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SESSIONAL WORKING GROUP ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

SUMMARY RECORD OF THE 10th MEETING

Held at Headquarters, New York,
on Friday, 18 April 1980, at 10.30 a.m.

Chairman: Mr. NAGY (Hungary)

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The meeting was called to order at 10.55 a.m.

CONSIDERATION OF REPORTS SUBMITTED IN ACCORDANCE WITH COUNCIL RESOLUTION 1988 (LX) BY STATES PARTIES CONCERNING RIGHTS COVERED BY ARTICLES 6 TO 9 OF THE COVENANT (continued)

Report of the Federal Republic of Germany (E/1980/8/Add.11)

1. Mr. BAUMANN (Federal Republic of Germany), introducing the report, said that the Federal Republic of Germany saw itself as a social State governed by the rule of law and considered that social justice could not be divorced from human dignity. The social security system of his country had been the first comprehensive social security system in the world and had influenced similar legislation in other countries. Naturally, the system was constantly being amended to take into account changing conditions. The individual's freedom to choose his occupation and place of work and to select how he worked was guaranteed under the Constitution. However, the latter did not contain any provision which might be considered to make labour compulsory.

2. To ensure social justice it was necessary to keep a watchful eye all the time on general economic development trends which often favoured one group over the others. The social system was designed to counterbalance such tendencies. The employment policy of his country was designed to neutralize the effects of unemployment, not only through direct assistance but also by financing public works programmes and providing horizontal and diagonal retraining programmes. However, the Government had purposely refrained from regulating every aspect of social life and the individual was free to determine how and where he worked. Working conditions and wages were regulated by collective agreements which, on the workers' side, were usually negotiated by unions that were totally independent from the State. Workers participated in the workers' councils in factories and businesses and were represen on the boards of large and medium-sized enterprises in the statutory social rance carriers and in the social and labour courts (as judges).

3. There were approximately $2.5 million foreign workers in the Federal Republic of Germany. Alien citizens working legally in the country enjoyed the same treatment as regards employment, social participation and social security as did German nationals, provided they had spent a certain number of years in the country (that requirement also applied to nationals). There were approximately 800,000 unemployed and approximately 300,000 vacant jobs. Experience had shown that society in the Federal Republic of Germany seemed able to solve all the major modern social problems to the satisfaction of the majority of the inhabitants of the country.

4. Mr. SALMENPERÄ (Finland) said that it appeared from the report that there were two separate systems for policing the safety measures - the factory inspectors and the technical supervisory officers of the statutory insurance carriers (E/1978/8/Add.11, p.15). He wondered what the exact role of the insurance carriers was and how the two systems operated side by side.

5. Mr. DIA (Senegal), noting that the representative of the Federal Republic of Germany had stressed the measures which the Government had taken to guarantee social justice, drew attention to the report of the ILO Committee of Experts on the Application of Conventions and Recommendations (E/1979/33) which stated that additional information would be desirable on the measures which would ensure equality of opportunity for promotion in the public service (E/1979/33, p. 76). He also pointed out, in connexion with protection against discrimination on the basis of political opinion, that the Committee of Experts had requested clarification of the criteria applied in connexion with the requirement of loyalty to the Constitution for admission to the public service (E/1979/33, p. 75). He asked whether the tripartite Committee which had been considering the matter had finished its work and, if so, what conclusions it had reached.

6. Ms. RICO (Spain), referring to the statement to the effect that members of the armed forces, the police, civil servants and judges were free to join trade unions (E/1978/8/Add.11, p. 21) requested further information regarding such unions, particularly unions for members of the armed forces.

7. Mr. ABDUL-AZIZ (Libyan Arab Jamahiriya) drew attention to the statement to the effect that the principle of equal treatment was recognized by the labour courts as a general unwritten principle of labour law (E/1978/8/Add.11, p. 17). He asked whether there were any guarantees to ensure that the unwritten principle was, in fact, observed.

8. Mr. SVIRIDOV (Union of Soviet Socialist Republics) noted the annexes to the report listing additional information that was available. Referring to the right to choose one's occupation, place of work and place of training guaranteed by the Basic Law (E/1978/8/Add.11, p. 3), he asked whether there was any limitation of that right for any reason and whether there was legislation providing for the right to work and to social welfare. It would be useful to know whether unemployment was on the way down and what measures the Government was taking to ensure that the inhabitants of the country were able to enjoy the right to work and to choose a profession and place of work without interruption.

9. According to the report, although the majority of workers were covered by collective agreements, there were some who were not thus covered. He asked whether there were any provisions in the legislation regulating labour and social security for categories of workers who were not covered by collective agreements. If no such provisions existed, he asked how the problem was handled.

10. He drew attention to the statements that the recruitment ban on new workers had been maintained (E/1978/8/Add.11, p. 3) and that children of non-nationals from outside of the European community had for the first time been included in the training promotion scheme on certain conditions (E/1978/8/Add.11, p. 4) and asked whether there was not some contradiction between those statements and the statement that foreign workers living in the Federal Republic of Germany enjoyed all the advantages and privileges of German labour law (E/1978/8/Add.11, p. 6). Finally, he asked whether a foreigner needed a work permit.

11. Mr. AL-KAISI (Iraq) took note of the statement by the representative of the Federal Republic of Germany to the effect that the 2.5 million foreign workers in his country were not discriminated against. He welcomed the news that the Federal Republic of Germany was about to embark on a programme designed to secure the political and cultural integration of its resident foreign workers and asked whether the Working Group could have more details on the subject.

12. Mr. SAMSON (International Labour Organisation) drew attention to the ILO report of the Committee of Experts on the Application of Conventions and Recommendations (E/1979/33). As had been pointed out, the report stated that a representation under article 24 of the ILO Constitution was pending before the Governing Body with respect to alleged non-observance of the Discrimination (Employment and Occupation) Convention. The matter had been referred to a tripartite committee whose report the Governing Body had considered in November 1979. The question raised by the representation related to those conditions of access to the public service involving the obligation of loyalty to the Constitution. According to the representation the procedures for the verification of that obligation could be applied in such a manner as to have the effect of rejecting candidates on the basis of their political opinions, on a vast scale.

13. In its replies to ILO, the Government of the Federal Republic of Germany had provided detailed information concerning the application of the procedures, giving figures which indicated that the number of cases of inquiries and rejection was not as large as had been alleged. Furthermore, in the cases mentioned in the representation, candidates had been rejected not simply on the grounds of their political affiliation but because of militant activities that were not compatible with the obligation of loyalty to the Constitution. The Government had drawn attention to the new rules for the verification of loyalty to the Constitution for the federal administration that had entered into force in April 1979.

14. The tripartite Committee had concluded that the new regulation should secure the required respect for the guarantees and limit investigation to special cases in which there were serious and justified doubts regarding the reliability or restraint which might be expected from applicants for employment in the public service, with particular reference to the nature of the posts which they were to occupy. In view of the recent entry into force of the new principles, their effect would depend on their practical application. That would be subject to examination in accordance with established ILO procedures for examining the effect given to ratified Conventions.

15. The Governing Body had approved the Committee's recommendation that it should take note of the report and declare the procedure closed. The Committee of Experts had recently reviewed the practical application of the new regulations at the federal level and the new situation at the level of the Länder (which had been able, within the framework of their administrative autonomy, to apply more stringent principles and had asked the Government to provide further information on the two issues in its future reports.

16. Mr. BAUMANN (Federal Republic of Germany), replying to the question raised by the representative of Finland, said that accident insurance was a statutory part of social insurance; accordingly, the insurance was based on a statute. The carrier of the statute was responsible under the statute for seeing to it that enterprises observed the general provisions of the statute. If the insurance carriers did not carry out the supervision it would have to be done by an official body.

17. The question raised by the representative of Senegal concerning the requirement of loyalty to the Constitution for admission to the public service had largely been answered by the observer for the International Labour Organisation. The representation on that matter under article 24 of the ILO Constitution (E/1979/33, p. 75, second para.) had been dealt with and the procedure had been concluded. In the Federal Republic of Germany, the private sector was considerably larger than the public sector and each citizen was free to choose which sector he wished to work in. The fact that anyone who took up employment in the public sector had to take an oath on the Constitution did not mean that employees in the public sector were not free to express their own opinions. The whole issue had been politicized beyond all proportion.

18. With regard to the question raised by the representative of Spain concerning trade unions for members of the armed forces and civil servants (E/1978/8/Add.11, p. 21), he said that trade union activities had never been limited to the private sector. The system whereby employees in the public sector were free to form associations in order to safeguard and promote working and economic conditions had proved quite successful. The only restriction in that respect was that public officials did not have the right to strike.

19. With regard to the question raised by the representative of Libya concerning the principle of equal treatment, although it was true that that principle had not been spelled out in the narrow context of labour law, it was one of the principles guaranteed in the Constitution and thus affected all legislation. The labour courts therefore regarded it as a key principle upon which all social legislation was based.

20. Turning to the questions raised by the representative of the Soviet Union, he said that the reference materials listed in the annex to the report (E/1978/8/Add.11), were available for consultation in the files of the Secretariat. Virtually all of the materials listed in the report were available in English and could be obtained upon request.

21. With regard to the question concerning the basic right of the individual to choose his occupation, place of work and place of training, which was guaranteed in article 12 of the Basic Law (E/1978/8/Add.11, p. 3), there were no restrictions on that right for it was believed that the machinery of the market economy should regulate the labour market.

22. With regard to the question concerning social security benefits, there was extensive legislation - over 200 statutes - covering the vast field of social legislation. A new Social Code was being drawn up in order to provide a clear

(Mr. Baumann, Federal Republic of Germany)

over-all picture of the situation. Parts of it had already been prepared, and the remainder was currently under preparation. All persons were eligible to receive social security benefits, even if they were not employed.

23. Concerning the reduction in the level of unemployment, the Government had taken many steps to combat the phenomenon of unemployment, which was a result of trends in the world economy not a result of the structure of society in the Federal Republic of Germany. His Government had never sought to achieve full employment by reducing the number of foreign workers in the country. Currently, 800,000 persons were unemployed and 300,000 positions were vacant. Those figures should be seen in the context of seasonal fluctuations and of normal fluctuations in a free market economy. His Government was not in favour of compulsory employment and preferred to provide unemployed persons with assistance through, inter alia, retraining programmes. Such programmes had proved quite successful, and unemployment was no threat to the stability of the Federal Republic of Germany.

24. With regard to the question concerning collective agreements, persons employed in entities that did not participate in the collective bargaining process were bound by such agreements.

25. With regard to foreign workers, although official hiring of new foreign workers had stopped since the start of the economic recession, foreign workers continued to enter the country. At the same time, other foreign workers had returned to their home countries. His Government had not taken any compulsory measures, either directly or indirectly, to reduce the number of foreign workers. The 2.5 million foreign workers currently in the country would probably remain permanently together with their families (accounting for a further 4.5 million people). There was no discrimination with respect to the so-called second generation of foreign workers. The children of foreign workers were subject to compulsory education; instruction was in German, but such children were also entitled to parallel education in their own language and they had the right to receive instruction in the history, geography and culture of their home country.

26. With regard to the question of the integration of foreign workers in the Federal Republic of Germany, which had also been raised by the representative of Iraq, he said that aliens who had completed a certain number of years of legal residence in the Federal Republic of Germany were on an equal footing with German nationals, with the sole exception that they did not have the same political rights. His Government was taking steps to integrate the workers and their offspring into German society, provided that they wished to integrate. They were entirely free to retain their own cultural identity if they so wished.

Report of Denmark (E/1978/8/Add.13)

27. Mr. ULRICHSEN (Observer for Denmark), introducing the report submitted by his country (E/1978/8/Add.13), said that new temporary legislation designed to give chronically unemployed persons a real opportunity to find employment had come into effect in October 1978. The aim was to accustom such persons to working once again and thus make it possible for them to be channeled back onto the labour market.

(Mr. Ulrichsen, Observer, Denmark)

28. He drew attention to the directive of the European Economic Community of 9 February 1976 on the Implementation of the Principle of Equal Treatment between Men and Women (E/1978/Add.13, p. 4) and said that Parliament had passed new legislation covering a whole range of relevant matters, including advertising of offers of employment.

29. Mr. ABDUL-AZIZ (Libyan Arab Jamahiriya) asked for an explanation of the conditions relating to nationality governing entitlement to a national pension (E/1978/8/Add.13, p. 6).

30. Ms. RICO (Spain), noting that the Danish Government had felt it necessary to take special measures to deal with the unemployment problem in 1978, asked how serious the problem was in fact.

31. Mr. SALMENPERÄ (Finland) asked why single women received a national pension at a different age from married women and men. Noting that survivor's benefits were payable, as in Finland, only to women, he asked whether the Government had any plans to extend the benefit to widowers.

32. Mr. VOLLERS (Federal Republic of Germany) drew attention to the comment in the ILO report (E/1979/33, p. 65) to the effect that members of the Danish armed forces and police enjoyed the right to organize. He asked whether they were also entitled to strike and, if not, under what conditions the organizations representing the police and armed forces negotiated salaries and working conditions for their members.

33. Mr. SVIRIDOV (Union of Soviet Socialist Republics) asked whether Danish legislation contained specific provisions on the right to work and guarantees of the exercise of that right. He also asked when the EEC directive of 9 February 1976 (E/1978/8/Add.13, p. 4) had been given the force of law in Denmark. Noting that the weekly working hours were not regulated by legislation, he wondered how the "general rule" of a 40-hour work week referred to in the report was enforced.

34. Mr. SAMSON (International Labour Organisation) pointed out that the report of the ILO Committee of Experts on the Application of Conventions and Recommendations had been prepared some time after the report of Denmark and therefore referred to some legislation not mentioned in that report. He drew attention to the request for additional information on the criteria and procedures adopted for reaching decisions regarding promotion in employment (E/1979/33, p. 64). As explained in the ILO report (E/1979/33, para. 18), provisions designed to eliminate discrimination on certain specified grounds were generally not defined sufficiently broadly to ensure that decisions concerning promotions were based solely on the criteria of seniority and competence mentioned in the Covenant.

35. Finally, he pointed out that the Committee had indicated, at the end of the section on Denmark (E/1979/33, p. 67), the manner in which it had tried to deal with the implementation of the Covenant in the Faroe Islands and Greenland.

36. Mr. ULRICHSEN (Observer for Denmark), replying to the questions raised in the Working Group, said that nationals of States other than Denmark were entitled to a Danish national pension by virtue of a series of bilateral and multilateral treaties under which Danish nationals enjoyed comparable privileges in the other Nordic countries, the member States of EEC, Cyprus, Greece, Switzerland and Turkey. He did not, however, know what provision was made for foreign workers who had resided in Denmark for many years before retirement, although it seemed certain that some provision was made.

37. At the end of February 1980 unemployment in the country stood at 182,000, or 6.9 per cent of the total work force. The level could be expected to fluctuate over the course of the year. Unemployment was certainly higher than in Norway, where the oil industry provided many job opportunities: Denmark, too, was looking for oil but so far without success. One of the major aims of the legislation introduced in 1978 had been to help the long-term unemployed to get back into the habit of working, since those who were without employment for a long time became almost handicapped as a result.

38. The difference between the pensionable age of single women and that of married women and men must be attributed to positive discrimination in favour of women. The same was true of the widows' pension: whereas it might be best for those widowed under the age of 45 to go out to work, it was felt that women widowed after that age probably needed special protection, since they were likely to have spent most of their lives in the home environment. Similar provisions for men had been discussed, but no action had yet been taken. Widowers with children received special attention, but that was regarded more as a benefit for the children than for the widower.

39. The police and armed forces did indeed have the right to organize, but it was felt that the special duties of a civil servant were incompatible with participation in a strike. In certain cases, groups of civil servants had chosen to disregard that sentiment. Such things were inevitable in a free society, but the public had found it difficult to accept, even so. Although police officers and the armed forces were not allowed to strike, some police officers had begun to question that provision and there had been a remarkably high incidence of influenza in the Danish police force in recent weeks.

40. Civil servants' conditions of work and salaries were established in the normal way through discussions between the organizations representing them, and the employer. The only difference between civil servants and industrial workers was that the organizations representing them could not apply the legal pressure of a strike threat if they were not pleased with the offer made by the employer.

41. Turning to the questions raised by the USSR representative, he explained that Denmark believed in letting market forces govern the right to work to some extent, rather than dictating the desirable level of employment in the economy. It was for trade unions and other such organizations to ensure that the right to work was upheld. However, if a person believed his right was being restricted, he could take the matter to court; the Danish courts had, in a series of decisions, established limits to an employer's right to turn down an applicant on such grounds as refusal to join the trade union predominant in the enterprise concerned.

(Mr. Ulrichsen, Observer, Denmark)

42. The EEC directive of 9 February 1976 on the implementation of the principle of equal treatment between men and women had entered into force in Denmark on 12 April 1978. An Equal Opportunities Council had been set up within the Office of the Danish Prime Minister to deal with all matters relating to women's equality and to check up on employers who did not observe the regulations.

43. Normal hours of work were not stipulated by legislation in Denmark because it was believed that they, like other working conditions and salary levels, should be subject to collective bargaining. In practice, the norm was fairly rigidly defended by trade unions, and special-interest groups could be relied on to draw attention to areas where working hours exceeded 40 in any one week and to indicate that that was an unacceptable situation. Some legislative protection was provided. For example, it was a statutory requirement that a worker must have at least 11 hours rest between any two periods at work.

44. The CHAIRMAN said that the Working Group had concluded its consideration of the report of Denmark.

The meeting rose at 1.05 p.m.