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HUMAN RIGHTS COMMITTEE

Sixth session

SUMMARY RECORD OF THE 127th MEETING

Held at Headquarters, New York,  
on Wednesday, 11 April 1979, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 10.50 a.m.

ORGANIZATIONAL AND OTHER MATTERS

1. The CHAIRMAN noted that press release HR/1773, of 9 April 1979, stated: "During a discussion of the Committee's agenda, members brought up the 'special situation' in Iran and decided to consider requesting the new government to provide additional reports to the Committee. In doing so, the Chairman stressed that the Committee would not 'judge' Iran." Although press releases were quite unofficial, he felt bound in the circumstances to state that the paragraph in question did not accurately reflect the discussion which had taken place during the Committee's consideration of its agenda.
2. Mr. SADI asked what could be done to avoid such errors in future. While it was true that press releases were unofficial, persons outside the United Nations did not distinguish between official and unofficial documents. Accordingly, some procedure should be established to ensure that press releases accurately reflected the facts.
3. Mr. BOUZIRI said that press releases often gave a defective, and at times biased, account of the statements of some speakers, or omitted them entirely. The attention of the competent Secretariat body should be drawn to the need for some control over press releases.
4. Mr. DIEYE, replying to a question from the CHAIRMAN said that it was not the Committee's normal practice to issue corrections when press reports did not accurately reflect its discussions. In the present case, the question had been raised because the representatives of the country in question had also read the press release and had asked whether it reflected what had happened in the Committee.
5. Mr. MAZAUD (Representative of the Secretary-General) emphasized that press releases were not official documents. However, if the Committee so wished, he would request the Department of Public Information to issue a correction. If the official record - namely, the summary record - did not accurately reflect the views expressed at a meeting, it was not for the Secretariat to take the initiative in having it corrected; rather, any member of the Committee could request corrections to his statements in the summary record.
6. Mr. OPSAHL agreed that the press release was not very accurate, but said he did not believe that there had been any intention to mislead. The press release did not state that the Committee had decided to request additional reports from Iran, although the public might have interpreted it in that manner, but only that it had decided to consider doing so.

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7. Mr. BOUZIRI said that the press release was biased, and the Committee should request the issue of a correction.

8. Mr. TOMUSCHAT said that, before taking a decision, the Committee should also check the French text of the press release. In his view, what was involved was a misunderstanding rather than biased reporting.

9. Sir Vincent EVANS said he believed that it would be sufficient if the statements made at the current meeting were reflected in the corresponding press release and its accuracy was checked by the Chairman.

10. Mr. LALLAH agreed with the suggestion made by Sir Vincent Evans. The importance of the error in the press release should not be exaggerated. He recalled that what had actually been discussed was whether the agenda would allow the Committee to consider, if the need arose, what action should be taken in connexion with the report of Iran, and it would be sufficient if that were reflected in the press release for the current meeting.

11. The CHAIRMAN suggested that an informal request should be made for the text of the press release relating to the current meeting, so that Mr. Bouziri and Mr. Opsahl could check it before it was issued.

12. Mr. SADI suggested that the Committee should request that press releases should be circulated, so that it could correct any error immediately.

13. The CHAIRMAN said that he would look into the matter.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 and 1978

Chile (CCPR/C/1/Add.25, CCPR/C/1/Add.40)

14. At the invitation of the Chairman, Mr. Diez (Chile) and Mr. Calderón (Chile) took places at the Committee table.

15. Mr. CALDERON (Chile) said that upon attaining its independence Chile had adopted a representative republican form of government, with a clear-cut separation of powers, modelled after the French Revolution and its immediate forerunner, the American Revolution of 1776. Beginning with the Constitution of 1833, the country had opted for a strong executive, but one strictly subject to the law. The separation of powers had been consolidated from the second half of the nineteenth century onwards, with the judiciary enjoying full independence, which had continued unimpaired down to the present.

16. The "strong executive" system had lasted until 1891, when a political and institutional crisis had ended in a hybrid but predominantly parliamentary régime, which had lasted until 1925 and had proved unequal to the task of governing the country. The Constitution of 1925 had partly re-established the principle of a strong centralized executive, but with special characteristics which had weakened it and had eventually helped to bring about a further crisis in 1973. That crisis, which had been more serious than those of the past, had shown the need for

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(Mr. Calderón, Chile)

a thorough revision of institutional mechanisms in order to create a stable and long-lasting democratic system capable of defending itself against factions or doctrines which, under the protection of republican institutions, had worked to destroy or violently change those same institutions.

17. In view of the situation which had arisen, making it necessary for the armed forces to assume power in 1973, the Government had adopted provisions having constitutional force which specified the organs that would exercise the executive, legislative, constituent and judicial powers.

18. On 11 September 1973, the same day that the armed forces had assumed power, Legislative Decree No. 1 had declared that the Government Junta guaranteed the full effectiveness of the powers of the judiciary and respect for the Constitution and the laws. Legislative Decree No. 527 of 1974, approving the Statute of the Government Junta, had stipulated that the Junta, composed of the Commanders-in-Chief of the Army, the Navy and the Air Force and the Director-General of the Carabineros, would assume the constituent and legislative powers and that executive authority would be exercised by the President of the Government Junta, who would have the powers and title of President of the Republic. That Decree, which had constitutional force, had also expressly reaffirmed that the judiciary was an established institution and would exercise its functions in the manner and with the independence and powers prescribed by the Constitution and laws of the Republic. To assist it in the exercise of the legislative and constitutional powers, the Government Junta had established as working organs four legislative committees and had set up a Secretariat of Legislation to co-ordinate the work of the committees. As a parallel measure, a commission of jurists representing the various democratic schools of thought had prepared a preliminary draft constitutional reform which, after thorough discussion at all levels, was to be submitted to the country in a plebiscite.

19. Reviewing the historical development of the law, he said that, upon the attainment of independence in 1810, the legislation from the period of Spanish rule, based essentially on the concepts and institutions of Roman law, had continued in force. Beginning in the second half of the nineteenth century, a process of modernization and adaptation, patterned primarily on French models had been carried out.

20. The protection of human rights had been provided for in the Constitution of 1811, which had reflected the Declaration of the Rights of Man and the Citizen of the First French Republic. Subsequently, those principles had been consolidated in the successive Constitutions of Chile, particularly those of 1828, 1833 and 1925 and the present Constitutional Acts. In addition, the protection of human rights was provided for in other legal provisions, such as the Penal Code, the Code of Military Justice, the Organic Code of the Judiciary, the Codes of Penal and Civil Procedure, the Labour Code and numerous special laws.

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(Mr. Calderón, Chile)

21. Lastly, he referred by way of example to the situation of women in Chile, who had made progress towards achieving a legal status similar to that of men. Women were now entitled to opt for separate property arrangements and had the right to administer, within the régime of the common marital estate, any property they acquired through their own work; they had full political and trade union rights and were eligible for public office.

22. Mr. PRADO VALLEJO said that he welcomed the presence of the Chilean delegation, since it showed that the Government of Chile was prepared to engage in a dialogue on questions which transcended national frontiers and were of concern to the whole international community.

23. He noted that the Government of Chile had informed the Secretary-General, in accordance with the Covenant, that the state of siege had been raised, a definite step forward which gave cause for satisfaction. In August 1976, the Government of Chile had also informed the Secretary-General which rights had been restricted, thus complying with its obligations under the Covenant. However, according to article 4 of the Covenant, any such restrictions must be imposed "to the extent strictly required by the exigencies of the situation", and he wondered whether so prolonged a period of emergency, at variance with the law and with the provisions of the Covenant, was compatible with fulfilment of the obligations assumed to the international community. Although all Latin American countries had experienced similar problems, it was hard to reconcile oneself to a country's living permanently under a state of emergency, with an uninterrupted restriction of the human rights provided for by the Covenant.

24. Despite the raising of the state of siege, repression apparently continued. The report of the Ad Hoc Working Group established under resolution 8 (XXXI) of the Commission on Human Rights to inquire into the situation of human rights in Chile (E/CN.4/1310) pointed to a disturbing situation, since the executive had been given powers previously reserved solely for a state of siege. Moreover, the state of siege had again been declared in the province of El Loa, where arrests and transfers outside the confines of the commune had been reported (*ibid.*, paras. 24 and 25). The Ad Hoc Working Group had reached the conclusion that the Government of Chile, without objective justification, was continuing to apply measures intended for exceptional conditions of internal disturbance, seriously restricting the exercise of various human rights. That was a disquieting conclusion, and it would be desirable to keep the views of the Chilean delegation on the subject because, if it was correct, the situation was still serious and had not improved as much as could be wished. Legislative Decree No. 1877 also remained in force, empowering the President to order detention pending trial through the security organs, which were given discretion to decide who was believed to be guilty of offences against the security of the State. That implied a grave abridgement of human rights in Chile.

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(Mr. Prado Vallejo)

25. Moreover, the commanders of emergency areas were granted powers to restrict the right of assembly, association, opinion and information and the executive was empowered to order the expulsion of Chilean citizens and to restrict the right of assembly of trade-union organizations (*ibid.*, para. 34).

26. The remedy of amparo was not available during the state of siege and was ineffectual during the state of emergency. According to the report of the Ad Hoc Working Group, it could not be said that the right to life, liberty and security of person was duly protected. Again, the concept of a person posing a danger to the security of the State was ambiguous and its specific application was left to the discretion of the Government (*ibid.*, para. 36); in other words, the Government was both judge and party when it came to taking repressive measures against citizens.

27. In addition, the Ministry of the Interior had the power to expel an alien or a national, as was expressly acknowledged in the report submitted by the Government of Chile (CCPR/C/1/Add.25, p. 4). The exercise of freedom of expression was also limited "where its abuse may create unjustified alarm or in any way disturb public order". It would be desirable to have some clarification of the legal concept of unjustified alarm", since it was difficult to see how it could give rise to restrictions on freedom of expression.

28. The same report referred to restrictions on the right of citizens to vote or to be elected, observing that "The slow pace of the advance towards democracy does not yet permit the full re-establishment of party political activity, because the corrupt political practices, which undermined law and order and brought the nation to the verge of civil war, have not yet been finally eradicated" (*ibid.*, p. 4). One might ask when it was thought that the exercise of that right would be possible, how long it would be before the sovereignty of the people could again be exercised, and who was to judge whether "the corrupt political practices, which undermined law and order" had been "finally eradicated."

29. It was also asserted that, under the state of emergency, habeas corpus retained its full force and effectiveness. However, the report of the Ad Hoc Working Group stated the exact opposite (E/CN.4/130, para. 60). The Chilean delegation should explain that contradiction. The report of the Ad Hoc Working Group also said that the courts did not question the trustworthiness of official reports and that judges appeared to presume, without admitting evidence to the contrary, that all arrests made by order of the executive or with its consent were lawful. If those were the conditions under which people were living in Chile, it could not be said that the remedy of amparo retained its effectiveness. The report also pointed out that there were unjustified delays in proceedings and that the courts accepted delays in the processing of petitions for habeas corpus, which could seriously jeopardize the security of the persons concerned (*ibid.*, para. 63). When a citizen was arrested, the reasons for his arrest should be examined and he should be accorded due process; however, the report of the Ad Hoc Working Group stated that "The Chilean courts do not seem inclined to proceed with investigations into serious violations of human rights" (*ibid.*, para. 69).

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30. The remedy of inapplicability on grounds of unconstitutionality provided under the Chilean legal system was apparently not available in the case of Constitutional Acts of the executive which had modified the Constitution. He also asked which provision took precedence if there was a conflict between the Covenant on Civil and Political Rights and a Chilean law, whether the Covenant could be invoked in defence of a citizen before a Chilean court, especially a military court, and what remedies were available to a citizen for asserting his rights under the Covenant. That point was of prime importance in determining whether or not the Covenant was effective.

31. Referring to the concept of national security as a basis for imposing restrictions of human rights, he asked how the concept was interpreted, whether national security was defined in terms of stability of the régime or stability of the State, and whether it was invoked when the Government feared for its stability or when its interests had been threatened. In connexion with article 4 of the Covenant, the report submitted by the Government of Chile (CCPR/C/1/Add.25, p. 12) said that "it is the natural and constitutional duty of the State to promote the common good, whose attainment is possible only through the creation of the conditions necessary for the economic and social development of the community and its concomitant, national security, in the sense of the ability of the State to guarantee such development by anticipating and overcoming emergency situations which endanger the attainment of national objectives". It was natural that the State should be concerned to promote the common good, but the question was how the attainment of national objectives was being reconciled with national security. Apparently, until such time as those objectives had been attained, there would be restrictions on human rights; that did not seem to be compatible with the Covenant, article 2 of which did not recognize any restriction of that kind and under which the States Parties undertook to take the necessary steps to adopt such measures as might be necessary to give effect to the rights recognized in the Covenant.

32. In that connexion, he wondered how the term "latent subversion" could be defined. He felt, in fact, that in the countries of Latin America where there was illiteracy, poverty and disease there was a state of latent subversion that would last as long as social rights had not been achieved. However, he was convinced that the applicability of civil and political rights could not be made dependent on the attainment of social rights, since that would mean that civil and political rights would have to be restricted in many third world countries, including Ecuador, the country from which he himself came. With regard to political prisoners, although there had been an amnesty its extent had been limited. With regard to missing persons, he wondered whether a serious, conscientious and effective attempt had been made to ascertain what had become of those persons and thus put an end to the anguish in which hundreds of Chilean households were living. Moreover, he wished to know whether, in cases where human rights violations had been established, the victims of physical and psychological oppression and of torture had received redress and whether those guilty had been punished.

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33. Although it was clear that emergency situations entailed a restriction of rights, he wondered whether political reasons had not been the sole justification for the state of siege and, subsequently, the state of emergency. He therefore wished to know whether citizens attempting to bring about a democratic change in the country were persecuted.

34. According to the report of Chile (p. 15), while the state of siege was in force a person might not be remanded in custody for longer than five days, and by the end of that period the detainee must either be released or be brought before the appropriate court, or the Ministry of the Interior. He felt that that provision would have to be clarified because under it a detainee could be held indefinitely at the order of the Minister of the Interior and not that of a judge. From a legal standpoint, the text of article 220 of the Code of Military Justice (p. 15) seemed indefensible, since it raised the question of whether there was a type of violence for which there should be no punishment and, if so, who was to determine it.

35. The section of the report of Chile concerning special powers indicated that by virtue of the exercise of legislative power it was possible to restrict personal freedom and freedom of the press, or to suspend or restrict the exercise of the right of assembly, when that was made necessary by the overriding requirements of the defence of the State, the preservation of the constitutional system or the maintenance of internal peace. However, since there was no constitutional order, that provision would not be applicable.

36. With regard to restrictions on trade-union activities, he requested more specific information, particularly since the Government of Chile had responded to the request for clarification from the International Labour Organisation. He wished to know what developments there had been in the area of trade-union activities and, with regard to the restrictions envisaged in Legislative Decree 198 (p. 19), according to which "... trade union organizations may only hold meetings which are of an informative nature or are concerned with the internal management of the organization in question, ... the provisions relating to the curfew being respected," he wished to know whether those restrictions remained in force.

37. With regard to the comment relating to article 6, paragraph 2, of the Covenant (p. 22), in order not to create an awkward situation he would not ask how many deaths there had been so far as a result of the revolution that had occurred in Chile. He stressed that, at a time when efforts were being made in the world to abolish capital punishment, the Penal Code of Chile permitted it in the case of crimes such as terrorism and other crimes of similar gravity, without giving any specific details regarding the latter. Moreover, he wished to know what legal remedies were currently available to the accused.

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38. With regard to the penalty of forced labour (p. 29), Law No. 11,625 provided that, as a security measure, anti-social individuals could be committed to a work-house or agricultural colony, drug addicts, beggars and drunkards, inter alia, being regarded as anti-social individuals; in his view, the term "inter alia" could lead to any individual being considered anti-social if there was no specific mention of his or her status.

39. With respect to the right of liberty of movement, set forth in article 12 of the Covenant, the report of Chile indicated that "restrictions on the above-mentioned rights can be imposed only for reasons of national security, in emergency situations which endanger the attainment of national objectives". He wondered what incompatibility there was between the desire of exiled Chileans to return to their country and the attainment of national objectives.

40. The comment relating to article 18 of the Covenant, concerning freedom of thought and conscience, indicated that each curriculum was to include two hours of religious instruction a week. In that connexion, it would be necessary to specify if that instruction was to be compulsory, which religion was to be taught, and who was to determine which religion would be taught.

41. The comment relating to article 19 of the Covenant (p. 41) stated that the courts might prohibit the publication or dissemination of opinions affecting morality, public order, national security or the private life of individuals. He wished to know what remedies were available to a citizen affected by those restrictions, as well as to a citizen whose freedom of expression was restricted in the cases envisaged in the Act on Abuses of Publicity.

42. On page 45 of the report of Chile, in connexion with article 22 of the Covenant, it was stated that on 13 October 1973, for reasons of national unity and security, the Government had issued Legislative Decree No. 77 dissolving Marxist political parties. He did not understand the term "reasons of unity" and requested clarification as to whether it was a question of political, administrative or economic unity, or unity of some other description. He wondered, moreover, how it was possible for all political parties, Marxist and non-Marxist, right-wing, left-wing and centre, to have been considered illegal. In his view, in that situation the Government was both judge and party and the political parties had no remedy at their disposal. The report stated on page 46 that "in order to prevent the suspended parties from conspiring against the unity that had spontaneously formed around the image of the fatherland, Legislative Decree No. 1697 of 1977 declared all political parties dissolved". He was unable to see what connexion there was between the dissolution of the political parties and the image of the fatherland. He also wished to know if there was any possibility of cancelling loss of nationality for political reasons.

43. With regard to the temporary suspension of various trade-union activities, in particular the right of collective bargaining and the right to strike (p. 46), he did not believe that it was possible to suspend such activities but "not affect the formation of trade unions".

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44. In conclusion, he expressed the hope that the Chilean people would overcome the current situation and achieve institutional normality. Although he acknowledged that the most recent report submitted by Chile gave the impression that progress had been made, it could be seen from an analysis of that report that the Covenant on Civil and Political Rights was still far from being a reality in that country. He hoped that the Chilean Government would restore without delay the full enjoyment of fundamental rights and freedoms, to the satisfaction of the peoples of Latin America and the whole world.

The meeting rose at 12.50 p.m.