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COMMISSION ON HUMAN RIGHTS
Open-ended working group on an *optional protocol to the International Covenant on Economic, Social and Cultural Rights*
(Geneva, 23 February - 5 March 2004)

Point 4 of the Agenda General Comments

Madam President,

The universality, indivisibility and the interdependence of human rights has been reaffirmed on numerous occasions by the highest authorities of the States members of the United Nations on different occasions, and the Vienna Declaration is completely unambiguous in this respect.

Adopted nearly forty years ago, the International Covenant on Economic, Social and Cultural Rights is one of the pillars of international law in the domain of human rights, and has a binding effect on States.

Currently, we are surprised to see that some States advance various arguments against the adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights, a protocol which would make it possible to submit violations to the Committee on Economic, Social and Cultural Rights.

According to some of the opponents, economic, social and cultural rights fall outside the purview of the judiciary, contrary to civil and political rights. Yet, many countries have not only incorporated economic, social and cultural rights in their national legislation, but have also established judicial bodies to impose sanctions for their violation.

The integration of human rights mechanisms is being harmonized at the regional level. Thus, since the entry into force on 1 July 1998 of the Additional Protocol to the European Human Rights Charter, it is possible to bring a complaint before the judges at Strasbourg on issues relating to working conditions and social security provisions. With the coming into effect of the "San Salvador Protocol" on 16 November 1999, the Interamerican Human Rights Tribunal has instituted similar procedures. And the African Commission on Human Rights has had the authority to deal with such issues ever since it was established, on 2 November 1987.

But there is no mechanism to deal with violations of economic, social and cultural rights at the international level. For as we know, the mandate of the International Penal Court relates mainly to war crimes and genocide.

Other opponents claim that the main obstacle standing in the way of the implementation of economic, social and cultural rights is a lack of financial resources. To this we say that a shortage of financial resources should in no way prevent States from adopting legislative

measures to create the necessary preconditions for the enjoyment of these rights, nor, if resources are needed, from appealing for international cooperation in accordance with the provisions of the United Nations Charter.

It is hardly necessary to reiterate that respect for human rights and the guarantee of a decent existence is a matter of political will. An example we may cite is Cuba, the fifth poorest country in Latin America, with a per-capita income of £2 712 annually, which has succeeded in providing 99% of its urban and 95% of the rural households with adequate sanitary installations. Most households also have gas stoves and the others receive a monthly supply of coal or firewood for their cooking stoves, according to UNICEF¹.

What kind of a world do we live in, when \$ 1 000 billion are spent annually on armaments, as against \$ 50 billion for development aid²?

Madam President,

How can respect for a right be ensured if its violation is not punished ? Furthermore, the cross-boundary nature of the violations of economic, social and cultural rights makes it imperative and urgent to set up machinery to prevent such violations and, where required, to impose sanctions.

The draft protocol elaborated by the Committee on Economic, Social and Cultural Rights is in our opinion a good basis for the group's work; but it needs some amendments. Indeed, the draft should take account of:

- 1) the cross-boundary nature of the violations of economic, social and cultural rights and the jurisprudence of the Treaty Bodies;
- 2) violations committed by transnational corporations, by international trade and financial institutions, considering their dominant position in the world's economy;
- 3) complaints between States;
- 4) complaints directed at States (by individuals or groups) when the plaintiffs are not citizens, or outside the jurisdiction, of those States.

Madam President,

The International Covenant on Civil and Political Rights has been endowed with a complaint mechanism for nearly thirty years; the Covenant on Economic, Social and Cultural Rights is still awaiting one !

It is not right to continue to seek cover eternally behind Article 2, paragraph 1, of the Covenant, which envisages the gradual implementation of the full enjoyment of these rights. The violations of economic, social and cultural rights have become a matter of great concern: it is urgent to take steps, for it is intolerable that these violations should remain unpunished.

Madam President,

I thank you for your attention.

¹ Cf. *MediCuba* Information Bulletin No. 12, February 2004.

² Cf. *Le Figaro*, 18 February 2004.