UNITED NATIONS

ECONOMIC
AND
SOCIAL COUNCIL

Distr.
GENERAL

E/1980/WG.1/SR.9
21 April 1980

ORIGINAL: ENGLISH

First regular session, 1980

SESSIONAL WORKING GROUP ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

SUMMARY RECORD OF THE 9th MEETING

Held at Headquarters, New York,
on Thursday, 17 April 1980, at 3.30 p.m.

Chairman: Mr. NAGY (Hungary)

CONTENTS

Consideration of the reports submitted in accordance with Council resolution 1988 (LX) by States Parties concerning rights covered by Articles 6 to 9 of the Covenant (continued)

80-55466

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The meeting was called to order at 3.55 p.m.

CONSIDERATION OF THE REPORTS SUBMITTED IN ACCORDANCE WITH COUNCIL RESOLUTION 1988 (LX) BY STATES PARTIES CONCERNING RIGHTS COVERED BY ARTICLES 6 TO 9 OF THE COVENANT (continued)

Report of Chile (continued) (E/1978/8/Add.10 and 28)

1. Mr. ALBORNOZ (Ecuador) asked to what extent the demand for medical services from the insured population had increased, what progress had been made in establishing a sickness insurance system and what steps had been taken to consolidate the budgetary base of the social security scheme. Social security funds had been established in a number of Latin American countries at about the same time, and the experience gained by Chile would be of great interest to them.

2. Mr. HARASHIMA (Japan) said that he welcomed the further report (E/1978/8/Add.28) submitted by Chile and the additional information it contained. His delegation was gratified to note from that document that certain improvements had taken place in the field of human rights in Chile. He was disappointed, however, to find that the information supplied still failed to meet the requirements of the Convention.

3. The introduction to the new document referred to new provisions regarding collective bargaining which had come into effect in July 1979, and he would welcome some details of how collective bargaining was conducted under the new legislation. In connexion with the provision of the new legislation on the formation of trade unions in small companies, he asked how many trade unions had so far been organized in companies employing under 25 workers and in companies employing only eight workers. He noted that the new legislation on collective bargaining, Decree-Law No. 2758 of 1979, made provision for the readjustment of salaries by 100 per cent of the rise in the cost of living since the most recent readjustment: that was an extremely ambitious approach, and he asked which authority was responsible for establishing the cost-of-living index used for that purpose, and whether the new system applied to all enterprises, regardless of size.

4. Mr. VOICU (Romania) said that his delegation had supported a number of resolutions adopted by the General Assembly in recent years on the subject of human rights in Chile. The information in the reports submitted by Chile and in the statement by the representative of Chile described a human rights situation very different from that portrayed in the relevant General Assembly resolutions. There was little solid information in the report, and he believed that the Working Group would require far more information in order to decide what the real situation was.

5. Mr. SALMENPERÄ (Finland) said that the report of Chile did not fully cover all matters of concern to the Working Group, especially in the field of social security. For the time being, he would confine himself to asking what machinery existed to enforce the regulations relating to workers' safety.

6. Mr. SAMSON (International Labour Organisation) said that the second ILO report (E/1979/33) commented on the situation in Chile with regard to Articles 6 to 9 of the Convention. The Committee of Experts had found that there were two particular features which called for comment. First, the Government of Chile had relied heavily on article 17 (3) of the Covenant, and had therefore given references to information previously supplied to the International Labour Organisation rather than reproducing that information in its report. In those circumstances, the ILO report was clearly an important means for briefing the Economic and Social Council and the Working Group on the progress made in the observance of articles 6 to 9. The account of the evaluation made by the Committee of Experts was therefore very detailed in the case of Chile.

7. Secondly, in many cases previously considered by the Working Group he had drawn attention to information made available through the periodic reports of ILO bodies which monitored the application of ILO Conventions. In the case of Chile, the ILO had been able to pay special attention, under two special procedures, to two major issues. On the question of discrimination in employment, in pursuance of the ILO Discrimination (Employment and Occupation) Convention, a commission of inquiry had been established in 1974 to examine the observance of that Convention by Chile. Following a thorough examination of the situation in law and in practice, and a visit to the country in 1974, its report and recommendations had been submitted in 1975. At that time, the Convention had not yet entered into force in Chile, but the commission's recommendations were being followed up by the Committee of Experts, and information on the subject was given in the 1979 ILO report.

8. Under a second special procedure, in operation since 1974, special attention had been given to the question of trade union rights and collective bargaining. With the consent of the Government, the Fact-Finding and Conciliation Commission on Freedom of Association had visited Chile to investigate a complaint, and had reported on the subject in 1975. It should be noted that that procedure had been followed despite the fact that Chile had not ratified ILO Conventions 87 and 98 on trade union rights; the procedure was available whether or not the Government concerned had ratified the relevant conventions. Ever since the Fact-Finding Commission had reported, Chile had been requested to supply information periodically on the development of its trade union practices, and that information had been considered at regular intervals by the Committee on Freedom of Association of the Governing Body of ILO. The most recent report of that Committee to the Governing Body was significant in that it had been prepared after the adoption by Chile in 1979 of the new legislation on trade unions and collective bargaining.

9. The main conclusions of the Committee on Freedom of Association had been approved by the Governing Body in November 1979. With regard to the adoption of new legislation on trade unions and collective bargaining, the Governing Body had noted with satisfaction the abrogation of Decree Law No. 198, adopted in December 1973, which had imposed serious restrictions on trade union activities. It had noted that the promulgation of new legislative decrees on trade union activity and collective bargaining was a first important step in the application of the recommendations of the Fact-Finding and Conciliation Commission. The Governing Body had pointed out, however, that the Committee on Freedom of Association had still found it necessary to make certain comments, in the light of the principles of

(Mr. Samson, ILO)

freedom of association, on certain provisions of the new legislation: the numerical requirements for membership of new trade unions, certain of the formalities required for the establishment of new trade unions, the detailed requirements for the election of officers, certain restrictions on the eligibility of officers, the powers of the public authorities to inspect the financial records of trade unions, the prohibition on trade union participation in political activities, the numerical requirements applicable to the composition of federations and confederations of trade unions, the prohibition on the participation of federations and confederations of trade unions, in collective bargaining, the fact that all trade union federations and confederations were subject to the control of the Directorate of Labour, and the exclusion of government employees from the scope of the legislation.

10. The Committee on Freedom of Association had also considered the question of collective bargaining and strikes, and two of the points raised at the previous meeting of the Working Group by the representative of the Federal Republic of Germany had been the subject of comments by it: the fact that collective bargaining was not allowed in public or private enterprises or institutions which had been State-financed to the extent of 50 per cent during the previous two years, whether directly or through taxation, and the provision restricting strikes in public utilities or where a stoppage would seriously jeopardize supplies to the public, the economy or national security.

11. The Governing Body had drawn the attention of the Government of Chile to provisions of its legislation that were incompatible with the principles of freedom of association, and had requested the Government to report on the implementation of ILO recommendations on amendments to legislation. In the additional report which had been circulated to members of the Working Group (E/1978/8/Add.28), the Government of Chile had referred to additional information communicated to the ILO on 20 February 1980. That information had been reviewed by the Committee on Freedom of Association, which intended to submit a further report on the situation in Chile to the Governing Body in May 1980.

12. Mr. SUAREZ (Chile), replying to a question asked by the representative of the Federal Republic of Germany, said that the role of the notary public, under law, was to certify circumstantial details, such as the identity of persons whose signatures appeared on documents. The notary public would be asked to participate not only in transactions concerning commercial organizations, but also in trade union matters. The role of the notary public was traditional, and was a general requirement of Chilean legislation, but it was confined to the certification of facts and personal identity; notaries public were independent of the public authorities. The same representative had asked how much freedom the trade unions enjoyed in convening meetings. Under the new legislation in force in Chile, there was no restriction on the right of trade unions to hold meetings. A further question asked by the representative of the Federal Republic of Germany had concerned the restriction on the right to strike in public or private enterprises partly financed by the State; that provision applied only if the budget of the enterprise concerned had not been self-financed over the previous two years. The fact that strikes were not permitted did not preclude collective bargaining.

(Mr. Suarez, Chile)

13. The recently-enacted provision with regard to the dissolution of trade unions was traditional under Chilean law. A trade union could be asked to dissolve itself if it had committed a breach of legislation or of its own statutes. The new rules embodied two important improvements: the breach had to be of a serious nature, and the person who alleged that it had occurred had to bring the matter before a court, which would make its judgement on the facts of the case. The organization concerned would have every opportunity to defend itself in court. So far, no court had ruled that a trade union would have to be disbanded.

14. The representative of the Federal Republic of Germany had also asked about enterprises in which employees were not entitled to strike, but to which mandatory arbitration applied. The Ministry of Labour was required to publish an annual list of the enterprises where strikes were forbidden. The prohibition was issued when it was determined that a strike would prevent the population from obtaining certain essential goods or cause a major disruption of essential services. Only 25 enterprises had so far been included on the list, only one of them in the all-important copper industry. In other enterprises there were no restrictions on the right to strike. The arbitration panels were self-generating and independent bodies composed primarily of academics with experience in economic and labour matters. With a view to maintaining the independence of the arbitration machinery, vacancies were filled on the basis of nominations made by panel members themselves.

15. As to the question asked by the representative of the Federal Republic of Germany about the protection of the unemployed under the social security system, he noted that labour legislation alone would be inadequate to solve the problem of unemployment. Mindful of its responsibility to adopt measures to mitigate the adverse effects of unemployment, his Government was, first of all, providing direct incentives to employers by subsidizing them for every employee recruited in excess of the normal manning table. An employee who was made redundant received from the State an unemployment benefit equivalent to 85 per cent of his normal wages for six months. Payment of the benefit could be extended for a further six months if new employment had not been found. That allowance was in addition to the compensation which the employer was legally bound to pay the employee, the amount of which was determined according to the salary and length of service at the time of separation.

16. In reply to the questions asked by the representative of Ecuador, he said that in Chile there were many social security schemes; they were administered by approximately 35 funds, to which contributions were made by employers and employees, and by the State. All employees and their families were covered for illness, and working women were entitled to maternity benefits. From the time a woman became pregnant until one year and two weeks after delivery, she could not be dismissed. For a period of 12 weeks before and 12 weeks after delivery, she was entitled to leave with full pay. That amount was payable from the social security fund. An enterprise with more than 20 female employees was legally bound to establish a day-care centre. Employees were also covered for occupational diseases and for accidents occurring at work and on the way to and from work. Although such benefits were payable by the State, the employer had to contribute to the insurance fund. Disability, old-age and death benefits were available, together with dependency allowances from a fund to which both the employer and the State

(Mr. Suarez, Chile)

contributed. Consideration was being given to a plan that would substantially change the financing and administration of the social security system and unify the various funds into a single social security fund covering the entire labour force.

17. His delegation did not have to hand all the statistics on collective bargaining requested by the representative of Japan. It could, however, provide some statistics on trade unions that would give the Working Group a better understanding of the process in which the Chilean Government was engaged. In the six months since the new legislation came in effect, 430 trade unions with over 28,000 members had been established. During the same period there had been systematic elections in 534 trade unions, in which over 42,000 members had voted. In the eight months since the entry into force of the new legislation on collective bargaining, 1,931 draft collective agreements, affecting approximately 300,000 workers, had been submitted. Although he did not know the exact number of enterprises with between 8 and 25 employees, he could say that the number was small in relation to the total. Although at least eight employees were needed to form a trade union, there was nothing to prevent a smaller group of employees from reaching a collective agreement through direct negotiations with the employer. Such an agreement would have the same force as other negotiated collective agreements.

18. The representative of Japan had also inquired about the computation of the cost-of-living index. The index was calculated on the basis of price comparisons for specific products over a given period, according to the universally recognized system for such calculations. In collective negotiations on salary increases, the employer could not offer less than the rise in the cost-of-living index from the time the previous wage level had been determined. If the employer did not wish to engage in such collective negotiations, he was still required to increase wages two or three times per year to keep pace with increases in the cost-of-living index. That provision applied to all employers, whether in the public or in the private sector.

19. The representative of Finland had referred to the question of the right to employment. There were two aspects to that question, namely, how the right to employment itself was guaranteed and how job security was ensured. Chilean legislation prohibited all discrimination in employment and provided that no one should be denied access to employment. There were specific appeal procedures which an individual could use if he felt that his legitimate right to employment had been violated. With respect to job security, the employer was legally bound to have justifiable grounds for the termination of employment. If he failed to state those grounds, he was required to pay the employee compensation amounting to one month's wages for every year of service.

The meeting was suspended at 5 p.m. and resumed at 6.10 p.m.

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20. The CHAIRMAN said that he had been authorized to read out for the record a summary of the major points of the Working Group's discussion on the report of Chile. Members of the Working Group were of the opinion that the supplementary information contained in document E/1978/8/Add.28 provided more information on the question under consideration. During the review of the information contained in the Chilean report (E/1978/8/Add.10 and 28) some members had referred to expressions of concern on the matter in other United Nations bodies. Members of the Working Group believed that additional information should be provided by the Government of Chile in the next report to be submitted by it under the Covenant concerning rights covered by articles 6 to 9, in accordance with the general guidelines prepared by the Secretary-General.

21. He said that, if he heard no objection, he would take it that the Working Group had concluded its consideration of the report of Chile (E/1978/8/Add.10 and 28).

22. It was so decided.

The meeting rose at 6.15 p.m.