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SUMMARY RECORD OF THE 265th MEETING

Held at Headquarters, New York,
on Tuesday, 24 March 1981, at 3 p.m.

Chairman: Mr. MAVROMMATIS

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Barbados (continued) (CCPR/C/1/Add.36)

1. Mr. TARNOPOLSKY said that he endorsed the remarks made by other members of the Committee on the attempts by Barbados to live up to the highest standards of human rights protection, and felt that many other countries could learn from its example. He admired Barbados for being prepared to ratify the Optional Protocol; although such ratification did not provide for immediate internal implementation, it was important for a country to be prepared to stand up to international scrutiny at the behest of its citizens. The format of the report was clear, and it dealt directly with the articles, which was commendable.

2. One of the most effective means of allowing the observance of the Covenant by States parties to be monitored was a well-informed citizenry. In that connexion, he requested information on whether publicity was being given in Barbados to the Covenant itself, the report submitted by Barbados to the current session and the discussion of the report by the Human Rights Committee.

3. He was unsure how to interpret section 26 of the Constitution, and felt that, if it protected only laws existing when it had come into force in 1966 but excluded laws enacted after that date from the application of chapter III of the Constitution, it could be cause for concern. Since the legal system in Barbados was based on the common law, he wondered if section 26 applied to delegated legislation, orders in council and regulations as well. If that provision meant that no law based on a law enacted prior to 1966 was inconsistent with the Constitution, it would seem that little effect was given to articles 12 to 23 of the Covenant.

4. Referring to the non-discrimination clause in article 2, paragraph 1, of the Covenant, he noted that section 23 (2) of the Constitution did not mention sex as prohibited grounds for discrimination, and he wondered why it had been left out. The reference to social origin, property, birth or other status in the same paragraph of the Covenant was really aimed at the issue of parentage, which was often used to suppress anti-governmental activity by the use of retaliation against children for the actions of their parents. Article 2, paragraph 1, provided protection against such measures, but they did not seem to be taken into account in sections 11 or 23 of the Constitution.

5. The remedies clause contained in section 24 (1) was extremely broad and commendable, but he wondered if examples could be found of remedies given under that section since the Covenant had come into force.

6. With regard to article 4, he agreed with Mr. Sadi that it would be useful to know if the emergency provisions under section 25 had ever been proclaimed. He endorsed Mr. Bouziri's question as to whether there were any limitations, as

(Mr. Tarnopolsky)

required by article 4, paragraph 1, of the Covenant, on emergency provisions. Section 23 (3)(d) seemed to provide exactly the opposite, since it allowed distinctions to be made in time of emergency on some prohibited grounds. He requested clarification on that point. With regard to article 5, he agreed with Mr. Opsahl that the way in which the report interpreted it was questionable. It did not matter whether the Covenant was part of the laws of Barbados; rather, it was important that the Covenant should not be used to impose greater restrictions than were actually set out in it.

7. In connexion with article 7, he requested information on laws regarding the maintenance of family contact by persons deprived of liberty, and on laws regarding solitary confinement. Section 13 (1)(h) of the Constitution, relating to article 9 of the Covenant, was unclear as to the definition of vagrants and how long they were deprived of liberty. He requested clarification on that point, but welcomed the information provided in the report on the treatment of prisoners.

8. With regard to section 17 on the search of person or property, he wondered what laws covered wire tapping and electronic surveillance, which were not forms of "search" per se. He felt that the limitations in section 19 of the Constitution were broader than those in article 18, paragraph 3, of the Covenant, which listed permissible limitations, but only on the freedom to manifest one's religion. In connexion with compliance with articles 19, 21 and 22, he requested information on laws protecting national security, particularly those covering sedition and sedition-related offences and criticism of the Government and its officials.

9. With regard to article 25, he felt that the residence requirement of at least seven years for election to the House of Assembly was perhaps too long, and might contravene sections 11 or 23 of the Constitution. Concerning article 27, he felt that sections 19 and 20 of the Constitution did not deal with the issue at stake. Article 27 dealt with the rights not of individuals, but of groups, specifically ethnic, religious or linguistic minorities. He wondered whether there were such groups in Barbados and if so, what treatment they received before the law.

10. Mr. GRAEFRATH said that the report could have provided more information on the general situation in Barbados. It referred mainly to the Constitution, and generally failed to discuss other legislation and its background in Barbados. For example, in order to understand the extent to which citizens of Barbados could enjoy the rights mentioned in the Constitution, it was important to know the rate of illiteracy, which largely determined how many people were aware of their rights. It would also be useful to know what requirements, monetary and otherwise, were placed on persons wishing to take a case to court.

11. The report used the word "reasonable" quite frequently. That word left a large margin of discretion to the authorities, and he wondered how it was interpreted in Barbados. Since the Covenant could not be directly invoked in Barbados, he wondered what remedies were available when a law directly contradicted the Covenant, and if such remedies had been used. Specifically, since some legal provisions in Barbados were not in direct conformity with article 3 of the Covenant, he wondered whether women had recourse to such remedies.

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(Mr. Graefrath)

12. The explanation in the report of the term "discriminatory" diverged considerably from article 2 of the Covenant. Endorsing Mr. Tarnopolsky's comment, he said that not only was sex not mentioned, but references to language, national or social origin, property, birth or other status had also been omitted from the report. That was extremely serious, and information should be given as to why the provisions on discrimination were so limited.

13. The reference to article 3 in the report did not contain enough information to indicate whether the law of Barbados was in conformity with that article, and neglected to specify what the State and society had done to ensure that women were given equal rights. In the Constitution (sects. 3, 4 and 6), women were not placed on an equal footing with men. He requested information as to why there were special provisions on women, and whether they were really in conformity with the Covenant.

14. In discussing compliance with article 4, the report did not furnish details on how all of the rights provided for in a situation of public emergency could be reconciled with the right to life. In his view, ensuring the right to life entailed more than making provisions against arbitrary killing or providing protection against war, ordinary crime, high infant mortality or long-standing unemployment. Information on those aspects of the right to life in Barbados would be exceedingly useful.

15. Referring to article 9 of the Covenant, he said that the phrase "reasonable suspicion" in section 13 (1) (e) of the Constitution was ambiguous, and he requested clarification as to what it meant. Similarly, the phrase "tried within a reasonable time" in section 13 (3) (b) was unclear. Section 13 (4) provided for compensation for unlawful arrest, but he wondered what rules applied if it was the authorities which had made such an arrest. The description of compliance with article 10 was generally acceptable, but he wondered how the laws on prisons were actually monitored and applied. For example, what was the role of the Visiting Committee, and was it also in charge of supervising the application of the laws on prisons?

16. In the discussion of article 11, the word "merely" was ambiguous. In general, he would have welcomed more information on the administration of justice. The section on articles 14, 15 and 16 left out information on the workings of the courts and requirements for judges, which he felt would have been useful to the Committee.

17. He wondered whether section 17 of the Constitution really dealt with everything covered in article 17 of the Covenant. That article, in addition to covering search and entry, also provided protection of privacy, family and correspondence, and he wondered how those rights were covered in the Constitution. In connexion with article 20, he felt that sections 33 and 34 of the Public Order Act did not in fact prohibit war propaganda or racist propaganda, and he wondered whether the legislation contained other provisions on those matters.

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18. Mr. TOMUSCHAT said that the report reflected real performance in the field of human rights, notwithstanding certain doubtful constitutional aspects. He would appreciate receiving further information as to how the Government had harmonized the Constitution with the provisions of the Covenant. In small communities like Barbados it was not possible to resolve all questions by law and there was therefore a need for the concept of "reasonableness". The substance of the Covenant seemed to be deeply rooted in the domestic legislation of Barbados and there was little need for the Covenant itself to be incorporated in such legislation. Barbados had ratified the Optional Protocol and citizens therefore had the right to bring any complaints to the attention of the Committee. It was, however, essential that citizens should be fully informed of that right and he would appreciate information as to how it was publicized. He would also like to know whether any legal provision existed in Barbados to the effect that, when national law and the country's international obligations conflicted, it was the latter which would prevail.

19. There was some contradiction between article 9 of the Covenant and section 13 of the Constitution. Article 9 stipulated that anyone who was arrested must be informed at the time of arrest of the reasons for his arrest, whereas section 13 (2) of the Constitution stipulated that such action must be taken "as soon as reasonably practicable"; the same wording was used in section 13 (3). Furthermore, section 23 (1) (a) stipulated that no law must make any provision that was discriminatory either of itself or in its effect. He would appreciate receiving further information regarding measures available in Barbados to ensure the supremacy of the Constitution in that connexion.

20. Section 12 provided for an exception to the inherent right to life in certain circumstances involving the defence of property. Such cases should arise only in extreme circumstances, as human life must have priority over all other considerations. He was also concerned that the penal legislation of Barbados permitted capital punishment in the case of minors below the age of 18; such a provision was in clear violation of article 6, paragraph 5, of the Covenant. He would appreciate receiving information as to whether an individual could invoke the Covenant in such a case and whether the court would regard such a contention as relevant. There was also a need to provide greater protection for individuals covered by section 13 (1) (h) and, in particular, those suspected to be of unsound mind. The Committee might wish to ascertain whether in such cases, a court order was necessary and what procedure was used to determine the individual's state of mind.

21. In commenting on article 10, the report had stated that under rule 22 of the Prison Rules, every prisoner, on reception, was to be provided with full information about the rules governing the treatment of prisoners of his class. Such a rule was to be commended.

22. In connexion with articles 19 to 22, he asked how many political parties existed in Barbados, whether new political practices could be formed and how many newspapers existed, including those which were controlled by the Government and others which might be less well disposed towards the Government.

(Mr. Tomuschat)

23. With regard to articles 23 and 24 of the Covenant, he inquired whether the guarantees provided under the Marriage Act and the Infants Act covered the question of transfer of nationality to children, as there seemed to be a possibility of discrimination against the Barbadian wife of an alien in that connexion. De facto marriage was a significant factor in a number of countries and he would appreciate receiving information as to what percentage of children were born out of wedlock.

24. In conclusion, he believed that, while national legislation should be consistent with the Covenant, every country must be free to choose its own method of implementing the Covenant, for example, leaving the Covenant at the international level and incorporating aspects of it into national legislation.

25. Mr. HANGA, referring to the introductory section of the report dealing with the general legal framework, inquired whether citizens could invoke the Covenant by way of exception in cases where its provisions had not been incorporated into domestic legislation and whether such provisions might apply in the case of a conflict of laws.

26. In its comments on article 1, regarding the right of self-determination, the report had referred to sections 21 and 20 (1) of the Constitution, which provided that, except with his own consent, no person should be hindered in the enjoyment of his freedom of assembly and association and his freedom of expression. He questioned whether the limitation implied in such consent was legally correct, as it would seem that the rights involved were so fundamental that they could not be waived.

27. The comments on article 3 were very brief and required further elucidation. He inquired whether the principle of equal pay for equal work between men and women was respected in Barbados.

28. The provisions of article 6, relating to the inherent right to life, were important not only from the point of view of penal law but also in terms of social and humanitarian law. He inquired whether laws existed in Barbados for the purpose of enhancing public health and living standards and whether penalties existed for genocide.

29. In connexion with article 9, he asked whether a person who had been arrested could request the court to examine the arrest warrant and determine whether it was correct or whether it should be cancelled. He would also like to know whether the compensation referred to in section 13 (4) was purely material or whether it would also incorporate a moral element. With reference to article 10, the report indicated that special attention was devoted to the maintenance of family and social contacts and relationships as well as to the after-care of prisoners. He would like to know what was involved in such after-care and whether it had been successful in rehabilitating those who had been detained. In connexion with articles 14, 15 and 16, he would like to have further information on section 18 (6) of the Constitution, under which no person could be tried for a criminal offence if he showed that he had been granted a pardon for that offence. He also inquired

(Mr. Hanga)

whether courts other than the criminal courts existed, such as labour courts, and what their procedures and competence might be.

30. With regard to article 18, freedom of religion was protected under section 19 of the Constitution. In that connexion, he would appreciate receiving information as to whether a child could choose his own religion and, if a conflict arose between the child and his parents, how the matter was resolved and what factors were taken into account. Furthermore, in connexion with article 20, he inquired whether there was a law in Barbados which prohibited war propaganda.

31. The report stated that the rights stipulated in articles 21 and 22 were guaranteed under section 21 of the Constitution. In that connexion he would like to know the conditions under which a new political party could be set up. He did not fully understand the comment on article 23 to the effect that, under section 38 (1) of the Marriage Act, the celebration of any marriage could not be enforced by reason of any promise or contract. He would like to know whether the celebration of marriage differed from a marriage contract and would welcome further information on the matrimonial system of Barbados and in particular, on its property aspects. As to article 24, paragraph 2, he would like to know the time-limit within which the birth of a child must be registered in Barbados. He would also welcome further information on the limits of parental authority.

32. In its references to article 25, the report did not mention whether the electoral law covered the question of the possible recall of a deputy who had not fulfilled his mandate. He would like to know the conditions under which such recall could be effected. In connexion with article 27, he would appreciate receiving information regarding measures taken by the Government in areas where ethnic, religious or linguistic minorities lived with a view to ensuring the preservation of their cultural heritage.

33. Mr. ERMACORA noted that the report described the legal norms contained in the Constitution of Barbados and attempted to relate the Constitution to the Covenant. Without understanding the actual situation in the country it was difficult to see how the Covenant had contributed to the enjoyment of civil and political rights; the report made no mention of the difficulties which might arise in implementing the Covenant. In that connexion, the Committee might define standards of implementation for the guidance of States parties. He noted from the report that the legal system of Barbados did not permit the inclusion of the Covenant per se in the legal order of the country. He inquired how such a position might affect the issue of human rights; the text was ambiguous. Moreover, it was his understanding that the death penalty could be imposed on persons below 18 years of age. Such a situation was in clear contravention of article 6 (5) of the Covenant; moreover, it would seem that Barbados had not made a reservation of its position on that point.

34. In commenting on article 1, the report had referred extensively to section 21 of the Constitution. In his view, section 21 had nothing to do with article 1. The Constitution did not, however, seem to be inconsistent with article 1.

(Mr. Ermacora)

35. The comments on article 2 had drawn attention to section 23 (1)(a) which provided that no law must make any provision that was discriminatory either of itself or in its effect; section 23 (3)(d) stipulated, however, that subsection (1)(a) did not apply to any law so far as that law made provision for authorizing the taking, during a period of public emergency, of measures that were reasonably justifiable for the purpose of dealing with the situation that existed during that period of public emergency. Section 13 of the Constitution, to which the report referred in commenting on article 4, dealt with situations arising in cases of public emergency that had been officially proclaimed. He inquired how the provisions contained in section 23 (3)(d) and in section 13 related to article 4 of the Covenant. He had some difficulty in accepting section 13 (8), according to which it would seem that a Prime Minister would retain supreme authority in a state of public emergency and that the role of Parliament would be minimal. He would like to know whether the rules relating to public emergency had been applied in practice.

36. The report stated, in commenting on article 5, that the Covenant was not per se part of the law of Barbados and that the question of the interpretation referred to in article 5, paragraph 1, and the pretext referred to in paragraph 2 of that article, should not therefore arise. That situation was somewhat unsatisfactory as it conflicted with article 29 of the Universal Declaration of Human Rights. Furthermore, in connexion with the commentary on article 6, he had failed to find any rule in section 12 of the Constitution which really respected article 6, paragraph 1.

37. The report stated in its comments on article 18 that freedom of religion was protected under section 19 of the Constitution and had made several references to religious communities. He would like to know how a religious community was defined under the Constitution and how many such communities existed in Barbados. With regard to article 27, he inquired whether ethnic or religious minorities existed in Barbados, as they did in other countries of the Caribbean. If so, that fact should have been stated in the report.

38. Mr. JANCA said he regretted that the report did not provide more information regarding the legislative or other measures adopted by Barbados to give effect to the rights recognized in the Covenant. For example, the report did not state whether Barbados had any laws regulating the right of every child - recognized in article 24, paragraph 3, of the Covenant - to acquire a nationality, let alone give the content of such laws. It was assumed in the Covenant that in some cases States would not have sufficient rules to safeguard the rights, and it was clearly stated that States should undertake the necessary remedial measures.

39. The very general nature of the provisions relating to the Covenant made it difficult for the Committee to determine to what extent the rights recognized in the Covenant were really guaranteed in Barbados. By way of example he cited the paragraph which related to article 3 of the Covenant. More information was needed regarding the actual situation as well as regarding legal and other measures

(Mr. Janča)

adopted. For example, it would be interesting to know how many women university professors there were and how many women there were in legislative, administrative and judicial bodies so as to have an idea of the extent to which women really enjoyed equal rights. Additional information concerning article 27 on the rights of minorities would also be useful, such as whether there were linguistic or other minorities in Barbados. If so, what were their numbers and did they have special schools and newspapers to enable them to preserve their culture. The information provided in respect of articles 6, 19, 26 and 27 was very general and rather uninformative. At the same time some very useful information had been provided in respect of other articles.

40. Noting from the fourth paragraph of the report that, in order for it to be possible to enforce the provisions of the Covenant, those provisions would have to be enacted into local laws, he said it was difficult to determine how far the domestic laws were consistent with the Covenant. Judging by the excerpts from the Constitution quoted in the report, it would seem that the laws of Barbados were not entirely consistent with the Covenant. In that connexion he cited the restrictions that were permitted during public emergencies and the restrictions placed on the right to life, noting that no mention was made of the provision contained in article 6, paragraph 5, of the Covenant to the effect that the death penalty must not be imposed on persons below 18 years of age and should not be carried out on pregnant women. It was possible that there were such provisions in the criminal code; in any case the Committee would appreciate more information on that and other matters.

41. Mr. LALLAH said that, as had already been pointed out, States were required to provide information concerning what steps they were taking to ensure that persons living within their confines enjoyed the human rights recognized in the Covenant.

42. With respect to article 6 of the Covenant concerning the inherent right to life, he inquired whether Barbados intended to take steps to ensure that the provisions of article 6, paragraph 5, were incorporated in the domestic law.

43. Concern had justifiably been expressed in respect of section 26 of the Constitution, concerning existing law. It was possible that the section had been drafted in that manner in order to obviate the necessity to review every law to ensure that it complied with the Constitution. However, a method had been adopted in respect of other constitutions to deal with existing laws: a provision could be enacted stating that if any law was inconsistent with the Constitution then that law, to the extent of such inconsistency, was invalid. He would therefore like to know what Barbados planned for the future with regard to that article.

44. He agreed to some extent with previous speakers regarding the extensive use made of the concept of what was "reasonable". For example, it would be helpful to know whether there were any provisions stating that a person must be brought to trial within a specified period of time, as that would demonstrate a willingness on the part of Barbados to give real meaning to the Covenant.

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(Mr. Lallah)

45. In respect of article 4 of the Covenant, concerning public emergencies, the report seemed to indicate that when a public emergency was proclaimed the only restrictions permitted in such cases related to personal liberty. Was it, in fact, correct to assume that freedom of movement, of expression and of association were not affected in such cases?

46. With regard to article 3, he wondered whether section 6 of the Constitution, which related to the possibility of acquiring citizenship through marriage, applied to men as well as to women. If not, it might constitute a case of reverse discrimination. What was the Government's attitude to the express desire for equality between the sexes and what action had it taken to increase such equality? Moreover, what was its attitude towards women's movements? Were there any? If not, he wished to know what the Government was doing to make women aware of their rights.

47. Mr. HERDOCIA ORTEGA expressed concern at the statement in the first paragraph of the report to the effect that most of the rights dealt with in the Covenant were guaranteed in the Constitution; in fact all the rights dealt with in the Covenant should be guaranteed. He was also somewhat concerned to note that the rights listed in the Covenant were not embodied in the domestic laws. Under international law States had an obligation to review their domestic legislation before acceding to an international instrument so as to ensure that there was no conflict between the two. He urged the representative of Barbados to take note of that concern.

48. Referring to the writ of habeas corpus, mentioned in the second paragraph of the report, which required the detainer to show cause why the detainee should not be released, he said that that language seemed very negative. He also wondered whether there was any way of enforcing such a writ. In his own country, in the event of any difficulty being encountered in implementing a release order, the Supreme Court could instruct officials to seize the detainee.

49. Turning to the information provided in connexion with article 4 of the Covenant concerning public emergencies, he noted that, according to section 13 (6) (e) of the Constitution, a person who was detained must be afforded reasonable facilities to consult and instruct, at his own expense, a legal adviser. Was there provision for appointing an adviser ex officio in the event that a detainee could not afford the services of such a person?

50. Section 12 of the Constitution seemed not to provide a very strong guarantee of the right to life recognized in article 6 of the Covenant, as subsection 2 stated that a person could not be regarded as having been deprived of his life in contravention of section 12 if he died as the result of the use ... of such force as was "reasonably justifiable". In the event of a conflict between the Covenant and domestic law, which prevailed? He also wondered whether consideration had been given to the possibility of abolishing the death penalty in Barbados. Referring to article 4 of the Covenant, relating to the proclamation of a state of emergency, he asked whether, in the event that Barbados had made such a proclamation, it had notified the States parties, and whether articles 6, 7, 8, 11, 15, 16 and 18 of the Covenant had remained in effect.

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(Mr. Herdocia Ortega)

51. He asked whether there were any provisions requiring the Covenant to be publicized so that the people of the country could know what their rights were under the Covenant and what international obligations Barbados had undertaken.

52. In connexion with trade union law, he asked whether the right to undertake collective bargaining, to form trade unions and to strike were recognized under the laws of Barbados. He also asked whether there existed private or national human rights commissions.

The meeting rose at 6 p.m.