimes described in art. 122, 123, 124, 126, 127, 129, 130, 131 of Penal Code, for crimes described in art. 125 in connection with art. 122-124 as well as 128 para. 1 in connection with art. 122-124 and 127 of Penal Code as well as to crimes described in art. 129 in connection with those regulations,

(3) To the crime of homicide described in art. 148 para. 1 of Penal Code,

(4) To crimes described in art. 134 and 135 of Penal Code as well as in art. 201 and 202 para. 2 of that code if property of considerable value was appropriated as well as for persons organizing or being in control of perpetration of the crime - by other persons - consisting in the appropriation of social property in agreement with other persons irrespective of the volume of afflicted damage,

(5) To the crimes of bribery and paid favouritism, described in art. 239, 240 and 241 para. 1, 3 and 4 of Penal Code, in art. 242 in connection with those regulations as well as in art. 244 of Penal Code,

(6) To crimes of rape described in art. 168 of Penal Code,

(7) To crimes of hooligan character or those perpetrated in the state of intoxication,

(8) To crimes described in art. 203 of Penal Code as well as to crimes of robbery and extortion described in arts. 211 and 213 of Penal Code,

(9) To economic crimes described in chapter 24 of Penal Code and to crimes described in the Law of 25 September, 1981 on combating profiteering (Official Gazette of 1982 no. 36, item 2).

Art. 7

1. If a perpetrator of a crime, who has granted amnesty, commits a willful crime, for which prison term had been adjudged the adjudgement on amnesty is annulled, in such case lawsuit is opened, omitted or reduced punishments are executed respect vely in full or in part, unpaid fines and court costs are executed.

2. The organ applying amnesty is obliged to instruct the person benefiting from amnesty in the contents of the regulation of section 1 that person acknowledges the obtaining of the instruction with his own signature put down for the record.

Art. 8

Minor offences perpetrated before the day of ultimate martial law for political reasons or against the background of social conflicts shall be forgiven and forgotten and unexecuted punishments shall be remitted.

Art. 9

1. In case of accumulation of crimes qualified for amnesty, amnesty is applied to each of the accumulating crimes. In case of accumulation of a crime coming under amnesty with another crime, amnesty is applied to the crime qualified for amnesty.

2. After the application of amnesty, when need be, overall punishment is adjudged according to general principles.

Art. 10

1. Regulations of the law apply to punishment already lessened by amnesty or pardon on the basis of the lessened punishment. The period of probation defined by individual act of pardon shall be shortened till 31 December, 1985.

2. If amnesty or pardon lessened only overall punishment, it is deemed that punishments administered for individual accumulating crimes were lessened to the measure of lessened overall punishment.

Art. 11

1. Amnesty is applied by the court proper for the examination of a given case.

2. In preparatory proceedings amnesty is applied by the prosecutor but the court at the motion from the prosecutor issues judgement on discontinuance of lawsuit on the basis of art. 3 section 3 and art. 4 section 2.

3. In cases concerning minor offences amnesty is applied by the people's court for minor offences.

4. In relation to persons serving prison terms and arrest terms, if there is not need to adjudge over-all punishment, amnesty is applied by voivodship court in the district of which the sentenced person serves his term, and in the sphere of competence of military courts - the military court; the court issues adjudgement at a session attended by one judge.

Art. 12

1. Adjudgements on amnesty are issued in form of decisions unless amnesty was applied in verdict; in cases examined during trial for discontinuance of lawsuit, remittance or lessening of punishment the adjudgement is in the verdict.

2. The decision on amnesty can be complained against. In cases mentioned in art. 11 section 4, the complaint is examined by voivodship court or by military court composed of three judges.

Art. 13

1. In cases mentioned in art. 7 adjudgement is issued by the organ competent for the examination of the case in which punishment was remitted on the basis of amnesty, and if a lawsuit was discontinued - by the organ which discontinued it.

2. The court issues the adjudgement at a session even if amnesty was applied in the verdict.

3. That decision can be complained against.

Art. 14

Proceedings in cases of amnesty are conducted in keeping with the regulations binding in proceedings in front of the organ which conducts them if the regulations of this law do not say otherwise.

Art. 15

1. While releasing people from penitentiary institutions and inquiry custody on the basis of amnesty, first released are persons serving arrest and prison terms - women and minors as well as persons under temporary arrest.

2. People deprived of liberty should be released no later than within 30 days from the law coming into force.

Art. 16

Ministers: of National Defence, of Labour, Wages and Social Affairs, of Justice, of Internal Affairs as well as General Prosecutor of the Polish People's Republic can issue regulations indispensable for the execution of the law.

Art. 17

The law becomes effective upon the day of its announcement.

X

From the legal point of view the above published text has no binding force. That force is vested in the texts published in Official Gazette.

Annex III

LAW OF 20 JULY, 1933 ON AMENDING THE CONSTITUTION
OF THE POLISH PEOPLE'S REPUBLIC

Art. 1

The following amendments are introduced to the Constitution of the Polish People's Republic (Official Gazette of 1976, No. 7, Item 36, of 1980, No. 22, Item 81 and of 1982, No. 11, Item 33):

(1) Sections 2 and 3 in art. 5 shall read as follows:

"2. The alliance and co-operation of the Polish United Workers' Party with the United Peasants' Party and the Democratic Party in the building of socialism as well as their collaboration with social organizations and associations standing on the grounds of the principles of the system of the Polish People's Republic constitute the basis of the Patriotic Movement for National Rebirth.

"3. The Patriotic Movement for National Rebirth is a plan for uniting the society for the benefit of the Polish People's Republic, as well as for co-operation of political parties, social organizations and associations and citizens irrespective of their world outlook, on issues concerning the functioning and strengthening of the socialist State and all-round development of the country".

(2) In art. 4:

(a) The hitherto contents of this provision shall be marked as Section 1,

(b) Added is Section 2 which reads:

"2. The Polish People's Republic realizes the nation-wide aspirations of the working class, benefits from its achievements and activity, expands the participation of workers in solving issues of the State, society and economy and strengthens the workers-peasants alliance".

(3) Item 3 in Art. 15 shall read:

"3. Provides care over private family-run farms of working peasants, guarantees permanent maintenance of those farms, aids them in increasing production and upgrading their technological and agricultural level, supports development of farmers' self-government, and especially that of farmers' circles and co-operatives, expands the links of private farms with the socialist national economy";

(4) In art. 33:

(a) Section 2 shall read:

"2. The Council of State can institute martial law in part or in the entire territory of the Polish People's Republic if it is necessary in view of defence or external threat to the security of the State. For the same reasons the Council of State can declare a partial or general mobilization";

(b) Added are Sections 3 and 4 which read:

"3. The Council of State, and in cases of great urgency - the chairman of the Council of State can institute for a definite time state of emergency in part or the entire territory of the Polish People's Republic, if internal security of the State is in jeopardy or in case of a natural disaster.

"4. The legal conditions and consequences as well as the course of instituting state of war, martial law, and state of emergency are defined by legal acts".

Art. 2

The law is effective from the day on which it is announced.

From the legal point of view the published text is not binding. Texts published in Dziennik Ustaw (Official Gazette) are binding.

(Trybuna Ludu, 22-24 July, 1983)