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Thirty-seventh session

SUMMARY RECORD OF THE 1637th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 11 March 1981, at 10 a.m.



Chairman:

Mr. CALERO RODRIGUES

(Brazil)

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The meeting was called to order at 10.30 a.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 (agenda item 13) (continued) (E/CN.4/1295; E/CN.4/1437; E/CN.4/1438; E/CN.4/1439 and Add.1; E/CN.4/1440; E/CN.4/1441; E/CN.4/1451; E/CN.4/1452; E/CN.4/1453; E/CN.4/1454; E/CN.4/1455; E/CN.4/1457; E/CN.4/1460; E/CN.4/1461; E/CN.4/1463; E/CN.4/1466; E/CN.4/1467; E/CN.4/1469; E/CN.4/L.1534; E/CN.4/L.1574/Rev.3; E/CN.4/L.1582; E/CN.4/L.1584; E/CN.4/L.1585; E/CN.4/L.1588/Rev.1; E/CN.4/L.1589; E/CN.4/L.1592; E/CN.4/L.1593; E/CN.4/L.1594; E/CN.4/L.1598; E/CN.4/L.1600; E/CN.4/L.1601; E/CN.4/L.1603; E/CN.4/L.1607; E/CN.4/L.1608/Rev.1; E/CN.4/L.1609; E/CN.4/L.1610; E/CN.4/L.1611; E/CN.4/L.1612; E/CN.4/L.1613; E/CN.4/L.1615; E/CN.4/L.1617; E/CN.4/L.1619; E/CN.4/L.1620; E/CN.4/L.1621)

1. Mr. SCHIFFER (United States of America), introducing draft resolution E/CN.4/L.1588/Rev.1, said that the taking of hostages was becoming an increasingly frequent occurrence throughout the world. It was not only an infringement of the human rights of the victims, but, in some of its manifestations, threatened the very fabric of international relations. It was clearly time for the Commission to make itself heard on that subject.
2. Draft resolution E/CN.4/L.1588/Rev.1 was designed to be very general. It singled out no specific act, but was directed against acts of hostage-taking everywhere. The fact that the International Convention against the Taking of Hostages had been drafted and approved by the United Nations in the short space of three years was an indication of the importance attached by the international community to the elimination of the practice of hostage-taking.
3. Acts of hostage-taking were directed increasingly against diplomatic personnel. Diplomatic activity was essential to the peaceful resolution of international differences. Indeed, the International Court of Justice had recently stated that the inviolability of diplomatic envoys and embassies was fundamental to the conduct of relations between States. All Governments had a special responsibility to comply with the norms of international law regarding the protection of diplomatic and consular personnel and premises and to prevent the taking of hostages. It was to be hoped that the adoption of the draft resolution would make it more difficult for any persons or entities to carry out, assist in or acquiesce in the repulsive act of hostage-taking.
4. Mr. BOEL (Denmark) announced that his delegation wished to sponsor draft resolution E/CN.4/L.1588/Rev.1, which was a natural follow-up to the initiative taken by the Nordic countries at the thirty-fifth session of the General Assembly with a view to the adoption of measures to enhance the security and safety of diplomatic and consular missions and personnel.
5. Mr. HILALY (Pakistan) said that his delegation had consistently called for the strict adherence by all States to international humanitarian norms. That position applied also to the question of hostage-taking.

6. His delegation was gratified that the sponsors of draft resolution E/CN.4/L.1588/Rev.1 had agreed to amend the original draft so as to eschew reference to any specific situation.

7. The affirmation contained in the draft resolution that the taking of hostages constituted a grave violation of human rights, and the appeal to all States to observe, fully and unconditionally, their international obligations to prevent the taking of hostages, were painfully relevant for his delegation. For the past 10 days, more than 100 people had been held hostage on board an aircraft of Pakistan International Airlines which had been hijacked by terrorists. One of the passengers, a Pakistan diplomat, had been shot in cold blood by the hijackers while the aircraft had been on the ground at Kabul airport. The condition of the remaining passengers was a cause for concern. Such an overt act of terrorism and murder was a most reprehensible violation of human rights.

8. He expressed his delegation's appreciation of the timely action taken by the Chairman of the Commission in issuing an appeal to the hijackers on 7 March 1981 to avoid further bloodshed and to release the hostages. His delegation was also grateful for the efforts made by the Secretary-General of the United Nations and the International Committee of the Red Cross in that regard.

9. He announced that his delegation wished to sponsor draft resolution E/CN.4/L.1588/Rev.1.

10. Draft resolution E/CN.4/L.1588/Rev.1 was adopted.

11. Mr. McKINNON (Canada), introducing draft resolution E/CN.4/L.1601, recalled that, in its resolution 30 (XXXVI), the Commission had requested the Secretary-General to assess the relationships existing between situations of mass exodus and violations of human rights and to report his findings and recommendations to the Commission at its thirty-seventh session. That decision had been confirmed by the General Assembly in its resolution 35/196. In his report (E/CN.4/1440), the Secretary-General had stated that further investigation of the question might be warranted, with a view to devising approaches for dealing with such situations.

12. The three essential premises on which the draft resolution was based were that any study undertaken must relate to all situations of mass exodus and not single out any specific situation; that the Commission must in no way prejudice the conclusions of the special rapporteur to be appointed by the Chairman; and that the study must be objective and arrive at conclusions which could be of practical use in preventing or alleviating such situations. Situations of mass exodus were of grave concern to many African and Asian countries, which bore the brunt of the burden. Many of those countries had made suggestions which had been incorporated into the text of the draft resolution.

13. Mr. HEREDIA PEREZ (Cuba), introducing the amendments to draft resolution E/CN.4/L.1601 contained in document E/CN.4/L.1621, said that the submission of draft resolution E/CN.4/L.1601 demonstrated the concern of the international community regarding the question of mass exoduses. However, a number of delegations considered it necessary to clarify certain general aspects of the draft resolution by referring to the root causes of the problem.

14. In its resolution 32/130, the General Assembly had stated that, in approaching human rights questions, the international community should accord priority to the solution of the problems of mass and flagrant violations of human rights resulting from apartheid and racial discrimination, and to the realization of the new international economic order. Those two elements were indissociable from the question of mass exoduses. Migrations of population in the developing countries resulted from the poverty inflicted on the third world by colonialist and imperialist exploitation and from the unequal distribution of the world's natural resources.
15. The draft resolution should refer specifically to problems such as the situations of Palestinian and African refugees which, despite having been considered by the Commission for a number of years, had remained unsolved. The question of mass exoduses should not be used for political ends.
16. The proposal to appoint a special rapporteur to study the question required further consideration, since it might not prove to be the most effective method of dealing with the matter.
17. Mr. DAVIS (Australia) said that draft resolution E/CN.4/L.1601, as it stood, was sufficiently general to take account of all the concerns expressed by the representative of Cuba. As the representative of Canada had pointed out, the objective of the draft was to initiate a study of all situations of mass exodus, without prejudicing the conclusions of the special rapporteur. In his delegation's view, the draft resolution could be adopted without further delay.
18. Mr. McKINNON (Canada) said that the amendments proposed in document E/CN.4/L.1621 were unacceptable to his delegation, because they ran counter to the conditions which he had set forth in introducing draft resolution E/CN.4/L.1601. The amendment proposed in paragraph 1 would prejudice the conclusions of the study envisaged. It was essential for members to have confidence in the special rapporteur, who must arrive at his own conclusions.
19. With regard to the amendment proposed in paragraph 2, the Commission should not single out one of a number of situations, since they were all important. The purpose of the draft resolution was to ensure that the special rapporteur considered refugees in all parts of the world.
20. Referring to the proposals in paragraphs 4 and 6, he said that the study should be effective and arrive at conclusions which would be useful to the Commission. The Secretary-General had informed the Commission that the question was a complex one and must be studied in depth. Matters could not be left as they were. The refugee problem was a serious one and efforts must be made to find a solution.
21. He announced that Ghana had become a sponsor of draft resolution E/CN.4/L.1601.
22. Mr. AKRAM (Pakistan) said that the amendments proposed in document E/CN.4/L.1621 caused his delegation some concern, primarily because those in paragraphs 1 and 2 of that document prejudged the problem of massive exoduses whereas draft resolution E/CN.4/L.1601 sought to have a study made of the matter. Furthermore, the proposals relating to the operative part of the draft resolution were designed to reduce the scope of the action envisaged.

23. Consequently, if the sponsors of the amendments pressed the proposal in paragraph 2, which his delegation could have supported in another context, it would reserve the right to submit an additional amendment to take account of the millions of refugees from Afghanistan and Democratic Kampuchea. Similarly, if the sponsors pressed their proposal in paragraph 5, which did not deal with the main reason for current exoduses, he would submit an amendment noting that the root cause of the problem, as confirmed by many resolutions of the General Assembly, was foreign aggression against the territorial integrity and sovereignty of States.
24. The amendment in paragraph 6 was obviously designed to shelve the matter and was inconsistent with the amendments relating to the preambular part, which were categorical about the causes of the refugee problem. His delegation was therefore firmly opposed to the proposed amendments.
25. Mr. EL-FATTAL (Syrian Arab Republic) said that since 1948, the General Assembly and various United Nations bodies had reaffirmed the right of the Palestinian refugees to return to their homeland. Thus far, none of those refugees had been able to do so. Therefore, the sponsors of the amendments wished to draw the special rapporteur's attention to the fact that the persistence of colonialism was a cause of the refugee problem. Members must bear international realities in mind and not confine themselves to requesting a study which was purely academic. The problem of the Palestinian refugees was a world problem and the responsibility of every delegation.
26. Ms. PALARCA (Philippines), speaking on behalf of the ASEAN nations, said that she was unable to accept the amendments proposed in document E/CN.4/L.1621, since the identification of particular exoduses among others of equal magnitude and importance negated the entire spirit of draft resolution E/CN.4/L.1601.
27. Mr. ORTIZ RODRIGUEZ (Cuba) said that he wished to make it clear that what was at issue was not the problem of refugees. The office of the United Nations High Commissioner for Refugees had been set up to deal with that problem. His delegation rejected the attempts being made to create confusion in the consideration of a matter which was quite clear. In that connection, he said that the amendment proposed in paragraph 2 of document E/CN.4/L.1621 concerned a number of human rights.
28. Mr. TWESIGYE (Uganda) said that although he was concerned about the plight of the Palestinians, he believed that the Commission should not single out a particular refugee situation.
29. His country had been associated with the problem of massive exoduses for the past 18 years and had received thousands of people from neighbouring countries. On the basis of its experience, it could not agree that massive exoduses had a single root cause. Some of the proposed amendments tended to prejudge the issue and, while he sympathized with the feelings of the sponsors of the amendments, he appealed to them not to press their proposals, since draft resolution E/CN.4/L.1601 met most of their concerns.

30. Mr. MAKSIMOV (Byelorussian Soviet Socialist Republic) said that his delegation fully supported the amendments proposed in document E/CN.4/L.1621. With regard to the amendment proposed in paragraph 5 of that document, he stressed that it was essential to indicate the causes of massive exoduses and he failed to see why some delegations objected to the proposed text. In his opinion, the proposal in paragraph 5 strengthened draft resolution E/CN.4/L.1601 and made it more specific. Nor should the amendment in paragraph 7 give rise to any objection. In his delegation's opinion, the proposed amendments significantly improved the text of draft resolution E/CN.4/L.1601.

31. Mr. RANIGA (Fiji) said that the proposed amendments were unacceptable to his delegation for the reasons already stated by other sponsors of draft resolution E/CN.4/L.1601.

32. Mr. McKINNON (Canada) associated his delegation with the appeal made by the representative of Uganda to the sponsors of the amendments to withdraw them. He pointed out that the views of the delegations concerned had been placed on record and that due note had been taken of them. He stressed the need for members to try to find ways and means of solving the problem of refugees. The draft resolution applied to all refugee situations, including that which was of concern to the sponsors of the amendments.

33. With regard to the comments of the representative of Cuba, he said that the United Nations High Commissioner for Refugees had a specific mandate which was humanitarian in nature and that study of the causes of massive exoduses lay outside the High Commissioner's terms of reference.

34. Mr. ORTIZ RODRIGUEZ (Cuba) said that his delegation had been guided by a desire to shed light on the situation under consideration. On behalf of the millions of refugees throughout the world, he appealed to the sponsors of the draft resolution to incorporate the reference to General Assembly resolution 32/130 which appeared in paragraph 1 of document E/CN.4/L.1621. Many situations of massive exoduses were due to the economic conditions prevailing in the countries in question, a fact which the Commission must take into account.

35. With a view to achieving a compromise solution, he suggested that no decision should be taken on the matter for the time being in order to allow the delegations concerned to hold informal consultations.

36. It was so agreed.

37. Mr. BEAULNE (Canada), introducing draft resolution E/CN.4/L.1598, said that the sponsors attached great importance to the responsibility of the individual to strive for the promotion and observance of the rights recognized in the International Covenants on Human Rights, and to the exercise by Governments of their rights and responsibilities in promoting effective observance of human rights. Those responsibilities were enshrined in the International Covenants and reflected in the preamble and articles 18 and 19 of the Universal Declaration of Human Rights.

38. The Economic and Social Council and the Commission had adopted a number of resolutions which had stressed the rights of the individual. He referred particularly to Commission resolution 23 (XXXVI), the adoption of which had surely been one of the Commission's major accomplishments at its thirty-sixth session.

39. The purpose of draft resolution E/CN.4/L.1598 was to give practical expression to Commission resolution 23 (XXXVI), by calling on the Sub-Commission on Prevention of Discrimination and Protection of Minorities to prepare at its thirty-fourth session a draft body of principles governing the right and responsibility of the individual to promote the observance of human rights and fundamental freedoms. Such a body of principles would represent a modest but positive step, which the sponsors thought was the best way to approach the establishment of international standards to govern the promotion and observance of human rights.

40. In response to a request by Mr. M'BAYE (Senegal), The CHAIRMAN said that the Commission would defer its consideration of draft resolution E/CN.4/L.1598 in order to allow time for consultations between the sponsors and the delegations which had proposed amendments, in particular, the delegations which had submitted the amendments in documents E/CN.4/L.1612 and E/CN.4/L.1613.

41. Mr. BOEL (Denmark), introducing draft resolution E/CN.4/L.1584, said that the General Assembly, in its resolution 35/190, had requested the Commission to study the possibility of extending the mandate of the United Nations Trust Fund for Chile. In that connection, the Nordic countries had noted the lack of support for that Fund and the interest expressed by a number of countries in having a fund of wider scope. The general view to be discerned from consultations on the subject seemed to be that the concept of gross and flagrant violation of human rights was too broad to be applied to the designation of a fund. Therefore, the sponsors of draft resolution E/CN.4/L.1584 had decided to apply a number of criteria for determining the sort of situations to which the proposed fund's extended mandate could apply. They had decided that, in order to qualify, cases should be of a particularly appalling nature, be well-defined and reveal a special need for assistance. On that basis, it had been decided that the fund should be applied to cases of torture, which was an utterly indefensible violation of human rights prohibited by a number of international instruments, although its practice unfortunately remained widespread.

42. The fund would remain a voluntary one. Therefore, support for draft resolution E/CN.4/L.1584 would imply no commitment to contribute. Pursuant to operative paragraph 1 (a) of the draft resolution recommended for adoption by the General Assembly, aid would be extended, for example, through organizations which were in consultative status with the Economic and Social Council and were qualified to channel assistance in accordance with normal United Nations practice. Eligibility for assistance would be assessed by a board of trustees composed of a chairman and four members, acting in their personal capacity, to be appointed by the Secretary-General with due regard to equitable geographical distribution and in consultation with their Governments. As a general guideline, priority would be given to victims in States in which situations had been the subject of resolutions or decisions of the General Assembly, the Economic and Social Council or the Commission on Human Rights.

43. The fund's new mandate would not imply any lessening of concern over the human rights situation in Chile; cases in that country could still be considered. Moreover, it was not intended that contributions to the fund should be diverted from development assistance; in the case of Denmark, where the percentage of GNP earmarked for development assistance was one of the world's largest, contributions would be made out of resources for humanitarian aid, not resources for development assistance. In any case, it was unlikely that contributions would be so large as to have a noticeable effect on allocations for other purposes.

44. The adoption of draft resolution E/CN.5/L.1584 would constitute one of the Commission's major achievements at its current session; it would also illustrate the concern of the United Nations about human rights in general and the use of torture in particular.

45. Mr. ZORIN (Union of Soviet Socialist Republics) said that his delegation acknowledged the humanitarian concern behind the proposals contained in resolution E/CN.4/L.1584, but felt that measures of the type proposed should be set forth very precisely.

46. The voluntary fund already in existence was governed by a mandate to deal with a specific country; an automatic broadening of the mandate's scope would be neither right nor reasonable, and might seriously undermine the fund's role, particularly since it existed to assist victims not merely of torture but of human rights violations in general in the country concerned.

47. The representative of Denmark, introducing the draft resolution, had said that assistance would be directed through normal United Nations channels. However, the concept of normal channels was too vague to be applied effectively in a specific instance. There was also the matter of objectivity; it was not clear who might claim assistance from the fund. In that connection, work was still in progress on a draft convention against torture. Once concluded, that convention could give useful guidelines for dealing with the problem concerned, which involved large-scale rather than individual torture; perhaps, therefore, its completion and adoption should be awaited before the fund's mandate was amended.

48. His delegation also found it difficult to accept the reference, in operative paragraph 1 (a) of the draft resolution recommended for adoption by the General Assembly, to violations by States in which the human rights situation had been the subject of resolutions or decisions by either the General Assembly, the Economic and Social Council or the Commission on Human Rights. There had been a large number of such resolutions - some of them, in fact, to the effect that certain situations no longer needed to be considered. That part of the text, therefore, could give rise to confusion; a much more precise wording was called for.

49. In order to overcome the difficulties, the Soviet delegation wished to submit a number of amendments to draft resolution E/CN.4/L.1584.

50. In operative paragraph 1, the words "to recommend the General Assembly to redesignate" should be replaced by "to consider the question of redesignating". In the same paragraph, the words "by adopting the following draft resolution" should be replaced by the words "and to recommend that the General Assembly should adopt the following draft resolution", and the following five lines should be deleted.

51. In the draft resolution recommended for adoption by the General Assembly, the words "whose human rights have been severely violated" in operative paragraph 1 (a) should be followed by the words "in Chile", and the rest of paragraph 1 (a) should be deleted. Paragraph 1 (b) should be amended to read "To study the question of the possibilities of using the Fund for providing assistance to victims of torture, and also the question of channels which are acceptable from the standpoint of the Charter of the United Nations for providing such assistance in cases where torture is practised on a massive scale". Paragraphs 1 (c), (d), (e) and (f) should be deleted. Paragraph 2 should be replaced with the following: "Requests the Economic and Social Council to consider in detail the question of the possibility of making appropriate changes in the mandate and designation of the Fund in the light of the comments made during the discussion of this question in the General Assembly and after the drafting of the convention against torture and other cruel, inhuman or degrading treatment or punishment has been completed".

52. Paragraph 2 of the draft resolution for adoption by the Commission should be replaced by the following: "Requests the Secretary-General to submit to the Economic and Social Council, as soon as possible after the completion of work on the convention, a summary of the comments made during the discussion of this question in the General Assembly and the Economic and Social Council".

53. Mr. BOEL (Denmark), replying to the remarks made by the representative of the USSR, said that the matter under discussion had been considered by the General Assembly and that draft resolution E/CN.4/L.1584 had been before the Commission for a week. Moreover, extensive consultations had been held with the delegation of the Soviet Union. As far as undermining the United Nations Trust Fund for Chile was concerned, he pointed out that his country had made a contribution to that Fund while the Soviet Union had not. He saw no reason to deny an opportunity to make voluntary contributions to those countries that wished to do so, even if the Soviet Union did not. As to how aid was to be transmitted to the victims of torture, he noted that in the case of Chile, the World Council of Churches and the Red Cross had proved that effective channels could be provided for such assistance. Nor could he agree that there might be any ambiguity as to who was a victim of torture. A clear definition of torture was already available even without the draft convention which was being prepared on the subject. The draft convention on the elimination of religious intolerance had been pending for 20 years, and the same fate could easily befall the draft convention against torture. There was no justification for linking the proposal to the draft convention against torture.

54. As for the functions of the board of trustees for the proposed Fund, in line with normal administrative practice, day-to-day details should be left to its discretion, but certain guidelines, however inadequate from the strictly legal point of view, had to be provided.

55. He also disagreed with the suggestion that the Fund should provide assistance only where torture had claimed many victims. Torture was unacceptable regardless of the number of victims, and the board of trustees should determine who was eligible for assistance.

56. In conclusion, he expressed the hope that the representative of the Soviet Union would withdraw his amendments and accept the draft resolution as it stood.

57. Mr. BRIMAH (Nigeria) said that, while the delegation of Denmark had dispelled some of his doubts regarding draft resolution E/CN.4/L.1584, he still was not convinced that it would be possible to identify victims of torture in a country without interfering in its internal affairs, at least before the completion of a draft convention, which was still the subject of much controversy, providing the safeguard of proper implementation machinery. Even the International Commission of Jurists had argued for a separate and optional protocol to the draft convention in order to facilitate its adoption by countries whose differing legal **systems** and principles prevented them from working out a common approach to such a convention. The financial implications of the proposal should also be taken into account, since available resources were already limited.

58. His delegation was in full sympathy with the humanitarian motives behind the proposal, but thought that with so many vital points still unresolved, it would be preferable to invite comments from Member States regarding its sundry implications.

59. Mr. BOEL (Denmark), speaking on behalf of the sponsors of draft resolution E/CN.4/L.1584 said that the effect of the Soviet amendments would be to postpone action until the convention against torture had been completed. As the representative of Nigeria had just made clear, it was highly uncertain when such a convention would be ready. He therefore opposed the Soviet amendments and hoped that the draft resolution would be adopted unamended and by a large majority.

The meeting rose at 1.05 p.m.