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SUMMARY RECORD OF THE 162nd MEETING

held at the Palais des Nations, Geneva,
on Monday, 6 August 1979, at 3 p.m.

Chairman:

Mr. KOULISHEV

later:

Sir Vincent EVANS

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GE.79-3077

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 (agenda item 5) (continued)

United Kingdom of Great Britain and Northern Ireland (CCPR/C/1/Add.37; CCPR/C/1/Add.37/Corr.1, English and Spanish only; CCPR/C/1/Add.39) (continued)

1. Mr. HANGA complimented the United Kingdom Government on the detailed report it had submitted, its decolonization efforts and its desire to co-operate with the Committee. In asking his questions, he would take all the reports on the various dependent Territories of the United Kingdom as a whole, and would follow the order of the articles of the Covenant.
2. With regard to article 2 of the Covenant, he pointed out that, in accordance with a constitutional principle of the United Kingdom, only Parliament could legislate, so that national legislation could only be amended by Parliament or under its authority. If an individual considered that Parliament or the competent legislative authorities of the Non-Self-Governing Territories had adopted a law that was contrary to the Covenant, what chance would he have of winning his case? And what measures were taken by the Government of the United Kingdom to ensure that the text of the Covenant was afforded the same publicity in the Non-Self-Governing Territories?
3. For the majority of those Territories, it had not been necessary to take any of the measures provided for under article 4 of the Covenant. However, the Bermuda Constitution Order 1968, Schedule section 14, contained provisions governing a state of emergency which appeared to be more extensive than those authorized by the Covenant. In that regard, section 16 of the Constitution of Gibraltar was also somewhat vague and the report provided no clarification.
4. Article 6 of the Covenant had important implications for public health. He wished to know, with respect to the United Kingdom Territories, whether medical assistance was governed by normative instruments, what was the scope of the network of therapeutic and curative institutions, to what extent safety techniques and labour welfare were developed and perfected, what measures had been taken to purify the environment and what steps had been taken to prevent and reduce morbidity. For the British Virgin Islands, the Caymen Islands, Gibraltar and Hong Kong, the report provided information on the legal provisions applicable to the crime of genocide referred to in article 6, paragraph 3, of the Covenant. He would like to know what legislative provisions existed in the other Territories on that subject. If the United Kingdom system was applied there, it could be considered that the Committee had already received information on the matter.
5. With regard to article 7 of the Covenant, the report indicated that, in certain cases, corporal punishment was used in some Territories such as the British Virgin Islands, Gibraltar, Hong Kong and the Turks and Caicos Islands. He would like to know whether the Government of the United Kingdom considered such

punishment to be in accordance with article 24, paragraph 1, of the Covenant. He also wished to know whether there were cases in which a person who was temporarily unable to give his consent could be subjected to a medical or scientific experiment. Did his close relatives have to give their consent and which of them were entitled to do so? Or did the decision lie with the medical authorities? What legal provisions, if any, were applicable in such cases?

6. With regard to article 3 of the Covenant, the report made it clear that labour was given freely under contract. In cases of breach of contract the courts would not generally order specific performance. That was the case for Belize, Gibraltar and St. Helena. It was therefore necessary to know in which cases, even if they were exceptional, specific performance of a labour contract was ordered. He would like to be informed whether legal discussions concerning labour disputes were governed by the rules of civil procedure or by the standards of labour law and whether, in the latter case, the trade unions could play a part. Were there any restrictions based on race in the field of employment?

7. With regard to article 9 of the Covenant, the report made it clear that, as far as Belize, the British Virgin Islands, Gibraltar and Hong Kong were concerned, in general, an arrested person must be informed of the true ground of his arrest (CCPR/C/1/Add.37, annex A, paragraph 10). The expression "in general" would seem to imply exceptions for which no provision of any kind was made in the Covenant. What were those exceptions? For Belize, the British Virgin Islands, Gibraltar, Hong Kong and Pitcairn, bail must be posted in order to obtain provisional release. That procedure would appear to depend on the financial resources of the person to be brought before the court, and it would be interesting to know whether the authorities took a person's financial situation into account. He wished to know whether persons who were subjected to unlawful arrest or detention and who, according to the report, were entitled to damages, could bring an action not only for material damages but also for moral injury?

8. Article 11 of the Covenant was apparently applied in all the Territories except Montserrat, where there were a few exceptions to the abolition of imprisonment for debts. It would be helpful to know what those exceptions were.

9. With respect to article 12, he would like to know whether persons domiciled in the Non-Self-Governing Territories under United Kingdom administration could establish residence in the United Kingdom without any formalities.

10. There were cases in connexion with article 13 of the Covenant where a person could be deported, through the implementation of a decision taken in accordance with the law, from a Territory such as the British Virgin Islands or Pitcairn without his being able to submit reasons why he should not be deported, and without being able to have his case considered by the competent authorities. In paragraph 69 of annex C of document CCPR/C/1/Add.37, he noted that the Governor could order the deportation of destitute persons, and he wished to know why. He also wondered why in Gibraltar it would be necessary to deport the wife and children of a man who had been deported (annex F, paragraph 52).

11. With regard to Belize, the British Virgin Islands, Pitcairn and Hong Kong, the report stated, in the context of article 14 of the Covenant, that the State could make ex gratia payments to a person who had been convicted, if as a result of fresh information the conviction was found to be wrong. He wished to know whether such a payment could be claimed.

12. In the case of Belize, Gibraltar, Hong Kong and apparently also the British Virgin Islands and Montserrat, the report stated, in connexion with article 15 of the Covenant, that the National Assembly was competent to enact ex post facto criminal legislation if it regarded it as necessary. It would be useful to know whether such legislation could provide for a harsher penalty than that applicable at the time when the offence had been committed. For the Territories he had referred to, another rule provided that no statute could be construed to have a retrospective operation unless that construction appeared very clearly in the terms of the legislation or arose by necessary and distinct implication. A question of conformity with the Covenant would arise if such an interpretation allowed for the application of a more severe penalty than that applicable at the time when the offence had been committed.

13. Was prisoners' correspondence controlled only in the British Virgin Islands, Gibraltar and Pitcairn? And how could such a measure be justified with regard to article 17, paragraph 1, of the Covenant?

14. The report stated that, in Belize, the British Virgin Islands, Gibraltar, Montserrat and the Turks and Caicos Islands freedom to manifest one's religion or beliefs was restricted by law only to the extent that it was necessary to secure public safety, order, health or morals or the rights of others. It would be useful to have supplementary information on the laws which governed that kind of restriction in order to see whether they conformed to the letter and spirit of article 18 of the Covenant.

15. If a citizen of a dependent Territory of the United Kingdom felt that his freedom of opinion had been infringed, what remedy was available to him? In the Turks and Caicos Islands, the freedom of officials to express opinions on matters of an administrative or political nature was restricted by the regulations governing the conduct of public officers. He wished to know what these restrictions were and whether they were in conformity with article 19 of the Covenant.

16. Contrary to article 20 of the Covenant, there was no law in the Territories under consideration expressly prohibiting propaganda for war or incitement to national, racial or religious hatred. In his view, assimilation of those offences to sedition was not sufficient to satisfy the provisions of article 20 of the Covenant.

17. Freedom of peaceful assembly was stated to be one of the oldest common law rights. In Belize, the British Virgin Islands, Gibraltar and Hong Kong, there were no restrictions on the exercise of that right other than those prescribed by law in the interests of the community as a whole. He wished to know exactly what the expression "in the interests of the community as a whole" meant (annex A, paragraph 61) and whether it was in accordance with article 21 of the Covenant.

18. He had noted in the report some restrictions on the right to freedom of association for which there was no provision in article 22 of the Covenant. For example, the control and prevention of crime gave rise to such restrictions in Belize, the British Virgin Islands, the Falkland Islands and Gibraltar. How could it be explained that, in the Cayman Islands, members of the Civil Service were precluded from taking an active part in political arguments or electoral campaigns (annex D, paragraph 27)?

19. As far as article 24 of the Covenant was concerned, he thought that in many cases it would appear from the report that the situation of a child born out of wedlock was considerably worse than that of a legitimate child.

20. Referring to article 25 of the Covenant, he wished to know what conditions candidates for posts in the public administration of Gibraltar had to fulfil (annex F, paragraph 109), and why in the Turks and Caicos Islands public officers were not eligible for election to the Legislative Council (annex L, article 25)?

21. According to the report, no one could be deprived of equal protection by the law except by an express act of Parliament. Referring to article 26 of the Covenant, he wished to know whether such an act had ever been passed in the Territories under consideration.

22. Mr. SADI thanked the United Kingdom Government for the honesty and frankness of the report it had submitted (CCPR/C/1/Add.37 and Corr.1 and Add.39); the impression gained from the document was that the situation had been reported factually, with no attempt by the authors to conceal any violation of the Covenant.

23. With regard to self-determination, he said that, under article 1, paragraph 3, of the Covenant, States parties were called upon to promote the realization of the right of peoples to self-determination. The United Kingdom's report showed that the Government of that country interpreted those provisions in a passive way and was making no effort to facilitate the self-determination of the population in the dependent Territories. With regard to Bermuda, a Green Paper on the possible advantages and disadvantages of independence had been published in 1977, and a White Paper was expected shortly (CCPR/C/1/Add.37, paragraph 11). In his view, those publications did not correspond sufficiently to the provisions of article 1, paragraph 3, of the Covenant, since the promotion of independence implied an active process by which peoples were encouraged to obtain it. In the Cayman Islands, the people had informed a mission of the United Nations Special Committee on the Granting of Independence to Colonial Countries and Peoples that at the present time they wanted no constitutional change (CCPR/C/1/Add.37, paragraph 13). He would like to know what constitutional process had been adopted in order to determine that the people did not want any change. The situation in Gibraltar and Hong Kong gave rise to similar questions. According to the report, the Island Council in Pitcairn had stated that it did not want any change in the nature of the existing relationship between the people of Pitcairn and the United Kingdom Government (CCPR/C/1/Add.37, paragraph 19), and St. Helena had not expressed a wish for further constitutional change (paragraph 20). He was surprised that dependent Territories so far from the United Kingdom should wish to

remain in a situation where they were neither fully dependent nor fully independent. He would like to have more details about the legal process which had led to the conclusions set forth in the report, especially since the usual way of settling questions of that nature was to hold a referendum.

24. With regard to the status of the Covenant in the United Kingdom's dependent Territories, he noted from the report submitted that, in the Cayman Islands, human rights were widely respected and protected (annex D, paragraph 1). But the expression "widely respected and protected" implied that the Covenant was not fully observed. Moreover, the observations of other members of the Committee on the subject of corporal punishment, religion and the laws against sedition showed that, in the Territories under review, the status of the Covenant was unclear. Since that instrument had not been incorporated into the legislation, it could not be invoked before the courts.

25. Mr. PRADO VALLEJO expressed his appreciation to the United Kingdom Government for the quality of its report (CCPR/C/1/Add.37 and Corr.1 and CCPR/C/1/Add.39) and welcomed the presence of representatives of that country. The United Kingdom Government was responsible for implementation of the Covenant in the dependent Territories, and if the Committee considered that respect for human rights in them was insufficient, it was up to the United Kingdom Government to promote that respect and to provide the strictest guarantees for the implementation of human rights.

26. In order not to repeat questions already asked, he would confine his remarks to four basic points: self-determination, the powers of the Governors in the dependent Territories, the status of the Covenant in each of the Territories and, lastly, certain specific facts which called for clarification.

27. With regard to Belize, the report indicated (paragraph 10) that the only barrier to its independence stemmed from the claim by Guatemala. In that connexion, although the United Kingdom Government asserted that it was in favour of an understanding with Guatemala, the Guatemalan Government maintained the contrary. He would like to know the exact circumstances of the problem, since the resultant tension in the region affected human rights. With regard to the Falkland Islands, the report made no reference to the fact that they were claimed by Argentina, nor did it contain any information concerning their eventual independence. It had not been stated whether the United Kingdom favoured such independence or not. Some clarification was therefore required.

28. Referring to the powers of the Governors in the dependent Territories, he said he was concerned by the fact that respect for human rights in the dependent Territories might depend on the will of one man. Those powers doubtless varied according to the Territory's degree of development. In any event, there ought to be some clarification about their scope and about available remedies against arbitrary decisions.

29. Since the Governor appointed judges of the Supreme Court and other courts in the dependent Territories, he wished to know how the independence of the judiciary was assured.

30. With reference to the report by Bermuda, in which it was stated that the effect of a public emergency on fundamental rights and freedoms was governed by the provisions of the Bermuda Constitution Order 1968, Schedule section 14 (annex B, paragraph 8), he wondered whether those provisions had already been applied and, if so, what restrictions had been imposed on fundamental rights and freedom. Since the report by other Territories made no mention of the application of article 4 of the Covenant, he wished to know whether similar provisions also existed in the other Territories.

31. Since the Covenant was not part of the Territories' internal legislation, he wondered what happened in the case of conflict between the provisions of domestic laws and those of the Covenant. Did the latter take precedence? He would like to have more details on that important point.

32. He also wished to know what steps the United Kingdom Government had taken to publicize the Covenant in the territories.

33. Although article 20, paragraph 1, of the Covenant stipulated that any propaganda for war must be prohibited by law, he noted that in Belize (annex A, paragraph 59) and Bermuda (annex B, paragraph 29), the criminal legislation did not expressly prohibit such propaganda.

34. He wondered why the general rights of minors set forth in article 24, paragraph 1, of the Covenant were not expressly protected by law in Bermuda (annex B, paragraph 33).

35. With regard to article 7 of the Covenant, the report by Belize cited, inter alia, two cases in which force might be used against a person (annex A, paragraph 12). What were the other cases?

36. He noted with disquiet that in Belize and in Gibraltar a person could be arrested "without warrant" (annex A, paragraph 34, and annex F, paragraph 58), although one human right was freedom from arrest without a warrant issued in proper and due form by a judge or competent authority.

37. With regard to the treatment of aliens, he understood that Guatemala complained of difficulties encountered by Guatemalan nationals who wished to travel to Belize. He would like to have further information on the subject. In certain territories, including Belize (annex A, paragraph 29), aliens could be deported simply on the order of an administrative authority and did not have any remedy in accordance with article 13 of the Covenant.

38. It was disquieting that, in Belize and Gibraltar, the legislative power could enact ex post facto criminal legislation (annex A, paragraph 51 and annex F, paragraph 77), contrary to the provisions of article 15 of the Covenant.

39. The report by Gibraltar indicated (annex F, paragraph 40) that the punishments which might be prescribed for prisoners included confinement in cell, a diet of dry bread and stoppage of earnings. He wished to know to what extent such punishments could be applied, since there was a risk that they might amount to inhuman treatment prohibited by the Covenant.

40. Restrictions could be imposed on freedom of expression in certain cases, including those of "seditious" (by which was meant, as everyone knew, "directed against the Government") or "blasphemous" statements in Belize (annex A, paragraph 58), the British Virgin Islands (annex C, paragraph 104), Gibraltar (annex F, paragraph 86) and Hong Kong (annex H, paragraph 104). He would like to have details about the scope of those restrictions.

41. Mr. MOVCHAN said that, having been brought up in a spirit of anti-colonialism, he obviously found it difficult to start a dialogue with representatives of the authorities of dependent Territories.

42. He noted from paragraphs 10-21 of the introduction to the report (CCPR/C/1/Add.37, pages 3-5) that the dependent Territories enjoyed "internal self-government" or "a wide measure of internal self-government" (paragraph 11) or else "a very large measure of internal self-government" (paragraph 12). He would like to know exactly what those distinctions meant.

43. With regard to article 1 of the Covenant, it was clear that the right of peoples to self-determination had not been respected by the United Kingdom Government. In paragraph 6 of the report it was stated that it had been the consistent policy of United Kingdom Governments since the end of the Second World War to lead the dependent Territories to a position where they could exercise self-determination. He would like to know what specific economic, social, legal or other measures the United Kingdom Government had taken to that end. It was stated in the same paragraph that the United Kingdom Government's policy had been to grant independence to any Territory which sought it, but not to compel them to accept it. How did the United Kingdom Government establish that a people did not want independence? Had it held referenda?

44. He would like to have further information on the distribution of legislative and executive powers in the dependent Territories. Were they assigned in the same way as in the metropolitan country or were they exercised by a single organ?

45. On article 2 of the Covenant the report by Belize confined itself to general statements affirming that there was no discrimination between individuals (annex A, paragraph 3). What the members of the Committee were interested in knowing, however, was what administrative and other measures had been taken to give effect to the rights set forth in the Covenant. Nor did the report say anything about measures taken to ensure equal rights of men and women, as provided for in article 3 of the Covenant.

46. The report by Belize was not at all clear on the subject of article 5 of the Covenant (paragraph 6).

47. The report stated (paragraph 75) that the laws of Belize applied equally and without discrimination to all nationals and aliens. Immediately before that, however, in connexion with article 25 of the Covenant, it was stated that every citizen, if English speaking, could be elected a member of the House (paragraph 74), which meant that there was discrimination on the basis of language. That was one of the many anomalies which he had found in the United Kingdom report before the Committee.

48. Turning to the implementation of certain provisions of the Covenant in the Territories generally, he asked how the executive, judicial and legislative bodies were constituted and to what extent associations, trade unions and political parties were permitted. Why could the Covenant not be invoked before the courts? Were the people and the responsible authorities nevertheless familiar with its provisions? Did the people of the Territories enjoy full citizenship? Were women subjected to special controls in respect of entry into and exit from the Territories? What were the laws, customs, regulations or other rules, instructions and so forth in that respect?

49. He wondered to what extent the environment of the population of the Territories was protected and how far they controlled their own resources. Were those resources shared equally among the inhabitants without any distinction? How were they shared between the Territories and the United Kingdom? What were the basic instruments in that sphere?

50. There were several references in the report to the assimilation and integration of populations. Were those populations able nevertheless to preserve their cultural heritage? Did they have cultural centres, schools where their own language was taught, and information media? Had there been any progress in that respect? How far were the customs and traditions of the people respected? What was their position with regard to property? How extensive were social security and medical assistance? Was child labour forbidden? What were the tax laws in the Territories?

51. Regarding implementation of article 3 of the Covenant (equal rights for men and women) he would like to know how many women there were in the executive and the legislature and how many were judges, doctors and professors. In that connexion, what were the relations between women from the mother country and the indigenous women?

52. In connexion with article 5 of the Covenant, which prohibited any activity or any act aimed at the destruction or restriction of the rights and freedoms recognized in that instrument, he asked whether privileges existed for certain persons in the Territories. If so, were any psychological or legal measures envisaged to remove those privileges?

53. Concerning the right to life, set forth in article 6 of the Covenant, he asked which crimes were subject to capital punishment.

54. What was the United Kingdom Government doing to prevent the violation of article 7 of the Covenant (prohibition of cruel, inhuman or degrading treatment or punishment) that was apparent from the information in the United Kingdom report? Was not corporal punishment in effect a violation of the inherent dignity of the human being?

55. In connexion with article 8, he would like to know whether all traces of slavery had been eliminated in the Territories.

56. Was respect for the right to liberty and security of person, as set out in article 9 of the Covenant, assured? In what circumstances could a person be detained for an indefinite period without trial? Who exercised control over such deprivation of liberty, the local police or the metropolitan police?

57. He would like information on how article 10, paragraph 2(a) and (b), of the Covenant was implemented in the Territories.

58. With regard to the implementation of article 14 of the Covenant in the Territories, he would like to know how the courts operated. Where were petitions filed? How were the rights of the people defended? Was interpretation at trials provided free of charge or not? If so, was that done by decision of the court or was it automatic?

59. Regarding the right to freedom of thought, conscience and religion, proclaimed in article 18 of the Covenant, he asked whether there was a predominant religion and whether local religions and religious rites were respected. What religions were prohibited? Was atheism prohibited? Could the people of the Territories express their beliefs, including socialist beliefs?

60. It seemed to him that article 25 of the Covenant concerning participation in the conduct of public affairs and the right to vote, to be elected and to have access to public service without discrimination could not really be respected in the Territories. If it was respected, how did the people of the Territories exercise those rights?

61. Mr. OPSAHL thanked the United Kingdom Government for submitting such an informative report (CCPR/C/1/Add.37 and Corr.1 and CCPR/C/1/Add.39) and for sending a delegation to the Committee. The report and the explanations offered at the meeting showed that certain anachronisms still remained, perhaps because they affected small Territories. In particular, there was a dilemma: how could the United Kingdom Government ensure that the people of those Territories enjoyed the right of self-determination under article 1 of the Covenant and at the same time do more itself to implement the provisions of the Covenant in accordance with its obligations under other articles? It emerged from the explanations on the report given in the meeting that the United Kingdom Government had been slow to act in that respect. Was not that a violation of a basic principle of the Covenant? It would be interesting if the United Kingdom Government could give examples of cases in which it might have wished to adopt a different approach, for example with regard to the death penalty.

62. With regard to corporal punishment and the application in that connexion of the European Convention on Human Rights, it was stated in the report that the Convention was implemented in one of the Territories. Was it implemented in the others and in what manner? It was clear from the cases dealt with by the European Court of Human Rights that corporal punishment was a violation of article 3 of the European Convention, which corresponded to article 7 of the Covenant.

63. Mention was made in the reports of arrangements between the Territories for carrying out prison sentences. Did such arrangements also exist between the United Kingdom and its former dependent Territories? If so, how could the United Kingdom Government ensure that prisoners serving sentences far away from their homes were guaranteed their rights, particularly with regard to visits from their families?

64. In connexion with article 14 of the Covenant, he noted that in Belize (annex A, paragraph 39) and Gibraltar (annex F, paragraph 65), for example, only the evidence had to be interpreted for a prisoner who was ignorant of the English language. Should not interpretation be provided throughout the hearing? In certain territories legal aid was provided only in certain cases, and he wondered whether that was not a violation of article 14 of the Covenant.

65. In connexion with article 7 of the Covenant, he referred to a case where damages had been awarded by the European Court of Human Rights to the family of a person who, after seeking refuge in Gibraltar and being expelled and returned to his persecutors, had died under torture. He wondered whether there were any safeguards in the Territories against deportation and expulsion of persons seeking refuge.

66. In that connexion he noted that a reservation to article 13 had been made in respect of Hong Kong. Why had that reservation been thought necessary? Was the United Kingdom Government considering withdrawing it? The same questions applied to the reservation made to article 25 in respect of Hong Kong.

67. Referring to a question raised by Mr. Bouziri in connexion with article 8 of the Covenant concerning the public work that all male inhabitants of Pitcairn Island between the ages of 15 and 65 years were required to perform (annex J, paragraph 11), he wondered why only men were liable. Why were only male persons eligible for election to the office of Island Magistrate or Chairman of the Internal Committee (annex J, paragraph 34)?

68. He would have liked further information on the people of the Territories and their way of life and on the size of the Territories.

69. Mr. DIEYE welcomed the co-operation between the United Kingdom Government and the Committee.

70. In the report by the British Virgin Islands (CCPR/C/1/Add.37, annex C), it was stated in paragraph 20 that the penalty for murder was death by hanging. Did that apply to premeditated murder or to unpremeditated murder, which under certain legal systems was punishable by life imprisonment?

71. Reverting to the comments already made on the subject of corporal punishment, he said that it was a penalty from another era and should be abolished. He hoped that the United Kingdom Government would not turn a deaf ear to the appeals already made to it to do so.

72. Turning to the question of the independence of the judiciary, he noted that the appointment of legal officers in the Territories was a matter for the Governor alone, who had undue powers in that respect. He doubted whether it was possible in those circumstances for magistrates to be completely independent in the performance of their functions. He would like to know whether they were natives of the Territory itself or whether they were brought in by the administering Power. As it was essential for a magistrate to understand the mentality and customs of the people he had to judge, it was desirable that he should be one of them.

73. Referring to paragraph 13 of the report on Belize (annex A), he noted that the criminal liability referred to seemed to be vicarious rather than directly imputable to the guilty parties alone. How was it possible to impute criminal liability to a person who had not committed the punishable act? Was the question perhaps one of civil liability? Noting that in Belize mitigation of criminal liability apparently

had to be proved by the detained or accused person, he wondered whether there were any provisions in the laws of that Territory specifying that the mitigation could be of a "legal" nature. Many countries made express provision for criminal liability to be mitigated not only by certain circumstances but also by the law itself. He had the impression from paragraph 51 of the report by Belize (annex A), relating to article 15 of the Covenant, that it was possible to establish certain forms of criminal liability retroactively. In what exceptional circumstances could that happen?

74. He wondered whether there was any policy for protecting and affirming the identity of the dependent Territories under consideration. Was it not true to say that the objective was, rather, assimilation, especially through language, since it appeared that a citizen who did not know English was looked down upon? Was there a national language of communication in the various cases? By the same token, were there specific measures providing for the exploitation of the natural resources of the Territories and their local utilization primarily or even exclusively for the benefit of the people of those Territories?

75. Mr. TOMUSCHAT remarked that the Covenant as such did not have legal force in the dependent Territories since the various institutions preferred to keep to the United Kingdom system and implement the Covenant through a series of specific legislative enactments. That procedure was perfectly valid. However, any individual who appeared before the courts or administrative authorities should be entitled to point out that a decision taken by them should be compatible with the obligations laid down in the Covenant. It should always be possible to invoke the provisions of the Covenant, contrary to what had been stated in the report by the British Virgin Islands (annex C, para. 2), although the Covenant need not of course become part of the domestic legislation.

76. He had been struck by the arbitrary way in which the fundamental rights and freedoms in force in each Territory had or had not been explained in the report. Why, for example, had they not been in the case of the Virgin Islands?

77. What was the legal significance of a chapter on human rights in the Constitution of a dependent territory? He would like to know what would happen in the case of an inconsistency between the provisions of the Constitution and, for instance, an order issued by a local authority.

78. With regard to discrimination, it would be interesting for the Committee to have more precise information on, for example, the status of aliens in the Territories. Did they enjoy the rights established in the Covenant, with the exception of political rights, on an equal footing? Women did not always enjoy the same rights as men in the Territories; that was the case in the Pitcairn Islands, where certain positions were open to men only, and also in the British Virgin Islands, where a woman who married a foreigner lost her nationality. It was not entirely clear whether the acquisition or loss of nationality was governed by the Covenant, although paragraph 23, paragraph 4, seemed to indicate that it was. Discrimination on the basis of language, as found in Belize, was hardly acceptable. With regard to the status of legitimate and illegitimate children, which was referred to in paragraphs 13 and 132 of the report by the Virgin Islands (annex C), the latter should not be in a less favourable position than the former, despite certain inevitable differences.

79. It was stated in paragraph 7 of the report that in the event of any conflict between the obligations imposed on the Government of the United Kingdom by article 1 of the Covenant and its obligations under the Charter of the United Nations, the latter would prevail. Should that be taken to mean that the United Kingdom Government regarded article 1 of the Covenant as binding only to the same extent as the Charter?

80. With respect to the death penalty, in what cases was it pronounced? It would be desirable to know its practical relevance. He was glad to note in that connexion that there had been no executions in the Cayman Islands since 1946.

81. Were there regulations governing the use of arms by the police? The use of firearms, even in the defence of legitimate interests, was a violation of the principles of the Covenant, and in that respect he shared the concern expressed by Mr. Graefrath. It would be desirable, moreover, for the United Kingdom to put an end to corporal punishment, as a number of previous speakers had already stated.

82. In all dependent Territories, the right to compensation was provided for solely if there had been negligence on the part of the judges. The situation had been best described in the report on Gibraltar, particularly in paragraph 75 (annex F). Article 9, paragraph 5, of the Covenant was not very clear in that respect, since it did not explain what was meant by "unlawful" arrest or detention. On the other hand, article 14, paragraph 6, was not in the least ambiguous, since it merely provided for the reversal of a criminal conviction. Was the person concerned entitled to compensation only if the judiciary had been negligent, or could he receive damages even if there had been reasonable grounds for arrest (provided that he himself had not given rise to the grounds for suspecting him)? He considered that the first interpretation was more consistent with the Covenant. A citizen should simply accept detention, even for a long period. In his view, that deprivation of liberty was precisely what article 9, paragraph 5, was intended to redress.

83. In general, the report dealt only with cases of arrest for penal offences and made no mention, for instance, of internment in psychiatric hospitals. What guarantees were there in that respect?

84. With regard to article 13 of the Covenant, the various reports from the dependent Territories provided very little information on the procedures to which an alien against whom, for instance, an expulsion order had been issued, could resort. The only satisfactory report in that respect was from Gibraltar.

85. Turning to article 14, he said it would be useful to have additional information on cases in which the burden of proof was placed on the accused. The report by Hong Kong was the most detailed in that respect (annex H, paragraph 76). Further clarification on recourse procedures in Belize and Hong Kong would also be welcome. It was stipulated in article 14, paragraph 5, of the Covenant that everyone convicted of a crime had the right to have his conviction and sentence reviewed by a higher tribunal. No other condition was laid down.

86. The reports did not provide any information on the legal régime governing radio and television. What did the United Kingdom Government do to prevent them from being used as propaganda tools by the authorities or by powerful social organizations?

87. Lastly, it appeared from paragraph 74 of annex A of the report that a policy of total assimilation designed to eliminate the Spanish language was being practised in Belize. If that was really the case, it could give rise to problems under article 27.

88. Sir Vincent Evans took the Chair.

89. Mr. TARNOPOLSKY said that no other nineteenth-century empire as large as the British Empire had given independence to its Territories on so vast a scale. The remaining dependent Territories, although very small, were the subject of a report that was as detailed as it could be. That, however, posed the dilemma of how the Committee should deal with the document submitted by the United Kingdom (CCPR/C/1/Add.37 and Corr.1 and Add.39). In other circumstances involving independent territories, the information provided would not be considered as covering adequately all aspects of life. Without commenting in detail on statements such as those which appeared in the report by Montserrat - for example, with regard to article 12 of the Covenant, that "In practice these rights are observed" or, with regard to article 7, that "This right is protected within the framework of the law" - he wished to put a number of questions to the United Kingdom delegation.

90. The United Kingdom had ratified the International Covenant on Civil and Political Rights on behalf also of the Territories covered by the report before the Committee. Consequently, did the United Kingdom Government not consider that it had a responsibility to amend any law applicable in the dependent Territories which was not consistent with the obligations laid down in the Covenant? Should there not be an assumption of responsibility of the Government in that area? Corporal punishment was a case in point. Under article 7 of the Covenant and, perhaps to an even greater extent, article 24, paragraph 1, corporal punishment was implicitly prohibited, for article 7 laid down that no one should be subjected to cruel, inhuman or degrading treatment or punishment and article 24, paragraph 1, provided that every child should have the right to such measures of protection as were required by his status as a minor. That being the case, did the administering Power not have an obligation to bring about the required changes in Territories such as Hong Kong, the Turks and Caicos Islands and the British Virgin Islands?

91. On the subject of the protection of minors, it emerged from several paragraphs of the report by Hong Kong read together (annex H, paragraphs 27, 51, 52 and 54) that minors of 14 years of age or above could be sent to detention centres with a very demanding programme in which convicted prisoners might be required to do useful work up to a maximum of 10 hours a day, unless excused on medical grounds, and that the work involved physical effort as far as possible and no payment. He wondered whether, in relation to minors, those provisions did not contravene article 7 and article 24, paragraph 1, of the Covenant and whether the British Government did not have a certain obligation to bring the matter to the attention of the Governor of Hong Kong for possible changes. In making those comments, it was of course possible that he had misread or misinterpreted the text of the report.

92. On the basis of the information provided in respect of article 15 in the reports of the various Territories, he concluded that there was clearly nothing to prevent the enactment of ex post facto laws. That was quite possibly contrary to article 15, but it seemed to him that there was no way in which such laws could be declared null and void.

93. With regard to article 17, paragraph 101, of the report by Hong Kong (annex H) stated that certain forms of arbitrary interference with private life might be restrained by injunction and give rise to an action for damages. However, an injunction was no real protection when, for example, a search had already taken place; furthermore, it was very difficult to assess the amount of damages to be granted to the victim.

94. Could it really be said that the bills of rights in existence in some of the dependent Territories had any real significance? Had there ever been a decision of the Judicial Committee of the Privy Council, which was the ultimate court, that either held a law to be invalid because it was contrary to the bill of rights or quashed a conviction because a right of the accused had been violated in the judicial proceedings?

95. With regard to article 26 of the Covenant, it was quite clear that the authors of the various reports had based their accounts on the old Dicey definition of equality before the law as being part of the rule of law. In his view, that concept was relevant to article 14 rather than article 26, which did not really require the type of application of the rule of law to which reference was made in paragraph 136 of the report by Hong Kong, paragraph 112 of the report by Gibraltar or paragraph 145 of the report by the British Virgin Islands. Rather, article 26 required the type of application revealed in paragraph 39 of the report by Bermuda or paragraph 75 of the report by Belize, the authors of which seemed to accept the post-Second World War definition of equality before the law as being based on the prohibition of any discrimination.

96. Mr. KOULISHEV observed that the United Kingdom Government took its obligations under article 40 of the Covenant very seriously. The Committee was considering the human rights situation in dependent Territories for the first time and was therefore faced with a very special problem. Furthermore, the situation in question had already been superseded by developments in international law, which proclaimed the right of peoples to self-determination and regarded the colonial system as an anachronism to be eliminated from the face of the world. Even before the adoption of the Charter of the United Nations, that right had been a legal obligation for States and it had been spelt out even more clearly in both article 1 of the Covenant and various United Nations instruments such as the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples and the 1970 Declaration on Principles of International Law. Consequently, the importance attached by the Committee to the implementation of article 1 of the Covenant in the Territories concerned was understandable, especially since the application of that right was a prerequisite for the full exercise of all others. It was extremely important for the Committee to determine, in each specific case, whether the dependent people concerned was moving towards self-determination and whether the administering Power was discharging its obligation to respect the right of self-determination and facilitate its realization in accordance with the Charter. Mention was made in general terms in the introduction to the report (CCPR/C/1/Add.37) of the application of article 1 of the Covenant, but no further reference was made to that question in the various annexes devoted to individual Territories. That matter should have been dealt with in detail, particularly as the introduction to the report

stated several times that certain populations did not wish to change their status. It should be noted that many of the Territories did not have a legislative body elected directly by the people. The additional information which the Committee needed in order correctly to assess the situation of the dependent Territories should relate, in particular, to the ethnic composition and economic and social situation of the populations concerned.

97. Nor did the report contain any information about the United Kingdom Government's co-operation with United Nations bodies responsible for the implementation of the 1960 Declaration. The Territories had been visited by several missions, but the observations of the United Kingdom Government in that connexion did not appear fully to coincide with those of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

98. With regard to the status of the Covenant in the domestic law of the Territories discussed, it was clearly stated that the provisions of the Covenant were not directly applied. A rather complex problem arose from the absence, in both the United Kingdom and the Territories, of legislation covering all the issues with which the Covenant was concerned; such matters were dealt with under common law, which did not always meet the Covenant's requirements, particularly those of article 2.

99. The information provided with regard to article 3 of the Covenant was not adequate. The provisions in question required Governments to adopt an active approach towards the achievement of equality between men and women.

100. It would be interesting to know how the United Kingdom Government intended to cope with the anachronistic problem of corporal punishment, which was unsuited to present conditions even when subject to medical control.

101. With regard to article 25, he asked how many indigenous persons held official posts in the dependent Territories, for it appeared that the majority of officials, and those holding senior posts, came from the United Kingdom.

The meeting rose at 6.25 p.m.