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Chairman: Mr. Ando

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(*continued*)

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The meeting was called to order at 10.20 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(agenda item 4) (*continued*)

Initial report of Malta (CCPR/C/68/Add.4)

1. *At the invitation of the Chairman, Mr. Borg-Barthet (Malta) took a place at the Committee table.*
2. **Mr. Borg-Barthet** (Malta), introducing his country's initial report (CCPR/C/68/Add.4), said that, since the submission of the report, the Maltese Parliament had enacted a law decentralizing power and giving more people responsibility for certain matters of day-to-day administration. There were to be 67 local councils with 5 to 13 members, which had to be consulted before council boundaries could be changed, and which were empowered to raise money to augment funds allocated by Parliament. Election to the councils was by single transferable vote, and foreign residents were entitled to vote if, in their country of origin, Maltese nationals were also allowed to vote. The first elections were to be held on 20 November 1993, and by April 1994 all villages would have their own councils. As soon as the law had been passed by Parliament, the Maltese Government had ratified the European Charter of Local Self-Government.
3. Another important development had been the substantial changes made to the Civil Code to remove all traces of sexual discrimination. The husband now shared the administration of the community of acquests with the wife; the law no longer spoke of paternal but of parental authority; and a married woman could retain her maiden surname if she wished. The law was to come into force on 1 December 1993 and the Government was carrying out an intensive publicity campaign to ensure that the new provisions were as widely known as possible.
4. The Government was also contemplating substantial changes in the Investigation of Injustices Act (Act XV of 1987) to achieve the smoother and more expeditious operation of the Commission established under the Act, and to empower it to function, practically speaking, as an ombudsman. The Government would shortly also be introducing a data protection bill to strengthen the individual's right not to have personal details unnecessarily divulged, and an information practices bill to widen access to information held in files, including those of the Government. The privilege granted to Government documents when their production was requested in court was also to be reviewed in a forthcoming bill amending the Code of Organization and Civil Procedure. Other contemplated legislation connected with the democratic process dealt with the financing of political parties and election campaign expenses and provided for the electorate to call for referendums which could bind the Government to abrogate laws in the event of an affirmative outcome. The latter measure would, however, require a constitutional amendment, and it might be some time before the necessary political consensus was reached.
5. The importance of Malta's ratification of the Covenant had been stressed during a parliamentary debate on foreign policy, and references to the Covenant were frequently made in human rights courses at the University of Malta and the Police Academy.
6. Over the preceding three years, allegations of human rights breaches in Malta had been made in relation to a wide range of grievances, including police searches, unavailability of bail upon failure to observe court conditions, length of court proceedings, discrimination on political grounds, refusal to allow a transsexual to have his or her birth certificate changed after undergoing surgery, and inability to proceed with an appeal as a result of an appellant not being notified within the time stated by the law. Some of those

matters were still *sub judice*, but most of the allegations had, after due investigation, been rejected by the courts.

7. A new set of prison regulations would soon be published, replacing those dating back to 1931 and giving greater emphasis to reformation and post-imprisonment opportunities. The prison building was being renovated and efforts were being made to find sufficient funds to build a new one.

8. Once the family law provisions had been amended to remove all traces of sexual discrimination, the Commission dealing with reform of the Civil Code would take up the question of the legal status of illegitimate children and the related law on succession.

9. A very recent development in the human rights field had been the award of damages by the newly constituted Employment Commission to employees of the Malta Dry Docks Corporation, who had been refused overtime payment on the grounds that they did not subscribe to the predominant trade union in the docks. That development was particularly welcome as it showed the zeal and independence of local supervisory bodies in protecting the rights and freedoms of individuals even when confronted with the power of the Corporation and the strength of the trade union.

10. His delegation would be willing to provide any further clarifications that might be requested by members of the Committee.

11. **The Chairman** invited the members of the Committee to put questions to the delegation concerning the report.

12. **Mr. Pocar** expressed great pleasure in welcoming the delegation of a country with long and close links with his own. He was confident that the Committee would be able to enter into fruitful dialogue with the Maltese delegation on the basis of their report, which was a good example of an initial report, although, like a number of such he had previously seen, it dealt more extensively with constitutional provisions and laws than with everyday practice. The information provided in the introductory statement on recent developments and events was very encouraging.

13. The first clarification he wished to request concerned the place of the Covenant in the Maltese legal system. He had had the impression from reading the report that it had secondary status to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which, as noted in paragraph 3 of the report, had been incorporated into Maltese law by Act XIV of 1987. Paragraph 4 of the report appeared to imply that the enforcement procedure related only to human rights and fundamental freedoms provided for in the European Convention, which, in some cases, afforded more limited coverage than the Covenant. As he understood it, in the hierarchy of Maltese laws, the Constitution, followed by Act XIV, took precedence over ordinary laws. Where did the Covenant fit into that hierarchy? Was it treated as an ordinary law or was it accorded special status? He noted that paragraph 8 of the report stated that the provisions of the Covenant might not be invoked or be directly enforced by the courts although they could be indirectly enforced to the extent that they were subsumed in comparable provisions of the Constitution and Act XIV. What, then, happened to provisions of the Covenant that were not so subsumed? Were they enforceable neither directly nor indirectly? In that context, he drew attention to article 2, paragraph 3 (a), of the Covenant, which imposed the obligation to ensure that any person whose rights or freedoms as recognized by the Covenant were violated should have an effective remedy. What provision was made in Maltese law to make effective remedies available in the case of the violation of rights or freedoms covered by the Covenant but not by the European Convention?

14. It was a matter for great satisfaction that, when Malta had ratified the Covenant, it had at the same time ratified the Optional Protocol on individual communications. He

wished, however, to ask the delegation what action would be taken if the Committee decided on the basis of an individual communication from Malta, that a violation of the Covenant had occurred. How would such a decision be enforced? Was there any procedure for enforcement similar to that provided under article 4 of Act XIV for the enforcement of human rights and fundamental freedoms protected by the European Convention?

15. His next question related to article 6 of the Covenant. Paragraph 19 of the report stated that Malta had “abolished the death penalty for all citizens in time of peace”, but he had noted that articles 33 and 58 of the Constitution still referred to that penalty. He asked for further details about the situation: at what time had the death penalty been abolished and by which Act; and how was the continuing reference in the Constitution to be explained? Was it merely that the articles in question were obsolete? He was also somewhat concerned about the reference to citizens in the paragraph of the report that he had quoted. Did it mean that the abolition of the death penalty did not extend to persons other than citizens? In that connection, the delegation might also be able to inform the Committee whether the Government planned to accede to the second Optional Protocol to the Covenant, on the abolition of the death penalty.

16. He would also be grateful for further information concerning freedom of religion, which was guaranteed by article 18 of the Covenant. He noted that section 2 of the Constitution established the Roman Catholic Apostolic Religion as the religion of Malta, but that, according to paragraph 46 of the report, section 40 of the Constitution provided the protection required by article 18 of the Covenant. The question he wished to ask concerned the teaching of religion, since, under the Constitution, the Catholic religion was a part of compulsory education, unless objection was made. He wondered whether full observance of article 18 did not entail a different approach – that the official religion should not be part of compulsory education, but that those who so wished could request that it be taught. He would appreciate some clarification on that point from the delegation.

17. Turning to article 24 of the Covenant, relating to non-discriminatory treatment of children, he welcomed the information about recent family legislation provided by the delegation in its introductory statement. He continued to be concerned, however, about the position of children born out of wedlock, referred to in paragraph 63 of the report, and he welcomed the comprehensive review of the Civil Code being undertaken to eliminate any forms of discrimination against illegitimate children, particularly in the law of succession, referred to in paragraph 78 of the report. How far had the review advanced, and had aspects concerning children been included in the recent changes to the Civil Code to which Mr. Borg-Barthet had referred?

18. Paragraph 74 of the report rightly pointed out that the list in article 26 of the Covenant was not exhaustive, as was indicated by the presence of the words “such as”, and that that also applied to article 14 of the European Convention implemented by Act XIV, in contrast to the constitutional provision where the list given was exhaustive. He thought that there might be some misunderstanding regarding the scope of article 26 of the Covenant, particularly as interpreted by the Committee, which did not exactly coincide with article 14 of the European Convention. The essential point was that article 26 provided an autonomous right, whereas the European Convention merely referred to non-discrimination in relation to the rights protected in the Convention without establishing an autonomous right applicable in any field as such. It was his understanding that the Maltese Constitution included the right to equality before the law and protection by the law “as such”, but precisely the fact that the Constitution did not contain a non-exhaustive list of grounds for discrimination caused him some concern because it did not provide the same scope of protection as article 26 of the Covenant, but only covered grounds for discrimination contained in the constitutional provision.

19. The final point on which he requested clarification concerned the rights of minorities, to which reference was made in paragraph 79 of the report, where it was stated that there were in fact no minorities in Malta, but that article 45 of the Constitution should provide protection for them if the need ever arose, and that, in any case, as far as religious practice was concerned, protection was afforded by section 40 of the Constitution. He wondered whether it could really be the case that there were no minorities whatever in Malta – for example, religious groups other than Catholics, or perhaps groups speaking languages other than the official one. Were there any statistics on such groups? Generally speaking, a law requiring non-discrimination was not in itself sufficient to protect minorities, or the rights of persons belonging to minorities, as their rights were additional to the rights of non-discrimination applicable to all citizens. He felt sure that, on that point as on the others he had raised, his concerns would be allayed by the answers to be provided by the delegation.

20. **Mrs. Higgins** warmly welcomed the Maltese delegation, the presentation of whose initial report would give the Committee a chance to explain the kind of information it needed to arrive at an understanding of the situation obtaining in Malta. She thanked Mr. Borg-Barthet for providing updated information in his introductory statement.

21. Turning to the question of Malta's reservations to articles of the Covenant, she referred first to the reservation to article 13 quoted in paragraph 35 of the report to the effect that, although the Government endorsed the principles laid down in the article, it could not at present comply with its provisions as no provision was made for review of an expulsion order in existing legislation. Reservations to article 13 were in fact rare, and she wondered what the nature of the problem was in the case of Malta and hoped that it would be overcome before too long. What was described in paragraph 39 of the report as a reservation to paragraph 2 of article 14 of the Covenant, concerning presumption of innocence, seemed in fact to be an interpretative declaration. However that might be, the reservation of the right to make an accused person bear the burden of proving facts could in particular circumstances tip the overall burden of proof against him or her, and she strongly hoped that that provision would not operate in such a way as to negate the presumption of innocence. The statement appended to the reservation to article 14, paragraph 6, of the Covenant in paragraph 40 of the report, to the effect that the Government was contemplating ratifying further protocols to the European Convention, one of which required that a person be compensated for wrongful imprisonment, and that its reservation might accordingly be removed in the not too distant future, seemed to her to confirm the impression of a number of members of the Committee that the Covenant was relegated to a secondary position compared with the European Convention. The reservation to article 19 of the Covenant concerning freedom of expression, limiting its application to the extent that it might not be fully compatible with Act I of 1987 regulating the political activities of aliens called for clarification. It was quite usual for a State to require that a person seeking political asylum from another State with which relations existed should not engage in political activities, but the imposition of more general constraints upon aliens would special justification. A reservation to article 22 on freedom of association seemed to relate to the possibility that public servants might on occasion be called upon to participate in joint negotiations with trade unions. If she was right in thinking that what was meant was that, just because they might at some future time be called upon to operate in that way, they were permanently forbidden to belong to a trade union, that would seem to be a case of extraordinary "overkill" for a very prospective problem, and she would be grateful for a clarification of the situation.

22. Turning to more general points, she said that although the report followed the Committee's guidelines by referring to articles of the Covenant, it did so in a minimalist way. There were brief references to what was obviously regarded as key legislation but very little about problems of administration, issues that had arisen in the courts or

differences of opinion within the community. The treatment of article 3, for example, was extraordinarily scant, although the additional information provided in the introductory statement was most welcome. In most reports, however, the Committee was given data on women's participation in public life, in education, and the like, and about outstanding indirect problems. The information given orally in the introductory statement was of the kind the Committee would have expected to find under all headings. She wished to give some examples, with reference to a few of the articles in the Covenant, to indicate the sort of information she hoped that the delegation would be able to provide when it again came before the Committee in a few days' time. Paragraph 11 of the report baldly stated that the provisions of article 2, paragraph 3, of the Covenant were adequately provided for by article 45, paragraph 2, of the Constitution. What she had found there, however, was a brief guarantee and then, by reference to various subsections, exceptions to the guarantee, which seemed extraordinarily broad. It did not, therefore, appear to her to be at all the case that those particular provisions of the Covenant were adequately covered by the article of the Constitution: when the exceptions were taken into account, the two instruments did not match. Again, with regard to article 6 of the Covenant, what the Committee would normally expect to know was not merely whether the death penalty was imposed — important though that was — but also what instructions were issued to the police governing the use of firearms, and whether problems have ever arisen in that respect; what was the situation regarding infant and prenatal mortality, what policy was followed on AIDS — in other words, information about protection of the inherent right to life more broadly viewed than simply in relation to the death penalty. The delegation might, in that and other cases, find it helpful to peruse the general comments adopted by the Committee under article 40, paragraph 4, of the Covenant, which indicated the interpretation placed by it on the various articles, and therefore the kind of information it wanted in order to discharge its monitoring duty. Again, with regard to article 7 of the Covenant, it was very interesting to learn that Maltese constitutional case law had extended the meaning of inhuman or degrading treatment to psychological harassment, but the Committee would also wish to know whether there had been any real problems encountered — as often occurred in many countries; what instructions were issued to the police or other responsible persons at all stages of detention or imprisonment; what training was given to them; whether they were made aware of their obligations under the international instruments; what procedures were available for making claims against the police or prison officers; and whether proceedings had been taken against them and with what result. On article 9, the Committee was informed that an arrested person had to be brought before the magistrate within 48 hours of his arrest — a provision entirely compatible with the article — but the Committee would also like information on such matters as whether preventive detention was permitted; how it worked; whether there was a time limit before bringing an accused to trial; whether, as the article required, he would be released if the limit had expired; at what stage a lawyer was available; what were the conditions for granting of bail; and many similar matters. As to article 12, the Covenant placed no limitation on freedom of immigration policy, and, in her view, the interpretation given in paragraph 33 of the report was correct. She would, however, like to have further information on the sorts of conditions imposed by the Minister in order to be in a position to make an assessment. The restrictions on the movement of foreigners referred to in paragraph 34 of the report were based on criteria that did not entirely coincide with those permitted under article 12, paragraph 3, of the Covenant, and she would like to have clarification on that point.

23. Referring to the points raised by Mr. Pocar with regard to article 26 of the Covenant, she wished to emphasize that the article of the Covenant that corresponded to article 14 of the European Convention was not article 26 but article 2. As to the existence of minorities, she said that, insofar as there were people in the country not speaking the official language or not speaking it alone, minorities did indeed exist, and she was confident that no human rights problem arose in relation to them. She felt however that the proper procedure would

have been not to deny the existence of minorities but to freely admit their existence and go on to assure the Committee that nothing at all occurred that would interfere with their specific rights under article 27.

24. **Mr. Aguilar Urbina**, welcoming the Maltese delegation, said that most of the points that he would have wished to make had been made by Mr. Pocar and Mrs. Higgins. There were, however, some further matters that he wished to raise. Paragraph 13 of the report very briefly stated that most obstacles to the achievement of equal opportunities to women had been removed, but, although Mr. Borg-Barthet had provided some further details in his introductory statement, he would like to know what further obstacles remained and whether there had been revisions not only to legislation but also to the Constitution, article 24 of which stated that nationality was acquired through the male line. There were a number of similar issues, including *patria potestas*, which raised problems, and he was pleased to hear that steps were being taken to resolve them. Without going into detail concerning the position of the Covenant in Malta, he had the impression that it was not fully implemented and held a subordinate position to the European Convention, which differed considerably from the Covenant in its application.

25. Turning to specific points, he asked, in relation to article 4 of the Covenant, what rights could be suspended in Malta during periods of public emergency. Paragraph 15 of the report merely stated that members of a disciplinary force still enjoyed the right to life, protection from forced labour and protection from inhuman treatment, but there was no mention of other rights that could be suspended so that it was impossible to know whether they included any of those listed in paragraph 2 of article 4 of the Covenant as being not subject to derogation. He would also like to know what precisely was meant by a “disciplinary force” – the phrase *grupo disciplinario* in the Spanish translation of the report conveyed no clear meaning to him and was perhaps inaccurate. With regard to article 8 of the Covenant, he noted that section 35 of the Constitution provided that a person could be condemned to “any labour required in consequence of the sentence or order of a court”, and he requested further details about the kinds of labour covered by that provision so as to determine whether it went beyond what the Covenant allowed. Paragraph 27 of the report quoted in full section 348 of the Criminal Code, subsection 2 of which stated that a person would be deemed to be detected in the very act of committing an offence and therefore subject to lawful arrest if, among other things, he was being pursued by “the public hue and cry” – *el clamor publico* in Spanish. The latter was a phrase that he was not sure that he understood rightly. Did it refer to public opinion? If so, that could hardly be a proper ground for arrest. He also requested further information on matters pertaining to the independence of the judiciary, such as how judges were chosen and how their independence was guaranteed. He welcomed the reference in paragraph 37 of the report to legal assistance but would like further details about how the system operated and how legal representation was ensured for the poor. He also asked for further information about the limitation on the power of Parliament to act as a tribunal referred to in paragraph 38 of the report. He wondered whether there was a mistake in the Spanish translation of the second reservation quoted in paragraph 50 of the report because the Spanish text appeared to state that the reservation applied “to the extent that this may be fully compatible with Act I of 1987 ...”, which was illogical.

26. **Mr. Francis** welcomed the fact that Malta had submitted its initial report relatively soon after having ratified the Covenant. He agreed with Mrs. Higgins’ comments with regard to article 7 of the Covenant and joined in commending the judiciary of Malta for having extended the meaning of “inhuman or degrading treatment” to psychological harassment. While again agreeing with what Mrs. Higgins had said about the position of the Covenant as compared with the European Convention, he was pleased to note that the Government was prepared to review its position on the payment of compensation for

unlawful imprisonment. He also welcomed the changes in the Civil Code establishing complete equality between the sexes, referred to in the delegation's introductory statement.

27. It was quite clear from paragraphs 1 and 8 of the report that, as other speakers had pointed out, the Maltese Constitution and Act XIV of 1987 did not provide effective legal coverage of the obligations under the Covenant. He therefore wished specifically to ask what legislative steps had been taken to ensure incorporation into the legal order of the provisions of the Covenant not covered by the Constitution and Act XIV; and what was the precise mechanism for enforcing provisions of the Covenant relating to rights not already subsumed under comparable provisions of the Constitution or the Act.

28. Returning to the subject of equality of the sexes, and looking beyond constitutional and legal provisions to everyday practice, he asked whether there were equal opportunities for women in administrative practice or by virtue of legislative measures in implementation of the specific provisions of section 45 of the Constitution and of Act XIV. With regard to article 10 of the Covenant, he wished to know whether there was any effective rehabilitation programme for prisoners in Malta – a subject in which he took a personal interest. Granted that there was no compulsory military service at present in Malta, was it sufficient to say that, consequently, there was no need to take measures based on the Covenant in relation to such an eventuality? With reference to paragraph 64 of the report, relating to article 24 of the Covenant, he asked under what circumstances the father of an illegitimate child could be deprived of his paternal authority – a possibility referred to in the paragraph.

29. **Ms. Evatt** noted with pleasure that Malta had ratified not only the Covenant but also the first Optional Protocol. She hoped that ratification of the second Optional Protocol would follow in due course.

30. She also hoped that the Government would decide to treat the Covenant in the same way as the European Convention for the Protection of Human Rights and Fundamental Freedoms and incorporate it into domestic law. There certainly appeared to be room for some reform of the constitutional provisions, the details of which were intricate and difficult to follow, and some of which seemed not to be fully compatible with the Covenant, and indeed with the European Convention, particularly in respect of the very large number of exemptions and qualifications permitted. There were also some provisions which appeared to allow the waiver of rights, and there were references to parental discipline as a limitation upon them. The onus sometimes appeared to be placed on the individual to show that a restriction or limitation was not justifiable, whereas the onus should rest squarely on those seeking to uphold a restriction. Furthermore, it was by no means clear what steps a person could take to obtain redress if the Committee took the view that a violation had occurred in accordance with the procedure in the first Optional Protocol.

31. Turning to specific articles, she said that she was concerned about the exceptions to article 6 permitted under section 33, subsection 2, of the Constitution, where the use of legal force appeared to be justifiable in a wide range of situations, such as to protect property, prevent escape or effect a lawful arrest, and she asked what guidelines were laid down, particularly for the use of firearms by the police in those situations. She also requested clarification of the exact relationship between section 34 (6) and (7) and section 46 (1) and (2) of the Constitution in relation to article 9 of the Covenant. It was not at all clear what right a person had to apply for habeas corpus to test the legitimacy of detention. Whereas article 12 of the Covenant placed no limits upon freedom of movement, section 44 of the Constitution appeared to limit such freedom to citizens of Malta. Moreover, section 44 (3) (b) of the Constitution even appeared to permit restrictions, unlimited in scope, on certain classes of citizens, whereas the Covenant required that all citizens should be treated equally in that respect. With regard to article 14 of the Covenant, the parties concerned could, under section 39 (4) of the Constitution, agree that proceedings could be conducted

in closed court, which would appear to undermine the principle of open justice and limit the freedom of the press. Was any revision of that measure contemplated? She commented in passing that little information had been provided in the report about the treatment of juveniles in the justice system – a matter that arose under articles 10, 14 and 24 of the Covenant. Paragraph 43 of the report, with reference to article 17 of the Covenant, listed circumstances in which the Executive Police could enter and search premises without a judicial warrant – provisions that seemed to extend well beyond what was permitted under article 17. With regard to articles 3 and 26, the constitutional provisions in section 45 were commendable and reflected a genuine intention to promote the equality of the sexes by positive measures. She wished, however, to know what action had in fact been taken, what programmes existed and what effect they had had. Was there any machinery to oversee the implementation of women's rights, and what progress had been made towards equal political participation of women, and to the implementation of the principle of equal pay, not only for equal work but, in accordance with the criteria adopted by the International Labour Organization, for work of equal value?

32. Her general impression of the report was that it fell short of the considerable expectations it aroused. It contained a great deal of detail about laws and the Constitution but very little about concrete and specific progress achieved in the enjoyment of rights, and there appeared to be a number of areas in which there was not full compatibility with the provisions of the Covenant. It would also be helpful to know what non-governmental organizations were active in the defence of civil liberties, what publicity had been given to the Covenant, and whether its provisions were included in training programmes for law-enforcement officers.

33. **Mr. El Shafei** joined in welcoming the delegation of Malta, a country which had played a valuable role in linking the European and non-European countries of the Mediterranean.

34. Like many other members of the Committee, he would have wished the report to contain more detail and mention any factors and difficulties affecting the application of the Covenant, as was usual practice in country reports. His first request was for information about how precisely the entry into force of the Covenant had taken place. Had it been simply by the act of ratification and by publication in the *Official Gazette*, or had a special act of Parliament been passed? The Committee had been given much information about the European Convention but not about the Covenant, whose status in Maltese law was far from clear, particularly in view of the wording of paragraph 8 of the report, which cast doubt upon the enforceability of the Covenant in all court cases. The relationship with the Constitution was particularly crucial since the chapter of that document dealing with fundamental rights and freedoms was extremely detailed.

35. He also wished to know why Malta had decided to enter a reservation to the first Optional Protocol, as a number, but by no means all, European countries had done, and whether adequate publicity had been given to the Optional Protocol. It was a starting point that no communication had been received from Malta under the Optional Protocol since its ratification in 1990. As to the reservations to articles 13, 14 (paras. 2 and 6), 19 and 22, he wished to know whether the Government was contemplating their withdrawal. It had committed itself by the act of ratification to develop the possibilities of judicial remedy in accordance with article 2 of the Covenant. Had there so far been any review of laws to that end, and what had been the outcome?

36. **Mr. Sadi**, welcoming the delegation, said that its composition was a clear indication that Malta took the dialogue into which it was entering with the Committee very seriously.

37. He shared the concerns of other members of the Committee about the scant information provided in the report, which, however, should not be overcritically judged as

it was an initial report and did provide a basis for a fruitful relationship between the delegation and the Committee. He wondered whether there was not some misunderstanding of the obligations undertaken by States parties to the Covenant, as such phrases as “many of the rights ... were already incorporated” seemed to imply. The Covenant did not call for some, or many or almost all of the rights guaranteed to be implemented, but required full compliance with all of them. In that connection, he joined other members of the Committee in emphasizing the need to clarify the place of the Covenant in Maltese legislation.

38. He shared Mr. Pocar’s concern about the position of children born out of wedlock, referred to in paragraph 63 of the report, which was not in accord with article 24 of the Covenant, and hoped that the review of the Civil Code mentioned in the delegation’s introductory statement would soon remedy that situation. Finally, he agreed with what other members had said about the question of minorities and about the numerous reservations made by Malta to the Covenant.

39. **Mr. Bruni Celli** joined in the welcome extended to the delegation. Most of the questions he would have wished to ask had already been put by other members of the Committee. He did, however, wish to ask why Malta had not incorporated the Covenant into its domestic law in the same way as it had incorporated the European Convention, and the same question applied to the second Optional Protocol, as compared with Protocol No. 6 to the European Convention. As things stood, doubts were bound to arise about how Malta interpreted the provisions of article 2 of the Covenant, both with regard to the obligation undertaken to respect and guarantee the rights recognized in the Covenant, and with regard to the obligation to adopt such legislative or other measures as might be necessary to give effect to those rights. He hoped that those deficiencies would be made good at least before Malta submitted its second report.

40. **Mr. Wennergren** extended a warm welcome to the Maltese delegation. He joined previous speakers in noting that the statement in paragraph 1 of the report that the Covenant did not create a new situation because many of the rights mentioned in it were already incorporated in the Constitution and Act XIV of 1987, implied that there were some rights not so covered. That was particularly clear with regard to articles 25, 26 and 27 of the Covenant, to which there were no corresponding articles in the European Convention. It was, therefore, necessary to ask, for example, what were the precise Public Service Commission regulations governing recruitment to the public service (paragraph 71 of the report) in order to establish whether they were compatible with article 25 of the Covenant, which guaranteed the right and opportunity of every citizen to take part in the conduct of public affairs. Similarly, the European Convention did not entirely coincide with the provisions of article 26 of the Covenant, which guaranteed not only equality before the law but the equal protection of the law. Again, paragraph 79 of the report, referring to the protection of the rights of minorities guaranteed by article 27 of the Covenant, stated that, religious rights were protected by the Constitution, which would seem to imply that any ethnic or linguistic minorities there might be would not enjoy protection under Maltese law. As to the statement that no minority existed in Malta, he, like previous speakers, found it difficult to credit that there were not refugees, perhaps from Africa, present in Malta, who would form the nucleus of linguistic and ethnic groups, entitled to enjoy the rights and protection guaranteed by article 27 of the Covenant.

41. Turning to various provisions of the Maltese Constitution, he noted that section 2 stated that the authorities of the Roman Catholic Apostolic Church had the duty and the right to teach which principles were right and which were wrong. He asked what kind of principles were meant. They could hardly be those enshrined in the Constitution; for that would give the Church the right to overrule the Constitution itself. As to article 36 of the Act XIV, relating to article 7 of the Covenant, he wished to know whether article 36 permitted corporal punishment in schools, and whether parents were entitled to use such

punishment on their children. Section 40 of the Constitution, referred to in paragraph 46 of the report, in relation to article 18 of the Covenant, prohibited persons under the age of 16 from refusing religious instruction. Why had the age of 16 been chosen? He personally believed that young persons, who had reached a mature age, should have the right to decide whether they should be educated in Roman Catholic beliefs or not. He also noted that a subsection of the same section of the Constitution stated that nothing contained in or done under the authority of any law should be held to be inconsistent with or in contradiction to subsection 1 granting full freedom of conscience and free exercise of religious worship – to the extent that the law in question made provision that it was reasonably required. According to article 18, paragraph 1, of the Covenant, however, freedom of conscience was an absolute right and not subject to any restrictions. He would welcome the delegation's comments on the compatibility of those provisions of the Constitution with article 18 of the Covenant. Section 41 of the Constitution, guaranteeing freedom of expression, left open the possibility that a person might be hindered from free expression by his parents, which did not seem to be compatible with article 19 of the Covenant. Finally, he requested fuller details of the restrictions placed by the Constitution upon public officials regarding their freedom of expression.

42. **Mr. Prado Vallejo**, welcoming the delegation, said that the high level of representation chosen was proof of Malta's desire to cooperate fully with the Committee.

43. The report was largely limited to accounts of laws and of the judicial system and did not address the factors and difficulties, if any, affecting the implementation of the Covenant as was required by article 40, paragraph 2, of the Covenant. He welcomed the quotation from section I of the Constitution in paragraph 9 of the report, to the effect that Malta was a neutral State actively pursuing peace and refusing to participate in any military alliance. He was, however, disappointed by the number of reservations Malta had made to the Covenant, and he hoped that the Government would find it possible to withdraw them in the near future. In particular, he thought that it should be possible for the reservation to article 13 of the Covenant concerning the expulsion of aliens to be withdrawn. He was also greatly concerned, in the light of article 14, paragraph 6, of the Covenant, that there was at present no compensation for wrongful imprisonment in Malta. He drew the attention of the delegation to the fact that, in all cases where the Committee had in the past examined individual complaints and concluded that there had been a violation of the Covenant, it had asked for compensation for the victim. That was a point for the Maltese Government to bear in mind in relation to its reservation. The imbalance between the treatment of the Covenant and the European Convention was particularly evident in paragraph 8 of the report, which indicated that only provisions of the latter instrument could be directly enforced by the courts. He wondered whether there might not be some fault of translation in paragraph 29 of the report, relating to article 10 of the Covenant, where the words "the Minister responsible for prisons may ... provide for ... the diet ... of prisoners ..." appeared. It could hardly be a matter of choice whether prisoners were given food or not. In paragraph 34 of the report, in relation to article 12, there was reference to restrictions on freedom of movement applied to foreigners in the interests of, among other things, public decency. That was to him a hitherto unknown reason for restricting freedom of movement, and he would be grateful for some clarification. Paragraph 43 of the report quoted, in relation to article 17 of the Covenant, a section of the Criminal Code prohibiting lower ranks of the Executive Police from entering a person's home without an order in writing from a superior officer, but it did not make it clear whether a superior officer could enter without a judicial warrant. He noted the reference in paragraph 45 of the report to telephone tapping "under the authority of a law" and wished to know the principles on which it was currently permitted, and what measures were being taken to protect family privacy from arbitrary use of telephone tapping by the police.

44. Paragraph 59 of the report stated that there was no law regulating divorce in Malta, but he noted from paragraph 60 that a marriage might be declared null and void by the civil courts in certain cases. Did these cases include the wishes of the two parties? Divorce was the only measure which made it possible to solve very serious family problems in some circumstances, which was why his own country, Ecuador, had made legal provision for it almost a century earlier, although it also was a country with a Roman Catholic majority.

45. He requested clarification of section 25 (1) (a) of the Constitution quoted in paragraph 68 of the report, in relation to article 24 of the Covenant. The subsection stated that a child neither of whose parents was a citizen of Malta and whose father was an envoy of a foreign sovereign power would not automatically become a citizen of Malta if born in that country. But what would happen to a child whose mother, not father, was the person enjoying the diplomatic status referred to? He was also concerned about the statement in paragraph 65 of the report, relating to the same article, about “reasonable decreases in the degree of punishments” for minors. In his view, minors should not be punished but rehabilitated.

46. **Mr. Lallah**, welcoming the Maltese delegation, said that their initial report provided a good basis for dialogue, although, as other speakers had pointed out, not sufficient attention was paid to actual practice, a shortcoming that he hoped would be made good when Malta submitted its second report. He also agreed with Mrs. Higgins that insufficient information was provided about provisions to given effect to rights, particularly under article 14 of the Covenant. On the other hand, he thought that the Constitution provided a very good legal framework for the protection of human rights, and he noted with approval that, under section 66 of the Constitution, the fundamental rights of the judiciary and other basic institutions could not be amended unless there was a large majority in favour. But it was regrettable that there were no provisions corresponding to article 4, paragraph 2, of the Covenant limiting derogations under states of emergency. There also appeared to be constitutional restrictions on rights under articles 23 and 24 of the Covenant. He had particularly in mind section 45 (3) (d) of the Constitution, which introduced the criterion of what was justifiable or not justifiable in a democratic society – a criterion open to wide interpretation. It was his impression that Maltese civil law was much influenced by the Catholic religion, as was the case in his own country, where, however, ways and means had been found of declaring a number of discriminatory provisions, particularly against women and children, unconstitutional. Perhaps in the case of Malta too, the Bar and the judges found ways of correcting that bias. He noted that sections 6 and 46 of the Constitution, which he thought admirable, gave considerable powers to the judiciary when the executive or legislature were acting in breach of the Constitution and fundamental rights guaranteed therein. He agreed, however, with other members of the Committee that such rights would be better guaranteed if the Covenant were given special status under Maltese law. If that were done, it would provide an opportunity for the Committee to learn what Maltese judges thought about the principles set out in the Covenant, as would occur if the Committee considered the exhaustion of domestic remedies under the provisions of the first Optional Protocol, to which Malta was a party. In some countries judges were deprived of the right to act because fundamental rights were not included in domestic law. He had particularly in mind the United Kingdom, where litigants had to look to the European Court to act in cases where it was not possible for them to do so within the framework of the laws of that country. He hoped, therefore, that Maltese judges would be given the possibility of acting on such matters. There were, he considered, some defects in the provisions regarding the independence of the judiciary, which, as he had noted, had the important task of ruling on the constitutionality of laws relating to the fundamental rights of citizens. Section 96 of the Constitution gave the executive the power to appoint judges: his reading of section 85 was that the President appeared to be bound to act in accordance with the advice of the Prime Minister. Moreover, according to section 98 of the Constitution, the Prime Minister could

terminate the temporary appointments of judges without any restrictions. He would have expected that for such high offices, carrying so many responsibilities, judges would be given some kind of security of tenure. Nor did he find any provisions guaranteeing the terms and conditions of service, such as were found in other constitutions. Possibly the delegation would correct him on that point. On the other hand, he noted that judges could not be removed by abolition of the office they held, which was a provision going some way in the right direction.

47. He agreed with, and would not repeat, what other members had said about the question of minorities. He wondered, however, whether the fact that no communication had been received from Malta under the first Optional Protocol might point to a lack of publicity given to the Covenant and the Optional Protocol in that country.

48. In conclusion, he agreed with those of his colleagues who had expressed the view that the delegation would find it useful to study the Committee's general comments as a guide to the preparation of future reports.

49. **Mr. Herndl**, welcoming the Maltese delegation, agreed with what other speakers had said on the subject of reservations. Regarding the question of discrimination against women, he noted that the report did not mention the differences of opinion which had arisen between Malta and the International Labour Organization (ILO) on the question of equal pay. Paragraph 76 merely stated that equal pay had been introduced in 1967 for Government employees and had been subsequently extended to employees in the private sector. He would welcome information on how that had been done and on the substantive difference between the Maltese Government and the ILO on that issue. Mr. Wennergren had dealt with the topic of religion, and he would merely say that he had been surprised to see that the duty and right of the Roman Catholic Apostolic Church to teach which principles were right and which were wrong had been enshrined in the Constitution, given the fact that that Church was the State religion.

50. He agreed with other speakers that the report was somewhat lacking in substance in that it drew its main arguments from the Constitution, a prominent feature of which was catalogues of rights and freedoms. There was, however, little in the report about other laws that might implement the provisions of the Covenant, and he hoped that information of that kind would be included in Malta's second report. While it was most gratifying that Malta had ratified both the Covenant and the first Optional Protocol in 1990, it was far from clear what action had been taken to implement the provisions of the Covenant. It had not been made part of internal law and, according to paragraph 8 of the report, could only be enforced indirectly if subsumed in the Constitution and Act XIV of 1987, which incorporated the substantive articles of the European Convention into internal law. With regard to those latter instruments, he would be interested to learn what would happen if there was a conflict between the provisions of the Constitution and those of the European Convention. As he understood it, the Constitution, as the supreme law of the land, would prevail unless Act XIV were given the rank of a constitutional norm. It was a regrettable fact that no clear status was accorded to the Covenant.

51. He wished to raise the issue of section 45 of the Maltese Constitution in relation to articles 2, 3 and 26 of the Covenant. Section 45 was a central and essential part of the Constitution, dealing with the prohibition of discrimination on a variety of grounds. It contained, however, a number of exceptions, for example, one withholding the principal provision on non-discrimination from persons not citizens of Malta, and there were also exceptions relating to marriage, dissolution of marriage, adoption and other matters. What was the real meaning of those exceptions to the principle of equality in law from the standpoint of article 26 of the Covenant, which, moreover, went beyond any of the provisions of the European Convention?

52. Like previous speakers, he also wished to know what the Maltese Government had done to bring the provisions of the Covenant to the attention of the public. Unless individuals were informed of their rights under the Covenant, they would be in no position to avail themselves of the procedures of the first Optional Protocol.

53. **The Chairman** observed that, in preparing its answers, the delegation might wish to group the topics covered — such as the place of the Covenant in domestic law, and its enforceability; the question of reservations; the publicity given to the Covenant; the independence of the judiciary; the status of illegitimate children; equality of the sexes; rights of aliens; and the question of minorities — but it was free to present its answers in any way it chose.

54. **Mr. Borg-Barthet** (Malta) expressed appreciation for the interest taken by the members of the Committee in the report.

55. He could assure the Committee that revision of the law of succession as it related to children born out of wedlock was regarded by the Maltese Government as a matter of priority. In actual fact, there were not many children who fell into that category because most were adopted by one or other of the natural parents.

56. The number of reservations to the Covenant made by the Maltese Government reflected the seriousness with which it took its international obligations. In practice, the Government often adhered more closely to the provisions of the Covenant than its reservations implied, but it did not feel that it could withdraw a reservation unless it was absolutely sure that it could fully comply with the provisions concerned. That was also implied in the status of the reservations under Maltese law. It meant that ratification was sufficient for a treaty since it did not require changes in internal law in order to become operative. An international obligation undertaken by the Maltese Government was, accordingly, not binding if it conflicted with local law. Nevertheless, any Maltese court interpreting a local statute would take the international obligations entered into by the Maltese Government into consideration, and, where two interpretations were possible, choose the one which conformed with international obligations. That was the extent of the status of the Covenant under Maltese law. The question had been asked why the Government had not incorporated the Covenant in the same way as the European Convention. No disparagement of the Covenant was intended by not so doing. The Committee would appreciate that, under the Maltese legal system, there were two basic and very strong documents guaranteeing and laying down procedures for local courts to follow. If Malta became a party to other instruments, that would add to the volume of domestic procedures. It had also to be taken into account that the Covenant was not so tightly worded as was the European Convention, and hence more difficult to enforce in a domestic court. That did not, however, mean that the relevant obligations were not guaranteed. The guarantees of the citizen were not granted basically by the Constitution or by the Convention incorporated into domestic law but above all by the ordinary law, which did not in any way need to be constitutionalized. Of course, some rights were more basic than others, thus implying a hierarchy of laws, but the Government did not feel at the current stage that it should implement the Covenant by placing it in a particular hierarchy: the need had not been seen to have yet arisen.

57. On the issue of the independence of the judiciary, he drew attention to section 107 of the Constitution, which provided that the remuneration and allowances of the judiciary could not be reduced or removed. It might be of some interest to note that, while a number of States members of the British Commonwealth had adopted basically similar constitutions, most of them only contained guarantees relating to judges of the Supreme Court, whereas the Maltese Constitution contained guarantees relating to all judges and magistrates.

58. As to equality of the sexes, he had mentioned amendments to the Civil Code removing certain anomalies in his introductory statement. There was also a strong publicity campaign to make women, and he hoped men as well, aware of women's rights. As to statistics, while it was true that only 1 of the 65 Members of Parliament was a woman, there was a great preponderance of female voters, who could have voted for women candidates if they had so wished. He personally did not believe in setting quotas for female representation, as some countries did. Some political parties in Malta were, however, advocating that policy. Maltese employment law provided for maternity leave with pay, unpaid leave for women with young children, and equal pay in employment. It was, however, true that, if a woman withdrew from work for a number of years, she would lose here place in the corporate hierarchy. On the other hand, men were excluded from the joys of motherhood.

59. As to the question of minorities, the Maltese population comprised people of many origins, particularly from the Mediterranean region. A small island like Malta gladly accepted immigrants they did not come in droves from a single source. If they had to be called minorities, it was only for the first generation, after which they were progressively assimilated. There were, it was true, adherents of religions other than Catholicism, and they were free to practise their religions without any restriction other than respect for public decency. As to the provision in section 2 of the Constitution affirming the duty and right of the Roman Catholic Apostolic Church to teach which principles were right and which wrong, the explanation had to be sought in history. A dispute between the erstwhile Archbishop of Malta and the leader of the Socialist Party, Mr. Dom Mintoff, in the 1950s and 1960s, had been resolved by the insertion of that provision in the Constitution. He personally was not too sure what it meant and thought that it read as if it had been drafted by an architect rather than a lawyer.

60. He and his colleagues would endeavour to provide further answers to the questions raised by members of the Committee at the current session if possible, otherwise when Malta's next report was submitted.

61. **The Chairman** thanked Mr. Borg-Barthet for his statement and said that the Committee looked forward to the further information that would be provided at the current session and in Malta's second report.

The meeting rose at 1 p.m.