CCPR

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Distr.
GENERAL

CCPR/C/SR.237
29 July 1980

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Tenth session

SUMMARY RECORD OF THE 237TH MEETING

Held at the Palais des Nations, Geneva,
on Friday, 25 July 1980, at 10.30 a.m.

Chairman: Mr. KOULISHEV

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GE.80-16366

The meeting was called to order at 11 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 3)

1. Mr. ANABTAWI (Secretary of the Committee) said that since the previous session, no new reports under article 40 of the Covenant had been received. Reports due in 1977 had not been received from Jamaica, Lebanon, Rwanda and Uruguay. In conformity with the decision taken by the Committee at its 219th meeting, a fourth reminder had been sent to Jamaica, Rwanda and Uruguay on 17 April 1980. However, it had been agreed that a further reminder should not be sent to Lebanon at that time.

2. Initial reports due in 1978 had not been received from Guyana, Panama and Zaire. In conformity with the same decision of the Committee, a second reminder had been sent to those States parties on 23 April 1980. Initial reports due in 1979 had not been received from the Dominican Republic, Guinea, Portugal and Austria. By virtue of the same decison of the Committee, a first reminder had been sent to those States parties on 25 April 1980.

3. Reports due in 1980 before 1 August had not yet been received from the Netherlands, Trinidad and Tobago, New Zealand, the Gambia and India. The initial reports of Morocco, Japan and Iceland were due on 2 August, 20 September and 21 November 1980 respectively. Notes verbales had been sent in due time to all those States informing them of the date by which they were expected to submit their reports under article 40 of the Covenant.

4. Additional information promised by States parties during the second, third, fourth and fifth sessions had not been received from the Libyan Arab Jamahiriya, the Federal Republic of Germany, Jordan, Madagascar, Mauritius and Yugoslavia. At its eighth and ninth sessions the Committee had taken no decisions on the question of the delay in receiving the additional information concerned.

5. In compliance with the decision taken by the Committee at its 219th meeting, notes verbales had been sent to Chile and Iran requesting them to submit the new reports promised by their representatives at the sixth session of the Committee. The Secretariat had received a note verbale from the Permanent Mission of Iran informing it that, for the reasons explained by the representative of Iran at the 149th meeting of the Committee and in view of the need for the newly elected Iranian Parliament to review existing Iranian legislation regarding the enforcement of the rights recognized in the new Constitution, the Government of Iran was not yet in a position to submit its report immediately to the Committee but would do so as soon as the necessary measures had been taken.

6. The initial reports of Barbados, Peru, Kenya, the United Republic of Tanzania, Mali, Venezuela and Italy were pending consideration by the Committee, as were supplementary reports from Denmark and Norway. To date, 34 reports had been considered by the Committee, as well as additional information from Cyprus, Equador, Finland, Syria, Sweden, the United Kingdom and Hungary.

7. There were now 62 States parties to the Covenant and 23 States parties to the Optional Protocol. Since the previous session of the Committee, one more country, Sri Lanka, had acceded to the Covenant - on 11 June 1980 - and had made the declaration under article 41. On 12 June 1980 the Secretary-General had

received a communication from the Government of the Netherlands notifying him of its objection to the reservation made by the Government of Trinidad and Tobago upon its accession to the Covenant.

8. Mr. PRADO VALLEJO said that it was extremely worrying to note that so many States parties were in default with regard to the submission of their reports. Several reminders had been sent, but to no effect. The Committee should therefore apply rule 69 of the rules of procedure and include a reference to the delays in its annual report.

9. Mr. BOUZIRI said he agreed with Mr. Prado Vallejo. Some developing countries might have technical problems in preparing their reports, but the Committee could assist them to do so if they so desired. Four years was an extremely long time for a country to be in default. It would therefore be appropriate for the Committee to include in its report a reference to the fact that the States parties concerned had not respected their obligation under the Covenant. To say nothing would merely encourage other States parties not to submit reports.

10. Mr. LALLAH said that, when the Committee had submitted its previous report to the General Assembly, 10 States parties had been in default since 1977. Now only four were left; one of them, Lebanon, was in a special situation. The Committee should express regret that the three remaining States parties had not yet submitted their reports, ask them whether there was anything the Committee could do to help them, and enclose the guidelines and copies of other reports for reference. The Chairman could be requested to contact their Permanent Representatives again.

11. An aide-mémoire could perhaps be sent to those States parties which had been in default since 1978, and the Chairman could be requested to contact their Permanent Representatives in New York.

12. Mr. HANGA expressed concern that 19 States parties - almost one third of the total - had not submitted their reports in time, although it should be borne in mind that some of them might have had difficulties in preparing the material. The Committee should proceed on a case-by-case basis, since other countries might find themselves in a situation similar to that of Lebanon. The reminders should therefore be differentiated. The defaulting States parties should be asked whether they needed any help with the preparation of their reports or whether the failure to submit them was due to socio-economic reasons or to changes in legislation.

13. Mr. SADI said that the Committee should apply whatever pressure it could. Failures to submit reports should be publicized. However, the same treatment should be applied to all States, since the application of different standards could lead to difficulties. Lebanon and Iran were exceptional cases and should be treated accordingly. The Committee appeared to have established a standard procedure of four reminders, and consequently two further reminders should be sent to those States which had been in default since 1978. To go beyond four reminders would be ridiculous.

14. Mr. BOUZIRI said that it was for States parties to notify the Committee of any special circumstances preventing them from submitting reports, as in fact Iran had done. The Committee should take a firm line with those countries which had been in default since 1977, except for Lebanon, and make it clear that they were failing to comply with the provisions of the Covenant.

15. Sir Vincent EVANS said that a pattern had developed with regard to the action to be taken in the case of States parties in default under article 40 of the Covenant. First, a series of reminders was sent; then, where the delay was of two years or more, the Chairman approached the Permanent Representative of the State concerned and delivered an aide-mémoire. Thitherto, the pressure exerted had been effective to some extent, since a number of State parties in default had finally submitted their reports. The Permanent Representatives of all four States parties which had been in default since 1977 had been contacted by the Chairman, who had handed over an aide-mémoire. That process should be repreated in the case of those States parties which had been in default since 1978.

16. The four States parties which had been in default since 1977 should be listed, one below another, in a separate paragraph of the Committee's report, so as to achieve prominence. It might also be possible to request the General Assembly to call upon the States parties concerned, except Lebanon, to comply with their obligations under article 40 of the Covenant. A sentence recognizing the special stiuation in Lebanon could be added.

17. Mr. TOMUSCHAT said that he agreed with other members that ways should be devised to strengthen the Committee's criticism of those States which were late in submitting reports, especially those States whose reports had been due in 1977.

18. The note verbale from the Iranian Government to which the Secretary had referred and in which that Government stated that the Parliament had not yet had an opportunity to review legislation in the light of the new Constitution contained a fundamental error. Reports on the implementation of human rights should not be limited to a description of legislation but, as stated in article 40 (2), should indicate the factors and difficulties, if any, affecting the implementation of the Covenant. Protection of human rights was all the more important in a situation of emergency, and in that connexion, article 4, especially in its paragraph 2, was a cornerstone of the Covenant. Since November 1979 over 50 persons had been held hostage in Iran in breach of that country's obligations under the Covenant. The Committee urgently needed a report from that State party.

19. Moreover, article 40 did not actually specify that a report should be in writing, even though the Committee had normally interpreted the article in that way. If a State was labouring under difficulties, it should send a representative to provide oral information on the situation in the country and to explain the Government's conduct.

20. The case of Iran differed from that of Lebanon: the Government of Lebanon was obviously not in control of the country, but the Government of Iran was. Therefore, Iran should be requested to provide information, at least in oral form, on the situation regarding the implementation of the rights listed in article 4 (2), which could not be suspended even in a time of emergency.

21. Mr. OPSAHL said that the situation regarding the submission of reports was fairly satisfactory. He suggested that, in line with previous practice, reminders should be sent to States parties whose reports were due in 1980. He agreed that publicity should be given in the Committee's annual report both to those States whose reports had been due in 1977 and to those whose reports had been due in 1978: an aide-mémoire, as before, would be sufficient for those whose reports had been due in 1979. That procedure had been applied to States parties whose reports had been overdue in 1979 and six out of the 10 had responded.

22. He hesitated to accept the suggestion that the General Assembly should be requested to mention in a resolution those parties which had failed to submit reports, since a majority of the States represented in the General Assembly had not ratified the Covenant and they should therefore not be asked to sit in judgement over those which had. He suggested that a letter should be sent to the meeting of States parties to be held in September to elect new members of the Committee, indicating the parties which had not reported. The meeting might decide to take appropriate action.

23. Mr. LALLAH said that he doubted whether the suggestion that the States defaulting in the submission of their reports should be set out in a list was appropriate to the usual format of reports to the United Nations General Assembly. Noting that chapter IV of the previous year's report (A/34/40) had subheadings "A. Submission of reports" and "B. Consideration of reports", he thought that it might be possible to include a further subheading entitled "Non-submission of reports". However, it was important not to create bad feeling between States parties and the Committee. He agreed with Mr. Opsahl that it might be useful to ask the forthcoming meeting of States parties to decide on the action to be taken in the matter.

24. He did not agree with Mr. Tomuschat's views regarding Iran. It was indicated in paragraph 60 of the previous year's report (A/34/40) that Iran had submitted both initial and supplementary reports and that a representative of the new Government had voluntarily appeared before the Committee to apprise members of the new situation in his country. He was reluctant to call upon Iran to justify its conduct, for the Committee had already agreed that its role was not to sit in judgement and to condemn.

25. In the case of Lebanon, he believed that the Chairman of the Committee had received a message and asked if the Secretary could read it out.

26. Mr. DIEYE, recalling that at its ninth session the Committee had commented on the brief character of the reports submitted by Kenya, Mali, Peru and Tanzania, inquired whether the guidelines had been sent to those countries as suggested.

27. While agreeing that a prudent line should be adopted in the matter of sending reminders, he thought that they should be more strongly worded and that four reminders were enough. Although aware of the difficulties encountered by some developing countries in producing their reports, he felt there was no need for more than three years' grace.

28. He agreed that Lebanon was a special case and that the Committee should not be too severe on that country. He also agreed, for the reasons expressed by Mr. Opsahl, that it would be better not to ask the General Assembly to refer to the defaulting countries in a resolution, but that they should be mentioned in the Committee's annual report and that the question of States whose reports had been due in 1977 and in 1978 should be referred to the meeting of States parties to be held in September. States parties whose reports had been due in 1979 should be sent a reminder along the usual lines.

29. While agreeing with Mr. Tomuschat's comments on Iran, he felt the case was an exceptional one. Nothing could excuse violations of human rights and the

Committee must not close its eyes to the situation in that country even though a representative had visited the Committee and offered an explanation. The Committee would be quite entitled to ask the Iranian Government about the human rights situation, but if Iran was requested to make a special report, other States parties which were undergoing a revolutionary process should be asked to do so also. The Committee should reflect carefully before making an exception in the case of Iran.

30. Mr. ANABTAWI (Secretary of the Committee) read out the letter from the Permanent Representative of Lebanon to the United Nations, dated 17 July 1979, in which he had conveyed his Government's regrets concerning the delay in submitting its report, a delay attributable to the difficulties which his country had been experiencing, and had expressed the hope that it would be able to submit a report as soon as possible. The substance of the letter was reflected in paragraph 64 of document A/34/40.

31. The CHAIRMAN said that, as the situation in Lebanon seemed to be unchanged, the Committee should, in his view, allow that country the same latitude as before.

32. Mr. PRADO VALLEJO said that it appeared that the Committee was reaching a consensus. All members seemed to agree that the countries whose reports had been due in 1977 should be mentioned in the Committee's report, and he supported Mr. Lallah's suggestion as to the form of that reference. Participants in the General Assembly could comment on the report if they so desired. He also agreed that latitude should be allowed to Lebanon, and that an explanation similar to that included in the previous year's report should be given.

33. The case of Iran should be given careful study before a decision was taken on it.

34. Mr. Bouziri's suggestion that the Committee should provide assistance to countries which were having difficulties in preparing their reports was a constructive one. The Committee should be more active and not just send reminders. He wondered whether a member of the Secretariat could visit countries which were having difficulties or whether there were insufficient funds available for that purpose.

35. Mr. BOUZIRI said that he hoped that Mr. Lallah would be able to find a formula which would adequately draw attention to the States parties whose reports had been due in 1977 and agreed with Mr. Opsahl that those whose reports had been due in 1978 should be listed also. Like Mr. Opsahl, he had doubts as to whether they should be mentioned in a General Assembly resolution. He also agreed that Lebanon was a special case and that the Government of that country should be allowed more time to submit its report.

36. A decision on Iran should be postponed till later. There appeared to be unequivocal violations of human rights in that country, but he did not agree with Mr. Tomuschat that the Iranian Government was in complete control of the situation and felt it was in a position similar to that of the Lebanese Government. The President of Iran was not even free to chose his Prime Minister, for example. A letter should perhaps be sent to that country and a certain grace be allowed.

37. Mr. TOMUSCHAT said that the Committee must not be seen to be standing idly by when exceptional violations of human rights occurred in the territory of a State party. He agreed that all States must be treated equally and that no one State should be singled out in an arbitrary manner, but suggested that under article 40 (1) (b) the Committee could request supplementary information whenever it learnt that a given country was in an exceptional situation such as Iran's. The

Committee's rules of procedure could be amplified to indicate that such supplementary information might be sought. Any such supplementary report need not be an extensive one but should provide information on the implementation of articles 6, 7, 8 (1) and (2), 11, 15, 16 and 18, as provided for in article 4 (2), for those articles dealt with rights which were especially threatened in a revolutionary situation. The Committee should not act only in normal situations but should devise procedures for dealing with exceptional situations too.

38. Mr. OPSAHL endorsed Mr. Tomuschat's proposal that the Committee should make it its policy to request additional reports under article 40 whenever a situation arose which came within the purview of article 4 of the Covenant.

39. Sir Vincent EVANS also strongly supported the proposal.

40. The CHAIRMAN, summing up the discussion which had thus far taken place, said that although the position with regard to the submission of certain reports was somewhat disquieting, the picture was not entirely black. Six of the reports which had been awaited for the previous year had been submitted during the current year and only four reports were more than two years late. All Committee members had agreed that mention should be made of those four reports in the Committee's report and that, as in its report the previous year, reference should be made to the special situation in Lebanon. While the report should be phrased in fairly strong terms it should be in strict accordance with the Committee's rules of procedure.

41. A proposal had been made that the General Assembly's attention should be drawn to the situation regarding the reports due in 1977. Mr. Opsahl had outlined the objections to that proposal and had pointed out that while States Members of the United Nations and parties to the Covenant could take steps that they saw fit, it was not for the Committee itself to take such action.

42. Differing views had been expressed with regard to the reports due in 1978. However, he understood that there was general agreement that an aide-mémoire should be sent to those States whose reports were due in 1978 and a further reminder to those States whose reports were due in 1979.

43. Mr. GRAEFRATH endorsed the view that it was not for the Committee to involve the General Assembly in the matter. However, with regard to Mr. Opsahl's proposal that the question should be referred to the meeting of States parties to be held in September in New York, he pointed out that an attempt had been made to draw the attention of the meeting of States parties to problems arising in connexion with article 5 of the Optional Protocol and had produced no result.

44. Mr. LALLAH said that a list of States in default in the submission of reports since 1977 should be brought to the attention of the meeting of States parties in September. The Committee might even suggest that the meeting of States parties should draw the attention of the defaulting States to their obligations.

45. The CHAIRMAN suggested that the Committee should merely send to the September meeting a report on the status of submission of reports and the section of its annual report dealing with the matter, and leave it to the States parties to draw their own conclusions.

46. Mr. PRADO VALLEJO supported the views expressed by Mr. Graefrath and Mr. Lallah. He also endorsed Mr. Bouziri's proposal that some help from the Secretariat might be offered to States which encountered difficulties in drawing up their reports.

47. The CHAIRMAN said that there seemed to be general agreement that a letter regarding the status of submission of reports should be sent to the September meeting of States parties.

48. Mr. HOUSHMAND (Representative of the Secretary-General) said that the agenda for the meeting of States parties was flexible and would allow for the discussion of other items in addition to the election of members of the Committee. The correct procedure would be for the Chairman of the Committee to send a letter to the Chairman of the meeting of States parties; that communication would then be placed on the agenda.

49. Mr. OPSAHL said that the Committee should consider whether there were any other matters that it wished to bring to the attention of the meeting of States parties. He had in mind such topics as the election of women to the Committee and the publicizing by States of the provisions of the Covenant and of the Optional Protocol in their own countries.

50. Mr. SADI said he wondered about the propriety of a direct approach by the Committee to the meeting of States parties.

51. Mr. HOUSHMAND (Representative of the Secretary-General) said that various procedures were open to the Committee for bringing the matter to the attention of the meeting of States parties. One method would be for the Chairman of the Committee to send a letter to the Secretary-General requesting him to bring it to the notice of the meeting of States parties. There were, however, precedents for the other procedure proposed. The Chairman of the Committee on the Elimination of Racial Discrimination, for example, had addressed a letter to the Chairman of the meeting of States parties to the International Convention on the Elimination of All Forms of Racial Discrimination, and he thought that it would be quite proper for the Committee to follow a similar procedure.

52. Mr. HANGA said that the Committee had received a mandate from the States parties, and that it would be perfectly correct legal procedure for it to address a letter to those from whom it had received its mandate.

53. Mr. BOUZIRI said that he, too, believed that no objection could be raised on legal grounds if the Committee were to address a communication to the meeting of States parties, and that it would in fact be desirable for it to do so.

54. It was perfectly possible that bureaucratic delays in particular countries were at least partly responsible for the non-submission of certain reports. It would be helpful if the Director of the Division of Human Rights were able to visit countries and address himself directly to those responsible for the preparation of reports.

55. Mr. LALLAH said that the letter to be addressed by the Chairman of the Committee to the Chairman of the meeting of States parties should inform the latter that delays in the submission of reports had been a matter of concern to the Committee since its second or third session, and that the Committee, in its annual reports, had outlined the steps it had taken in an endeavour to improve the situation. The letter should refer to the latest position with regard to the submission of reports and suggest that the Chairman of the meeting of States parties might wish to bring the matter to the attention of the States concerned.

56. He suggested that the Committee might request the Secretariat to contact the States concerned and inquire whether they desired assistance in drawing up their reports. A copy of the Committee's guidelines should be sent to the States in question and also to those which had submitted very short reports.

57. Mr. HOUSHMAND (Representative of the Secretary-General) said that such an offer of assistance in the preparation of reports might have financial implications and would require further study by the Secretariat before any commitment could be made.

58. Mr. GRAEFRATH said that, while agreeing with Mr. Lallah's suggestions regarding the content of the letter to be sent, he believed that the Chairman of the meeting of States parties should be invited to draw the situation to the attention of States parties in general and not merely the States directly concerned.

59. Sir Vincent EVANS said that the letter should also make the point that the great majority of States parties - some 31 out of 35 - had co-operated in a satisfactory way with the Committee by submitting their reports in due time.

60. In reply to a question put by Mr. DIEYE, Mr. ANABTAWI (Secretary of the Committee) said that no decision had been taken at the previous session regarding reports which the Committee had considered to be too brief. However, the Chairman had undertaken to contact the Permanent Representatives of the States concerned in New York. He understood that those representatives had promised to do their best to ensure that more elaborate reports were submitted.

61. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed that a letter on the lines indicated in the discussion should be drafted with the help of the Secretariat and addressed by the Chairman of the Committee to the Chairman of the meeting of States parties.

62. It was so decided.

The meeting rose at 1 p.m.