

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



Distr.
GENERAL

CCPR/C/SR.147
7 May 1979
ENGLISH
ORIGINAL: SPANISH

HUMAN RIGHTS COMMITTEE

Sixth session

SUMMARY RECORD OF THE 147th MEETING

Held at Headquarters, New York,
on Wednesday, 25 April 1979 at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant: initial reports of States parties due in 1977 and 1978 (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room A-3550.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

79-55941

/...

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 AND 1978 (continued)

United Kingdom of Great Britain and Northern Ireland (CCPR/C/1/Add.35, 37 and 39)

1. At the invitation of the Chairman, Mr. Richard and Mr. Cairncross (United Kingdom of Great Britain and Northern Ireland) took places at the Committee table.
2. Mr. RICHARD (United Kingdom) reaffirmed the readiness and willingness of the United Kingdom to co-operate with the Committee in furthering the protection of human rights. In the present instance the Committee had before it a number of documents submitted by the United Kingdom, the first of them (CCPR/C/1/Add.35) containing written replies to questions which had been put by Committee members during the consideration of the initial report by the United Kingdom but which it had not been possible to answer fully at that time.
3. The Committee also had before it the report submitted by the United Kingdom concerning the Channel Islands and the Isle of Man (CCPR/C/1/Add.39). Those islands were not part of the United Kingdom, but dependencies of the Crown. The three islands were governed by lieutenant-governors appointed by the Crown and had their own legislatures, whose laws were subject to the approval of the Sovereign, and their own courts of justice. The Islands were responsible for their own domestic affairs; and the acts of the United Kingdom Parliament were not applied to them unless they contained express provisions or necessary implication to that effect. The United Kingdom Government was responsible for the external defence and foreign relations of the Islands, and consulted with their authorities concerning any international agreement which directly affected them. Although the Islands took just pride in their independent status, which the United Kingdom was careful to respect, they shared the social and cultural background of the United Kingdom and maintained close contact with it through the Home Office.
4. The third document before the Committee was the report concerning the 12 dependent Territories of the United Kingdom to which the Covenant on Civil and Political Rights applied (CCPR/C/1/Add.37). Each Territory had its own separate and distinct legal system, and the report in relation to each Territory had been prepared by its own authorities. The report actually consisted of 12 separate reports which varied greatly, as they related not only to small Territories where local institutions were still very simple, but also to Territories having well-developed democratic institutions, which were effectively self-governing and for which the United Kingdom's responsibility was confined mainly to defence and security, and some aspects of external affairs.

/...

(Mr. Richard, United Kingdom)

5. It had long been the United Kingdom's policy to encourage the development of democratic political institutions in its dependent territories. That policy had led progressively to the devolution of political power in respect of domestic affairs to locally elected assemblies and ministers, and was consonant with the general aspirations of the peoples in those Territories to advance to eventual self-determination and, if they wished, to independence. The United Kingdom considered that it was not proper for an administering Power to interfere in matters of internal government and administration, and that its role was to advise but not to impose.

6. Mr. LALLAH said that, while the information provided in document CCPR/C/1/Add.35 covered many of the points which had attracted the Committee's attention, there was one question concerning the constitutional structure of the United Kingdom which had been asked previously but which seemed, in the light of the reply, not to have been properly understood. The most important provisions of the Covenant with respect to political rights were set out in articles 2 and 25. Article 25, in particular subparagraphs (a) and (b), laid down very clear guidelines with regard to the rights which States had undertaken to ensure, and stipulated that the bodies established for the conduct of public affairs must be open to all citizens on general terms of equality, i.e., without any distinction based on birth, for example. It was his understanding that there was a category of citizens in the United Kingdom who by virtue of their birth had an absolute right to become members of the House of Lords. There were others who were not elected but who could be appointed life peers, although they could not transmit to their heirs either their title or their seat in the House of Lords. The question asked had not been concerned with whether peers could renounce their rank and participate directly in Parliament, but rather with whether such a constitutional arrangement was in keeping with the principles of the Covenant.

7. Mr. TARNOPOLSKY drew attention to article 25 (c) of the Covenant, which laid down the right of every citizen to have access to public service in his country, without distinction as to the conditions and circumstances enumerated in article 2 of the Covenant, including national origin. In the annex to document CCPR/C/1/Add.35, which contained information concerning candidates for posts in the civil service, the Cabinet Office, the Ministry of Defence and the diplomatic service, it was indicated that there were restrictions based on the nationality not only of candidates - which was a common practice - but also parents of candidates, which clearly raised the question of distinctions within the meaning of article 25.

8. Mr. MOVCHAN recalled that, during the consideration of the initial report by the United Kingdom, he had noted that the United Kingdom did not have a written constitution and that the Covenant was not part of its internal legal order. It had been stated that the provisions of the Covenant were reflected in the common law and in numerous court decisions. It had also been stated that the initial report had been prepared before the guidelines laid down by the Committee had been issued. However, in the replies provided in document CCPR/C/1/Add.35, which had been prepared after the preparation of the guidelines, there was likewise no reference to legislative texts, nor was there a summary of judicial decisions. The same observation applied to document CCPR/C/1/Add.39 concerning the Channel Islands

(Mr. Movchan)

and the Isle of Man, in which it was stated that the rights enshrined in the Covenant were granted to all citizens without distinction of any kind and that, in consequence, it was deemed unnecessary to adopt specific legislation to give effect to those rights. He wondered whether the Committee should be satisfied with such assertions and, specifically, how it could ascertain how the Covenant was applied in the United Kingdom if there were no laws relating to that matter, how British subjects could know their rights under the Covenant if it did not form part of the country's law and whether it was possible directly to invoke the Covenant before the courts. It was also stated that the Judiciary was independent of the State. However, since the Covenant was a commitment undertaken by the State, he asked how a court could apply the Covenant if it was independent of all State influence and was bound only by laws which in the case of the United Kingdom were nonexistent.

9. With regard to equality of rights and the commitment undertaken by States parties in accordance with article 2 to respect and to ensure to all individuals in their territories the rights recognized in the Covenant without distinction of any kind, the question arose as to how the Committee could ascertain whether that provision was being applied in the United Kingdom.

10. There was no mention of the equality of men and women in the initial report by the United Kingdom, which did not even contain the word "woman". In that connexion, he asked whether there was any law which guaranteed the equality of men and women.

11. With regard to article 25 of the Covenant, he asked what role the political parties played in the formation of the Government and, specifically, whether there had been any instances in which a Government had not been formed on a party basis. If that had never happened, it meant that, although there was no statute law in the matter, political parties had a leading role in the United Kingdom with respect to the Executive, and the possibility of participating in public affairs was predicated on membership in a political party. He also asked what differences there were between the Conservative Party and the Labour Party with regard to the political and economic foundations of the system, for example, with respect to the way in which the national income was distributed and such essential rights as the right to work and the right not to suffer from the effects of unemployment.

12. Lastly, he stressed that all the questions he had asked related to fundamental problems, namely, the application of the Covenant, the equality of men and women, and equality with respect to participation in the conduct of public affairs and access to public service.

13. Mr. SADI noted that it was maintained that, in the United Kingdom, the obligations undertaken in accordance with article 2, paragraph 2, of the Covenant were complied with through various safeguards embodied in legislation distinct from, yet fully consistent with, the Covenant. He believed, however, that the provisions of article 2, paragraph 2, of the Covenant required the adoption of specific measures to give effect to the rights recognized in the Covenant; it was not sufficient to state that the existing laws were consonant with the Covenant. The

/...

(Mr. Sadi)

question could be raised as to who determined whether the laws were or were not consonant with the Covenant and how individuals could enjoy the benefits of the provisions of the Covenant if it was not part of domestic law.

14. With regard to equality in respect to elections, he asked whether the "one man, one vote" principle was applied in the United Kingdom and whether electoral districts were drawn up in such a way as to reflect that principle.

15. Mr. RICHARD (United Kingdom) said that the House of Lords was an institution which for centuries had been an inherent part of the British constitutional structure and was still in a state of evolution. There were differences of opinion in the United Kingdom as to whether further reforms should be introduced in that House, or whether it should be retained in its existing form. At all events, although its organization had been the subject of controversy, it was considered useful to have a second House to examine laws and, in practice, the House of Commons took precedence over it. When the House of Lords did not agree with the drafting of a bill, it returned the text to the House of Commons, which decided whether to accept the proposed change, as it normally did, or whether to reject it. In the latter case a special parliamentary procedure was applicable, with the participation of both Houses, in order to resolve the difficulty. Furthermore, in recent years the hereditary element of the House of Lords had been diluted by the nomination of new life Peers designated by the Crown on the recommendation of the Government. The political parties of the United Kingdom considered it desirable, from the constitutional point of view, to have a second house, and not many people were in favour of vesting legislative power in a single chamber. In reality, the existence of the House of Lords in no way affected the right of citizens to take part in the conduct of public affairs without discrimination of any kind.

16. With regard to access to public service, it was well known that in the United Kingdom, citizenship had for a long time been granted on a broad basis to a large number of persons. It was considered reasonable that those who became involved in public administration, in addition to being citizens, should have direct ties with the country.

17. As to the references which had been made to the absence of a written constitution in the United Kingdom, he pointed out that the laws could be consulted by everyone and that anyone could examine their texts, ascertain whether the rights laid down in the Covenant were being respected in the United Kingdom, and observe the operation of the courts.

18. Furthermore, he did not share the opinion that, under article 2, paragraph 2, of the Covenant, a State party had to adopt positive measures; the State undertook to take the necessary steps, in accordance with its constitutional processes, to adopt such legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant. Anyone could judge whether the rights recognized in the Covenant were given effect in the United Kingdom.

/...

(Mr. Richard, United Kingdom)

19. It had been observed that in one of the documents submitted by the United Kingdom there was no reference to women. To explain that omission, he recalled that, when the term "man" was used in a British legislative instrument, it was understood to include women.

20. As to the differences which existed between the principal British political parties, the development of the current election campaign showed that those differences were very significant for British citizens. Furthermore, in the United Kingdom everyone enjoyed the freedom to form other political parties, such as the Communist Party, which had presented candidates and was participating in the election campaign. Questions had also been asked about the system used to determine the boundaries of constituencies. In the United Kingdom each constituency elected a single representative, and an independent commission periodically examined the boundaries of constituencies to decide whether they reflected the distribution of population. The objective was to ensure that all the constituencies represented an approximately equal number of people.

21. Lastly, he pointed out that the political parties could form coalition governments, as had occurred during the Second World War.

22. Mr. TOMUSCHAT said that it was difficult to reconcile hereditary institutions, including the monarchy, with the Covenant. It was not enough to explain that membership of the House of Lords did not constitute an advantage, nor was it satisfactory to maintain that the State proceeded on the assumption that its legal system was compatible with the Covenant. That assumption could easily weaken the force of the Covenant, since a State could then reject all criticism, maintaining that, in its view, its legal system was fully in accordance with the Covenant. Furthermore, the Covenant included the principle of the self-determination of peoples, and it was incompatible with the provisions of the Covenant that legislative power in a country should be in the hands of a select minority or a special class. In the case of the United Kingdom, the explanation seemed to be that the House of Lords had a genuinely limited role, and did not have decision-making power. As to the monarchy, its role seemed to be limited to moral leadership and it did not seem to be a political institution which could infringe on the right of the people to self-determination.

23. Mr. GRAEFRATH said that the question was not one of deciding whether the system of the House of Lords was good or bad, since that was a matter falling entirely within the competence of the United Kingdom. The problem was rather to determine whether a constitutional structure, written or unwritten, really corresponded to articles 2 and 25 of the Covenant. In order to answer that question, it was not enough to maintain that the people had the opportunity to take part in political activity, since what was being considered was whether, in accordance with article 25, the people had access to all political bodies. Nor was it enough to say that the powers of the House of Lords were limited.

24. Furthermore, he wondered whether it was a fact that the Lord Chancellor and the Chief Justice of the Supreme Court had to be Anglican or members of any particular church.

/...

25. Mr. SADI said that, in the context of the House of Lords, there was clearly a conflict between two rights. The people had the right to decide whether there should be a House of Lords, which implied a distinction between who was a Lord and who was not. The right to choose that system was in conflict with another right, the right to equality, since the existence of the House of Lords was incompatible with the article of the Covenant concerning equality. It was important to determine the exact meaning of article 2, paragraph 2, of the Covenant, not only in the case of the United Kingdom, but in other cases too. The United Kingdom had interpreted it to mean that it did not need to take steps to incorporate the provisions of the Covenant in its legislation, since its legal order made that unnecessary. Furthermore, the spirit of article 2, paragraph 2, of the Covenant was that if the constitution or relevant laws of a country did not provide for the incorporation of the provisions of the Covenant, appropriate steps should be taken for that purpose. Otherwise, any State could maintain that it did not see any need to adopt such measures because its legislation was in accordance with the Covenant. In that context, it must be borne in mind that the purpose of the Covenant was basically to protect the individual.

26. Mr. DIEYE said that it was extraordinary to find that in a country which had no written legislation the laws were respected. When there was no written legislation in a country, the judiciary acquired crucial importance and that, in turn, gave rise to the possibility of the clear denial of human rights. Article 25 (c) of the Covenant provided that every citizen had the right to have access, on general terms of equality, to public service in his country. If a person in the United Kingdom considered that that provision had been violated by the competent authorities and applied to a court which, as was known, acted in complete independence, a decision could be reached which was in violation of article 25 of the Covenant. It was therefore important to know what direct and specific protection was available to an individual who was deprived of a right laid down in an international instrument ratified by his country.

27. Mr. KOULISHEV said that he shared the doubts of other members of the Committee regarding the compatibility of a hereditary institution with the provisions of the Covenant, and in particular with articles 2, 25 and 26. Furthermore, in the United Kingdom treaties were not automatically incorporated into the internal legal order and it was therefore very important that there should be rules for the application of treaties in general and of the Covenant in particular. He accordingly asked whether, in connexion with the ratification of a treaty, the practice existed in the United Kingdom of examining its compatibility with the internal legal order and, if so, which bodies were responsible for carrying out such an examination and taking the initiative if changes in the legislation were required.

28. Mr. HANGA recalled that at the time of the consideration of the report of the United Kingdom he had asked whether members of the armed forces could stand for election to Parliament. It was indicated in the annex to the report (CCPR/C/1/Add.35) that if a member of the armed forces wished to stand for election to Parliament he was required to resign or retire voluntarily from the forces. He wished to know whether there were other officials who, because of their official duties, could not stand for election to Parliament and, if so, what proportion of the population was in that situation.

/...

(Mr. Hanga)

29. Furthermore, in connexion with article 25 (a) of the Covenant, he asked how the inhabitants of the United Kingdom took part, directly or indirectly, in the conduct of public affairs, and whether there were precedents or specific legal provisions on the subject which eliminated any possibility of discrimination in accordance with article 26 of the Covenant.

30. Mr. MOVCHAN interpreted the replies of the United Kingdom representative to mean that he acknowledged that there were no differences between the two political parties and that, informing the Government, the winning party assumed executive power and played a guiding role. Furthermore, the absolute equality of rights enunciated in articles 2 and 3 of the Covenant was not expressly provided for in the United Kingdom and no mention had been made in the Committee of any legislation indicating the existence of provisions under which all United Kingdom subjects were equal, without any discrimination, particularly on the grounds of their political opinions.

31. He said that the existence of a written constitution was the responsibility of each country. In the Covenant international norms were laid down which each country applied in accordance with its own structure and its traditions and customs. Since, however, by virtue of article 2, paragraph 2, of the Covenant, States parties were required to adopt legislative or other measures, he requested the United Kingdom representatives, in their replies, to try to ensure that the applicable laws in force were cited and, if there were no such laws, they should say so, to enable the Committee to ascertain whether the provisions of the Covenant were applied in accordance with statute law, precedents or custom. In the case of precedents, he wished to know how the Government ensured that they corresponded to the spirit and letter of the Covenant. Without that background information, it would be impossible to form a real picture of the application of the Covenant in the United Kingdom.

32. Mr. CAIRNCROSS (United Kingdom), referring to the problem raised in connexion with the interpretation to be given to article 2, paragraph 2, of the Covenant, and in particular to the fact that the provisions of the Covenant had not been incorporated into British legislation, he said that, when the United Kingdom signed a treaty, the Government examined it carefully before it was ratified in order to ascertain whether the legislation in force was in keeping with the provisions of the treaty. In the United Kingdom, the provisions of treaties were generally not incorporated into domestic legislation. Furthermore, the Covenant did not stipulate that the States parties must incorporate its provisions into their domestic legislation; rather, it laid down that - where not already provided for by existing legislative or other measures - each State party undertook to take the necessary steps, in accordance with its constitutional processes, to adopt legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant.

33. Mr. Movchan had pointed out that the report made assertions with regard to the implementation of the provisions of the Covenant without indicating the relevant legislation to corroborate those assertions. In reply he pointed out that, in the preparation of the reports submitted to the Committee, an effort had been made to avoid overburdening it. In any event, that comment would be taken into account in the future.

/...

(Mr. Cairncross, United Kingdom)

34. As to the question concerning the way in which to implement a law that was unwritten, he explained that, while there was no written law in respect of constitutional organization, namely, the relationship between the various Powers, there were indeed written laws covering all the remaining areas, and those laws had to be applied by the courts. The question had also been asked what would happen if a court, on the basis of a law in force, rendered a judgement which was contrary to the provisions of the Covenant. While that was an unlikely, hypothetical situation, if the question arose Parliament would enact a law to annul the judgement rendered by the court in question.

35. With regard to the House of Lords, it had been correctly pointed out that if, upon examination of the British constitutional system, it was determined that there existed a hereditary element constituting a source - and perhaps the only source - of political power, that situation would run counter to the provisions of the Covenant. In reply he said that, when the United Kingdom had considered the possibility of ratifying the Covenant, the legislation and British constitutional organization had been studied closely and the conclusion had been reached that the situation was in keeping with the provisions of article 25 of the Covenant.

36. With regard to the same article and the question relating to the cases in which an individual could be precluded from participating in the conduct of political affairs, he replied that that possibility did not exist. Referring to the question of "direct" participation, he pointed out that a member of Parliament, for example, took a direct part in the conduct of political affairs, while those who elected him participated indirectly. Furthermore, in his view, the existence of the House of Lords prevented no one from freely participating in the conduct of political affairs. As to the question of discrimination he indicated that, if a person considered that his rights set forth in article 25 of the Covenant had been violated, he could invoke laws which specifically referred to discrimination on grounds of race, sex or marital status or could challenge the authority of the person who prevented him from exercising his right.

37. As to the question of the existence of provisions in which it was stipulated that the Lord Chancellor had to profess the Anglican faith, he pointed out that there were now no such provisions.

38. The question had also been raised whether the position occupied by an individual in a political party determined the position which he would have to occupy in the Government if the party to which he belonged was elected. He explained that there were no rules on that subject: the Crown requested the leader of the political party elected to form the Government and it was the latter which assigned the various posts. Of course, in practice, there was a certain relationship between the position of an individual in a political party and his position in the Government, but there was no law at all to regulate that process.

39. In conclusion he indicated that, in addition to members of the armed forces, there could be no participation in the conduct of political affairs on the part of members of the civil service or the diplomatic service. That question had recently been re-examined with a view to ascertaining to what extent there was a

(Mr. Cairncross, United Kingdom)

need to impose such a restriction on members of the civil service or the diplomatic service, and greater flexibility in that respect had been proposed. However, the criterion applied hitherto was that members of both the civil service and the diplomatic service offered their services to the Government and not to the political party in power, and that they must therefore be able to act with absolute impartiality.

40. Mr. TOMUSCHAT, referring to article 2 of the Covenant, said that in a recently published article an authority on the subject had indicated that, when customary law was applied, loop-holes could arise which were not rectified for some time because of the slow functioning of that system. Consequently, there was a need for machinery which would keep a close watch on the evolution of legislation in relation to the provisions of the Covenant and other machinery to enable the citizens of States parties to the Covenant to invoke that instrument directly, even though its provisions did not form part of the domestic law of the State in question.

The meeting rose at 1 p.m.