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SUMMARY RECORD OF THE 161st MEETING

held at the Palais des Nations, Geneva,  
on Monday, 6 August 1979, at 10.30 a.m.

Chairman: Mr. MAVROMATIS

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The meeting was called to order at 10.40 a.m.

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

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

1. The CHAIRMAN said that, on 29 June 1979, the United Kingdom Mission had notified the Division of Human Rights that the Gilbert Islands would become independent on 12 July 1979, on which date the United Kingdom Government would cease to have any responsibility for the Territory and would therefore no longer be in a position to answer for the report submitted by it. Accordingly, the Mission had suggested that the Human Rights Committee should not consider annex G of document CCPR/C/1/Add.37.
2. At the invitation of the Chairman, Mr. Marshall (United Kingdom) took a place at the Committee table.
3. Mr. MARSHALL (United Kingdom) said that document CCPR/C/1/Add.37 contained information prepared by the authorities of 11 dependent Territories for which the United Kingdom was responsible.
4. Since 1945, when the Charter of the United Nations had formally acknowledged the principle of self-determination for colonial peoples, successive United Kingdom Governments had given every help and encouragement to dependent Territories wishing to become independent. To that end, the United Kingdom was committed to the creation of competent political and economic institutions in its dependencies. At the same time, it had been a consistent part of United Kingdom policy that no Territory should be forced into independence against the will of its population.
5. That policy had led the United Kingdom progressively to devolve political power in matters of domestic affairs upon locally-elected assemblies and Ministers. That meant that, subject to the overriding responsibility for good government, the United Kingdom Government did not seek to substitute its own judgement or instructions for the will and decisions of local Governments responsible to their own people. There might be instances where the United Kingdom Government might have wished to adopt a slightly different approach, but so long as a decision was arrived at by the people of the Territory concerned through due democratic process, and so long as it did not offend the basic principles of the Covenant, the United Kingdom Government considered it proper for the administering Power not to interfere.
6. He was glad to say that the list of Territories on which his Government was reporting was dwindling. Its guiding principle was that the wishes of the people must be paramount. It would continue to give every help and encouragement to any Territory which desired independence. In the past year, the Solomon Islands, Tuvalu and Kiribati had all attained independence.
7. Each of the Territories on which information was provided had its own separate and distinct legal system. While there were common elements, there were also many differences of detail, and occasionally even of principle, depending on the wishes of the local authorities.
8. The fact that the information in the document had been prepared by the authorities of the Dependent Territories themselves was consistent with the measure of autonomy which they enjoyed. The varying substance of the reports reflected the widely varying circumstances of the Territories themselves. They ranged from sophisticated modern cities like Hong Kong to remote islands with less

than 100 inhabitants like Pitcairn. Some were small Territories where large institutions of government were still very simple; others were larger Territories effectively self-governing, with well-developed democratic institutions and with the United Kingdom's responsibility under the Constitution now confined mainly to defence, security and external affairs.

9. The submission of the report had raised a problem of presentation. Those who had drafted it were well aware of the degree of detail into which it was customary to enter in furnishing such reports but, on the other hand, they had been concerned to keep to a manageable length the written material submitted to the Committee. If a report as lengthy as that on the average country had been presented for each of the dependent Territories, the document would have run to some 400 pages. It had therefore been decided to err on the side of brevity and some of the material had been presented very succinctly. Even so the report consisted of 128 pages. In addition, the more important constitutional instruments had been supplied to each member of the Committee and the texts of other relevant legislation were also available. The United Kingdom delegation did not expect to be able to answer immediately all questions which required a detailed knowledge of the law and practices of the 11 Territories covered by the report. He hoped that the Committee would understand the reasons for that and allow the delegation, as on past occasions, to reply later in writing to questions which might have to be referred to the Territories concerned.

10. Mr. LALLAH said that the reports submitted by the United Kingdom had always been very helpful, comprehensive and cogent. He wished to pay a tribute, as he had done on a previous occasion, to the United Kingdom's remarkable record of freeing, as it were, more than one third of the world. He also wished to express satisfaction at the composition of the United Kingdom delegation and to express particular appreciation for the presence of Sir Michael Hogan in that delegation.

11. He had been especially interested in the statement contained in the third sentence of paragraph 1 of the report by the Cayman Islands. The general introduction to the report indicated that some Territories had not expressed a wish for independence. What were the positions of Gibraltar, Hong Kong and Montserrat regarding self-determination?

12. He had heard of the existence of the British Indian Ocean Territory, whose population had at one time stood at approximately 2,000 inhabitants. He understood that it was a new dependent Territory, created in 1965, consisting of islands which had formed part of the Seychelles and Mauritius. It was also his understanding that the British Indian Ocean Territory was less extensive than in the past because when the Seychelles had become independent, the United Kingdom Government had returned a number of the islands to the Seychelles, but a few, including Diego Garcia, had remained as part of the British Indian Ocean Territory. He had raised that issue because of the concern which many people felt regarding the position of people who had been born in Diego Garcia and other parts of the Chagos Archipelago and no longer lived there. Did they have the right to return to their place of birth and how much compensation had they received for their property when they had been, as he believed, forcibly removed from their islands? Were there any actions before the courts in the United Kingdom relating to their rights or what they regarded as their rights?

13. He understood that in the former colony of Cyprus there were what was known as "sovereign bases". He would like to know whether there were people living in those bases and, if so, what steps the United Kingdom had taken under article 1, paragraph 3, of the Covenant to enable them to exercise self-determination.

14. He had been particularly glad to see that the list of dependent Territories was diminishing. It was a matter of common knowledge that the people of

Ocean Island had been settled elsewhere against their will and had initiated action in the United Kingdom for the restoration of their rights. Did that island form part of the Gilbert Islands, had the inhabitants been consulted on the resettlement and had they given their consent to becoming part of the Gilbert Islands?

15. In connexion with the provision contained in article 1, paragraph 2, of the Covenant, he said that the world was developing in such a way that resources were viewed in terms not only of the territory in which they were situated, but also of the resource margins around that territory. People had the inherent right not only to be aware of resource margins but also to have a say in the way those margins were exploited. The United Nations Conference on the Law of the Sea was dealing with highly important economic resource margins such as territorial waters, the continental shelf and the economic zone. Because of their geographical characteristics as islands, many dependent Territories had interesting prospects for economic development and he would like to know something about the extent to which their interests were taken into account by the United Kingdom in international forums. Was anything being done to make the people of the dependent Territories aware of their rights? There might be some conflict between the rights of those people and the rights of the United Kingdom with regard to the kind of principle proclaimed, for example, in the Conference on the Law of the Sea. In the event of a conflict, who represented the Territories?

16. Another question which was applicable to all the Territories related to the provisions of Orders-in-Council concerning fundamental rights. It was of relevance because Orders-in-Council, whether or not they purported to provide a constitution, were instruments of high juridical importance to the extent that local legislatures could not exceed their provisions. It was therefore extremely important that fundamental rights should be written into the Constitutions of the dependent Territories. In that regard, he noted the contents of paragraph 2 of the report by the British Virgin Islands. He considered that, under article 1, paragraph 3, of the Covenant, it was the responsibility of the United Kingdom, and not the dependent Territories, to ensure that those rights were given effect in law and not simply left to the discretion of the local legislatures.

17. In connexion with article 7 of the Covenant, he had been shocked to learn from paragraph 36 of the report by the British Virgin Islands of the existence of corporal punishment. He was sure that that kind of punishment no longer existed in the United Kingdom and considered that it should no longer be applied in the dependent Territory.

18. With regard to the provisions of article 2, paragraph 3 (a), of the Covenant, the report indicated that it was possible for individuals to bring an action against officials and that such actions were regulated by the Crown Proceedings Ordinances. What restrictions were placed upon litigants in terms of time, procedures and so on, and were there restrictions which would not apply in the case of one individual who brought an action against another? If there were restrictions, what were the circumstances in which those restrictions applied and were they reasonable?

19. Mr. BOUZIRI said that he wished to express his appreciation to the United Kingdom Government for transmitting a very detailed report and for sending a delegation which was eminently qualified to provide any explanations which the Committee might seek on the report.

20. First, he would like to know what legislation was applicable in the different dependent Territories, bearing in mind that some were not autonomous and that others enjoyed varying degrees of autonomy. The representative of the United Kingdom had touched upon that problem in his introductory statement, and he would welcome further details. Did United Kingdom legislation apply automatically in the non-autonomous Territories? In the Territories which had a degree of autonomy, did United Kingdom law apply in questions concerning fundamental rights, public order and matters such as marriage, divorce, legal majority and so on? Or was it adapted to meet the needs of the local society? What happened in the event of a conflict between local custom and United Kingdom law?

21. He had been interested in the statement in paragraph 6 of the introduction and would like to have more information on the constituent elements of the United Kingdom Government's policy and how that policy was implemented. Did the United Kingdom Government consult regularly and democratically the peoples of the dependent Territories concerning their wish to attain independence or otherwise? What were the prospects of independence for Hong Kong and Gibraltar in view of their close links with China and Spain respectively? What were the special circumstances of Hong Kong, alluded to in paragraph 126 of the report by Hong Kong, which precluded progress towards an elected government?

22. Turning to the reports submitted by the different Territories, he drew attention to paragraph 53 of the report by Belize relating to article 17 of the Covenant and asked for details regarding the specific provisions of the law concerning privacy of correspondence. In connexion with paragraph 57 relating to article 18 of the Covenant, he asked what religion was involved. Were several religions practised and taught? If religious instruction was an essential feature of the curriculum, were there examinations on the subject, and were pupils who failed such examinations liable to be penalized?

23. Paragraph 58 relating to article 19 of the Covenant dealt with what he considered to be a rather delicate matter. Was it "blasphemy", for example, to reject a particular religious belief? Was atheist propaganda punished? The distinction between blasphemy and simple criticism was not a simple one. Also, what did "seditious" mean? The term was subject to a number of interpretations, as it had been in his own country shortly before independence. Could mere opposition to government policy be regarded as seditious? Laws on the subject could very well restrict individual liberty. What punishment was provided for sedition?

24. Referring to paragraphs 65-70 relating to article 23 of the Covenant, he asked what was the legal age for marriage in Belize, whether men and women had full equality and who was the head of the family. With regard to paragraph 74, he inquired whether the language requirement referred to in that paragraph was consistent with article 25 of the Covenant. Was a limited knowledge of the English language a disqualification, and were citizens examined to determine the extent of their knowledge of English?

25. Referring to the report by Bermuda, he drew attention to the section relating to articles 2 and 3 of the Covenant. It was not clear from paragraphs 5 and 6 exactly how the equal right of men and women referred to in article 3 of the Covenant was ensured in practice. In connexion with paragraphs 12 and 13 relating to article 6 of the Covenant, he requested clarification regarding the length of what was described as detention "during Her Majesty's pleasure".

26. Referring to the report by the British Virgin Islands, he drew attention to paragraphs 34 and 35 and asked whether such an anachronism as corporal punishment was likely to be abolished in the near future. He inquired what was meant by the phrase "at the discretion of the Court" in paragraph 41 relating to article 8. Were there no precise rules or scales of punishment or did the phrase mean simply that sentence might or might not be pronounced? According to paragraph 112 relating to article 22 of the Covenant, every trade union must be registered and he would like information on the requisite procedure. Was permission to register required, and if it was not forthcoming, what remedy did a trade union have? In connexion with the section of the report relating to article 23 of the Covenant, he asked whether a woman could ever be considered head of the family. He also wished to know who received custody of the children in the case of divorce and whether there were provisions for the payment of alimony. How were widows and children protected?

27. With regard to the report by the Cayman Islands, he drew attention to paragraph 17 relating to article 12 of the Covenant and inquired about the reasons for the reservation to article 12, paragraph 4. He also wished to know the reasons for the reservation to article 14, paragraph 3 (d), referred to in paragraph 19 of the report. Could the reservation be withdrawn? In connexion with paragraph 25 relating to article 20 of the Covenant, he requested an explanation of the second sentence.

28. Turning to the report by the Falkland Islands, he asked who were members of and who presided over the Legislative Council referred to in paragraph 55 relating to article 25 of the Covenant. What authority did the members have and what ethnic groups did they represent?

29. Referring to the report by Gibraltar, he drew attention to paragraph 8 relating to article 6, paragraph 1, of the Covenant and inquired whether there was any prospect of the abolition of the death penalty. In relation to paragraph 10 he asked under what circumstances abortion was admissible in Gibraltar and whether Gibraltar followed the example of other countries where it was allowed if the mother already had many children or if it was necessary in order to protect the mother's health. Drawing attention to paragraph 15 (3) relating to article 7 of the Covenant, he inquired whether there could be lawful correction of a child in that sense and whether such a practice might not be too severe and contrary to the spirit of the Covenant. In connexion with paragraph 85 relating to article 18 of the Covenant, he referred to the point he had already made and asked whether there was any prejudice against children who did not receive religious instruction. He was surprised at the wording of paragraph 96 relating to article 23, paragraph 1, of the Covenant, which dealt with a sensitive and difficult subject. Referring to a recent court decision in the United States, he inquired how a husband could legally rape his own wife if they were not separated. Also, what exactly did bestiality mean?

30. Turning to the report by Hong Kong, he drew attention to paragraph 17 of the introduction to the United Kingdom report and asked how and on the basis of what criteria, in the absence of elections, the Executive and Legislative Councils in Hong Kong were appointed. Were there any restrictions on nomination, such as knowledge of English or membership of a particular ethnic community? In connexion with paragraph 20 (3) relating to article 7 of the Covenant, he recalled the observation he had already made on the subject. With regard to paragraph 137 relating to article 27, he asked whether Chinese or English was used in the Hong Kong administration and in dealings with the Chinese community.

31. In connexion with the report by Montserrat, he drew attention to paragraph 2 of the section relating to article 2 of the Covenant and expressed puzzlement at the term "in general". Were limitations placed on certain rights? Which rights were not affected? With regard to paragraph 2 of the section relating to article 8, he asked in what cases forced labour was in fact allowed. The sentence relating to article 26 was worded unsatisfactorily and was not in keeping with the relevant provision of the Covenant. He was also dissatisfied with the sentence relating to article 27 of the Covenant because it said nothing about actual practice and required clarification.

32. Referring to the report by Pitcairn, he noted that the manner of electing the Island Council, as indicated in paragraph 19 of the introduction to the United Kingdom report, was extremely complex and wondered whether under the circumstances it could really take a firm stand on matters affecting relations between Pitcairn and the United Kingdom. Drawing attention to paragraph 11 of the report by Pitcairn relating to article 8 of the Covenant, he inquired whether the public work referred to was paid, who decided whether work was public and what remedies were available in the event of a dispute. He also wished to know for how long such work was performed and whether the length was left to the discretion of the administration. The situation described in that paragraph seemed to contradict article 8 of the Covenant.

33. Paragraph 1 (b) of the report by St. Helena made it clear that children accounted for a very high proportion of the population and paragraph 1 (c) stated that the Island was not self-supporting. He therefore wondered whether family planning was practised, as in most developing countries. Paragraph 5 of the report, which related to the legal system, stated that sentences of imprisonment of over three months must be confirmed by the non-resident Chief Justice. If the sentence was not subsequently confirmed, could the individual claim compensation for the time spent in prison?

34. Referring to the report by the Turks and Caicos Islands, he drew attention to paragraph 2 relating to article 6 of the Covenant and said that setting 16 years as the minimum age for imposition of the death penalty violated article 6, paragraph 5, of the Covenant. Most other United Kingdom colonies complied with the Covenant in setting 18 years as the minimum age. In connexion with paragraph 1 relating to article 7 of the Covenant, he inquired how many strokes were given in the whippings referred to in that paragraph and whether a doctor must be present. In any case, such punishment would appear to constitute a violation of the Covenant. Drawing attention to paragraph 3 relating to article 14 of the Covenant, he asked how a victim could bring an action against the authorities if there were no legal provisions for compensation from public funds.

35. In conclusion, he was pleased to see that very detailed reports had been submitted by Territories with extremely small populations because it was important that the human rights of all persons should be protected, in even the smallest communities.

36. Mr. GRAEFRATH expressed appreciation to the United Kingdom Government for the very full report it had submitted on the legal and constitutional situation regarding human rights in a large number of Territories dependent on it. The picture given was, of course, necessarily incomplete since it pertained only to the laws and not to the practice in those Territories. He noted that, as the United Kingdom representative had stated in his introductory remarks, the Gilbert Islands had become independent since the drafting of the report. Thus the responsibility for reporting on the human-rights situation in those islands no longer rested with the United Kingdom Government.

37. With regard to the other 11 Territories covered by the report, he could not help feeling that their dependent status in itself constituted a violation of article 1 of the Covenant. So long as they remained dependent they had not exercised their right of self-determination. The statement in paragraph 6 of the report that the United Kingdom Government could not compel those Territories to proceed to independence against their wishes was perhaps no more than an excuse to cover their continued dependency in contravention of article 1 of the Covenant. In that connexion, he would be grateful for information from the United Kingdom Government as to what positive steps it had undertaken to enable the peoples of the various Territories to decide their status, in accordance with the resolutions adopted by the General Assembly on the granting of independence to colonial countries and peoples, full control by such countries and peoples over their own natural resources, the guaranteeing of their future development and other matters. In a way, those resolutions defined the duties of the administering Power in helping dependent peoples to exercise their fundamental right of self-determination.

38. In general, it appeared that in all the Territories covered in the United Kingdom report the entire administrative and judicial structure depended on the power vested in the Governor of the Territory appointed by the Queen of England. So long as that colonial structure persisted, the implementation of, for example, articles 19, 22 and 25 of the Covenant must remain in doubt, since it was clear that the peoples of those Territories themselves had very little influence. It seemed to him from a perusal of some of the Constitution Orders referred to in the report that the language used in them, while resembling that used in the Covenant, was nevertheless much narrower in its import. For example, the Orders referred merely to the protection of certain rights of the individual, whereas the Covenant spoke of ensuring the enjoyment by the individual of his various civil and political rights. He thus considered that the Constitution Orders did not fully correspond to the conception of the Covenant but rather reflected a specific political model.

39. With reference to the question of the integration of the provisions of the Covenant into the internal legal order of the various Territories, he noted the statement, in paragraph 4 of the report, that the Covenant did not itself have the force of law in any of the Territories, and the reference in that paragraph to article 2, paragraph 2, of the Covenant, which left each State party free to decide the means by which it should give effect to the rights recognized in the Covenant. He also noted the unequivocal statement, in paragraph 2 of the report by the British Virgin Islands, that the provisions of the Covenant were not protected constitutionally and could not be invoked before or directly enforced by the courts. The situation in the dependent Territories in that respect was thus similar to that prevailing in the United Kingdom itself, a situation to which he had referred during the Committee's discussion of the report on the United Kingdom. He took it that that situation did not exclude the possibility



of a person referring to the provisions of the Covenant before the courts and that a person taking such action would not be liable to punishment. The report was silent on the subject of possible contradictions between the internal legal order and the Covenant. He wondered if there was any procedure under which an individual could challenge the law and secure action in the sense of the Covenant. That was an important matter for dependent territories and related to article 1 of the Covenant.

40. The reports on the Territories of Belize and Bermuda stated, with reference to the implementation of article 2 of the Covenant in those Territories, that there was no discrimination. The relevant provisions of the Constitution Orders of those two territories did not appear entirely to bear out those statements: their non-discrimination clauses were drafted differently, and section 11 of the Bermuda Constitution Order 1968 appeared to permit discrimination based on sex.

41. The reports on most of the dependent Territories were silent on the subject of the implementation of article 3 of the Covenant, and more information was needed in that respect.

42. Referring to article 6 of the Covenant, he asked what were the infant mortality rates in the Territories as compared with the rate in the United Kingdom. He noted the various provisions of section 2 of the Bermuda Constitution Order 1968 as set out in the report (annex B, para. 10): they appeared to be far-reaching, and he wondered if they had been either substantiated or limited by further legislation.

43. The provisions of article 7 of the Covenant were reflected in schedule section 3 of the Bermuda Constitution Order 1968, just as they were reflected in the Constitution Orders of other Territories, but they appeared after a general reservation. That fact appeared to call for some explanation. There appeared to be a possibility of restrictions on and abrogations of those provisions; and the Committee ought to be given fuller information on the matter. As had already been noted, corporal punishment was permitted in certain Territories, for example, the Virgin Islands. It was difficult to see why that was so when the United Kingdom Government had admitted that that was a contravention of the Covenant.

44. In connexion with article 9 of the Covenant, on the right to liberty and security of person, he observed that schedule section 5 of the Bermuda Constitution Order 1968 provided for the deprivation of liberty of a person for specific purposes, such as to prevent the spread of communicable diseases, which was normal and acceptable. However, that provision did not indicate what legal safeguards existed against misuse of deprivation of liberty, for example, in respect of mentally disabled persons.

45. Referring to article 14 of the Covenant, he observed that the Constitution Orders of the various Territories assumed that the courts were independent and impartial. However, there were very rigid and apparently restrictive conditions for the selection and appointment of judges. Then, article 14, paragraph 2, of the Covenant referred to the right of persons charged with a criminal offence to be presumed innocent until proved guilty according to law, whereas the Constitution Orders contained a provision that a person should be presumed innocent until he was proved or pleaded guilty. That appeared to open the way for bypassing the presumption of innocence and also for putting pressure on an accused person to make a confession of guilt. Again, the Covenant, in article 14, paragraph 3(a), provided that an accused person should be informed "promptly" of the charge against him, whereas the Constitution Orders used the

expression "as soon as reasonably practicable", which was not necessarily the same. Various questions arose about payments - for legal representation, for the calling of witnesses, for obtaining copies of records of proceedings, etc. The Constitution Orders were very vague on the subject, and he would like more specific information. Schedule section 6, subsection 12, of the Bermuda Constitution Order 1968 placed limiting conditions on the choice of a legal representative such that an accused person would not be able to call upon the services of a lawyer from, say, Cuba, since he would not be entitled to practise before the Bermuda courts.

46. With reference to article 18 of the Covenant, the report on Belize referred solely to religious and not to non-religious beliefs. Paragraph 57 of that report stated that religious worship and instruction was an essential feature of the public and voluntary schools in that Territory, and it appeared that parents were required to obtain special permission for their children to absent themselves from religious worship and instruction. That appeared to be a contravention of the right to freedom of thought and conscience called for in article 18 of the Covenant.

47. With reference to article 19 of the Covenant, he asked whether the list of exceptions to the right to freedom of expression contained in paragraph 58 of the report on Belize was exhaustive and, if not, what other restrictions existed.

48. In connexion with the implementation of article 25 of the Covenant, he noted from paragraph 74 of the report on Belize that only English-speaking persons might be elected members of the House of Representatives. That restriction appeared to be incompatible with article 25, and also with articles 2 and 26 of the Covenant, which specifically referred to non-discrimination on the basis of language. Sections 5 and 6 of the Belize Constitution Order set out other conditions, relating to property and income, for candidature in an election, all of which appeared to conflict with the provisions of the Covenant prohibiting discrimination.

49. Paragraph 75 of the report on Belize stated that that Territory's laws applied equally and without discrimination "to all nationals and aliens". That was rather loosely worded and could not be entirely true since there must be legal rights, such as the right to vote, which were exclusively enjoyed by nationals and not aliens, as was the normal practice.

The meeting rose at 12.55 p.m.