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SUMMARY RECORD OF THE 205th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 25 March 1980, at 10.30 a.m.

Chairman: Sir Vincent EVANS

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The meeting was called to order at 10.40 a.m.

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

Canada (CCPR/C/1/Add.43, vol. I and II)

1. The CHAIRMAN welcomed Mr. McPhail, Canada's Ambassador to the United Nations, and the eminent persons with him. The presence of so large a delegation was proof of Canada's interest in the work of the Human Rights Committee and of its wish to help the Committee to supervise the implementation of the provisions of the Covenant on Civil and Political Rights. He called upon the Canadian Ambassador to introduce his country's report.

2. Mr. McPHAIL (Canada) said that, in his country's opinion, the Committee's questions and comments, whether in the context of the Covenant or of its Optional Protocol, could have a significant impact and help to increase the understanding of the States parties of their obligations under the Covenant. The dialogue between the Committee and States parties was potentially one of the most important factors in the long-term development of international protection of human rights. His delegation would therefore be pleased to co-operate fully in answering any questions that the Committee might wish to ask regarding the Canadian report. After introducing the members of his delegation, he said that he would offer a few comments on the way in which Canada regarded the Covenant, the nature of the Canadian constitutional system and the manner in which the Covenant related to Canadian law.

3. Canada, as a federal State, functioned on the basis of a complex division of responsibilities between the Federal and Provincial Governments in most areas to which the Covenant applied, so that the implementation of that instrument required action by the Canadian Parliament, the provincial legislatures and, in the case of the two Territories, the Territorial Commissioners in Council. Thus, while it required an extensive process of consultation, the constitutional division of powers in no way affected the international responsibility of Canada. Under the Canadian constitutional system, jurisdiction was divided between the Federal and the Provincial Governments. The Federal Government, for example, had jurisdiction with respect to naturalization and emigration, marriage and divorce, criminal law and the establishment and maintenance of penitentiaries, while the Provinces had jurisdiction in the following sectors: municipal institutions, property and civil law, administration of justice, and education. Since each Province had authority within its own sphere, legislation on the same subject-matter varied from Province to Province. In the two Territories which were not organized into Provinces, the Canadian Parliament possessed plenary jurisdiction, i.e. in addition to its own powers it possessed powers equivalent to those possessed by the Provinces. As was explained in Canada's report, however, Parliament had delegated to the Commissioners in Council of the Northwest Territories and of the Yukon most of the powers possessed in the rest of Canada by the Provincial Governments. Hence Canada's accession, on 19 May 1976, to the International Covenant on Civil and Political Rights and the Optional Protocol had been preceded by extensive consultations between the federal and provincial authorities and had been undertaken with the assurance that the Federal and Provincial Governments were prepared to fulfil the obligations set forth in the Covenant and the Protocol.

4. The Covenant was not part of the law of Canada. The Federal and Provincial Governments, however, aware of the need to ensure that present and future legislation was consistent with the Covenant, had committed themselves to amend existing law where necessary in order to bring it into accord with the Covenant and to resolve any inconsistencies there might be between the Covenant and the law. Notwithstanding some differences in law arising from the federal character of the Canadian system, the protection of human rights was characterized by the same approach and the same objectives throughout the country. Human rights commissions or like mechanisms existed in all Canadian jurisdictions and judicial review was exercised at both the federal and the provincial level. Where differences existed, they related not to the existence of a right or the need to protect it, but rather to the means by which that protection was ensured. In other words, Canada's implementation of the Covenant must be examined in terms of legislation enacted in a variety of areas and of procedural and judicial guarantees and practices which had evolved with the development of the Canadian legal system. The length and detail of the Canadian report was evidence of the vast scope of that legislation.

5. The Covenant and the Optional Protocol had already had an important effect on human rights in Canada. The debate and the consultations which had preceded Canada's accession to the Covenant and the Optional Protocol had made the Canadian authorities more conscious of the need for better defined measures for the protection of human rights and freedoms. The efforts made on that occasion had served as a catalyst and were reflected in the proliferation of official bodies to protect human rights and by the improvement of human rights legislation at both the federal and the provincial levels.

6. The detailed report before the Committee was available to all Canadians. The press release of 27 June 1979 announcing its publication explained that it could be obtained free of charge in English or French. In addition, copies of the report had been or were being sent to all parliamentarians and to all the principal libraries in the country. Several thousand copies had been distributed in that way. The question of human rights continued to enjoy wide publicity and the Canadian authorities were confident that the continuation of the public debate on the provisions of the Covenant would give further impetus to the protection of human rights in Canada.

7. Since the report had been completed at the beginning of 1979, it did not mention the more recent developments in the field of human rights, including judicial decisions relating to the rights of prisoners, changes in the status and the internal law of the Yukon and the Northwest Territories, and recent legislative developments relating to human rights in some of the Provinces, of which Mr. Strayer and Mr. Hurtubise would give the Committee a brief account.

8. Mr. STRAYER (Canada), referring to the part of the report devoted to federal law, drew the Committee's attention to a recent judicial decision concerning the rights of prisoners. The report indicated that the Sub-Committee on the Penitentiary System had criticized the courts' insensitivity to the problems of inmates. In its recent decision in the case of Martineau v. The Matsqui Institution Disciplinary Board, the Supreme Court of Canada had stated clearly

that prison disciplinary boards had a duty to act fairly when dealing with inmates accused of disciplinary offences and that if they failed to do so the courts could review their decisions. Nevertheless, aware of the need to deal speedily with breaches of prison discipline, the court had indicated that such remedy could be granted only to prisoners who were victims of serious injustice and that proper care should be taken to prevent the review procedure from being used to delay punishment so long that it became ineffective or was even avoided.

9. Another complaint of prisoners in federal penitentiaries was that the penitentiary authorities exercised "control" over their solicitors. In the case of Solosky v. The Queen, the Supreme Court of Canada had held that, in order to protect the safety and security of an institution, federal penitentiary authorities could exercise control over communications between an inmate and his solicitor. It had, however, established certain limits to the power granted to the penitentiary authority by establishing the following rules: "The contents of an envelope may be inspected for contraband; in limited circumstances, the communication may be read to ensure that it, in fact, contains a confidential communication between solicitor and client written for the purpose of seeking or giving legal advice; the letter should only be read if there are reasonable and probable grounds for believing the contrary, and then only to the extent necessary to determine the bona fides of the communication; the authorized penitentiary official who examines the envelope, upon ascertaining that the envelope contains nothing in breach of security, is under a duty at law to maintain the confidentiality of the communication". It should be noted in that respect that Commissioner's Directive No. 219 of 26 September 1974 on correspondence met the conditions established by the Supreme Court in that area.

10. In addition, sections 462.1 to 462.4 of the Criminal Code, which provided that an accused should be tried in the official language of his choice (English or French), had entered into force in New Brunswick, Ontario, the Northwest Territories and the Yukon.

11. One of the most significant new developments at the territorial level was the attainment by the Yukon of responsible government on 9 October 1979. The Commissioner of the Territory, on instructions from the Federal Government, now limited his role to that played by a Lieutenant Governor in the Provinces. A similar status had not yet been conferred on the Northwest Territories, but the Federal Government was at present studying the report of the Special Representative for Constitutional Developments in the Northwest Territories (Drury Report). Other interesting new developments included the adoption in the Northwest Territories of a Legal Services Ordinance and a Student Grants and Bursaries Ordinance, and in the Yukon of the Matrimonial Property Ordinance, under which the legal régime for the separation of property which had previously been in force in the Territory had been replaced by a deferred community property régime, which the spouses, however, had the option to refuse. The Ordinance also provided that a man and a woman who cohabited without being married could enter into a cohabitation agreement establishing their respective rights and obligations during cohabitation, or upon ceasing to cohabit, in relation to the ownership, possession, management, disposition or division of property.

12. Mr. HURTUBISE (Canada) said that he would try to define the new developments which had taken place at the provincial level. With regard to New Brunswick, mention should be made of the adoption of the Right to Information Act giving individuals the right of access to Government information. Attention should also be drawn to the adoption in Newfoundland of the Human Rights Anti-Discrimination Act, 1979, which abrogated a number of statutory provisions which might be interpreted as discriminating against women. In Alberta, several relevant amendments had been made to provincial law. Among the more important, he would mention the entry into force of the Matrimonial Property Act, which established a matrimonial régime of deferred community property, similar to that already mentioned with regard to the Yukon, and the entry into force of certain amendments to the Domestic Relations Act, which gave the husband and wife the same rights and duties with regard to the provision of maintenance. Another development was that, by reason of recent amendments made to the Mental Health Act, it would in future be necessary to supply two separate certificates, each one from a doctor, in order to authorize confinement for one month, as provided for by the Act; it would no longer be enough to produce a certificate from a doctor and another from a therapist. He further pointed out that the Mentally Incapacitated Persons Act had been abrogated by the Dependent Adults Act, which provided that, where there was a tutelage or guardianship order, the marriage of an incapacitated person could only be solemnized if the doctor certified in writing that the person concerned was able to understand the significance of his commitments. Moreover, the issue of the licence for the solemnization of the marriage had to be notified to the trustee or guardian not less than 14 days before the ceremony.

13. In Ontario, the Cabinet, aware of the importance of human rights, had set up a Cabinet Committee on human rights and the elimination of racial discrimination. The Ontario Human Rights Commission had set up a division which was competent in questions of race relations and had appointed a Commissioner with responsibility for such relations. Ontario had also enacted the Religious Organizations Lands Act, which governed the acquisition, use and disposal of real estate by religious associations.

14. Mention should also be made of the new Saskatchewan Human Rights Code of 1979. That Code not only incorporated in one and the same text the rights hitherto protected by various provincial laws, but it ensured the increased protection of those rights. It had two major aims: (1) to further the recognition of the inherent dignity of all members of the human family and of their equal and inalienable rights; and (2) to strengthen the fundamental principle whereby in Saskatchewan the worth and dignity of all persons were equal, and at the same time to endeavour to halt and to eliminate discrimination. Thus any discrimination based on race, belief, religion, colour, sex, matrimonial status, physical incapacity, age, nationality or ethnic or geographical origin was prohibited in connexion with employment, housing, education, etc. The Code also prohibited the publication in the printed press and the dissemination by electronic devices of documents inciting to hatred and contempt of persons or groups of persons who could be identified on one of the above-mentioned prohibited grounds of discrimination. In addition, the Code recognized freedom of conscience, religion, expression and association, and declared that no one could be detained arbitrarily and that free elections must be held periodically. One of the most important aspects of the Code was its overriding character. Any law of the Province of Saskatchewan was inoperative in so far as it authorized or required the performance of an action forbidden by the Code, unless such action was the subject of an exception laid down in the Code or if an Act of the Legislative Assembly expressly declared that the law in question remained in force notwithstanding the provisions of the Code. The Code allowed for the possibility of giving effect to affirmative action programmes to counteract any present effects of past discrimination.

15. The Province of Quebec, too, had enacted legislation which represented progress in the field of the protection of human rights. It had in particular amended the Charter of Human Rights and Freedoms to include physical or mental handicaps among the prohibited grounds of discrimination under the terms of an Act providing for the exercise of the rights of handicapped persons. Among the other laws adopted in Quebec mention must be made of the Youth Protection Act, which had led to the establishment of a Commission for Youth Protection and was designed to "dejudicialize" the procedures for such protection and at the same time to make clear what were the rights of young people. It must also be pointed out that the Police Act had been amended so as to provide for the automatic protection of witnesses interrogated by the police and in certain cases to give the police legal powers to act on behalf of the Attorney General, except when he acted on behalf of a municipal corporation. The Probation and Houses of Detention Act had been amended: it established a Quebec Commission for Release on Probation and authorized a director of a House of Detention to prepare a programme allowing detained persons to follow courses outside the place of detention or to pursue another activity likely to promote their social rehabilitation, for example, a programme involving remunerated activities.

16. The CHAIRMAN thanked the representatives of Canada for the additional information which they had supplied on the way in which Canada was giving effect to the Covenant on Civil and Political Rights. He invited Committee members to offer comments and to ask questions on the Canadian report.

17. Mr. OPSAHL congratulated the Canadian delegation on the high quality of the report submitted by his country, which in his opinion was the most comprehensive so far received by the Committee. The fact that the federal system, and hence the multiplicity of laws in their country, had led the authors of the report to consider in turn federal law, the law of the Territories and the law of the Provinces, and therefore to draft a very long report, should be no reason for complaint, for it was the first time that the problems inherent in the application of the Covenant in a Federal State had been set out in such a precise manner. He appreciated the fact that the Canadian authorities had not invoked those problems as justification for the fact that any particular human right did not enjoy adequate protection.

18. While the federal and provincial authorities had clearly adopted a considerable number of texts in the field of human rights in recent years, it was apparent from the report that, although Canada had ratified the Covenant, it had not become an integral part of Canadian legislation, the provisions of which on human rights and fundamental freedoms and on civil and political rights merely set forth general rules which were applicable only so long as there was no special legislation to the contrary. The Canadian Bill of Rights, however, provided in part 1, article 2, that "Every law of Canada shall, unless it is expressly declared by an Act of Parliament of Canada, that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of any of the rights or freedoms herein recognized and declared ..." and, according to the report of the Canadian Government the Bill of Rights allowed "the Courts to hold as inoperative all 'laws of Canada', as well as the orders, rules or regulations made thereunder, if such laws, rules or regulations abrogate, abridge, or infringe any of the rights of freedom therein recognized." It seemed therefore that there was subsequent control of legislation. He would like to know whether it had already occurred in practice that the Court had declared a law of Canada inoperative because its provisions were contrary to those of the Canadian Bill of Rights.

19. It seemed that there was also a preventive administrative control, for article 3 of the Canadian Bill of Rights provided that the "Minister of Justice shall ... examine every proposed regulation ... and every Bill ... in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this Part" (of the Canadian Bill of Rights) "and he shall report any such inconsistency to the House of Commons at the first convenient opportunity." He would like to know whether the Minister of Justice had already had occasion to draw the attention of the House of Commons to the inconsistency of a Bill with the provisions of the Canadian Bill of Rights. He would also like to know whether others had noted and drawn the attention of the Minister of Justice to such an inconsistency and, if so, what had been the position of the Minister. He would also like to have details of the way in which that system worked, not only at the federal level but also at the provincial level, since alongside the Canadian Bill of Rights at the federal level, there were Bills of Rights and other legislative texts on the subject of human rights applicable at the provincial level.

20. Turning to the report itself, he asked the Canadian delegation to explain what the Canadian Government had had in mind in saying that the Government of Canada was "answerable to the international community for non-compliance in Canada with the obligations assumed when, ... it acceded to the Covenant and the Optional Protocol" (page 3 of the report) or that "Canada, by acceding to the Covenant, undertook vis-à-vis the international community to comply with its provisions" (page 17 of the report). He wondered whether the authors of the report had used the expression "international community" simply to show that the obligations assumed by Canada under the Covenant were of an international character, or whether that term had been used to signify that Canada recognized that by acceding to the Covenant it had assumed responsibility juridically to other States or a community of States - for example, the other States parties - or even towards the Human Rights Committee

21. He regretted that the report had not provided more information on the way in which Canada discharged its obligations in practice, i.e. on what was the position of human rights not only in legislation but also in Canadian society. It was not enough for a country to enact legislation in conformity with the provisions of the Covenant; it had also to apply it. To ascertain whether the Covenant was effectively implemented in a country, the Committee needed to be informed not only on the legislation in force but also on the manner in which that country respected human rights in practice. As Canada had ratified the Optional Protocol, the Committee could, however, form an opinion of the actual situation of human rights in that country from communications received from private individuals living in Canada.

22. He found the Canadian report more frank and open than many others which confined themselves to giving assurances that the provisions of the Covenant were applied. Its authors had not hesitated to admit that there was no provision in federal law which gave anyone arrested or detained the right to be tried within a reasonable time or, if not, to be released pending judgement (article 9, paragraph 3, of the Covenant). Nor had they hesitated to mention the insensitivity of the courts to the problems of persons in detention, the question of the expulsion of foreigners and the fact that there was no law prohibiting propaganda in favour of war.

23. In considering the various provisions of the Covenant, it appeared that in the case of article 1, to which many States attached special importance, the provisions of federal law and of the law of certain Provinces, Alberta and Manitoba in particular, merely subscribed to the principle of self-determination, which was not even mentioned in the law of British Colombia and Quebec. It would therefore be useful for the Committee to have additional information on that point. He would like to know in particular what was the position of the Canadian Government on the question of the right of secession, with special reference to the recent decision to hold a referendum in Quebec.

24. With regard to article 2 of the Covenant, which prohibited any form of discrimination in giving effect to the rights and freedoms proclaimed in the Covenant, the report gave a very interesting account of Canadian legislation and institutions whose aim was to prevent discrimination in numerous fields. Political opinions were not, however, among the prohibited grounds for discrimination mentioned and they were referred to only in certain Acts (the Unemployment Insurance Act, 1971 and the Human Rights Act of the Province of Manitoba). With regard especially to article 2, paragraph 3, the report gave examples of the recourse open to persons whose rights and freedoms recognized in the Covenant had been violated. He wondered whether the Canadian Government could demonstrate that a person who simply claimed to have been the victim of a violation of the Covenant always had a remedy open to him.

25. While the authors of the report had the honesty not to claim that Canadian law was wholly in conformity with the provisions of the Covenant when that could not be demonstrated, he wondered whether it would not be possible, in certain cases, to bring the provisions of national law into line with those of the Covenant by giving an interpretation of it, as some countries, notably Norway, had already recommended. For example, in the case of article 4 of the Covenant concerning derogations in an emergency situation, the Canadian Government had honestly recognized that the War Measures Act made it possible to circumvent that article. As, however, it was clearly stated that Canada would respect the international obligations which it had assumed, he thought that it might be possible to go further and to state that the War Measures Act had to be interpreted in the light of those obligations. That principle of interpretation might be added to the three factors to be taken into account in analysing the degree of conformity of Canadian law with the provisions of the Covenant (page 7 of the report).

26. With regard to article 6, concerning the right to life, the report assumed some interesting interpretations of the Covenant which the Canadian delegation could perhaps confirm explicitly. It appeared that, under Canadian law, article 6 was considered a positive obligation in many sectors, including health and social security; if that was the Canadian Government's interpretation, it would represent some progress towards a convergence of different social systems.

27. On the other hand, the Canadian Federal Government appeared to interpret the provisions of article 9 of the Covenant, concerning unlawful deprivation of liberty, in a more restrictive manner. The relevant section of the report dealt exclusively with arrest and detention for crime, whereas article 9 protected the individual against all forms of unlawful deprivation of liberty. In many

countries, deprivation of liberty for medical, psychiatric, educative or public security reasons was regulated by administrative texts; that did not appear to apply to Canadian federal law, although the parts of the report relating to provincial law gave certain indications in that direction. It would therefore be interesting to know whether the clause on due process of the law, appearing in the Canadian Bill of Rights, was applicable in the context of article 9, paragraph 1, outside the criminal sector. It would also be interesting to have other examples of federal, provincial or territorial laws concerning deprivation of liberty. That was a most important question, which continued to give rise to controversy in many countries of Eastern and Western Europe. Even if the Canadian Bill of Rights and habeas corpus implicitly safeguarded the right not to be unlawfully deprived of liberty, it would be interesting to know how that right was respected in practice. With regard to the right to be informed, at the time of the arrest, of the reasons for the arrest (article 9, paragraph 2), the arguments advanced in the case of the Gamracy arrest in 1974 were not entirely convincing; it would be useful to know whether the Canadian Government still considered that Canadian law was consistent with the Covenant in that respect.

28. The part of the report relating to article 10 of the Covenant set forth the Canadian Government's penitentiary policy in detail. Considering the immense area of Canadian territory, he asked whether there was any law providing that a prisoner should serve his sentence in an establishment not too remote from his home. The Canadian Government was to be commended for its opinion that imprisonment was not the most useful method of rehabilitation.

29. With regard to article 13 concerning expulsion, he asked whether the provisions mentioned in the Canadian report were applicable in the case of expulsion, extradition or refusal of admission and whether it was to be considered that the holder of a residence permit issued by the Ministry of Employment and Immigration under its discretionary powers was not legally on Canadian territory and could therefore not benefit from the protection provided in article 13 of the Covenant.

30. With regard to article 14, which recognized the right to a fair hearing, he asked what was meant by the term "competent tribunal" (page 58 of the report). Canadian federal law appeared to interpret paragraph 2 of that article, which provided that everyone charged with a criminal offence should have the right to be presumed innocent until proved guilty according to law, in a somewhat restrictive manner. The provision might be considered to have other implications than those concerning the burden of proof. It might be asked, for example, whether an accused person who had been acquitted had to pay the costs of the proceedings; whether the public prosecutor could refrain from taking legal action but declare publicly that he considered the accused person guilty; whether the accused person could accept a penalty in order to avoid being sent for trial; and whether authorities other than the courts respected the presumption of innocence.

31. It would also be desirable for the Canadian delegation to confirm that the provisions of article 17 of the Covenant concerning respect for privacy were given a broad interpretation in Canada. It appeared from the report that acts performed in relation to that article involved the civil responsibility of the person performing them. That applied in particular to the part of the report concerning the Province of Alberta.

32. With regard to article 19, he would like to know whether the Canadian Government recognized that it had a positive obligation to promote freedom of expression. He asked how that freedom was exercised with regard to the press and publishing. The report mentioned certain possible restrictions to the exercise of that freedom. He also asked whether the decisions concerning film censorship, particularly in Alberta and Ontario, could be contested.

33. Mr. LALLAH said that, in his view, the Canadian report was most impressive and fuller than most of the reports submitted to the Committee. A number of acts and regulations were quoted in it, together with a number of important cases of jurisprudence.

34. It had been observed that the provisions of the Covenant were not incorporated in Canadian federal or provincial law. In view, however, of the difficulties of incorporating in the legislation the provisions of all the international instruments to which Canada had acceded, the Canadian Government's selection appeared to be a wise one from the practical point of view. He nevertheless shared Mr. Opsahl's view that some co-ordination in administering the provisions of the Covenant was necessary.

35. With regard to articles 2 and 27 of the Covenant, it should be noted that, under article 2, paragraph 2, States parties undertook not only to apply the provisions of the Covenant but also to give effect to the rights recognized in the Covenant by taking other measures. Mr. Opsahl had raised an interesting point with regard to article 1 of the Covenant when he had mentioned the recognition of the right to secession in referring to the referendum shortly to be organized in the Province of Quebec. He would like to have more information on the situation of the Indians and the Eskimos in Canada. From the part of the report dealing with article 12 of the Covenant, it would appear that a distinction was made between Indians and other Canadian citizens. It would be useful to know the Federal Government's policy towards Indians and the principles on which the Indian Act was based. The same applied to the situation of the Eskimos.

36. With regard to article 2, paragraph 3, the Crown Liability Act established remedies in the case of offences committed by Canadian public servants. He asked whether those remedies were subject to restrictions at the procedural level, such as time-limits for the submission of complaints, and whether the Government could maintain that an official had been guilty of an offence outside the performance of his duties.

37. With regard to article 3 of the Covenant, concerning the equality of the sexes, and article 23 concerning the family, the fact that the distinctions which had applied to foreign wives of Canadian citizens had been removed was to be welcomed. He asked whether there was any policy in Canada concerning feminist organizations. With regard to the protection of the family and its members, provided for in article 23 of the Covenant, it was surprising that, in the Province of Quebec, the marriageable age had been established at 14 years for a man and 12 years for a

woman. That age appeared to be rather young for genuine consent to be assumed, particularly on the part of the woman. He asked whether that measure had been adopted in the context of a population policy, and whether it was truly in the spirit of the Covenant.

38. With regard to the application of article 24, paragraph 2, he would like to know what was the situation of adulterine children: whether they took the name of their father or of their mother, and to what extent a child's right to a name was affected by the fact that he was an adulterine child.

39. In connexion with article 6, dealing with the right to life, he asked whether there was any legislation in Canada concerning termination of pregnancy. He would be glad if the Canadian Government would state at what moment it established the beginning of life and whether the voluntary termination of pregnancy was legal in Canada or was always an offence. He asked whether, in the special case of victims of rape, there were any measures providing that the victims were not obliged to submit to an unwanted pregnancy.

40. With regard to article 9, paragraph 2, he asked in what cases a warrant was essential for making an arrest and what formalities were required in order to obtain such a warrant. Referring to a case in which the Supreme Court of Canada had ruled that a police officer arresting a person without a warrant complied fully with the requirements of article 29 (2) of the Criminal Code if he informed the person concerned that he was being arrested under an enforceable warrant, he asked whether that was not a somewhat restrictive interpretation of article 9, paragraph 2, of the Covenant. In his view, it was not enough to inform a person that an arrest warrant had been issued against him; he must also be informed of the reasons for his arrest. He would like to know whether the Canadian Government did not consider that legal provisions were essential in that area.

41. Turning to article 10, he drew attention to the fact that among the penalties that could be imposed by the chairman of the disciplinary board of a penitentiary institution was that of solitary confinement. In his view, that measure should be distinguished from "loss of privilege" or "forfeiture of remission" which were the other applicable penalties, since it was a special kind of imprisonment. He therefore wondered whether a detainee condemned to solitary confinement should not have the opportunity to appeal. The Canadian representative had partially replied to that question by indicating that the courts were competent to intervene in certain cases.

42. Under article 14, paragraph 3, of the Covenant, everyone charged with a criminal offence should have the right "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him". He asked what happened in the case of persons who spoke neither of the two official languages of Canada, namely, English and French. He observed that, in its report, the Canadian Government admitted that the right to be tried without undue delay was not recognized in federal law. He would therefore like to know whether there were any legislative provisions designed to ensure that no criminal procedure was prolonged indefinitely and, if so, whether those provisions applied equally to all categories of offence.

43. He pointed out that even if, according to the Canadian Government, "it is doubtful that Parliament would enact legislation contravening the provisions of article 15", that possibility could not be totally excluded. He wondered, therefore, if it would not be advisable to include provisions expressly prohibiting the enactment of retroactive laws in one of the legislative instruments concerning human rights in force in Canada.

44. He would like to know whether telephone tapping was strictly controlled in Canada as it was in other countries. It would be useful to state who was empowered to authorize the interception of telephone communications by electromagnetic, acoustic, mechanical or other device. He wondered whether it was the responsibility of a ministry, whether telephone tapping could be authorized for a specific period and, if so, what formalities were required.

45. Regarding article 18, he would like the Canadian Government to confirm that freedom of religion was effectively guaranteed. He noted in connexion with the Lord's Day Act adopted by the Canadian Parliament that "the purpose of this Act is to preserve the holy character of the most important day of the week for Christians", but that "it does not affect or restrict the right of non-Christians to have, and practise, their religion". He wondered, however, whether the emphasis on the holy character of Sunday for Christians did not introduce a discriminatory element and whether it might not be better merely to state that Sunday was a holiday for all citizens.

46. The report provided little information on how the right of peaceful assembly was exercised. He would like further particulars on that subject: whether it was a regulated right, whether it was necessary to obtain authorization before holding peaceful meetings or whether it was an absolute right, and whether the organizers of a peaceful meeting could appeal against refusal of the right to hold such a meeting.

47. Mr. HANGA thanked the Canadian Government for the comprehensive report it had submitted. It was clear from the report that by acceding to the Covenant, the Canadian Government had undertaken, at the international level, to respect and ensure the rights recognized in the Covenant, but it seemed that at the provincial level the law did not always give effect to all the provisions of the Covenant; he would like fuller information on the subject. It also appeared that in Canada an individual could not base a recourse on the Covenant itself, but could resort to the remedies provided in Canadian law to have his rights respected. He wondered what happened in cases where Canadian law did not offer any remedy. He would also like to know which provisions took precedence in the event of contradiction between the provisions of the Covenant and those of provincial legislation. It was stated in the report (page 7, paragraph (b)) that "in all cases where the common law or Canadian statute law, does not, directly or by interpretation, prohibit a practice regarded as contrary to the Covenant, such practice is lawful"; he wondered whether it should be concluded from that that a practice contrary to the Covenant might be admissible.

48. With regard to article 2, paragraph 3, he would like to know whether there was any administrative remedy under Canadian law in the case of violation of the rights recognized in the Covenant. He noted that federal public servants were liable to criminal and civil proceedings for wrongful acts committed in the performance of their duties and wondered whether, in the event of a public servant being insolvent, the plaintiff could appeal to administrative or judicial courts.

49. Regarding the elimination of all discrimination on the basis of sex, he would be glad if the Canadian Government could provide information on the role of women in political, legal, diplomatic and other affairs.

50. With reference to the section of the report dealing with the Canada Labour Code, it was important to know the criteria on which the civil liability of employers was based. If that liability was based on the employer's fault, the employee would have to prove that fault, but if it was based on the notion of risk, he would only have to report the damage suffered. He wondered whether there were any special courts to deal with labour disputes.

51. In respect of the way in which the Canadian Government implemented the provisions of article 7 of the Covenant, he would like to know whether the transplant of human organs was regulated by law, by administrative rules or by practice.

52. It was stated in the report that "an employee is free to choose his employer"; he wondered what was the role of the unions in recruitment and in collective bargaining.

53. It would be useful if the Canadian Government could indicate what was the status of conscientious objectors, whether they were bound by law to perform national service and, if so, what kind of service.

54. He noted that the right to stand trial within a reasonable time was not recognized in Canadian federal law. He asked what was the jurisprudence on the subject and whether the accused could, for example, invoke "breach of procedure" in order to be brought to trial within a reasonable time.

55. Regarding the possibility of a person unlawfully arrested suing for damages, he would appreciate it if the Canadian Government would indicate whether it was a question solely of material compensation or whether a person whose rights under the Covenant had been infringed had legal means of obtaining moral redress.

56. He noted that the two laws under which jurisdiction over correctional institutions was shared between Parliament and the provincial legislatures dated back to 1867 and 1871. He wondered whether any more recent legal and administrative provisions had been adopted to supplement those laws.

57. In connexion with the implementation of article 11 of the Covenant, it was stated in the report that "a person who has become bankrupt is, nevertheless, liable to imprisonment if he has attempted to defraud his creditors". He thought that it should be made clear whether it was the actual fraud or only the attempt to defraud that was an offence.

58. In connexion with article 14, he would like further information on how judges were appointed, in what circumstances proceedings were held in camera, and whether there were any laws corresponding with the provisions of the Covenant.

59. It was stated in the report of the Government of Canada that "the rule that a person may not be convicted twice for the same offence may, however, not apply if Parliament so provides" (page 71). He wondered whether that provision was consistent with article 14, paragraph 7, of the Covenant.

60. Similarly, since there was no provision in Canadian law which expressly prevented Parliament from enacting retroactive legislation, it was permissible to question whether on that point the legislation in force in Canada was really consistent with article 15 of the Covenant. He would like to know whether the possibility of enacting retroactive laws related solely to criminal law or to civil law as well, since in the latter event a new law could annul acquired rights.

61. On the question of legal status, he would like to know whether in Canada the old principle whereby a child conceived was considered to be born was recognized in the law of inheritance and in criminal law. While legal status normally ended with natural death, some legal systems recognized the notion of civil death. He asked whether that was so in Canadian law.

62. He did not think that the section of the report of the Government of Canada concerning implementation of article 20, paragraph 1, was very clear. It stated that there was no law prohibiting propaganda in favour of war and that an individual or organization could therefore legally disseminate such propaganda, but that the Government of Canada could not do so without breaking the commitments it had made by signing the Covenant. There seemed to be a legal contradiction there, since the provisions of article 20, paragraph 1, of the Covenant applied not only to Governments but to every citizen of a country.

63. Regarding article 22, dealing with the right to form trade unions, he would like to know whether trade unions could play a political role in the institutional system of Canada, for example, by advocating amendments to existing laws or the adoption of new laws.

64. He shared Mr. Lallah's surprise that in one Canadian Province marriage was permitted at the age of 14 for men and 12 for women and wondered whether those provisions were based on biological facts. He noted that in some Provinces the minimum age of marriage had been raised and he wondered whether that was the current trend in Canada. With regard to the notion of marriage, under Canadian law "evidence that a person has cohabited with a person of the opposite sex or has in any way recognized that person as being his spouse is, in the absence of any evidence to the contrary, proof that they are lawfully married". He fully supported that interpretation, which seemed to him highly practical from the legal and ethical points of view and which made it possible to settle such problems as the legitimization of natural children, rights of inheritance and so forth. He would like to know what were the administrative and legal procedures for legitimizing natural children.

The meeting rose at 1.10 p.m.