



Economic and Social Council

Distr.
GENERAL

E/1986/WG.1/SR.13
28 April 1986

ORIGINAL: ENGLISH

First regular session, 1986

**SESSION 1 WORKING GROUP OF GOVERNMENTAL EXPERTS ON THE IMPLEMENTATION
OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

SUMMARY RECORD OF THE 13th MEETING

**Held at Headquarters, New York,
on Tuesday, 22 April 1986, at 3 p.m.**

Chairman: Mr. RUIZ-CABAÑAS (Mexico)

CONTENTS

**Consideration of reports submitted in accordance with Council resolution 1988 (LX)
by States parties to the Covenant concerning rights covered by articles 13 to 15
(continued)**

**Consideration of reports submitted in accordance with Council resolution 1988 (LX)
by States parties to the Covenant concerning rights covered by articles 10 to 12
(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 DC2-750, 2 United
Nations Plaza.**

**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.**

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED IN ACCORDANCE WITH COUNCIL RESOLUTION 1988 (LX)
BY STATES PARTIES TO THE COVENANT CONCERNING RIGHTS COVERED BY ARTICLES 13 TO 15
(continued)

Initial report of Canada (E/1982/3/Add.34)

1. At the invitation of the Chairman, Mr. Lewis (Canada) took a place at the table.

2. Mr. LEWIS (Canada), introducing the report, said that, given the federal structure of Canada and the extensive information requested by the guidelines, the report was somewhat voluminous compared with those of unitary States. Now that the initial report had been submitted, however, future reports would merely add to the information already provided.

3. With regard to the distribution of powers and responsibilities among the federal Government and the governments of the 10 provinces and two territories, subject to certain specialized areas of federal responsibility, only the provincial legislatures were empowered by the Constitution to make laws in relation to education. Those legislatures, therefore, had the main responsibility for the implementation of international obligations in the area of education. The responsibilities of the federal Government in that area included the education of Indians living on reserves, a responsibility often fulfilled in co-operation with provincial and territorial governments.

4. Although Canada's Constitution was not always explicit concerning the distribution of powers between the federal and provincial governments in the areas of culture and science, it was generally recognized that those responsibilities were shared. The mechanisms to facilitate the process of consultation and federal-provincial collaboration in the implementation of international human-rights instruments, created when Canada had acceded to the Covenants in 1976, continued to function effectively.

5. The Canadian Charter of Rights and Freedoms, adopted in 1982 to guarantee the rights and freedoms of Canadians under the Constitution, had become an extremely important document. Governments across the land had undertaken intensive reviews of existing laws and practices to ensure conformity with the Charter and with other human-rights instruments. Numerous court cases had already referred to its principles, and the decisions rendered by the courts tended to clarify its meaning and application and strengthen its provisions.

6. That development was particularly significant to Canada's implementation of its international human-rights obligations; many judicial decisions had interpreted the Charter by reference to the corresponding provisions of, inter alia, the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. Some governments were offering direct help to individuals and groups to seek redress before the courts for alleged violations of

(Mr. Lewis, Canada)

their rights under the Charter. The federal Government, for example, had instituted a court challenge programme under which individuals or groups could receive financial assistance to challenge before the courts federal laws or practices that might violate the equality or language rights guaranteed by the Charter.

7. All governments had also enacted human-rights legislation which offered additional guarantees against discrimination. Many amendments had recently been made to strengthen the protection against discrimination on the basis of disability. Additional measures had been taken to facilitate access to education for children with disabilities. In Ontario, for example, with effect from September 1985 universality of access for all children, disabilities notwithstanding, was guaranteed to schools under public boards. Boards were required to offer programmes to meet all exceptionalities, including provisions for gifted pupils.

8. Canadians attached great importance to education and were prepared to make significant financial efforts to achieve that end. The right to education had been largely achieved. Education was compulsory for all children up to the age of between 14 and 16, depending on the province or territory, and was free of charge up to university level. Books and transport were generally also provided free of charge. Almost all children received primary education and most completed their secondary education. Special efforts were made to accommodate children with special needs. Higher education had become widely accessible through the considerable expansion in universities and colleges in the past 25 years; enrolment had more than quadrupled in that period. While higher education was not free, fees accounted for only about 10 per cent of the cost, most of the remainder being borne by governments. In addition, assistance was provided to students in the form of bursaries, loans or scholarships.

9. Basic adult education was both encouraged and provided for those persons who had not completed their primary education, either as continuing education or as part of retraining programmes to help people upgrade their skills and improve their employability. Canada had a complete system of schools at all levels and the conditions of teachers had improved dramatically over the years.

10. Education in Canada was directed to the full development of the human personality, the sense of its dignity and the respect for human rights. Interest in the teaching of human rights had increased, particularly since the coming into force of the Canadian Charter of Rights and Freedoms. Special efforts were also made to promote in the school system understanding, tolerance and friendship among all nations and all racial, ethnic and religious groups. Governments were continuously trying to improve that aspect of education, which was so important in a multicultural society like that of Canada.

11. The right to take part in cultural life was respected throughout Canada in two major ways. Firstly, there were no restrictions on the freedom to exercise that right; and secondly, an important cultural infrastructure which facilitated participation in cultural activities was in place. The same was true of the right

(Mr. Lewis, Canada)

to enjoy the benefits of scientific progress. A characteristic of the cultural infrastructure was that it often operated at arms length from the governments which created and supported it in order to ensure that cultural and scientific agencies, even if they were publicly funded, operated with minimum government intervention.

12. The broadcasting media in Canada played an important role in the development and diffusion of culture. The Canadian Broadcasting Corporation reached listeners and viewers in almost all parts of Canada. There were also private networks, and some provinces had public television stations which offered high-quality educational and cultural programmes. Through the Northern Native Broadcast Access Programme, the federal Government provided professional and financial assistance to enable Native communications companies to produce and distribute regional radio and television programming for Northern Native audiences.

13. Canada co-operated extensively with other countries, bilaterally or through international agencies, in cultural and scientific undertakings as well as in the protection of intellectual-property rights and the control of illicit traffic in cultural property. It also provided aid for international development through, inter alia, the International Development Research Centre and the Canadian International Development Agency. The country was also pleased to participate in UNESCO's efforts to preserve for future generations the world's cultural and natural heritage. Nine Canadian sites had so far been placed on the list of world sites to be preserved.

14. Canadians were free to participate in international cultural and scientific activities and to communicate with their counterparts in other countries on such matters. Their participation was encouraged and often supported financially by the Government of Canada. For example, Canada's delegation to UNESCO's General Conference in October 1985 had included scientists, engineers, human-rights experts and persons involved in cultural activities.

15. Mr. TEXIER (France) noted that the report of Canada (E/1982/3/Add.34) was comprehensive. In view of its great length, however, he would confine his comments and questions to those sections dealing with the federal Government and with Quebec Province, with which France shared special links.

16. The adoption in 1982 of the Canadian Charter of Rights and Freedoms was an important step, since it reflected Canada's will not only to ratify the Covenant and incorporate its provisions into domestic legislation, but also to create institutions that would ensure the implementation of the Covenant by the various provincial and territorial governments and by public agencies. The fact that the government of Quebec had also adopted a Charter of Human Rights and Freedoms was a further source of satisfaction.

17. With regard to general aspects of the report, he was pleased to note in paragraph 17 that the federal Government, through various public agencies, was promoting the teaching of human rights. In many countries, including France, the subject of human rights was taught poorly or not at all in primary and secondary schools. Moreover, at many universities international humanitarian law was not a compulsory subject in faculties of law.

/...

(Mr. Texier, France)

18. He would welcome information on the respective percentages of private and public universities and on the comparative costs of tuition.

19. He had noted with satisfaction from paragraph 52 that the Correctional Service of Canada operated academic and vocational programmes in all its major penitentiaries.

20. He would welcome more information on the Public Service Alliance mentioned in paragraph 70.

21. On the question of education, he inquired whether the State ensured that private schools operated in a manner consistent with national education policies, and whether they were subsidized.

22. He noted that radio and television services in Canada were provided by both the State and the private sector. He was particularly interested in that system, since television services in France had until recently been provided solely by the State. He felt that State-run television was of a better quality. He would be interested to learn how the Canadian system had been established, what share of the services was provided by the public and private sectors respectively, whether public television was financed from a special levy, and whether there was any difference in quality between them.

23. On the question of the archival system, it would be useful to know whether, at the federal level, the various ministries were required to hand over documents to the Public Archives of Canada after a certain time. If so, what types of documents were involved and after what period were they made available to the public?

24. With the lifting of restrictions on the operation of private radio stations in France, a problem of overcrowded airwaves had arisen. It would be interesting to learn whether Canada experienced similar problems and what steps had been taken to resolve them.

25. He had noted Canada's advanced system of information storage and retrieval, and wished to know whether there were any restrictions on the kind of information that could be stored in computerized systems in order to ensure that there was no threat to the freedom of the individual.

26. Mr. MRACHKOV (Bulgaria) said that the copious information available in the report testified to Canada's high level of cultural development. In that connection he wished to know what percentage of the federal and provincial budgets was devoted to the teaching of culture and science. With respect to secondary education, more information on the relative importance of private and public schools would be welcome. In particular, he asked whether the assertion that education was free up to the university level applied to private schools. The report lacked details concerning the social origins of students or the numbers of women in higher education. It would also be useful to have figures for State grants to students.

(Mr. Mrachkov, Bulgaria)

27. The report referred (para. 158) to the Science Council of Canada, but it was not clear whether the Council was actually independent of the Government; clarification would be welcome. Finally, he wished to know how successful the Government had been in promoting literacy among the Native population of the Northwest Territories and the Yukon.

28. Mrs. KIMATA (Japan) said that it was important to know how the federal Government monitored the policies carried out by the provinces and territories in implementing the Covenant. The report should, moreover, have contained more information on international co-operation and how responsibility for such co-operation was shared between the federal and provincial governments. In that connection, it seemed that Canada stressed research activities rather than manpower skills. She asked whether Canada had co-operated in the execution of training activities in developing countries by, for example, assisting in the establishment of training centres. Finally, it would be of interest to know what Canada was doing in the field of international co-operation for the promotion of human rights.

29. Mrs. JIMENEZ BUTRAGUENO (Spain) said that paragraph 15 of the report, relating to the right to education, referred only to special categories of individuals, leaving the status of the population as a whole unclear. With respect to protection against discrimination, she wished to know whether the provisions referred to in paragraph 12 applied only to the physically handicapped. Clarification of the reference in paragraph 13 to the protection of workers would also be welcome. The report did not provide figures relating to participation by women and the Native population in the various levels of the education system. The point raised in paragraph 192, concerning the prevention of the use of scientific progress to undermine human rights, was interesting, but required further elaboration. Lastly, she asked whether the Native population comprised groups other than the Inuit.

30. Mr. POERSCHKE (German Democratic Republic) said that it would be of interest to know how the provincial governments would be informed of the Working Group's comments.

31. Noting that 1986 was the International Year of Peace he asked what role education for peace played in Canadian schools. In particular, he wondered whether Canadian schoolchildren were introduced to ideals espoused by other nations. Similarly, the Canadian attitude towards other cultures was not clear from the report. Specifically, he wished to know whether the works of socialist authors were available in Canada and whether socialist plays were performed.

32. Mr. KHODAKOV (Union of Soviet Socialist Republics) said he regretted that it had apparently not been possible to translate the Canadian report into Russian. The somewhat voluminous document indicated that real progress had been made in implementing articles 13 to 15 of the Covenant, particularly with regard to the provision of free, compulsory secondary education. With respect to public and private schools, it would be of interest to know what percentage of pupils from both types of school went on to higher education, and whether children of poor parents or from minority groups had a real opportunity to attend private schools. The primary aim of education was to ensure equal opportunity of advancement for

(Mr. Khodakov, USSR)

all. In that connection it would be relevant to know how many members of the Canadian legislature were members of the Native population.

33. It was unclear from the report whether there was a complete separation of Church and State in all provinces and whether, in particular, church schools were part of the State education system. He wished to know what control the Government had over the curricula of church schools. In that connection, paragraph 821 stated that in Ontario a parent might object to religious education, which suggested that there might not be complete separation of Church and State in Ontario. Similarly, the reference in paragraph 814 to Judaeo-Christian principles raised the question of whether atheists were permitted to become teachers in Ontario.

34. With respect to the Native peoples, it would be of interest to know whether all the indigenous groups had a written language and whether textbooks were available in those languages. Similarly, he asked whether literary works by indigenous authors were available in their native languages. The report spoke of the freedom of the press, and in that connection he asked whether Native peoples could freely air their views in newspapers, and whether it would be possible for racist groups to propagate racial hatred.

35. With respect to national culture, since Canada was a relatively new nation it would be of interest to know what steps were taken to promote Canadian culture and, in particular, what proportion of films and television programmes screened were of Canadian origin and what the status of Canadian literature was. Finally, he wished to know what measures the Canadian Government was taking to combat immoral ideas, such as pornography and violence.

36. Mr. LY (Senegal) asked whether the increasingly multicultural and multiracial character of Canadian society had affected indigenous peoples' participation in cultural life.

37. It would be interesting to learn what measures Canada was taking to alleviate the difficulties encountered by UNESCO.

38. He asked whether Canada could cite any practical cases in which it had co-operated with other countries in the return of foreign cultural property which had been illegally exported to Canada.

39. He requested specific examples of Canada's co-operation with developing countries within the framework of the United Nations Convention on the Law of the Sea, and asked in what areas such co-operation was carried out.

40. It would be useful to learn whether Canada undertook any activities at the federal, provincial and territorial levels to promote a better knowledge of developing countries in Canada.

41. He inquired whether legislation with respect to researchers existed at the federal, provincial and territorial levels, and whether researchers had worked on the preparation of a system to protect scientific research and persons engaged therein.

/...

42. Mr. BEN HAMIDA (Tunisia) requested information on the position of the Canadian Government with regard to the new world information and communication order.

43. The CHAIRMAN, speaking as the representative of Mexico, asked how the Government defined Canadian Indians and the other indigenous peoples of Canada. According to paragraph 5 of the report, the education of the Indian people was a responsibility of the federal Government, and he wished to know why that responsibility was not delegated to the individual provinces.

44. He asked whether the two International Covenants on Human Rights had equal importance in Canada, or whether their relative importance varied from province to province. He also inquired whether the various international human-rights instruments mentioned in the report had any impact at the federal and provincial levels.

45. Referring to paragraph 125 of the report, he inquired why the Canadian Government had felt the necessity of promoting things Canadian. Was that policy also applied to primary and secondary education?

46. It would be interesting to learn how Canada perceived its obligation under article 2 (1) of the Covenant to promote international co-operation which would assist other countries in achieving the full realization of economic, social and cultural rights.

47. He asked what the average country-wide expenditure on education was, and what per cent of the total budget such expenditure represented.

48. Mr. Lewis withdrew.

CONSIDERATION OF REPORTS SUBMITTED IN ACCORDANCE WITH COUNCIL RESOLUTION 1988 (LX)
BY STATES PARTIES TO THE COVENANT CONCERNING RIGHTS COVERED BY ARTICLES 10 TO 12
(continued)

Second periodic report of Spain (continued) (E/1986/4/Add.6)

49. At the invitation of the Chairman, Mr. Somalo (Spain) took a place at the table.

50. Mr. SOMALO (Spain) said that the courts, when considering questions concerning recognition of the right to enter into marriage and to establish a family, would act in keeping with the spirit of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. The Spanish Constitution promoted harmony between Spanish and international norms.

51. It was difficult to provide data on the number of formal marriages (civil or religious) and the number of unmarried couples who lived together.

52. The decreasing popularity of marriage was a phenomenon common to many developed countries. It could be explained in many ways, including the entry of women to the job market, the decline of traditional and religious values, and the economic independence of women.

(Mr. Somalo, Spain)

53. The social problem arising from the mistreatment of women by their husbands was serious and, in recent years, there had been a significant increase in the number of public and private institutions set up to deal with that problem.

54. Referring to paragraph 21 of the report, he said that dismissal on the grounds of maternity was contrary to article 14 of the Constitution and article 17 of the Workers' Charter, which guaranteed equality before the law and prohibited discrimination based on sex.

55. The Workers' Charter entitled the father or the mother to up to three years' unpaid leave to enable him or her to care for a child (para. 25 of the report). Usually, it was the mother who took advantage of that right, but the husband might decide to do so, for instance if the wife had a better-paying job.

56. The Workers' Charter provided for the possibility of young people obtaining permanent jobs with enterprises that had provided their vocational training. In order to encourage their employment, the Royal Decree of 25 May 1985 provided for reductions in enterprises' social security contributions.

57. The law prohibited persons under 16 years of age from obtaining employment, and administrative measures were taken against enterprises employing such persons.

58. He was circulating to the members of the Working Group a sheet containing the latest data on unemployment, with a breakdown by occupation of unemployed persons.

59. The rights of migrant workers were recognized in the recent law concerning foreigners in Spain, including provisions on residence and work permits.

60. Article 41 of the Constitution provided for a system of social security for all citizens to guarantee assistance and benefits in cases of need, especially unemployment. The social-security system provided workers with benefits relating to health care, work accidents, disability and death. Health care was free of charge not only for workers but also for their dependants and for retired persons.

61. A Royal Decree of 23 November 1983 determined the types of patients for which the anti-hepatitis vaccine was recommended.

62. The best medical and hospital facilities belonged to the public sector, which treated the majority of the population. The private medical sector coexisted with the public sector, but at a lower level. Its services were satisfactory.

63. National legislation to combat drug addiction included provisions for rehabilitation and for education campaigns to reduce drug consumption.

64. Under article 42 of the Constitution, the State safeguarded the economic and social rights of Spanish workers abroad, and encouraged their return.

/...

(Mr. Somalo, Spain)

65. Consumers' organizations were becoming increasingly influential. Article 51 of the Constitution guaranteed that the public authorities would ensure the safety, health and legitimate interests of consumers and users, encourage consumers' organizations and be responsive to the issues which affected them.

66. In recent years, the number of ecological movements had increased, although they were not as large as similar movements in certain other countries.

67. Article 96 of the Constitution provided that international treaties to which Spain was a party would become part of the internal legislation as soon as they were published.

68. The Spanish Government had not considered its entry into the Common Market as prejudicial to the future of Spanish workers, although certain types of farming might be subject to change, depending on future trends.

69. Spain had signed bilateral agreements on assistance and co-operation with certain African countries. At the multilateral level, it was a donor country although it did not belong to the Development Assistance Committee of the Organization for Economic Co-operation and Development. Spain had participated in an international conference on the emergency situation in Africa and in that connection had pledged contributions to certain programmes. Spain also contributed to the World Food Programme.

70. Spanish law established no hierarchy among legal norms. However, in the case of a contradiction between, for instance, the Covenant and the European Convention on Human Rights, a judge could use all the methods of interpretation available to him to determine which of the norms was applicable in a given instance.

71. With regard to divorce, article 107 of the Civil Code established that divorces granted by foreign courts would take effect under Spanish law on the date of their legal recognition in accordance with the Civil Proceedings Act. The number of persons filing for divorce in Spain (para. 14 of the report) had been lower than had been expected on sociological grounds once divorce had been made legal in 1981. The fairly low number was perhaps explained by the decline in the number of marriages. As to divorce by mutual consent, the spouses reached agreement on the sharing of pensions, on domicile and on the care of children. No additional taxes were imposed as a result of divorce.

72. With regard to tests of paternity (para. 9 of the report), the judge involved in a case was the one to evaluate them.

73. As an example of long-term planning to deal with the aging of the population, the latest social-security reform mandated longer periods for eligibility to receive certain benefits.

74. Maternity was treated in the same way as temporary incapacity for work for economic purposes only (para. 22 of the report), since maternity benefits were the same amount as sickness benefits. As to the organization of day nurseries

(Mr. Somalo, Spain)

(para. 18), the autonomous communities were responsible for their operation. He had no figures for the number of employers providing nurseries, but the number of nurseries had increased so markedly because of the previous shortage. They were run by qualified personnel and medical care was provided for the children. They were open to workers employed by the establishment maintaining the nursery or to those living nearby.

75. As concerned the protection of young people, attempts were being made to inculcate in them a spirit of solidarity by promoting various youth organizations. They were being educated in a spirit of friendship among peoples, moreover, under the preamble to the Constitution, which referred to co-operation in strengthening peaceful relations among all peoples. With regard to youth unemployment, there were no overall statistics on the number of young people taking advantage of the special subsidies to firms employing them.

76. Concerning the right to an adequate standard of living, housing-construction programmes were helping to create jobs. Moreover, the Government provided the autonomous communities with the funds needed to supervise food production in compliance with existing legislation and the State could monitor such compliance.

77. The reduction of vineyards (paras. 78-81) was being promoted because Spain had a wine surplus. It might prove more complicated to recycle olive groves, both because of local opposition and for ecological reasons, since erosion might result. The land devoted to olive growing had, in fact, been reduced by 20 per cent in the past 10 years, but productivity had still increased notably. Spain's campaign against desertification (paras. 90 and 91) was being directed by the Nature Conservancy Institute (ICONA) and by the Agrarian Reform and Development Institute (IRYDA).

78. With regard to the acquired immune-deficiency syndrome (AIDS), that problem was not widespread in Spain, there having been only 120 recorded cases.

79. Emigration had declined markedly, once the situation of Spanish workers in the Common Market countries had been stabilized after Spain had become a member. The money repatriated by the emigrants had been very important for the Spanish economy.

80. The CHAIRMAN said that the Working Group had concluded its consideration of the report of Spain.

81. Mr. Somalo (Spain) withdrew.

Second periodic report of Australia (continued) (E/1986/4/Add.7)

82. At the invitation of the Chairman, Mr. Quinn (Australia) took a place at the table.

83. Mr. QUINN (Australia), replying to questions raised by the members of the Working Group, said that Australia's population was currently almost 16 million, having doubled since the Second World War and grown at an average rate of

(Mr. Quinn, Australia)

2 per cent per year, with net immigration accounting for about 40 per cent of that growth and natural increase the remainder. The Aboriginal and Torres Strait Island population, according to the most recent census, in 1981, was approximately 160,000, or 1.1 per cent of the total population, and their growth rate - 10 per cent from 1976 to 1982 - was much higher than that of the non-Aboriginal population.

84. As to the definition of an Aboriginal, there were two. A legal definition could be found in the Constitution, section 51.26, which stipulated that the federal Government had the power to make laws for any race for whom federal laws were needed. The Aboriginals were considered a race for that purpose. A second, administrative definition dealt with the degree of Aboriginal descent and identified those eligible for government benefits: an Aboriginal was a person of Aboriginal or Torres Strait Island descent who identified himself as such and was accepted as such by his community. The elements of the definition removed the need to prove the degree of descent, which could be offensive and artificial, since lineage was not necessarily a proof of social disadvantage. It should be noted that a subsidiary body of the United Nations Commission on Human Rights had also addressed the subject of defining indigenous populations.

85. Concerning the status of Aboriginals, they enjoyed by law the full fundamental human rights of other Australians, although regrettably many were still disadvantaged in practice as a result of past dispossession and dispersal. His Government was committed to a range of programmes, for which 290.7 million Australian dollars had been allocated in 1985/86, to ensure that Aboriginals participated fully and equitably in Australian society. The three priorities were to provide drinking water, better housing and better health care, especially in remote areas. The key element had been the recognition that Aboriginals themselves placed fundamental importance on regaining and retaining rights to their traditional lands as the cornerstone of their aspirations and identities. An area of over 900,000 sq km (over 11 per cent of Australia) had been or was being handed over to Aboriginals.

86. The Government also placed considerable emphasis on measures to encourage Aboriginals to participate fully in decisions regarding their future, through consultative arrangements involving Aboriginal organizations dealing with land rights, health, education, legal and other issues, and through a variety of public agencies, including the Aboriginal Development Commission. A particular priority had been to increase Aboriginal employment in public service, and it had risen from 0.53 per cent to 0.66 per cent from 1982 to 1984. The Head of the Department of Aboriginal Affairs was himself an Aboriginal, a prominent Aboriginal woman was a member of the Australian Human Rights Commission, and a number of other Aboriginal figures occupied positions of authority in Australia.

87. Since the Second World War, immigration to Australia had included more than 400,000 refugees. Up to 1954, over 170,000 had come, mainly from Eastern Europe; 14,000 Hungarians had come after the 1956 uprisings and some 6,000 Czechoslovaks after 1968; 13,000 white Russians had come from China, 11,000 Poles between 1978 and 1983, and 14,000 refugees from other areas, including Africa. Under special

(Mr. Quinn, Australia)

humanitarian criteria, 17,000 Lebanese had arrived since 1976, 5,200 East Timorese since 1975, 4,000 Soviet Jews since 1973 and over 1,100 Central and South Americans since 1983.

88. With over 30 different ethnic and religious groups represented, Australia obviously had a real commitment to assist refugees, consistent with its non-discriminatory policies and the principle of international burden-sharing. Emphasis continued to be given to family reunion through normal immigration procedures where those could be established, and alternative solutions were promoted and financed, such as voluntary repatriation or settlement in the country of first refuge. Refugees and immigrants shared the whole range of opportunities available to other Australians, and the Government encouraged immigrants to retain and develop their own culture, language and life-style in the Australian context, as a way of helping them to adapt while at the same time enriching Australian culture.

89. International treaties did not automatically become part of national law when ratified. In the case of the Covenant, which covered a very wide range of activities to be implemented progressively, an equally wide variety of legislative and administrative methods at all three levels of Australian Government were used to implement it. Examples of the complex implementation machinery in Australia were the conciliation and arbitration system dealing with wage-levels and employment conditions, or the elaborate social-security arrangements. The federal Government always consulted the state governments, with whom much of the legislative burden in the areas covered by the Covenant rested, before undertaking international obligations; and that process of consultation and co-operation produced a stronger network of anti-discrimination and human-rights measures than would otherwise be the case. The provisions of the Covenant of course extended to all parts of Australia as a federal State.

90. As to the relationship between federal and state human-rights legislation, the Constitution provided that some legislative powers were exclusive to the federal Government, but, in section 51, gave the federal Government other powers concurrent with state powers. Where there was a conflict between federal and state law, the federal law prevailed. The federal Government had constitutional authority to act in many areas of human rights, while the states had a residual power to legislate for the general community, under which they had enacted a considerable body of human-rights legislation.

91. The complexities of Australia's constitutional system could sometimes cause difficulties for those seeking remedies within the human-rights machinery, and efforts were being made to simplify procedures. Consideration was being given, for instance, to the possibility of annexing the Covenant to the Human Rights Commission Act. The problem there, however, would be twofold: a major function of the Commission was to handle complaints of violations, while the Covenant was expressed in terms of progressive implementation, so that it might be difficult to determine whether particular actions represented a breach of obligations under the Covenant; also, the Government was not in a position to provide the Commission with the extensive resources necessary to deal comprehensively with implementation of the Covenant. In any case, other remedies existed.

/...

(Mr. Quinn, Australia)

92. The proposed Bill of Rights had been drafted as an aid to judicial interpretation and did not provide new causes of action for complainants. Given the availability of remedies under the common law and other legislation, the Bill of Rights had been developed as a complement to rather than a substitute for other procedures. It could be characterized as pioneering legislation, and it was hoped that in time its evolutionary approach would develop a special significance.

93. The changes being made in the recently established Australian Human Rights Commission represented less a wholesale change of approach than an extension of the existing institution to cover action against sexual discrimination and discrimination in employment.

94. Regarding the protection of the family, the federal Government was providing paid maternity leave to federal employees, just as some of the state governments had done in the case of their employees. It should be noted that the unpaid maternity leave entitlements were generous, and that there was clear protection against dismissal or other discrimination on the grounds of pregnancy under the Federal Sex Discrimination Act. While few employees benefited from paid paternity leave, various forms of leave were available to fathers in relation to the birth of children and several public services included special leave provisions as well. A number of Australian employees benefited from family leave, which could be used for parental purposes. Women had a choice as to how much of the 52-week maximum unpaid maternity leave they wished to take, although there were sometimes restrictions regarding attendance at work around the expected date of confinement.

95. Regarding Australian citizenship, the specific case described in paragraph 27 of the report, in which the Australian Human Rights Commission had intervened directly, had been salutary in prompting a closer look at the effects of decisions in many fields on the rights of children. At the same time, remedial action was clearly necessary to correct the untenable situation whereby illegal immigrants could secure permanent residence by having a child in Australia, thus circumventing normal immigration procedures; and a bill had been proposed to deal with that situation.

96. Regarding children born out of wedlock, they were at no disadvantage in legal and social-security matters, although lingering community attitudes could in practice cause difficulties.

The meeting rose at 6.15 p.m.

