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Seventh session

SUMMARY RECORD OF THE 165TH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 8 August 1979, at 10 a.m.

Chairman: Mr. MAVROMMATIS

later: Sir Vincent EVANS

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The meeting was called to order at 10.15 a.m.

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

Cyprus (CCPR/C/1/Add.6 and 28)

1. The CHAIRMAN said that since the Committee was about to discuss a report submitted by his own country, he would follow established practice and ask the Vice-Chairman of the Committee to take the Chair.
2. Sir Vincent Evans took the Chair.
3. At the invitation of the Chairman, Mr. Pouyouros (Cyprus) took a place at the Committee table.
4. Mr. POUYOUIROS (Cyprus) said that Cyprus had been one of the first countries to ratify the International Covenant on Civil and Political Rights, and had played a pioneering role in promoting human rights and fundamental freedoms in practice. It commended the unique and beneficial work which the Committee was doing in that area.
5. Drawing attention to article 40, paragraph 2, of the Covenant, he observed that since the Turkish invasion of Cyprus in 1974, 40 per cent of Cypriot territory was still occupied by Turkey, which persisted in flouting the decisions of the Security Council and the General Assembly calling on it to withdraw its forces, to allow the return of refugees and to respect the territorial integrity and non-aligned status of Cyprus. As a result, some 250,000 refugees in Cyprus were still denied access to their own homes. Cyprus was thereby prevented from ensuring the implementation of the rights embodied in the Covenant in respect of all inhabitants of its territory. The Turkish aggression and the subsequent attempts to change the demographic composition of the country through the settlement of Turkish citizens in formerly Greek areas meant that fundamental rights and freedoms were denied to one third of the population. Nevertheless, as his country's report showed, Cyprus was doing its utmost to implement the Covenant in the territory over which it had effective control. Since it was part of the Committee's task to discuss the actual implementation of the Covenant, he hoped that it would mention in its report the difficulties which Cyprus was encountering.
6. In conclusion, he introduced Mr. Loucaides, Deputy Attorney-General of Cyprus, who would be available to answer members' questions.
7. The CHAIRMAN said that all members of the Committee were aware of the unhappy situation in Cyprus and of the efforts made by the Secretary-General to promote intercommunal negotiations. The success of those negotiations was essential in order to solve problems which had exceedingly serious humanitarian implications and affected the lives of many ordinary people.
8. The Committee was required to discuss the human-rights situation in the area under the effective control of the Government of Cyprus, and he suggested that it should proceed by concentrating on some of the more important issues and subsequent questions arising from Cyprus's initial report in the order in which they were reflected in the Covenant.

9. Mr. OPSAHL said that he wished to begin with some general observations. The additional information provided by Cyprus in document CCPR/C/1/Add.28 related mainly to legal provisions, but the "measures" and "progress" referred to in article 40 of the Covenant must mean more than that. Actual practice was just as important as legislation. He did not wish to imply that practice departed from law in Cyprus, but would like further information on how remedies operated and what they meant to the individual. For example, was the system of administrative redress under article 29 of the Constitution and annulment by the Supreme Court under article 146, including the right to compensation under article 146 (6), a living reality, or was it seldom applied, either because the administration was generally acceptable to citizens or because they were unfamiliar with the available remedies? How often did citizens complain to a high administrative authority under article 29 of the Constitution of Cyprus? How often were they successful in their claims? How often did the Supreme Court annul an act? Was it necessary to apply first to the Supreme Court and then to take civil action in another court in order to obtain compensation? Did citizens have the patience and endurance to do all that, or was the machinery provided only as a last or theoretical resort which was little used because it was superfluous or not widely known? What steps were taken in practice to make remedies regarding information legally effective? Unless the text of constitutions and laws could be assessed in the context of the necessary factual background, the Committee could not assist Governments in promoting human rights because it could not comment meaningfully on the progress made in the enjoyment of those rights - progress which could be measured only in terms of its impact on the individual. It was in that light that he interpreted the requirement in article 40, paragraph 2, of the Covenant that reports should indicate the factors and difficulties affecting the implementation of the Covenant.

10. He therefore welcomed the last section of the Cyprus report, but noted that it dealt exclusively with the difficulties resulting from the de facto partition of Cyprus since 1974. He recognized, of course, that that was a fact of overwhelming importance and that many other tasks had to be left in abeyance pending resolution of the underlying conflict. It must be borne in mind, however, that there were several versions of the events involved and their background. Furthermore, there were more permanent tasks to which he hoped the people and Government of Cyprus would turn their minds in the meantime - tasks on which he would like information. Peoples and Governments must adapt themselves to circumstances and apply the Covenant as best they could in spite of unjust circumstances. He would therefore ask questions regarding both difficulties encountered as a result of partition and difficulties encountered for other reasons.

11. He was particularly interested in learning how the difficulties referred to in the last section of the report affected the implementation of the Covenant within the territory remaining under the de facto control of the Government of Cyprus. Was any consideration being given to article 4 of the Covenant? Was the situation regarded, or had it ever been regarded, as an emergency justifying derogation from the Covenant in respect of the remaining territory, or had it not been felt necessary to apply article 4 in any way? Although the Covenant had not entered into force until 1976, it would be useful to know whether it had been necessary at any time in recent years to derogate from those parts of the Constitution which dealt, for example, with powers of arrest, judicial control of pre-trial detention and detention without trial for other than criminal offences. Had the emergency

affected the implementation of articles 25 and 27 in the territory under the de facto control of the Government? How was article 26 of the Constitution (concerning prohibition of discrimination against the two communities) applied in the present period? It would also be useful to know more about how the constitutional and legal system designed to deal with the existence of two communities had functioned before 1974. Had the system not, in fact, been partly inoperative for many years?

12. Turning to questions not related to the territorial situation, he said that information on the economic system of the country and the various sectors of employment would provide a useful background for understanding the implementation of article 8. Information regarding the existence and position of bipartite communities would throw light on the implementation of article 18 of the Covenant, particularly in view of the reservation contained in article 10, paragraph 3, of the Constitution, which was quoted on page 12 of the report. What did that reservation actually mean? Similarly, in order to gain an understanding of the implementation of article 19 of the Covenant, further information was required concerning the situation with respect to private and public media in different languages and the degree of literacy and education of the people. For example, could newspapers or other printed matter be seized as of right under article 19, paragraph 4, of the Constitution? Had there been court proceedings in such cases applying the principle set forth in the case referred to on page 4 of the report, namely, that legislative provisions involving interference with the fundamental rights and liberties safeguarded under the Constitution should be construed in case of doubt in favour of the said rights and liberties?

13. He thanked the Cypriot Government for its co-operation with the Committee and said that he would prefer to receive in writing the additional information he had requested.

14. Mr. SADI, after welcoming the representatives of Cyprus and expressing the hope that the dialogue between them and the Committee would be fruitful, said that on the general issue referred to by the Chairman, he had one question to put. The report stated, with reference to the implementation of article 5 of the Covenant, that the fundamental rights safeguarded by the Constitution of Cyprus might be subjected to reasonable restrictions or limitations in the public interest. He would like to know what those restrictions and limitations were and what was meant by the public interest in that context. He did not think that the term could be equated with a state of emergency and felt that there was thus some conflict between that situation and article 4 of the Covenant.

15. Mr. BOUZIRI said he recognized that the partition of Cyprus was creating difficulties for the Government of the country in its efforts to apply the provisions of the Covenant. He asked whether a state of emergency existed in Cyprus in the sense of article 4 of the Covenant and, if so, what measures had been taken by the Government derogating from its obligations under the Covenant.

16. Mr. TOMUSCHAT thanked the Government of Cyprus for its noteworthy efforts to supply the Committee with additional information in its informative and well-organized supplementary report. The Government of Cyprus and its representative in the Committee had rightly drawn attention to the very difficult situation prevailing in that country since the events of 1974. The Committee could perhaps contribute something to the reunification of the two communities into a true nation.

17. As a result of the division of Cyprus into two parts a particular problem arose in connexion with the implementation of article 12, paragraph 1, of the Covenant. As everyone knew, there had been an exchange of population between the two parts after the events of 1974: Greek Cypriots had been expelled from the northern part of the island and were not now allowed to enter it. He wondered whether similar restrictions prevailed in the southern part of the island, which was under the control of the Cypriot Government. Specifically, were Turkish-Cypriots who had formerly resided in the southern part of the island free to return to their homes there or were they prohibited from doing so? The Constitution of Cyprus had rested on a delicate balance of powers between the two communities and called for co-operation between their representatives. Now that the basis for that delicate balance no longer existed, he wondered how the Constitution was construed and applied. For example, the report referred, with respect to the implementation of article 6, paragraph 4, of the Covenant, to the provision in article 53 of the Constitution under which the President and Vice-President of the Republic had the right, each with respect to the members of his community, to exercise the prerogative of mercy towards persons condemned to death. Who, at present, he wondered, was in a position to exercise the prerogative of mercy towards Cypriots of Turkish origin living in the part of the island which was under the control of the Government of Cyprus? Had the Constitution been amended to take account of the situation prevailing since the events of 1974?

18. Mr. PRADO-VALLEJO said that the supplementary report submitted by the Government of Cyprus gave a very clear idea of the efforts being made by the Government to ensure the implementation of the provisions of the Covenant in that country. It was particularly laudable that in spite of the very difficult situation existing there, the Covenant had been incorporated in its entirety into the municipal law of Cyprus and prevailed over other national legislation. He noted in particular, with reference to the implementation of article 2, paragraph 1, of the Covenant, that the Constitution guaranteed every person enjoyment of all the rights and liberties set forth therein "without any direct or indirect discrimination ...". That was the first time that there had been a reference in a report from a State party to indirect discrimination, and it demonstrated a desire to secure the fullest possible implementation of human rights in Cyprus.

19. He recognized that, in view of the de facto division of the country into two parts, the Government could not ensure the enjoyment of all rights throughout the territory of the Republic. He noted from the report (p.20) that there were some 1,780 Greek Cypriots in the part of the island that was not under the control of the Government of Cyprus, where, apparently, they were deprived of all rights. He would welcome further information about those persons.

20. The de facto division of the country must have repercussions in other spheres, such as relations with other countries and the treatment of aliens in Cyprus. He noted that under the Constitution deportation of aliens was permissible on grounds of public interest such as the preservation of public security (p.8 of the report). He wondered what provisions governed the legal situation of foreigners in the territory of the Republic at present. Furthermore, if restrictions had been imposed, for example on the right to freedom of speech, in the interests of maintaining order in the present abnormal situation, then that would appear to imply a contravention of the Covenant. He would be grateful for information on that aspect of the situation.

21. It was very important that, in its own report on its consideration of the report submitted by the Government of Cyprus, the Committee should describe the situation prevailing in that country, where the Government could not ensure the implementation of the Covenant in the 40 per cent of Cypriot territory which was not under its control.

22. Mr. DIEYE considered that the efforts of the Government of Cyprus to co-operate with the Committee and to secure the implementation of the provisions of the Covenant were particularly praiseworthy in view of the very difficult situation prevailing in that country. He had been especially impressed by the fact that the Covenant had been incorporated in its entirety into the domestic legislation of Cyprus and in fact prevailed over other internal laws, and also by the evident concern of the Government to ensure the scrupulous observation of its provisions. There was no doubt that the sudden and brutal division of that country into two parts must have had the effect of dislocating the national institutions set up under the Constitution. Mr. Tomuschat had asked if the Constitution had been amended to take account of the new situation in Cyprus. He thought that unlikely since the present situation there was regarded as temporary and it was the desire of the Government of Cyprus to secure the reunification of the country under its Constitution. Nevertheless, it must have been necessary in practice to take certain measures to deal with the situation, since it was no longer possible to administer the country strictly in accordance with the Constitution, which, as Mr. Tomuschat had pointed out, called for the co-operation of members of the two communities, for example in the conduct of judicial proceedings. He would be grateful for information on that matter.

23. Mr. LALLAH said it was his understanding of the present situation in Cyprus that it amounted to a de facto state of emergency, even though the Government of Cyprus had not formally declared a state of emergency under the Constitution. As Mr. Dieye had observed, the situation must have had a very disturbing effect on the country's institutions and the way they functioned, and consequently on day-to-day life and the enjoyment and protection of human rights. The report did not go into detail on those matters and it would be very useful for the Committee to have further information on them. He wondered

for example, how far the judiciary had been able to help overcome the practical problems resulting from the dislocation of the institutions established under the Constitution, for example by applying the doctrine of State necessity with a view to maintaining the orderly conduct of life in Cyprus. Like other members of the Committee, he would be grateful for further information regarding any restrictions or limitations which had been imposed on any rights, such as freedom of expression or freedom of movement, in the public interest.

24. The Government of Cyprus merited every sympathy in its difficulties, for duality had always marked the situation in that country, and it had been necessary from the beginning to attempt to build a unified nation on the basis of that duality. It was all the more praiseworthy, therefore, that the Government was doing its utmost to ensure the full enjoyment of human rights in Cyprus, and he was glad to see that for the first time in a report by a State party the submitting Government referred to specific cases decided in courts of law in order to illustrate its statements.

25. Mr. KOULISHEV said that the Government of Cyprus was to be congratulated on its efforts to fulfil its obligations under the Covenant in spite of the very difficult situation existing in that country. He entirely agreed with the Chairman on the importance of the intercommunal negotiations under way in Cyprus, and their outcome, for the full enjoyment by all Cypriots of their rights under the Covenant. Indeed, the implementation of the Covenant in that country depended to a large extent on the success of those negotiations which, in accordance with the relevant resolutions of the United Nations General Assembly, ought to ensure the maintenance of the sovereignty, independence and territorial integrity of Cyprus, its policy of non-alignment and the peaceful coexistence of the two communities.

26. With reference to article 2, paragraph 2, of the Covenant, the report stated that a number of legislative measures had been adopted. He would be grateful for further details about those measures and would like to know if they related to the present situation in Cyprus. With regard to the judicial remedies described in connexion with article 2, paragraph 3, of the Covenant, he would be grateful for further information about the procedure mentioned in the report under which an aggrieved person could seek redress for the violation of his fundamental rights by any administrative act or omission. It would be of interest to the Committee to know how such a procedure functioned and in what conditions an aggrieved person could appeal to the Supreme Court.

27. Mr. HANGA considered, like other members of the Committee, that the Government of Cyprus was to be congratulated on its supplementary report, which gave a very full picture of the manner in which the Covenant was being implemented in Cyprus. He had only one question to ask at the present stage and it concerned the special committee of experts which, he recalled, had been appointed by the Government some two or three years earlier to consider the incorporation of the provisions of the Covenant into the country's domestic legislation. He would like to know what results that committee had so far achieved.

28. Mr. MOVCHAN expressed appreciation for the presence of the delegation from Cyprus and its desire to co-operate with the Committee. When the first report submitted by Cyprus had been examined by the Committee, he had expressed the hope that the Government of that country would be able to give the Committee comprehensive information on constitutional, administrative and legal aspects of the situation prevailing there and he was extremely pleased to see that it had done so. He was also gratified to note that the report had been prepared in accordance with the guidelines laid down by the Committee to facilitate co-operation with States parties. When those guidelines had been established, he had been among those who had expressed the view that, when examining reports submitted by States, it was extremely important for members of the Committee to be able to make comments rather than merely ask questions.

29. He wished to raise the question whether, from an historical point of view, the present situation in Cyprus and the difficulties encountered by the people of Cyprus were not the outcome and aftermath of colonialism. Was that situation not an obvious example of the application of the precept "divide and rule"? In his view, colonialism was at the historical root of the situation now prevailing in Cyprus. As Lenin had stated, it was not possible to bury the past; it lived on.

30. He had been particularly glad to learn from the report that the Government of Cyprus had, from the outset, chosen a course very different from that followed before independence. That was borne out by the provisions of article 28 (2) of the Constitution. However, the Committee was primarily concerned with the enjoyment of rights and he wished to draw attention to the fact that the legislative, executive and judicial bodies of the Republic had the obligation to ensure the enjoyment of the rights proclaimed in the Constitution. The recourse to remedies was an important part of any democratic régime and he noted the relevant provisions as set out on pages 2 and 3 of document CCPR/C/1/Add.28.

31. A number of questions had been raised about the restrictions or limitations mentioned in connexion with article 5 of the Covenant. For his part, he fully appreciated the need to impose certain reasonable restrictions or limitations in the public interest.

32. He had been particularly interested in the points raised by Mr. Dieye and Mr. Lallah, and looked forward to hearing replies from the delegation of Cyprus.

33. Mr. LOUCAIDES (Cyprus) said that the questions raised thus far by the members of the Committee had touched upon various aspects of the legal system of Cyprus and that it would be necessary to give a brief outline of the constitutional situation in his country since the establishment of the Republic.

34. The Republic had been established under an international treaty which had given little choice to the people of Cyprus as to the form of the Constitution; it could therefore be said that the Constitution was not the outcome of the free will of the people of Cyprus. The Constitution was somewhat complicated and did not safeguard the rights of the majority of the population, as would normally be expected in accordance with the general principles of international law. An eminent

British jurist had commented that the Constitution of Cyprus was probably the most rigid in the world, certainly the most detailed and possibly the most complicated. It was weighed down by checks and balances, procedural and substantive safeguards, guarantees and prohibitions. Constitutionalism had run riot in harness with communalism. The government of the Republic must be carried on, but never had the chosen representatives of a political majority been set so daunting an obstacle course by the makers of the Constitution.

35. There had therefore been many problems for the majority. Those problems, coupled with foreign intervention, particularly by Turkey with its incitement of Turkish-Cypriots to implement the policy of partition, had led to friction in 1963 between the Greek and Turkish communities. The Constitution presupposed co-operation between the two communities in many fields, but after the outbreak of the troubles, the Turkish-Cypriot officials in the Government had abandoned their posts and the Vice-President of the Republic, Dr. Kuchuk, had declared the Constitution to be null and void. The majority of Turkish-Cypriots had remained in government-controlled areas, but faced with the anomalous situation, the Government of Cyprus had had to choose between allowing the structure of the State to crumble or continuing to function to the extent possible under the Constitution and taking such measures as were dictated by necessity in order to keep the State alive.

36. The first step had been to bring the whole question before the Security Council of the United Nations, which had stated emphatically that it was the duty of the Government to establish law and order. There had therefore been a deviation from the provisions of the Constitution so far as the participation of the Turkish-Cypriots was concerned. Almost a year after the troubles had started, the Turkish-Cypriot members of the judiciary had returned to their posts, disregarding considerations of political expediency and the pressures exerted upon them by the Turkish leadership, and had offered their services in working with the Greek-Cypriot members of the judiciary on the basis of a unified system of justice.

37. In September 1964, the case of a law enacted by the House of Representatives had been brought before the Supreme Court. That law had provided for a unified system for the administration of justice in which there would be no more mixed courts and no division in the administration of justice. That law, of course, had not been compatible with the strict letter of the Constitution, and the question had therefore arisen whether it could be sustained on the basis of the principle of the doctrine of necessity. It was important to emphasize the fact that the Supreme Court which had been seized with the case had been composed of Turkish-Cypriots as well as Greek-Cypriots and that its President had been a Turkish-Cypriot. The Turkish-Cypriots, together with the Greek-Cypriots, had decided to hear the case of the Attorney General versus Mustapha Ibrahim, which had subsequently been accepted by foreign jurists as authoritative with regard to the doctrine of necessity. The decision of the Supreme Court had been that, in view of the difficulties encountered in complying with the provisions of the Constitution which required the participation of the Turkish-Cypriot community, and in view of the need for the State to carry on its functions, it was a sound and correct principle to promulgate laws such as the one under consideration.

That was the legal basis on which the Republic of Cyprus had continued to function since 1963. The Turkish-Cypriot members of the judiciary had continued to participate in the judiciary of Cyprus after the decision, had accepted the principle enunciated and had delivered judgements based thereon.

38. After 1964, all the human-rights provisions in the Constitution had been applied strictly, with no derogations in any respect. Between 1963 and 1974 an anomalous situation had prevailed in that there were military posts dispersed throughout the island in which Turkish-Cypriots subject to the instructions of the Turkish leadership lived. The rest of the island had been under the control of the Republic. Despite that situation, the Turkish-Cypriot members of the judiciary had continued in their posts until they had received direct and compelling instructions to abandon them and go to the areas under so-called Turkish administration.

39. In 1974, Turkey had invaded Cyprus on the pretext of restoring constitutional order and had proceeded to occupy approximately 40 per cent of the country. That situation still prevailed and was not only incompatible with the principles of international law in general and with the principles underlying the protection of human rights in particular, but was also contrary to Turkey's declared intention of restoring the status-quo. The obvious aim had been to partition the island in order to set up a Turkish-populated area.

40. The means used to achieve that end had constituted a series of massive violations of human rights. Thousands of Greek-Cypriots had been expelled from the Turkish-occupied areas, families had been divided and the civilian population had been forced to live under distressing conditions in concentration camps. In all, some 200,000 Greek-Cypriots had been forced to seek refuge in the government-controlled area and were still unable to return to their homes. He noted that the expression "exchange of population" had been used to describe that situation, but that did not accurately reflect what had happened. An intercommunal agreement had been reached in accordance with which Greek-Cypriots living in the Turkish-occupied areas would be free to join their families in the government-controlled areas and any Turkish-Cypriots living in the government-controlled areas would be free to move to the Turkish-occupied areas. In spite of that agreement, the Turkish authorities had compelled Turkish-Cypriots to leave the government-controlled areas for the occupied areas and had failed to provide any facilities whatsoever to enable Greek refugees in the government-controlled areas to return to their homes in the occupied areas.

41. Even after the catastrophic events of 1974, the Government of Cyprus had not declared a state of emergency. In spite of the difficulties encountered, it had been considered more appropriate not to take any measures which would in any way affect the enjoyment of human rights.

42. The human rights of the population in the government-controlled areas had been affected by the Turkish occupation to the extent that the Government had been unable to afford any remedy to those individuals wishing to rejoin their families in the occupied areas. In all other respects, both Greek-Cypriots and

Turkish-Cypriots living in government-controlled areas continued to enjoy their full human rights. The Government had never attempted to prevent Turkish-Cypriots from entering the government-controlled areas. The restrictions referred to in the report were those expressly defined in the Constitution and dealt with such questions as the protection of property.

43. The Greek Communal Chambers had been abolished after the intercommunal troubles and their functions assumed by the Ministry of Education. If the Turkish Communal Chambers continued to exist, they did so illegally since they were operating in areas under foreign occupation and had no link whatsoever with the lawful Government.

44. No restrictions whatsoever were imposed on aliens, who were afforded the same enjoyment of human rights as the rest of the population, with the exception of the right to vote. They could also be expelled from the country.

45. Article 146 of the Constitution provided remedies for persons whose fundamental rights were violated by administrative acts or omissions. That article represented an innovation in the legal system of Cyprus and its provisions had been applied in thousands of cases, as a result of which many administrative decisions had been annulled. As far as the question of compensation was concerned, an individual was entitled, under article 29 of the Constitution, to apply to the administrative authority for redress and to receive a reply within 30 days of his application. If he did not obtain satisfaction, he could appeal to the Supreme Court. In the event of an administrative decision being annulled, the administrative authority was obliged to ensure that the situation of the individual concerned was as it would have been if the act or omission had not taken place. If it was unable to do so, compensation was awarded, either as a result of direct negotiation or through civil proceedings.

The meeting rose at 12.50 p.m.