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ON CIVIL AND
POLITICAL RIGHTS**



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HUMAN RIGHTS COMMITTEE

Thirteenth session

SUMMARY RECORD OF THE 299th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 20 July 1981, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 11.55 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2), (continued)

1. The CHAIRMAN said that he had been waiting until all members of the Committee were present to announce the death of Mr. Jaime Roldos, President of the Republic of Ecuador, a country which according to the report that the Committee had studied, was moving towards democracy. If the Committee agreed, he would request Mr. Prado Valledo to convey the condolences of members of the Committee to the family of Mr. Jaime Roldos and to the Government and people of Ecuador.
2. It was so decided.
3. The CHAIRMAN said that it was also his painful duty to announce the death of Mr. Ben-Fadhel, a former member of the Committee, just before the opening of the session. If there was no objection, he would request Mr. Bouziri to convey the condolences of members of the Committee to the family of Mr. Ben-Fadhel.
4. It was so decided.
5. The CHAIRMAN proposed that, in the absence of a reply from Guinea, the Committee should postpone consideration of that country's report until the forthcoming spring session to be held in New York. As the representative of Guinea had been unable to travel to Geneva and might also have difficulty in taking part in the Committee's session to be held in Bonn, it seemed preferable to wait until the New York session. If he heard no objection, he would take it that the Committee agreed to his proposal.
6. It was so decided.
7. Mr. SADI said that he was not sure whether it was an opportune time to raise the question, but he wished to draw the attention of members of the Committee to an article by Mr. Manfred Nowak appraising the effectiveness of the Covenant after the Committee's first ten years of existence. It appeared that the article, which had been circulated to members of the Committee, did not accurately reflect the Committee's discussions, and the record should be set right. For example, the author continually stressed an alleged political division of the Committee into members from Eastern and members from Western countries. The article gave the impression that the other members of the Committee, such as those from the developing countries, did not exist. He found that view of the Committee's work annoying, especially since the Committee always sought to reach a consensus, and if there was sometimes a division, it was peaceful. The Rapporteur might be requested to communicate those observations to the author of the article in order to correct that impression.
8. The CHAIRMAN suggested that members should be given enough time to become familiar with the article before discussing it informally.
9. Mr. OPSAHL said that he would be grateful to Mr. Sadi for his comments if the author of the article changed his attitude as a result.
10. Mr. TARNOPOLSKY said that he shared Mr. Opsahl's point of view and did not think that the Committee as such should reply to anyone's views. It was better to respect freedom of expression, even if it gave rise to the publication of mistaken views.

11. Mr. MOVCHAN said that he had not read the article in question, but in the light of Mr. Sadi's observations he would not waste his time doing so. The author of the article had expressed his personal point of view and the Committee did not need to answer him. Nevertheless, it was strange that the author had taken a political view and had ignored the principle of geographical distribution which had been respected in the composition of the Committee. He added that States parties had acted wisely in appointing nine members representing different legal schools in the developing world.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT
(agenda item 3) (continued) (CCPR/C/XIII/CRP.3)

12. Mr. LALLAH (Chairman of the Working Group on "Follow-up") said that at the 295th meeting he had not referred to the first draft decision (CCPR/C/XIII/CRP.3) in the belief that the second draft would meet with the agreement of the members of the Committee. The second text was not supposed to set forth the reasons why the Committee was taking the decision in question, or why the Committee had taken its decision of October 1980. In the opinion of the Working Group, the text had been addressed, not to States parties, but to the Secretariat. In the light of the comments made on the draft, he thought that the Chairman of the Committee might perhaps send a letter to States parties explaining the Committee's reasons for its decision of October 1980 and the decision currently under consideration, but that it would be best not to weigh down the decision itself by the inclusion of explanations.

13. Furthermore, the Working Group had by no means sought to follow one ideology rather than another. He pointed out that the Working Group consisted of two persons from developing countries, one from Western Europe and two from Eastern Europe. The Working Group had rather endeavoured to take into account the work performed so far by the Committee and to carry out in an objective manner the terms of reference given to it by the Committee.

14. A comparison between the first text (CCPR/C/XIII/CRP.3) and Mr. Tomuschat's draft showed that paragraph 1 of the Working Group's text more or less corresponded to paragraph 2(b) of Mr. Tomuschat's draft. The difference between the two texts lay in paragraph 3 of Mr. Tomuschat's draft, which expressed an idea which in his (Mr. Lallah's) and the Working Group's opinion was not part of the consensus of October 1980. The paragraph did not take into account the fact that the retention of the former system of reports and supplementary information undermined periodicity. Furthermore, in paragraph 1(b) of his text, Mr. Tomuschat set forth a requirement which was not in the Covenant. Why should a State party whose report had not yet been considered by the Committee be obliged to submit a further report to the Committee within a period of less than five years? He did not understand the purpose of that provision.

15. It was nevertheless necessary to revise the Working Group's draft (CCPR/C/XIII/CRP.3) and he suggested that account should be taken of the fact that only two States had submitted their reports within the period prescribed by the Covenant. The words "within the period prescribed by the Covenant" in paragraph 2 should therefore be deleted, for otherwise the phrase would apply only to the two States in question. Furthermore, in paragraph 3 the words "in the case of States parties which have failed to submit their initial reports within the time prescribed by the Covenant" should be replaced by the opening words of paragraph 2 of the Working Group's second draft, "In the case of States parties which do not meet their reporting obligations".

16. In reply to the comments made mainly by Sir Vincent Evans at the 296th meeting, he said that in the first place the argument in favour of a five-year period between reports because of the heavy workload lost some of its force when it was considered that the Committee would no doubt receive a series of reports and supplementary information and that the number of States parties to the Covenant would steadily increase in the years to come. The second reports of States parties would have to follow somewhat different guidelines from those for the initial report; the guidelines were mentioned in paragraph (g) of the consensus. There was the question whether the Committee should distinguish between supplementary reports and additional reports. He pointed out that the last sentence of paragraph (f) of the consensus, "As far as the States parties whose additional information or supplementary reports have already been considered by the Committee are concerned, these reports may be considered to be their second periodic reports", had given rise to difficulties in the Working Group. It was questionable whether States from which the Committee had not requested additional information would accept different treatment.

17. Furthermore, supplementary reports had hitherto been considered somewhat flexibly, whereas they would henceforth have to meet stricter criteria. In that connection, in reply to a comment by Sir Vincent Evans, he said that the files in question would not necessarily be lost and that in any event the Secretariat would provide the officials concerned with the summary records of the Committee's discussions and with its decisions. Nor did he believe that it was by slowing down the consideration of reports, as proposed in paragraph 3 of Mr. Tomuschat's draft, that it would be possible to maintain the impetus to which Sir Vincent Evans had referred at the 296th meeting.

18. In conclusion, he said that the Committee should adopt a system applicable to the great majority of States on the basis of its decision of October 1980 and the parts of the draft decision under consideration which met with the agreement of the Committee. What was most important was not periodicity in itself but rather the manner in which the Committee worked in practice.

19. Mr. TOMUSCHAT said that he had been convinced by the explanations given concerning the Working Group's draft decision. As the difficulties which had arisen on the subject were not differences of principle, he had no doubt that the Committee could reach a consensus on the point. In submitting his own draft decision his only purpose had been to systematize the results of the thinking of the Working Group itself. In paragraph 3 of his text, which seemed to him to be the part which differed most from the Working Group's text, he had sought to encourage States whose initial report was considered incomplete or too brief to provide further information, for he did not think it normal, for example, that the Committee, having received an initial report of two pages, should wait five years before receiving the next report.

20. In reply to Mr. Lallah's criticism with regard to paragraph 1 (b) of his text, he pointed out that States parties in that category would be placed at a disadvantage if the five-year general rule advocated by the Working Group was applied to them.

21. Furthermore, he thought that it should be made quite clear that in situations of public emergency the Committee was empowered to request the Governments concerned for information, and should do so systematically.

22. Mr. PRADO VALLEJO said that it was wise to take a decision on the subject of the periodicity of reports. He thought that the two texts before the Committee could be combined, for a comparison of them did not reveal any substantive contradiction. However, he did not quite grasp the meaning of paragraph 3 of the Working Group's text: if the initial report had not been submitted, how would it be possible to decide the periodicity of subsequent reports? He therefore considered that the essential in such cases was to ensure that the State party concerned submitted its initial report, but that was no easy matter, as experience had shown.

23. With regard to situations of public emergencies, he agreed with Mr. Tomuschat that the draft decision should point out that in such circumstances the Committee might wish to ask for additional information. It would thus be a question of supplementing the provisions of article 40. To that end, he proposed the addition to the draft decision of a fourth paragraph along the following lines: "If, subject to the provisions of article 4, paragraph 2, of the Covenant, the Committee deems it necessary to ask a State party for a report in the additional event of a situation of public emergencies having arisen, the State party shall submit that report within the time and in the form prescribed by the Committee".

24. Mr. OPSAHL said that the quality of the reports and of the Committee's work was more important than details of periodicity, and efforts should be concentrated on improving the quality of reports and of the Committee's consideration procedures. It also seemed to him to be more important to solve the problem of States failing to submit reports than to seek to improve the dialogue with States that met their obligations and even, by submitting supplementary reports, went beyond what was required of them by the Covenant. As far as periodicity was concerned, he thought that it might be to the Committee's advantage to follow the example of the Committee on the Elimination of Racial Discrimination; he would like the representative of the Secretary-General to provide some details on that point. The discussion that had taken place that morning had convinced him that the question of subsequent reports might make the distinction between initial and supplementary reports superfluous, and indeed dangerous, as Mr. Lallah had so cogently argued.

25. He accepted the draft before the Committee, with the changes read out by Mr. Lallah, but he wished to draw attention to two points.

26. Firstly, a decision of the type concerned should, in his view, be more explicit; some framework should be provided for the undertakings entered into by States parties under article 40 of the Covenant and the relevant parts of the consensus reached in the previous year should be repeated to make it clear that the purpose was to make it easier for States to fulfil their commitments.

27. Secondly, he wondered whether it was appropriate to mention emergencies in a general decision. The Committee had the power to ask for reports in emergencies, and that right was not jeopardized by the draft decision on periodicity. It was not easy to draw up a general rule on that point, as the Committee's proceedings on that point clearly demonstrated. He failed to see how a link could be established between periodicity and emergency. In the circumstances, it was preferable to adhere to what the Covenant said with regard to the matter.

28. Mr. HOUSMAND informed the Committee that, under the International Convention on the Elimination of All Forms of Racial Discrimination, the States parties undertook to submit an initial report within a year, as under the Covenant, and thereafter to report every two years after the date on which the first report was due, and further whenever the Committee on the Elimination of Racial Discrimination requested. The reports in the latter category were supplementary or additional and not periodical. They provided answers to questions previously asked or supplementary information in cases where the Committee had considered an initial report to be too brief or incomplete.

29. As in the case of the Covenant, many States were slow in submitting their initial or periodical reports; the Committee sent them reminders and brought the matter to the attention of the General Assembly in its annual report. When a country was two or three reports behindhand, the Committee sent it reminder after reminder. The Governments concerned were sometimes asked to submit reports covering four or six years instead of the usual period.

30. Mr. MOVCHAN pointed out that it was the Working Group's task to follow up the decision adopted on 30 October 1980 and, in particular, to see how paragraph (f) could be applied in practice. The fact was that the Committee's decision would not be communicated to the States parties concerned until August 1981. The members of the Working Group should realize that Tunisia, for example, would be required, in accordance with the October decision - of which it would not be informed until August - to submit its periodical report in July 1981, which was patently absurd. The Committee could not, therefore, if it wanted its work to be taken seriously, apply the decision of 30 October 1980 as it stood, for it would then find itself obliged, like the Committee on the Elimination of Racial Discrimination, to send reminder after reminder to States parties that were forgetful of their undertakings.

31. All that the Working Group had done was to add subparagraph (b) of paragraph 2 to the October 1980 decision. In his view, Mr. Tomuschat's point was met by the new wording of paragraph 3, as read out by Mr. Lallah: "that, in the case of States parties which do not meet their reporting obligations, the Committee shall in each particular case decide the periodicity of their subsequent reports".

32. Sir Vincent EVANS said that he could not accept Mr. Lallah's interpretation of article 40 of the Covenant, since all States parties to the Covenant were obliged not only to report to the Committee on the measures they had adopted to give effect to the Covenant, but to answer questions from the Committee on the report submitted if it was incomplete. The Committee's questions that were not answered orally by the representative of the State party should be dealt with in a supplementary report submitted to the Committee as soon as possible and studied by it as soon as possible, i.e. without waiting for the expiry of the four or five year period when a further report fell due. If States parties were not encouraged to submit that kind of supplementary report promptly, and if the Committee did not study it promptly, it might well be that the supplementary information requested by the Committee would not be submitted until the following report, i.e. four or five years after the questions had been asked. It would be better to obtain the supplementary report from the State party as soon as possible and to study it as soon as possible, and then to let the period of four or five years after which a further report was to be submitted run

from that date, instead of letting it run from the date of submission of the initial report. That procedure would be flexible and would enable the Committee to exert more influence on States anxious to co-operate with it; it would also seem more satisfactory to those who watched what the Committee was doing and attached great importance to the follow-up of its work.

33. Mr. SADI thought that, whatever rules the Committee adopted, it should decide what it intended to do with information voluntarily submitted that went beyond what the Committee was supposed, in the draft decision, to request, i.e. information similar to that recently supplied by Senegal. The question had arisen what was to be done with the information provided by Senegal, and the decision had been postponed; the time seemed to have come to decide the matter.

34. With regard to emergency situations, whatever rules the Committee adopted, they must not conflict with the provisions of the Covenant. According to article 40, paragraph 1 (b), of the Covenant, the Committee could ask for further information at any time. It was essential that what the Committee agreed on should have the flexibility provided in article 40 of the Covenant.

35. Mr. DIEYE thought that the flexibility of article 40 of the Covenant should be borne in mind and that it would be unwise to establish a parallel between the Human Rights Committee and such bodies as the Committee on the Elimination of Racial Discrimination. The two committees differed in their working rules and in their subject matter. Moreover, the organization and working experience of the Committee on the Elimination of Racial Discrimination showed that it was pointless to increase the number of submissions of reports. On the contrary, the object should be to simplify, and article 40 of the Covenant made that possible. Once an initial report had been submitted, provision should be made for one report only every four years. If the State party did not abide by that periodicity, the Committee would deplore the fact, but it could not legislate for those which did not abide by the rules established. If an emergency arose, the Committee could always ask the State party concerned to submit a supplementary report forthwith. If, subsequently to its initial report, a State party considered that it should supply additional information, it should be able to do so at any time.

36. Mr. ERMACORA thought that the Group's draft would be clearer if, instead of merely indicating the number of the particular session, the year in which it was held was also stated, and if the phrase "this session" was replaced by "the thirteenth session". Moreover, phrases like "supplementary information", "subsequent report", "periodic reports", "additional reports" and "supplementary reports" could give rise to misunderstandings. He wondered whether the terminology could not be more homogeneous.

37. The draft decision on the periodicity of reports should also make it clear that the decision did not concern the reports mentioned in paragraph 1 (a) of article 40.

38. In paragraph 2 of draft decision CCPR/C/XIII/CRP.3, it should be made clear that "next periodic report" meant the report following that submitted under article 40, paragraph 1 (a), of the Covenant.

39. He supported in principle the draft decision submitted by the Group.

40. Mr. GRAEFRATH observed that, if the Committee adopted Sir Vincent Evans's proposals, the following would be the result as far as Jamaica was concerned. Jamaica's initial report should have been submitted on 22 March 1977; it had been submitted late and had been studied in July 1981. If the Jamaican Government supplied its supplementary information in four years time, it would not be studied by the Committee until 1985. If the five-year period stipulated for the second report ran from 1985, the report would not be presented until July 1990. In the meantime, the Committee would have studied in 1985 the second report of States parties which, like Jamaica, had had to submit their initial report in 1977 and had in fact done so at the right time. That would mean a gap of seven years between the study of the second report of the State party which submitted its initial report at the right time and the study of the second report of a State party submitting it late. That was exactly the kind of situation that the Committee should avoid.

41. Sir Vincent EVANS said that there seemed to be a misunderstanding, especially as the interval between the reports, according to the Working Group's draft, would be four years and not five. If the Committee received supplementary information from Jamaica in from six months to a year, it could study it in 1983, and Jamaica's second report would have to be submitted in 1987. If, however, the Jamaican Government did not submit the supplementary information promised by its representative until four years later, its second report would have to be submitted in 1985. He merely wished the Committee's procedure to have some flexibility so as to encourage States parties to reply promptly to requests for supplementary information.

42. The CHAIRMAN noted that there seemed to be agreement on several points. With regard to the periodicity of reports, in view of the fact that the Committee would have to study 28 reports over the coming eighteen months, it would be desirable to fix the interval between the two reports at five years, otherwise the Committee might find itself inundated.

43. The members of the Committee also seemed to agree that States parties which had provided supplementary information should not submit a further report for another four years.

44. The case of emergency situations did not seem to present any difficulty, since the Committee had the power to ask for further information in such cases. The matter might possibly be covered by a separate decision.

45. The case of States parties that had not discharged their obligations under article 40, paragraph 1 (a) of the Covenant could be covered in a new paragraph in the Group's draft or in a separate decision.

46. With regard to new information supplied to the Committee, it was not desirable that it should affect the periodicity of reports, unless it was information that the State party had been unable to supply to the Committee at an earlier date. The Committee could take a decision in each particular case on that matter. That was the only point that required further study.

47. A drafting group of all members of the Committee should endeavour to work out a new draft decision taking account of the views expressed.

The meeting rose at 1.10 p.m.