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Seventh session

SUMMARY RECORD OF THE 155TH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 1 August 1979, at 10.30 a.m.

<u>Chairman:</u>	Sir Vincent EVANS
later:	Mr. MAVROMMATIS

CONTENTS

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

Organizational and other matters (continued)

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

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

Ukrainian SSR (CCPR/C/1/Add.34) (continued)

1. Mr. TOITUSCHAT expressed appreciation for the detailed and well organized report submitted by the Government of the Ukrainian SSR and for the presence of the representative of that country in the Committee. The way had thus been paved for a constructive dialogue which would, as in the case of other countries, lead to the enhanced and strengthened enjoyment of human rights by all persons under the jurisdiction of the Ukrainian SSR. The Ukrainian representative's introductory statement made at the 153rd meeting had amplified and supplemented the information contained in the report itself.

2. He wished, first of all, to express his full awareness of the tremendous difficulties with which the Ukrainian SSR had had to contend after a devastating war which had cost millions of human lives and had inflicted atrocious harm and suffering on the Ukrainian nation. It was gratifying to note that all available evidence tended to indicate that the Ukrainian SSR had overcome all the disruptive effects of war and once more become a flourishing community.

3. Like previous speakers, he had been struck by the statement at the beginning of page 2 of the report. He fully realized that a Government might be confident that it was living up to its commitments under the Covenant. Other Governments had expressed themselves in more or less similar terms. It seemed to him, however, that the Covenant was based on a slightly different philosophy. Why had the reporting procedure under article 40 been established? Why had States been instructed to inform the Committee of factors or difficulties affecting the implementation of the Covenant? Obviously, for the simple reason that to bring national rules and policies fully into line with the Covenant was not an easy task, since the Covenant proclaimed lofty principles which required major efforts on the part of any Government. No community, irrespective of its structure, could be totally sure that it had won the final victory against the threats which continually jeopardized human rights. The ensuring of human rights was a never-ending process, since human rights constituted a challenge to any community. If one proceeded from different assumptions, it would not be possible to understand the role of the Committee, whose function was to monitor the performance of States parties and, if necessary, to draw their attention to any shortcomings or deficiencies. He did not believe that it was a matter of shame for a Government to admit that its performance required certain improvements, an admission which might well be made as the outcome of the constructive dialogue which the Committee was so eager to conduct with every State Party. Accordingly, Governments should note with the utmost care all questions and observations submitted by the members of the Committee. Only if there was a preparedness to listen to reasonable arguments could the exchange of views be fruitful.

4. When reading Chapters 5 and 6 of the Ukrainian Constitution, one saw that almost all the fundamental rights or freedoms had been set forth solely for the benefit of Ukrainian citizens. Article 35 seemed to accord a number of very limited rights to aliens. As he understood the text of the Constitution, a specific legal enactment was required explicitly to confer equal rights on both Ukrainian citizens and non-nationals of the Ukrainian SSR. Chapter 6, as he read it, could not be included among such legislation, since it referred solely to Ukrainian citizens. The basic philosophy of the Covenant was a different one. Nearly every right was to be enjoyed by "everyone", an approach that was in keeping with the preamble to the Covenant, which expressly mentioned human dignity and the philosophical basis from which the Covenant had sprung. Obviously, some differences existed. Article 12, paragraph 4 of the Covenant, applied in principle only to nationals. Article 25 applied only to persons who were members of the national community, and article 2, paragraph 1, and article 26 did not list nationality as a prohibited criterion of discrimination. Generally, however, aliens should be on an equal footing with the State's own citizens. His question, therefore, was how the Constitution's limited scope ratione personae could be reconciled with the requirements of the Covenant.

5. Turning to the information which had been supplied in the report in connexion with the various articles of the Covenant, he wished to draw the attention of the Ukrainian representative to the fact that the prohibition of discrimination under the Covenant was much broader than the corresponding provision in article 32 of the Ukrainian Constitution. Article 2, paragraph 1, of the Covenant expressly mentioned as an inadmissible ground of discrimination "political or other opinion". The same was true of article 26. There was no need to elaborate on the difference, which was obvious and had been amply dealt with by previous speakers. The prohibition of political discrimination confirmed what could be deduced from articles 1, 19, 21, 22, 25 and 27, namely that the Covenant constituted a charter of political freedom. Anyone should have the right to express himself freely on all matters of public concern, provided that he did so in a peaceful manner, availing himself only of the force of his arguments and not of his physical strength.

6. Expressing oneself on the meaning of the scope of the Covenant might be viewed as a "political" activity. He had taken note of the information that the Covenant as such had not been incorporated into the national legal order. Nevertheless, the Covenant could not be considered irrelevant to private citizens. It embodied a network of international obligations which the Ukrainian SSR had assumed. Therefore, any private citizen should be able to argue a case on the basis of the Covenant, referring to the international obligations of his country. In fact, one of the best guarantees was the vigilance of the individuals concerned. That was only a factual argument, but derived legal force from article 2, paragraph 3, pursuant to which, in the event of a violation of a right or freedom recognized in the Covenant, the individual should have the possibility of seeking redress. Thus, anyone who claimed a remedy must necessarily refer to the Covenant itself in order to show that his claim was well founded.

7. In that connexion, therefore, he wished to ask the following questions. Did the Government of the Ukrainian SSR agree that to invoke the Covenant was permissible and should not entail any negative consequences? How had publicity for the Covenant been assured? Were there textbooks which could be purchased in any bookshop? How would the Ukrainian Government judge the activities of a group of private citizens intending to monitor on their own behalf the respect for the Covenant shown by the Ukrainian Government?

8. He would revert to the question of the guarantee of effective remedies under article 2, paragraph 3, in connexion with specific articles. One particular point should, however, be stressed with reference to the enumeration of devices for the protection of rights to be found at the bottom of page 3 and the top of page 4 of the report. By stating that any person claiming that his or her rights had been infringed should have a remedy, the Covenant clearly recognized a procedure which the aggrieved individual could set in motion on his own initiative, without having to rely on anyone's consent or approval. Objective procedures, which the individual could not influence, were thus only supplementary. Their mere existence did not satisfy the requirements of article 2, paragraph 3.

9. With regard to article 6, further clarification seemed to be required. Did the Ukrainian Government have specific rules regarding the use of firearms? Were they laid down in formal legislative enactments? What was the substance of such rules? Were they based on the principle of proportionality in the sense that shooting must be the last resort justifiable only when high social values and, in particular, human lives were at stake?

10. With respect to article 7, he noted the statement in the report that the legislation of the Ukrainian SSR established criminal and disciplinary liability for officials guilty of violating the rules for the treatment of persons accused of crimes or sentenced to deprivation of liberty. What were those rules? What was their legal basis? Perhaps the statement merely referred to the Criminal Code and the Code of Criminal Procedure. Or perhaps there was some other specific set of rules on the treatment of criminal offenders. It should be possible to clarify that point without difficulty.

11. In connexion with article 8, he would like to know whether there was any penal provision which made so-called "parasitism" a punishable offence. That might give rise to the question of compulsory or forced labour. Was there not only a right, but a duty, to work? The report merely referred to dependent labour. But what about a self-employed person, such as an artist or a painter who did not wish to tie himself to a specific employer? Could he run the risk of criminal prosecution for parasitism if the competent State organ deemed him not to be "socially useful". Further enlightenment should be given on that point.

12. Additional information was required in respect of article 10. In his opinion, the Committee would need the full text of the Correctional Labour Code, just as it would need the complete text of the Law concerning Court Organization in relation to article 14. It seemed to him that the Committee needed for its evaluations, in

addition to the relevant national Constitutions, the texts of the major codes which set forth the legal régime of the principles proclaimed by the Covenant. That observation applied, of course, to all States parties to the Covenant. For instance, under article 10, there arose the question of the situation of the family when a convicted person was serving a term of imprisonment. The report did not, however, convey a clear idea of that situation.

13. Like previous speakers, he considered that the report was excessively discreet with regard to article 12 and that precise and detailed information would have to be provided. It could not be denied that the freedoms under article 12 might be restricted. It would be one of the main tasks of the Committee to trace the borderline between inadmissible infringements of article 12 by excessive restriction and legitimate limitations which were justified under paragraph 3. However that might be, it should be stressed that it would contradict the Covenant to make the sole fact of applying for an emigration visa a punishable offence or an act otherwise detrimental to the interests of the person concerned. A denial of a visa might be, in the specific circumstances of the case, a perfectly legitimate decision. He could see no justification, however, for barring a citizen from even presenting a claim with reference to the Covenant, which expressly set forth the right to leave any country. Again it was quite obvious that the Covenant could become a living constitution, only if anyone could invoke its provisions freely and without hindrance.

14. With respect to article 13, he would like to be more fully apprised of the procedure followed when an alien adduced arguments against his expulsion.

15. He had been struck by the concept of "socialist justice" and would like some further explanation. Was it different from justice in a very simple sense or was some further elaboration needed in order to understand what was meant by "socialist justice"? He would also like more detailed information on the concept of a "State secret". As the report pointed out, a departure from the basic principles of publicity of court proceedings was permissible when a State secret was involved. If, for instance, a person was tried for anti-Soviet agitation and propaganda, could such a trial be held in private on the assumption that it would be detrimental to the interests of the Ukrainian SSR to reveal the facts which supported the charges? More information should be given about the organization of the legal profession. In fact, the guarantee offered by article 14 would be worthless without the existence of a bar whose members were prepared to speak out even against the position taken by State authorities. In other words, it was obvious that barristers needed a considerable degree of autonomy. Was access to the legal profession free? What were the requirements? What disciplinary régime was applicable to lawyers? Had the law mentioned in article 159, paragraph 2, of the Constitution been enacted? Were the guarantees offered under article 14 applicable to the comrades' courts referred to on page 3 of the report. He assumed that comrades' courts possessed some disciplinary powers and it would seem obvious that they came within the purview of article 14.

16. With regard to article 17, he wished to have some clarifications regarding remedies. If letters were confiscated by the police, what remedies were at the disposal of the aggrieved individual? If a telephone was disconnected, would the person involved have the right to challenge the decision? He would also be grateful for confirmation that a letter from abroad containing, for instance, nothing more than the text of the Covenant would not be considered as violating Ukrainian public order and would not thereby be subject to confiscation.

17. Turning to article 18, he said that he found highly commendable the provision under which any religious or atheistic activities were limited by the religious feelings or rights of other persons. On the other hand, the report clearly revealed a number of far-reaching prohibitions which should be given very careful scrutiny. If he had correctly understood the situation, religious communities were not allowed to engage in activities which were deemed to be the purview of State organizations. However, the Convention explicitly spoke of the right to manifest one's religion or belief in worship, observance, practice and teaching. Religious communities, therefore, were not confined to worship in a narrow sense.

18. In order to facilitate a fuller understanding of the legal régime in force, the Ukrainian SSR should submit to the Committee all the relevant texts in all the working languages of the Committee. He shared the concern of those who found it difficult to reconcile with the requirements of the Convention the fact that atheistic propaganda should be privileged with regard to religious propaganda, which did not enjoy the protection of the Constitution. Page 21 of the report referred to the rules concerning religious education. It bluntly stated that the teaching of any kind of religious dogma in educational establishments was prohibited, the only alternative being to study religion privately. Could that be reconciled with article 18, paragraph 41, of the Covenant? He doubted it. Since parents had been granted the right to ensure the religious and moral education of their children in conformity with their own convictions, they must also be given the means of enjoying that right. Obviously, any community needed collective forms of expression in order to survive, as was borne out by article 27. Parents alone were not in a position to ensure the religious upbringing of their children if they were prevented from organizing joint teaching facilities. Furthermore, it would appear that those restrictions applied only to religious activities. He would like to have information about the legal régime in force and about its justification. In addition, the statement at the beginning of page 22 did not seem to be confirmed by the information preceding it.

19. He did not wish to dwell at length on articles 19, 21 and 22; there had already been much discussion on the correct interpretation of those provisions. In his view, freedom of opinion and speech could be conceived in very simple terms. It gave the individual the right to say what he thought was the truth. He could not agree, therefore, that freedom of opinion should be subject to the inherent limitation of having to contribute to strengthening any general State philosophy, so that views other than socialist ones would ab initio be outside the scope of article 19. How could the prohibition of political discrimination be respected if specific substantive

opinion was discriminated against? More clarification seemed required on the scope of the provisions of the Penal Code which made anti-Soviet agitation and propaganda a punishable offence. What was meant by that formula and how was it interpreted and applied?

20. He would also like to draw the attention of the Ukrainian representative to the fact that art in all its forms was also protected by article 19. Was there any specific legal régime for artists? Did an artist enjoy full freedom to present his work to the public? Was membership of an official association of artists necessary for the effective exercise of artistic freedom? The report was silent on those points, but article 45 of the Constitution seemed to indicate that artists had been assigned the function of contributing to the building of communism.

21. The main point with regard to article 22 was whether some measure of pluralism had to be granted by States parties. He did not disregard the fact that excessive fragmentation of the trade-union movement was likely to give rise to serious problems. Nevertheless, there were many intermediate solutions between the principle of strict unity and the situation in which two workers could claim to constitute a union. If he had understood the report correctly, the possibility of forming and joining trade unions outside the existing trade-union structure was not provided for in the legislation of the Ukrainian SSR. Unless he was mistaken, that situation had been criticized by another international body, the ILO Committee of Experts, which had even recommended that existing legislation should be amended in order to recognize clearly the right of workers to set up unions of their own choice and enjoying the same status as the existing trade-union committees.

22. Much interesting information had been provided in connexion with article 27, but it did not seem clear whether the rights of minorities had been defined in a legislative enactment or whether the description merely reflected a factual situation. What was the basis, for instance, of the proposition contained in page 31 of the report that national groups undertook to "develop a socialist culture which is undivided in its spirit and basic content and at the same time national in form"? Furthermore, how was a nationality or minority defined? Was the Jewish population, for instance, recognized as enjoying the same rights? What about schools? The report was explicit in that respect, but it did not specify whether it was describing a factual situation or a legally entrenched one. Did national minorities have the legally-vested right of establishing a school for their children if they so wished? More information seemed to be required in that respect.

23. In conclusion, he wished to stress that, in making his observations, he had been guided by the desire to contribute to the process which the Committee was duty bound, under article 40, to carry out. The interests of the international community could not be served if the Committee was not prepared to raise delicate and complex issues, which might even touch upon a structure of government in general.

24. Mr. OPSAHL expressed thanks to the Ukrainian SSR for the comprehensive report transmitted to the Committee. It was very encouraging to note that the socialist States in particular had shown how very seriously they took co-operation with the Committee.

25. It was natural that the report should focus on the new Constitution adopted in 1978. The present report indicated that more than 32 million persons had participated in a nation-wide discussion in the Ukrainian SSR on the text of the Constitution. Perhaps, however, that figure did not take account of the fact that the same persons might have participated in more than one discussion. Even so, wide popular participation in the preparation of a constitution was certainly a good thing which should recommend itself to other nations.

26. The report further stated that socialism in the Ukrainian SSR had in fact guaranteed working people real freedoms and genuinely democratic rights, well-being and solid confidence in the future. Assuming that was so, several questions nevertheless arose. He personally shared the view that it was necessary for the full realization of human rights to eliminate the exploitation of man by man, but he had never been of the opinion that that alone was sufficient. For instance, some forms of exploitation of nature by man might threaten human rights. He therefore wished to ask the following questions. Firstly, what did "other forms of oppression of man by man" in the report refer to? Secondly, had such other forms of oppression of man by man, although now eliminated, existed in the Ukrainian SSR at any time after the revolution which had brought exploitation to an end? Thirdly, if some form of oppression (e.g. political, ethnic, social or cultural) contrary to human rights could ever exist even under socialism, in the Ukrainian SSR or elsewhere, how could one have confidence in the future? Must one not always be on guard against new or old forms of oppression?

27. The Ukrainian report contained few, if any, references to the federal system to which the Ukrainian SSR belonged and he would like to know to what extent its legislation was co-ordinated with that of the USSR. Furthermore, its references to laws reflecting the provisions of the Covenant included only those laws which had been adopted in the 1960s and 1970s. He therefore wondered how such an impressive legislative programme had come into being and why there had been no reference to laws dating back to earlier decades. It would also be useful to know the extent to which Ukrainian laws copied those of the USSR. The quotations in the report indicated a very close, if not complete, similarity to corresponding provisions in the legislation of the USSR and the Byelorussian SSR, and he assumed that there were no significant differences in terms of implementation of the Covenant.

28. Noting that under article 31 of the Constitution, every citizen of the Ukrainian SSR was at the same time a citizen of the USSR, he would like an explanation of the citizenship requirements in the different legislative systems, and how citizens' status differed from that of aliens. Such information was relevant in relation to the provisions of articles 12, 13 and 25 of the Covenant.

29. Turning to the implementation of specific articles of the Covenant, he would like to know, in connexion with article 1, whether there was any feeling of nationalism in the Ukrainian SSR, and if not why not. Although the right of self-determination was a collective rather than individual right, it would seem that the individual should be able to advocate the exercise of that right, and he would like to know whether Ukrainian citizens were able to do that and whether they could express nationalist views.

30. Article 2 of the Covenant was fundamental, and yet it did not seem to be fully reflected in article 32 of the Ukrainian Constitution, especially in respect of political or other opinions. In relation to article 2, the report quoted article 4 of the Code of Civil Procedure of the Ukrainian SSR, which provided that any person had the right to apply to the courts for protection if his rights or legally protected interests were infringed or contested. What distinction was there between rights and legally protected interests? Could the latter include, for example, the right to freedom of expression, as embodied in article 19 of the Covenant? How was that right understood in the Ukrainian SSR? Was the exercise of available remedies in the hands of the individual citizen or dependent on the decision of a public authority? And did the duty of an official to act to protect the rights of citizens also extend to cases where he must act against other officials or authorities, including those of a higher rank? It should be noted that article 2, paragraph 3 (a), of the Covenant set forth a requirement that could be fulfilled only if the authorities concerned were familiar with the Covenant and were instructed to apply it.

31. In connexion with article 6, the report stated that the death penalty in the Ukrainian SSR was an exceptional measure applied, pending its abolition, only for the most serious crimes. He therefore wished to know whether abolition was in fact envisaged and to have a complete list of the crimes in respect of which the death penalty was applied. How many executions had taken place in recent years? He had heard for example, that as recently as in July 1979 at least four death sentences had been confirmed by the Supreme Court of the Ukrainian SSR. If that was correct, he would like to know exactly what offences had been involved, and what was the ethnic origin of the persons sentenced? Had their crimes involved violence? Could pardon be granted by any higher authority, for example as a result of an appeal to the President of the USSR. The report contained no information on how the death penalty was carried out, and he would like some clarification in relation to article 7 of the Covenant. Who was present at executions and how were executions prepared? Were they publicized?

32. In connexion with article 8, he agreed with the statement in the report that none of the economic, political or legal preconditions for slavery or the slave trade were present in the Soviet system. However, in order to clear up a misunderstanding which had arisen in connexion with his questions concerning the USSR report considered in 1978, he wished to point out that the Covenant prohibited not only slavery but also "forced or compulsory labour". He therefore wished again to draw attention to the distinction which must be drawn between slavery and "compulsory labour", and to ask how the duty to work referred to in article 58 of the Constitution was understood and applied. In his opinion, the duty to work was not contrary to the Covenant, but the Committee must interpret the prohibition in the Covenant in such a way that it became acceptable under different social and economic systems. He therefore wished to know what guarantees were provided in the Ukrainian SSR to prevent the duty to do socially useful work from becoming compulsory labour and, in particular, what were the present meaning and practice of provisions against "parasitism", if such provisions existed in the Ukrainian SSR as in other Soviet republics. Also, was it possible to leave a collective farm without the agreement of the management committee?

33. In connexion with article 9, he noted that a distinction had to be drawn between arrest and imprisonment in criminal cases, and other instances of deprivation of liberty, including the detention of mental patients, persons suffering from infectious diseases and aliens with a view to expulsion. Under article 9, paragraph 4, both categories of detention should be subject to control by the courts. The report was not quite clear on that point with respect to the first category and was silent with regard to the second. He therefore hoped that additional clarification would be forthcoming.

34. The report did not reveal whether the right to court control of detention extended to all cases of pre-trial detention, as the Covenant certainly required. He would like a clear explanation of the legality and grounds of pre-trial detention. Was it the procurator or the court who ordered pre-trial detention? The grounds for arrest set forth in the report referred only to the strength of the suspicion that a crime had been committed, but article 9 prohibited any arbitrary detention. Detention could be said to be arbitrary, even when suspicion was very strong, in such cases as when there was no danger of flight, of tampering with evidence, or of commission of another crime. Suspicion was not sufficient and the presence of other factors also had to be determined very soon after the initial arrest. He drew attention to article 9, paragraphs 3 and 4, and asked what guarantees against arbitrary arrest through court control were available under the Ukrainian system of criminal proceedings. Since the report was silent about detention in non-criminal matters, he wondered whether it occurred and if so in what kinds of cases, on what grounds, and under which procedures. Were courts competent to control its legality.

35. With reference to article 14, the report described the requirement of public court proceedings as one of the democratic foundations of socialist justice, but that requirement seemed to apply primarily to the court of first instance or trial court, rather than to the court of appeal. It was obvious that in camera proceedings on appeal could weaken that democratic guarantee in general and the position of the accused in particular. The report also stated that the defendant had the right to participate in the hearing in courts of first instance. Did he or his defence counsel also have that right in courts of appeal? He also would welcome a general clarification of the various rights of the accused under the Covenant, and in particular the "minimum guarantees" under article 14, paragraph 3. How were those rights applied? Were they available only during the trial or also during the pre-trial investigation and appeals after the trial?

36. He commended the Government of the Ukrainian SSR for its attitude to the family and children's rights as set forth in articles 23 and 24 of the Covenant, and associated himself with questions asked by other members regarding articles 12, 13, 18, 19, 21, 22 and 25.

37. In conclusion, he wished to make a point concerning the Committee's procedure. The questions asked by members concerning States' reports tended to be long and repetitive, and he had often felt obliged to put in his own way questions already raised by other speakers. The remedy could not be to accept less thorough examination and questioning. He wished to suggest an alternative course: observations and questions should be submitted to the Secretariat in writing before being summarized orally in the Committee. Such a procedure would facilitate the task of State representatives, who could not be expected to take notes based on simultaneous interpretation, to perceive all nuances, and to prepare answers long before any records were available.

The meeting was suspended at 12.05 p.m. and resumed at 12.25 p.m.

38. Mr. Mavrommatis took the Chair.

ORGANIZATIONAL AND OTHER MATTERS (continued)

39. The CHAIRMAN said that, although it had earlier been decided that the Committee would not examine the report of the Syrian Arab Republic at its current session, the

Bureau now wished to propose - since there had been a misunderstanding on the subject - that the Committee should reverse that decision, on the understanding that such action would not set a precedent because changes of programme during a session caused considerable difficulties.

40. It was so decided.

41. The CHAIRMAN informed the Committee that a communication had been received from Mr. Uribe Vargas stating that he would not be able to attend the current session.

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

Ukrainian SSR (CCPR/C/1/Add.34) (continued)

42. Mr. JANCA thanked the representative of the Ukrainian SSR for his introductory statement in which he had given valuable additional information supplementing that submitted in his Government's excellent report. That report was of particular interest because it came from a country which was a constituent part of one of the most distinctive federal systems in the modern world.

43. The Ukrainian SSR evidently enjoyed an extraordinary degree of autonomy in the matter of international affairs, since it was one of the States parties to the Covenant and other international treaties. That meant that it could undertake obligations and directly exercise rights within an international legal system. He presumed that it had an equal degree of independence and autonomous competence in the matter of its internal legal structure, within the framework of the given federal system. The report did not clearly say so but that conclusion could be drawn from the fact that the Ukrainian SSR had adopted a number of codes of law such as the Civil Code, the Code of Civil Procedure and the Labour Code which were mentioned in the report. In that connexion, it would be interesting for the Committee to have more detailed information on the exact division of competence between the federal authorities and those of the individual soviet republics. In which internal legal domains did competence lie exclusively with the federal authorities, in which was it shared and in which did it lie exclusively with the individual republics? In the latter case, there would seem to be a possibility of an internal conflict of law, for example as a result of differences in human-rights legislation between the various republics, and he would like to know how such a conflict would be resolved.

44. He would be grateful for further information on the exact relationship between international and municipal law in the Ukrainian SSR. The report stated on page 19 that under article 572 of the Civil Code of the Ukrainian SSR, if an international treaty or agreement to which the Ukrainian SSR was a party established rules other than those contained in the civil legislation, the rules of the former applied. He would like to know whether that meant that provisions relating to

civil-code matters contained in an international treaty to which the Ukrainian SSR was a party would be directly applicable, while provisions on other matters contained in the same treaty would not. He would also like to know whether a similar rule on the direct applicability of provisions of international treaties, when they regulated matters which were not covered by the rules of municipal law in force or were incompatible with them, existed in other legal fields in the Ukrainian SSR?

45. With regard to the institution of "comrades' courts" mentioned on page 3 of the report, he would like to know for which offences those courts were competent, and whether their competence was based on legal rules adopted by legislative bodies (in which case why did they not form part of the judicial system?) or on some quasi-legal norms which might be adopted by social institutions. He would further like to know what procedural rules were applicable in those courts, to what kinds of acts they applied and what penalties the courts could impose.

46. He had two questions regarding the regular judicial system. The first was whether there existed an explicit legal rule prohibiting a superior court, called upon to decide on an appeal by a defendant against a judgement of a lower court, from pronouncing a more severe penalty than that which had been imposed by the lower court. The second was whether the law on criminal procedure of the Ukrainian SSR provided that the closest relatives of an accused person could refuse to testify in criminal proceedings against him.

47. In connexion with article 22 of the Covenant relating to the right to freedom of association, the report quoted on page 24 article 243 of the Ukrainian Labour Code, which referred to trade unions. He would like to know in what circumstances a group of citizens could set up a trade union and under what conditions such a union would be entitled to assistance in its work from the State bodies, enterprises, institutions and organizations referred to in that article of the Code.

48. With regard to article 24 of the Covenant, which dealt with the rights of children and the protection of their interests, he felt that the report did not provide sufficient information on the legal status of illegitimate children. The question of the equalization of the rights of illegitimate children with those of children born in wedlock was extremely important, not only as a matter of principle, but also because the number of illegitimate children in the world was increasing daily. The omission was perhaps unintentional and he would be grateful if it could be remedied.

49. He had two questions in connexion with the implementation of article 27 of the Covenant, which dealt with the protection of the rights of minorities. In that connexion the report referred, on page 31, to "nations, nationalities and national groups". He would like to know what exactly was implied by those terms and whether the different groups in question had the same possibilities for enjoyment of the rights guaranteed to them. Were there, for example, radio and television programmes in the languages of all the different groups? The report stated that under the national education law of the Ukrainian SSR every citizen was free to choose the language in which he should be educated, and it referred to "compact population groups" of nationalities other than Ukrainian and Russian. He would like to know what was meant by that expression and how large such a group must be before it was entitled to have a school with teaching in its own language.

50. Sir Vincent EVANS resumed the Chair.

51. Mr. GRAEFRATH congratulated the Ukrainian Government on its detailed and instructive report, which gave the Committee extensive information on the laws adopted in connexion with the new Ukrainian Constitution and provided more information on the application of laws than the Committee had received in other States' reports. He expressed gratitude to the Ukrainian representative for his valuable introduction to the report. Like other members of the Committee, he rejoiced to see the achievements of that country in the realm of human rights, particularly in view of the suffering inflicted on the Ukrainian SSR during the Second World War.

52. He had some questions to add to those of previous speakers regarding the report. His first question related to the method of implementation of the Covenant in the Ukrainian SSR. Article 2 of the Covenant left it to States parties to decide how they should integrate the rights it mentioned into their internal legal order, and different States had done that in different ways. There was no provision in the Covenant obliging a State party to make the Covenant directly applicable in its internal law in such a way that an individual would be able to invoke provisions of the Covenant before the courts. Up to now most States had implemented the Covenant through their own legislation, as was perfectly acceptable under article 2. However, it was not clear from the report what system of implementing the provisions of the Covenant was being applied in the Ukrainian SSR. He had the impression that although, as was normal, the obligations deriving from the Covenant were complied with through national legislation, both old and new, that was not the only method. The representative of the Ukrainian SSR had indicated, in his introductory statement, that in some matters, such as family law, the provisions of an international treaty were directly applicable. He would be grateful for more information on that subject.

53. His second question related to the non-discrimination clause in article 2, paragraph 1. He did not believe that the enumeration in that clause was intended to be exhaustive or that it had been intended that the clause should be reflected directly in internal law. Most non-discrimination clauses in national legislation were somewhat differently phrased: it was not the wording that mattered but the actual situation with regard to equality for all individuals in the enjoyment of the rights recognized in the Covenant. Thus, it was perfectly proper that article 32 of the Ukrainian Constitution, in speaking of the equality of Ukrainian citizens before the law without distinctions of any kind, should use a somewhat different formulation of the non-discrimination clause from that used in the Covenant. The Ukrainian Constitution spoke of non-discrimination in relation to "property status". Very often, formal equality was contradicted by factual discrimination simply because of the lack of the requisite property or economic means. Thus the elimination of the exploitation of man by man would be very important in permitting the implementation of article 2 of the Covenant. He would therefore like to ask the Ukrainian representative how, in his country, the elimination of exploitation had contributed to the basic right of individuals to equality in the enjoyment of other fundamental rights. It had been said that the purpose of the Covenant was to limit State power

in relation to the rights of the individual: he disagreed, for he considered that to be too narrow a conception and one which could co-exist with slavery, colonialism, racism, world war and the starvation of millions of people. Article 2 of the Covenant required States to ensure the positive enjoyment of rights and not simply to refrain from interfering with those who already had the economic power to enjoy rights.

54. The report referred to the different juridical procedures open to Ukrainian citizens in defence of their rights, such as court procedures, administrative procedures, the functioning of the Procurator's Office, the organs of public control, the people's assessors, and so on. He felt that it would be useful for the Committee to know exactly how the judicial system functioned with the participation of the people. On the question of the independence of judges and the courts, he could not see anything in the Covenant which would justify an interpretation that the judge or the court should be independent from the people. To identify article 14 of the Covenant with the separation of State powers, which was true for only one political system, would undermine the universal approach of the Covenant to human rights. He himself knew only too well what could happen when a system had the active support of independent judges and courts: the result had been the war from which the Ukrainian people had suffered so much. He would therefore be glad to know how the Ukrainian juridical system functioned as an instrument of the political power of the people.

55. The Ukrainian Government's definition of public affairs appeared to be wider than was normal and to include also economic affairs and indeed the planning of the entire economy. It was true that without the power to decide on the main economic questions, political rights often amounted to no more than mere wishful thinking. He would therefore be grateful for more information on that subject.

56. The report gave useful information about what the Ukrainian Government and society had done for the benefit of children and for the equality of women. He considered those matters to be part of the guarantee of the right to life under article 6 of the Covenant, which was concerned not solely with the death penalty, but also, in his view, with such matters as a policy to ensure peace and to combat, among other things, infant mortality, criminality, pollution and unemployment.

57. In general, the Ukrainian Constitution seemed to embody the conception that human rights were rights emanating from and guaranteed by the State; they were not fixed and eternal but could change and develop with society. It was his understanding that the Covenant did not exclude that conception, since it was not based on any specific political model.

58. With regard to article 18 of the Covenant concerning freedom of conscience and its relationship with article 50 of the Constitution of the Ukrainian SSR, he pointed out that article 18 was in no way restricted to freedom of religion, religion being mentioned simply as one kind of freedom of conscience. Thus article 50 of the Constitution was perfectly acceptable in guaranteeing freedom to profess any religion or to conduct atheistic propaganda.

59. He appreciated what the report stated on the subject of trade unions, but he would be grateful for further information on the rights and legal position of trade unions in the Ukrainian SSR, because it was not their existence or their number which mattered but their real influence in shaping society.

60. His last question concerned the reference in the report, in connexion with article 14 of the Covenant, to "the socialist concept of justice". He would like to know what was meant by that expression since it was important for the Committee to know what different concepts of justice existed in the world. The "justice" of the factory owner might not be the same thing as the "justice" of a worker in that factory.

The meeting rose at 1.10 p.m.