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ON CIVIL AND
POLITICAL RIGHTS**



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SUMMARY RECORD OF THE 203rd MEETING

held at the Palais des Nations, Geneva,
on Monday, 24 March 1980, at 10.30 a.m.

Chairman: Mr. PRADO VALLEJO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the
Covenant (continued)

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The meeting was called to order at 10.45 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Report of Iraq (CCPR/C/1/Add.45)

1. Mr. RASHID (Iraq) said that he had noted a number of discrepancies between the original Arabic text of his country's report and the English and French translations.
2. The questions asked by members of the Committee in connexion with the report seemed to have been for the sole purpose of obtaining additional information on the protection of human rights in Iraq. Those questions could be grouped into six major categories: political and constitutional questions; general legal questions; questions concerning the organization of the judiciary in Iraq; questions concerning exceptional or special jurisdictions; economic questions; and social questions.
3. In order to answer the political and constitutional questions, which related, inter alia, to the political report of the Eighth Regional Congress of the Arab Ba'ath Socialist Party, it was necessary to look back. The Arab Ba'ath Socialist Party, established in Syria in 1940, was a party which proclaimed the unity of the Arab nation and whose activities were therefore not limited to any given Arab country. From the first National Congress, held on 7 April 1947, until February 1978, the Party had held 11 national congresses. The Iraqi section of the Party had held its first Regional Congress in 1955 and the last in January 1974, at which it had adopted the political report referred to. Mr. Koulishév had pointed out that the single party in Bulgaria could issue instructions and directives only to its members. While the same was true in Iraq, the Law of the Leading Party, No. 142 (1974), had bound all institutions to observe the political report adopted by the Eighth Regional Congress and had given the report a legal character and the role of a basic law.
4. Replying to the numerous questions concerning the Revolutionary Command Council, he apologized for having been able to provide the members of the Committee with only one version of the Provisional Constitution, published in 1976, whereas amendments had been made to it on 26 September 1977. Two new paragraphs had been added to Title IV, chapter 1, article 37, concerning the institutions of the Iraqi Republic. Paragraph (b) provided that all members of the Regional Command of the Ba'ath Party were members of the Revolutionary Command Council, and paragraph (c) limited the number of members of the Revolutionary Command Council to 22. Consequently, paragraph (c) of the former article 38 had been deleted. Under article 38, the Council acted by a two-thirds majority, one of its principal duties being to elect a President who, as a result, became President of the Republic. The other duties of the Revolutionary Command Council were described in articles 42 and 43 of the Provisional Constitution. In replying to the questions asked regarding contraventions of the provisions of the Constitution by a member of the Council, he pointed out that paragraph (f) of the former article 43 of the Constitution defined the powers of the Revolutionary Command Council regarding the composition of the tribunal dealing with the matter and the applicable procedures for passing judgement.

5. With regard to the National Council, article 47 (formerly article 46) of the Constitution provided that the Council should be composed of representatives of the people from the various political, economic and social sectors. A special law, known as the National Council Law, defined its formation, composition and working procedures. That Law had recently been supplemented by Laws Nos. 55 and 56 of 1980, concerned, in particular, with the Legislative Council of the Kurdistan Region. The National Council Law was also in conformity with the Law of 17 July 1968, which provided for the setting up of a pilot experiment in Iraq with a view to achieving the aspirations of the Arab nation.

6. The National Council Law comprised four parts including 11 chapters and 64 articles. The first part dealt with the membership of the National Council, which must not comprise less than 250 members elected by direct universal suffrage. The members of the National Council, who represented the whole Iraqi people, could not be subjected to criminal prosecution during sessions without the permission of the Council, except in cases of flagrante delicto. The Law also stipulated the circumstances in which the mandate of a member of the National Council could be terminated; a member whose mandate had been terminated must be replaced within 90 days by means of a by-election.

7. The second part of the National Council Law established the conditions of eligibility for the National Council. Any Iraqi citizen, male or female, of more than 25 years of age, of good character and able to read and write, was eligible. In reply to a question asked by Mr. Graefrath, he said that the criterion of literacy was applied not only to candidates for election to the Legislative Council of the Kurdistan Region, but also to candidates for election to the National Council. It should be borne in mind that primary education was compulsory in Iraq and that a national campaign for the elimination of illiteracy had been launched on 1 December 1978, with the aim of enabling all citizens between the ages of 15 and 45 to learn to read and write within three years. The results achieved were encouraging and it was hoped that it would be possible to shorten that period. The second part of the Law also contained provisions relating to the electoral rolls, electoral propaganda and voting procedures.

8. The third part of the National Council Law established the duties of the Council, which consisted mainly in proposing laws, legislating in accordance with the Constitution, adopting the budget and the Iraqi development plan, ratifying international treaties and covenants in accordance with the Constitution, debating the general domestic and foreign policy of the State, summoning any member of the Council of Ministers whom it wished to question to appear before it, proposing the termination of the mandate of a member of the Council and receiving the resignation of members of the Council. The fourth and final part of the Law dealt with the operating procedures of the National Council.

9. Some members of the Committee had asked about the building of socialism in Iraq. It might be recalled that the Arab Ba'ath Socialist Party was a revolutionary socialist party which regarded the building of socialism as absolutely essential to the liberation, unification and rebirth of the Arab nation. Consequently, the dissemination of socialist ideas had pride of place in the Iraqi revolutionary

programme which was socialist, unitary and democratic in nature. One of the basic tasks of the revolution of 17 July 1968 had been to bring about the socialist transformation of all the country's institutions. During the period of the monarchy, from 1921 to 1958, a large proportion of the land and the means of production - electricity, railways, petroleum industry and so on - had been in the hands of a feudal Government which, from 1953 onwards, had been the country's largest capitalist. From 1958 to 1968, there had been a succession of régimes in Iraq, where a very damaging instability had jeopardized the achievements of the 1958 revolution. The aim of the July 1968 revolution had therefore been, not only to achieve economic independence for Iraq, but also to put an end to the corruption which has been widespread throughout the country at that time, to carry out a policy of accelerated development and to take steps to transform the institutions and to open the way for the transition to a socialist society. The centralization made necessary by the circumstances must not, however, become a tyranny and lose its necessarily revolutionary and socialist character, if the result was not to be a State capitalism which could stifle the working class and its dynamism. The Arab Ba'ath Socialist Party was fully aware of that danger, which it had always emphasized in its education programme. It was endeavouring to eliminate man's exploitation of man and the conflicts existing between the interests of the individual and those of society.

10. Another essential task of the Arab Ba'ath Socialist Party had been to establish the National and Progressive Front. That had been a difficult undertaking and it had taken some time to achieve co-operation between the Arab Ba'ath Socialist Party, the Communist Party and other progressive forces and to establish a balance between those different elements, while at the same time enabling the Ba'ath Party to play a guiding role. The Arab Ba'ath Socialist Party had established the National and Progressive Front on 16 July 1973, by agreement with the Communist Party of Iraq and under a Charter of National Action. Subsequently, the Kurdish Democratic Party, the Kurdish Revolutionary Party and other independent nationalist groups had joined the Front. The four major parties which he had mentioned were the official parties currently existing in Iraq.

11. Freedom to establish parties was guaranteed under article 26 of the Provisional Constitution. Freedom of opinion, too, was guaranteed. That should not be interpreted, however, as meaning absolute freedom of opinion, in view of the requirements of public order, public morals and the freedom of others, which must be protected by, if necessary, prohibiting certain activities. Furthermore, article 22 of the Covenant itself provided for limitations of the exercise of that freedom.

12. In reply to questions relating to the People's Councils, he said that those Councils had been set up at the beginning of the 1970s. They were to be found in the administrative centres of the 18 administrative units and in the sub-prefectures and large communes. They represented a form of popular democracy since they expressed the will of the entire people. They performed economic, social and cultural functions and activities at the local level and participated in the formulation of the economic plans and budgets of the administrative units within the general context of the national economic plan and budget. The central authority was empowered to oversee their activities. It could, for example, terminate the

functions of the President or any of the members of the presidential bureau of a Council in the event of a breach of the law. In addition, it could issue general guidelines to the People's Councils to enable them to discharge their duties adequately. The People's Councils were thus the pillars of the democratic structure. It should be noted in that regard that, in the political report on its Eighth Congress, the Arab Ba'ath Socialist Party had set out guidelines for the democratic changes with which the People's Councils should be associated. Those changes included the definition of the ideological, political and legislative criteria to be followed by the Councils and the formation of experienced cadres to direct them; providing the Press and popular organizations with a greater opportunity to engage in discussions on fundamental issues of interest to citizens; endeavouring, by every possible means, to achieve broader participation in the discussion of such questions; and, finally, completing the experiment in popular democracy by drawing up the final Constitution of the country, holding general elections for the National Council and organizing the People's Councils on an elective basis.

13. The popular organizations were the organic framework in which the various sectors of the population - young people, students, women, lawyers, doctors, etc. - could group together to co-ordinate their activities and so enrich popular democratic experience, for those organizations had a very important role in the country's political, economic and social life. He drew attention to the passage in the report of his country's Government (CCPR/C/1/Add.145, pp. 87-91) which dealt with the implementation of paragraphs 1 and 2 of article 22 of the Covenant and gave detailed information on the popular organizations, more particularly trade unionist and professional associations.

14. In reply to a question concerning the complexity of the Iraqi legislative procedures, he explained that the Revolutionary Command Council and the National Assembly both had the power to introduce bills, which were then considered by the National Assembly. If its opinion was favourable, the Revolutionary Command Council approved the bill by majority, except where otherwise provided, and promulgated the law, which was signed by the President of the Republic. In the event of disagreement between the two bodies, article 51 of the Provisional Constitution provided for its settlement. The same law-making procedure was applied in the case of international treaties concluded by the President of the Republic, which had to be ratified by a Law.

15. With respect to the questions he had been asked concerning minorities, the Kurdish minority in particular, he pointed out that his Government had set forth the main lines of its action in that area and the fundamental principles on which it was based in the report before the Committee (*ibid.*, pp. 107-116 and annex). Members of the Committee would find all the information they might wish on the matter in the report which his Government had prepared in accordance with article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/50/Add.1); he hoped that document would be distributed to members of the Committee. Under the new Law on the Legislative Council for the Autonomous Kurdistan region, which had replaced the authority referred to in the report, the Council was to have not less than 50 members representing the whole population of Kurdistan. The Council had the power to legislate on any

matter within the competence of the local authorities, concerning education, housing, transport and communications, culture, youth and economic and social affairs, in accordance with the Law of Autonomy for the Kurdistan Region, Law No. 33 of 1974. It must be pointed out, however, that the judicial organization fell exclusively within the competence of the central authority and was the same in Kurdistan as in the rest of Iraq.

16. In reply to questions of a general legal nature, he said that he would like first to give some details on the place of the Covenant in his country's national legislation. In general, an international instrument acquired mandatory force from the moment it had been ratified. Since in Iraq such ratification was achieved by a law, any international instrument duly concluded and ratified became an integral part of the national legal system on the same footing as national laws, but it could not acquire a status equal or superior to that of the Constitution. Since the Covenant had been ratified, it had force of law and could be invoked before his country's courts, but as it simply stated general principles and fundamental rights, its provisions could not alone suffice to guarantee those rights and remedy violations: the general principles had to be supplemented by decrees of application specifying the procedures to be followed, sanctions, etc., as was the case for the Constitution or any other law laying down general principles. If, for instance, an individual in his country thought that he had been the victim of a violation of article 17 of the Covenant, which provided that "No one shall be subjected to arbitrary or unlawful interference with his privacy", he could refer to that fundamental principle before a court but the court could do no more than take notice of the fact and would not be able to hand down any civil or penal judgement other than on the basis of the country's Civil Code or Penal Code. The same applied to any possible incompatibility between the Covenant and national legislation.

17. Replying to members of the Committee who had asked him for examples of his country's laws which "surpassed in range" the provisions of the Covenant, he referred in particular to the Law on the elimination of illiteracy, the Law on prison administration, the Law concerning minors, the Labour Code, and the article of the Constitution covering the rights of ethnic and religious minorities. He was unfortunately unable to say whether there was in his country and body of legal decisions relating to the interpretation of the Covenant; his delegation would reply later, in writing, to the question asked on that matter. Similarly, it would transmit to the Government the questions about the number of death sentences pronounced or carried out in recent years, since it had no information on the matter. He stated, however, that the death penalty was applied only in very specific cases since, under the Law for the Reformation of the Legal System, the penalty imposed on an offender should be a corrective measure designed to permit the convicted person's social rehabilitation and to avoid any repetition of the offence. The only crimes for which the death penalty was imposed were spying, crimes against the security of the State, crimes related to drug trafficking, crimes with aggravating circumstances and crimes against the national economy -- since the national economy had an important role in the building of a socialist society.

18. In reply to the questions concerning the Law for the Reformation of the Legal System which he had just mentioned, he said that the Law laid down basic principles and proclaimed the objectives of legislative reforms in the economic, commercial, administrative, political, civil and penal spheres. It did not consist of rules which were immediately applicable but proclaimed a short-term, medium-term and long-term legislative programme prepared by the Ministry of Justice, which was to be responsible for its implementation. Several drafting committees had been set up since the Law had entered into force and some decrees had already been issued, for instance that referring to supervision of the judicial process and that concerning the reform of the prosecutor's office. It was hoped that the committee dealing with the reform of the Civil Code would complete its work before the end of the year.

19. Proceeding to the questions that had been raised on the subject of the publicity given to the Covenant and to the law in general in his country, he pointed out that under article 64, paragraph 1, of his country's Provisional Constitution, laws were published in the Official Gazette and entered into force on the date of their publication except where otherwise provided. Under a law promulgated in 1977, that was the case in particular for all laws ratifying treaties. The Covenant had therefore been published in the Official Gazette and in the official collection of treaties concluded by his country. He was not certain, however, whether it had been published in the English version of the Official Gazette. The Iraqi Human Rights Committee and the Iraqi Human Rights Association had on several occasions invoked the Covenant in the course of their activities.

20. In regard to any possibility of a law being found, ultra vires, his country had no Supreme Court or special court having competence in the matter. Recourse by way of direct proceedings was not admitted; as to recourse by way of defence objection, the court before which such a plea would be raised was not competent to declare a law illegal: its competence was limited to declining to apply it.

21. With respect to the Islamic religion, which under article 4 of the Constitution was "the religion of the State", he said that that provision had invariably appeared in all Iraqi constitutions and was accounted for by the fact that the people of the country were in the great majority (more than 90 per cent) avowed Moslems. Islam governed not only the spiritual life of man but also his temporal existence. It amounted to a kind of universal law covering all aspects of human, civil, economic and social relations. Its principal characteristic was its flexibility, which enabled it to be adapted to all kinds of society and all epochs. History showed, moreover, what Islamic civilization had contributed to all mankind. If the Arab nation constituted a body, Islam was its soul, but to say that Islam was the State religion did not mean that Moslems were in any way privileged as against non-Moslems. Furthermore, in article 19, paragraph 1, of the Constitution, it was stipulated that "Citizens are equal before the Law, without discrimination as to .. religion". In reply to the questions about the meaning of the word "Shari'a", it meant, according to context, "legislation" or "code" and it was currently used to designate Islamic law. The Shari'a was one of the sources of law to which the judge had to refer when the statutes in force were inadequate. Such was the case in particular with respect

to the laws concerning personal status, which must be in conformity with the Shari'a. With regard to the questions concerning equality of rights as between man and woman, he confirmed that the right to divorce was in fact guaranteed to each of the spouses in the specific instances listed in his Government's report (ibid., pp. 95-97, article 23, paragraph 4). As to the need for the woman to remain under the protection of her husband, that applied solely to financial protection, but there was nothing to prevent a woman engaging in employment if she so wished. Under Iraqi's law, marriage was a contract between a man and a woman who was able lawfully to become his spouse. The contract was required to be registered before a court and the matrimonial regime provided for the separate ownership of property and goods. Of course, the fundamental principles on which that conception of marriage was based were inspired by the "Shari'a".

22. He would like also to explain a point of legal terminology. In Iraqi law, persons under the age of 18 were classified in several categories and sub-categories. Those under the age of 7 were children and those between 7 and 18 were minors, a category which included adolescents aged between 7 and 15 and young adults aged between 15 and 18.

23. With regard to the social rehabilitation of former convicts, any prisoner who had served his sentence had the right to resume the employment he had had before his imprisonment. If he was a civil servant, the State had to take him back into the service but it was not obliged to appoint him to the post he had previously occupied. The Iraqi authorities had no difficulty in abiding by that rule because there was no unemployment in Iraq and the two million nationals of other Arab countries working in Iraq enjoyed the same rights as Iraqi citizens. The expression "place of detention", about which a member of the Committee had asked for particulars, meant the part of the prison establishment or commissariat or any other place under police authority allocated to such purpose.

24. In reply to a question concerning religious instruction, he said that course of religious instruction were in fact obligatory in Iraq. With regard to remedy for persons injured through a violation of one of the Covenant's provisions, he referred the Committee to the paragraphs of the report which dealt with criminal and civil liability (ibid., pp. 18-20). In reply to questions concerning property, he said that property in Iraq, whether public, co-operative or private, was a social function and was not to be made a means of exploitation; in exercising rights based on property, Iraqi citizens were required to act in accordance with the general interest. With regard to nationality, issue of passports and travel documents, the Iraqi authorities would provide a written reply later. In connexion with the paragraph in the report which dealt with the protection of children following dissolution of a marriage (pp. 96 and 97), he said that, contrary to what might be inferred from the French translation of that paragraph, the mother of an infant could marry a man not related to the infant but in such a case she lost her right to custody.

25. With reference to the third group of questions, concerning the organization of the judiciary, he said that, in that field, Law No. 26 of 1963 had been superseded, in January 1980, by a new law, Law No. 160, the purpose of which was to allow of the establishment of legal machinery capable of supervising respect for the law while

taking into account revolutionary ideals. The judicial system of Iraq was based on the principle of a single, rather than a dual, jurisdiction; thus there was no "administrative jurisdiction" side by side with the "ordinary jurisdiction". The new law stipulated that the courts were independent and that no power except that of the law could be exercised over them. The competence of the courts extended to all natural or juridical persons, including the public authorities. There were, however, certain persons who were not subject to the competence of the courts. They included, on the one hand, foreign diplomats stationed in Iraq or travelling through Iraq to their posts and, on the other, certain Iraqi nationals - namely, the President of the Republic, the members of the Revolutionary Command Council and judges - who, unless the competent authorities ruled otherwise, enjoyed immunity from the law.

26. Until June 1978, judges had been chosen from members of the civil service who had a law degree and worked in the legal departments of the various ministries or State bodies, and from barristers. They had been appointed, on the proposal of the Ministry of Justice, by the President of the Republic, who issued a decree to that effect. Since the promulgation, in March 1976, of the law establishing the Institute of Judges, the method of recruiting judges had changed. That law provided that only graduates of the Institute of Judges could become judges. Admission to the Institute's courses was open to Iraqis of both sexes, aged between 28 and 40 years, who held a law degree, were married and had worked in a legal capacity or had been a practising barrister for at least three years. The Institute was also open to students of other Arab countries who had a law degree. The early results obtained by that Institute, which trained not only members of the Bench but also those of the Bar, were very encouraging. Whereas in 1978 there had been no women among the first 40 graduates, there had been three women among the 110 judges who had graduated from the Institute the following year and the next course was expected to include five or six women. The judges, who were always appointed by presidential decree, had to swear an oath before the Council of Justice before taking up their posts.

27. The Council of Justice, which had been established by Law 101 of 1977, was presided over by the Minister of Justice. Its members included the President of the Court of Cassation, who acted as Vice-President, the President of the Public Prosecutor's Office, the President of the State Consultative Council, the President of the Judicial Inspection Department, the Presidents of the Courts of Appeal, which were seven in number, the President of the Supreme Labour Court and the Directors-General of the Ministry of Justice. Thus the bodies subordinate to that Ministry were all represented in the Council. When the latter was called upon to look into matters concerning the judiciary, including occasions when it was to rule on the promotion and advancement of judges, those of its members who were not themselves judges withdrew. The Council of Justice could also decide to terminate the career of a judge or to transfer him to another post. In such cases, however, a presidential decree was essential. The Ministry of Justice also included a Committee on the Judicature, whose task was to impose disciplinary measures against judges who had committed errors. Among such disciplinary measures were the freezing of promotion and salary for a period of one to three years, and retirement.

28. With regard to the protection available to Iraqi citizens against administrative acts, he pointed out that, since there was a single jurisdiction, all legal actions or disputes, including those instituted in respect of an act by the administration, were heard before the ordinary courts. The courts were not competent, however, to annul acts; they could only oppose their application with respect to persons who were injured or liable to be injured thereby.

29. Turning to the group of questions relating to exceptional or special courts, he said firstly that, although in Iraq personal status and labour courts existed besides the high courts and the courts of appeal, and juvenile courts existed besides the courts of session, they could in no way be regarded as courts of exceptional jurisdiction. They were simply special courts - in other words, ordinary courts having competence in particular spheres. In fact, to the extent that exceptional jurisdiction was understood to mean a court invested with very broad competence, applying exceptional procedures and providing fewer safeguards than the ordinary courts, there was no exceptional jurisdiction in Iraq. The Revolutionary Court, created in 1969 to protect the Revolution, was not a truly exceptional court. At the present time it was competent only to rule in cases of attacks on internal or external State security, of contraband, of arms dealing and of drug traffic, as also of economic and fiscal violations. The Revolutionary Court applied the Penal Code or any other repressive law, and the procedure it followed was established by the Code of Criminal Procedure. The Revolutionary Court consisted of three members, two of whom had to be jurists, and the public prosecutor; in practice, the president too was almost always a jurist. Persons tried before the Court were given all the safeguards provided in the Code of Criminal Procedure. For example, the accused had a free choice of defending counsel; when he had no lawyer, the Court would appoint one and pay his fees if the accused lacked the means to do so. The hearings were public, unless the Court decided otherwise; the accused could call witnesses for the defence and cross-examine witnesses for the prosecution. The Court differed from the ordinary courts, however, in that its findings were final and not subject to appeal. There was no recourse except in the case of capital punishment; the death sentence must in fact be ratified by a presidential decree. In practice, however, the person condemned could request the President of the Republic to review the sentence, and in such a case the President of the Republic referred the matter to a special legal commission which looked into the case and made recommendations. Sometimes the death sentence was commuted or the condemned person might be pardoned. The independence of the Revolutionary Court was safeguarded in the same way as that of the ordinary courts.

30. Mr. TOMUSCHAT said there seemed to be a contradiction between the information given by Mr. Rashid concerning the Revolutionary Court and article 14, paragraph 5, of the Covenant. The representative of Iraq had in fact said that sentences pronounced by the Revolutionary Court were not subject to appeal. It was stated in article 14, paragraph 5, of the Covenant, however, that "everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law". He would therefore like some explanation of that point.

31. Mr. RASHID (Iraq), replying to Mr. Tomuschat's question, said that any Iraqi citizen could appeal to the President of the Republic in order to request him to review a sentence passed by the Revolutionary Court. The President of the Republic thus served in a way as a court of appeal.

The meeting rose at 12.50 p.m.