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Fifteenth session

SUMMARY RECORD OF THE 340th MEETING

Held at Headquarters, New York,
on Thursday, 25 March 1982, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 11 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

1. Mr. ANABTAWI (Secretary of the Committee) reported that, since the Committee's fourteenth session, initial reports had been submitted under article 40 by Australia, New Zealand, Mexico and Uruguay and a supplementary report by Jordan. Reports were still outstanding from Lebanon (due in 1977), Panama and Zaire (due in 1978), the Dominican Republic (due in 1979), the Gambia, India and Trinidad and Tobago (due in 1980) and El Salvador, Nicaragua and Sri Lanka (due in 1981). In addition, reports promised by Chile and Iran at the sixth session were still not forthcoming. In accordance with the decision taken at the fourteenth session, reminders had been sent to Chile, the Gambia, India and Trinidad and Tobago, an aide-mémoire to the Dominican Republic and a letter to Iran.
2. The Committee had also decided at its fourteenth session that an informal meeting should be held with representatives of Panama and Zaire to determine the status of their reports. It had not been possible to hold such a meeting and, instead a note verbale had been sent to each country requesting it to arrange for a representative to meet with the Committee at its current session. In further contacts immediately before the session, the Permanent Mission of Zaire had said that it could not send a representative to meet with the Committee because it had received no instructions from its Government, which it would contact again. The Permanent Mission of Panama had promised to arrange a meeting with the Committee as soon as possible.
3. The Committee would also recall that consideration of the report from Peru had been scheduled for the twelfth session but had been deferred when the Peruvian Government had promised to submit a new report taking into account recent constitutional and other developments. The new report was to have been submitted within six months but had not yet been received, and he wondered whether a reminder should be sent to the Permanent Mission of Peru. He also requested instructions on whether to send reminders to those countries whose reports had been due in 1981 and second reminders to those whose reports had been due in 1980.
4. After orally notifying the Secretary-General of the imposition of martial law in Poland, the Permanent Representative of Poland had submitted a formal notification in accordance with article 4 of the Covenant on 29 January 1982. That notification had already been circulated.
5. Since the fourteenth session, Saint Vincent and the Grenadines had acceded to the Covenant and the Optional Protocol and Egypt had ratified the Covenant, bringing the number of States parties to the Covenant to 70 and the number of States parties to the Optional Protocol to 27.
6. Finally, the following countries had not provided additional information to the Committee as promised: Libyan Arab Jamahiriya (additional information promised at the third session), Federal Republic of Germany, Madagascar, and Yugoslavia (promised at the fourth session), Mauritius (fifth session), Iraq (ninth session) and Costa Rica and Suriname (tenth session).

7. Mr. SADI suggested that, in taking action with regard to States parties whose reports were still outstanding, the Committee should concentrate in particular on countries in areas which might be termed "human rights hot spots" - for instance, El Salvador, and perhaps even Nicaragua - and insist that their reports should be submitted expeditiously, even if they were not yet very late. Since the Security Council was at that moment discussing the situation in Nicaragua, the Committee might consider suspending its meeting in order to attend the meeting of the Council and gain first hand information on what was going on in that country.

8. Mr. ERMACORA said that the reporting obligation of States parties was extremely important, because it was only on the basis of their reports that the Committee could take action to ensure that they fulfilled all their obligations under the Covenant. The Committee should therefore take decisive action with regard to States parties who had not fulfilled their reporting obligation and should inform all States parties and the General Assembly of the situation.

9. Where the human rights situation was particularly crucial - for instance in El Salvador and Nicaragua - the Committee should try to discuss that situation as soon as possible on the basis of a report. While it would be difficult for it to do so without a report, some way could perhaps be found under the Covenant to act more quickly on certain situations.

10. With regard to situations in which a state of emergency had been declared, article 40 gave the Committee the power to ask any country to report on its human rights situation following the declaration of an emergency. As could be seen from some of the communications received under the Optional Protocol, the present reporting system did not permit a thorough examination of the human rights situation in a given country at a given time. While he agreed that the Committee already had more than enough work to do, it could none the less formulate general comments on how it might deal with situations arising under article 4 with a view to adopting a standard, non-discriminatory approach. Of course, the General Assembly had a political right to consider violations of human rights in specific countries if one of its members so requested, but he did not see why the Committee could not at least give priority to certain situations under the terms of article 40 and the rules of procedure.

11. Mr. BOUZIRI observed that not all States parties who failed to submit reports did so out of reluctance or bad faith; in some cases, countries simply lacked the resources to prepare reports or their administrative systems were so cumbersome that such matters were overlooked. Often they were not fully aware of the obligations they assumed when they acceded to an international instrument. That could well be so in the case of the two countries that had submitted unduly brief reports to the current session. In those circumstances he felt that, rather than send in a formal reminder to such countries or contacting their Permanent Representatives, the Committee should enter into direct contact with them, for instance by arranging for a member of the Committee to visit the country in order to explain its obligations under the Covenant or help it to prepare its report. Such an arrangement, although costly, was worth considering and would show that the Committee was seeking to co-operate with rather than condemn the countries concerned.

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12. The CHAIRMAN agreed that a more effective approach was required, since all other attempts at eliciting reports from certain countries had failed.
13. Mr. TOMUSCHAT observed that the situation was not as discouraging as some members seemed to think. Of the 35 original States parties, only Lebanon had failed to fulfil its obligations under article 40 and in its case there were clearly mitigating circumstances, although it was unfortunate that the Government had not seen fit to give the Committee a formal explanation of its difficulties. With regard to the reports due in 1978, the Committee should do all it could to elicit a report from Zaire, given the situation in that country as reflected in some of the communications received under the Optional Protocol. It was clear from the Secretary's statement that Panama was co-operating and hoped to submit its report as soon as possible.
14. With respect to the suggestion that the Committee should help countries to prepare their reports, he had recently learnt that the International Labour Organisation sent officers to certain regions to assist countries in preparing their reports under the various ILO Conventions. While the reporting obligation under those Conventions was much more complex than under the Covenant, he still felt that the Committee should make the same help available and explore possible ways of obtaining financing for that purpose.
15. He was also concerned at the situation with regard to the report promised by the Government of Iran. The Ambassador of Iran had undertaken to try to obtain from his Government a statement or a formal commitment concerning the report it had promised after repudiating the one submitted by the Shah's Government. The Permanent Mission of Iran should be contacted to find out what developments there had been since the Committee's meeting with the Ambassador.
16. He agreed that the present periodicity of reports was inappropriate for dealing with emergency situations arising under Article 4 and that the Committee should take a decision on how to deal with such situations.
17. Sir Vincent EVANS agreed with Mr. Tomuschat that the reporting situation was not at all discouraging. Most States parties had submitted reports, although sometimes rather belatedly, and most of those which had not done so could plead exceptional circumstances. One could always expect a few countries to fail in their reporting obligations under an international instrument.
18. With regard to those countries from which reports were still outstanding, every member of the Committee was aware of the situation that had prevailed in Lebanon since the entry into force of the Covenant for that country and must recognize the circumstances that had prevented the Lebanese authorities from submitting a report. He strongly believed that personal contact with the other "defaulting" countries might yield positive results. Representatives of the countries concerned should first be invited to attend a meeting of the Committee, as had been done in the past; if that failed, the Chairman should contact the Governments through their Ambassadors or Permanent Representatives. As a last resort, an individual member of the Committee might meet with the authorities of a

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(Sir Vincent Evans)

country in person; the logical choice for that assignment would be a member who came from the region concerned.

19. With regard to the suggestion that certain countries should be given technical assistance in preparing their reports, he was sure that some Governments would welcome such assistance and that the resulting reports would provide a satisfactory basis for discussing the human rights situation in the country. However, he did not think that many of the States which had not yet submitted reports needed such assistance. Several were countries with long-established administrations and competent lawyers, and they had been fully aware of the obligations they were assuming when ratifying the Covenant. He was sure that the Dominican Republic, India, Panama and Trinidad and Tobago were all quite capable of preparing their own reports. It should perhaps be noted that the Gambia as such had ceased to exist and that with Senegal, it now formed a new country, Senegambia. Although the report submitted by Senegal had of course applied only to Senegal as it then existed, the Secretariat might investigate the situation in order to determine whether it was no longer appropriate to list the Gambia as a separate country for the purposes of the Covenant.

20. He stressed the need for realism where El Salvador and Nicaragua were concerned. In view of the situation prevailing in those two countries, it would not be realistic to expect their officials to prepare a report under article 40 of the Covenant and submit it to the Committee. There were three phases in emergency situations: first, there was the immediate situation after a coup, when the country and the authorities were in such turmoil that it was impossible to expect the kind of report the Committee required; secondly, after the immediate unrest, came a situation which, although not entirely normal, was such that it would be more realistic to expect some sort of report from the country; in the third phase, the emergency had ended and normality had been restored. The Committee must therefore consider the implementation of the reporting obligations of States under article 40 and the question of notifications under article 4 in the light of the developing situation in the countries concerned.

21. He had hoped that two countries which had submitted a rather insubstantial report, Guinea and Rwanda, would send representatives to the current session so that the reports could be discussed with them. When such representatives failed to appear, the Committee might have to find an alternative approach. One possibility was to draw up a list of questions concerning the more important points on which the Committee required supplementary information. While that was no substitute for an actual meeting, it would be one way of moving forward when there were problems in arranging a meeting with representatives of a State party and the Committee had only a very brief report. Once the Committee had received the supplementary information, it could proceed to its initial consideration of the report.

22. The CHAIRMAN, replying to a point made by Sir Vincent Evans, said it was his understanding that the Gambia maintained separate representation in international affairs and at the United Nations.

23. Mr. OPSAHL said that, while the general picture was encouraging, many initial reports submitted by States parties were far too brief to comply with the

(Mr. Opsahl)

obligations under the Covenant. There was nothing in the rules of procedure or the Covenant to prevent the Committee from taking more effective action in respect of a number of countries. While agreeing that the Committee could do little to help the situation in certain countries, especially those with very serious problems, he felt that it could encourage the press and non-governmental organizations to publicize the situation and to contact their affiliates and friends in the countries concerned, thus helping to persuade the Governments to make additional efforts.

24. As for providing countries with assistance in the preparation of reports, he agreed with Sir Vincent Evans that many of those which had not submitted reports had no technical problems. The situation might, however, be somewhat different in the case of countries which had submitted brief reports or had not furnished the additional information they had promised. It might therefore be possible to provide more effective assistance to some countries, particularly those where no emergency existed and where the root of the problem lay in poor contacts and inertia.

25. The Committee had discussed in the past the need to make the reporting system more effective, and in particular the need for a second round where the first round had not been satisfactory. The decision taken in 1981 on the question of periodicity seemed to have had the effect of slowing down the progress made on having second rounds with States at the initial report stage, as evidenced by the number of States which had not submitted additional information. It was therefore important to take another look at the problem. The Committee could assess the situation on a country-by-country basis and decide whether it was necessary to amend the decision on periodicity in order to encourage the submission of additional information. Since second periodic reports were due from five of the States which had not submitted additional information, it might not be necessary to take any special action with regard to them. However, that was not a very satisfactory solution, and he therefore suggested that the Working Group should continue to discuss the problem and prepare a recommendation for the next session.

26. Mr. LALLAH said that the Committee must decide what action to take in respect of countries which had not submitted reports. It was necessary to look at the situation in specific terms, differentiating, for example, between countries which had not submitted any report and those which had submitted an inadequate report. The fact that as indicated in paragraph 42 of the Committee's 1981 report (A/36/40), the Committee had been able to postpone a decision on ways and means of dealing with the reports requested but not received from certain States parties until its current session was a sign of success on the part of the Committee and the States parties. After all, the Covenant had originally given the Committee little power of action in such situations; having exhausted the possibilities under the Covenant, such as reminders to States parties or mentions in its reports, the Committee had decided to have informal consultations with the States whose reports were overdue and had invited a number of them to participate in its discussions. As a result, all but two of those States had submitted reports. That was an example of what the Committee could achieve on the basis of a constructive dialogue with the States parties.

(Mr. Lallah)

27. With regard to the poor quality of some reports, he suggested that the Committee should proceed in accordance with earlier guidelines for the preparation of reports, such as those produced by Sir Vincent Evans. Quite often, it was only when the States parties came before the Committee that they realized what the obligations they had assumed under the Covenant entailed. He suggested that, at its current session, the Committee might repeat the exercise undertaken by Sir Vincent Evans.

28. While appreciating the need to pay particular attention to special situations, he felt that it would be wrong for the Committee to take action regarding El Salvador and Nicaragua while doing nothing about the other States whose reports were overdue. It was important to evolve generally applicable procedures on the basis of the Committee's rules of procedure. It would be a good idea to combine two of the suggestions made by Sir Vincent Evans and invite representatives of the States parties concerned to attend meetings of the Committee in order to discuss the difficulties involved - an approach which had yielded excellent results in the past - while also encouraging contacts between the Chairman and those States. He acknowledged the importance of such questions as the action to be taken if States did not send representatives to meetings of the Committee and the possible need to review the decision on periodicity, but the Committee should not be too ambitious at its current session. He recalled that the decision on periodicity had been taken after lengthy discussions aimed at finding a solution which would be appropriate for the largest possible number of States, taking into account the limited time the Committee had to consider reports of States parties and the other communications it received.

29. Mr. HANGA said that the results achieved by the Committee in considering reports submitted by States had been encouraging and there was every reason to be optimistic about the future. The majority of the States which had ratified the Covenant had fulfilled their obligations. However, it was important to understand the reasons for the exceptions, which included developing countries with problems preventing them from submitting reports. The Committee should study the specific situations in those countries individually. The possibilities open to the Committee under the Covenant were limited; it could only request States to submit a report and try to encourage them to do so through a constructive dialogue. He stressed the importance of continuing to solve problems by consensus and the need to be flexible in order to respect both the letter and the spirit of the Covenant.

30. With regard to technical assistance to States in preparing their reports, the very fact of a State's ratifying the Covenant showed that it had capable lawyers and should not, therefore, be faced with any technical problems when it came to preparing reports.

31. Lastly, the Committee was, of course, quite able to discuss a report without a representative of the State concerned being present.

32. Mr. TARNOPOLSKY said it was clear that a number of States parties did not consider the Covenant or the Committee to be very important. The Committee's task was to make such States realize that their obligations under the Covenant were important. The most effective means of doing so had thus far been the establishment of personal contact through the Chairman. That should be encouraged, but there were obvious time limitations. Members of the Committee, or at least members of the Bureau, who came from the region concerned could also be asked to contact the States parties. In cases where States parties did not respond to an invitation to appear before the Committee, it would be possible to request the Secretary-General, in accordance with article 36 of the Covenant, to arrange the kind of contact required. Furthermore, in addition to the Committee's guidelines and a list of the questions most frequently asked, the Committee could also request, under article 36, technical assistance to States parties in preparing their reports.

33. In the case of States parties which had submitted brief reports or had not sent a representative to appear before the Committee, the Committee could invoke rule 70, paragraph 1, of its rules of procedure, which provided that the Committee should first satisfy itself that the report provided all the information required under rule 66. The latter rule was based on article 40 of the Covenant, which required States parties to submit reports on the measures they had adopted giving effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights, and also on the factors and difficulties, if any, affecting the implementation of the Covenant. It was obvious that reports of 10 pages or less did not meet the requirement clearly stipulated in article 40. In such cases, the Committee could invoke rule 70, paragraph 2, under which the Committee might request the State in question to furnish the additional information which was required, indicating by what date the said information should be submitted. Where, in accordance with rule 68, it was requested that a representative of a State party should be present at a specified meeting and that representative did not appear, the Committee should submit a list of questions to the State party and set a definite time-limit for an answer.

34. In the case of reports of States parties which ceased to be relevant because of changed circumstances in the country in question, the Committee should invoke article 40 (1) (b) of the Covenant and request additional information.

35. Mr. AL DOURI said that the Committee should use the means which the Covenant, the rules of procedure and its working methods placed at its disposal for obtaining additional information from States parties on the implementation of the Covenant. It was not necessary to wait five years for the next periodic report. Generally speaking, he was satisfied with the co-operation given to the Committee by almost all States parties, including those which had submitted short reports; the latter would furnish the Committee with additional information in the future. The Committee should understand the position of States which had not submitted reports because of difficult domestic situations. There was no general need for technical assistance to States which had not submitted reports. In some cases, political questions were involved. The Committee should request the Secretary-General to arrange contacts with those States in order to achieve concrete results.

36. Mr. BOUZIRI supported the suggestions made by Mr. Tarnopolsky regarding the use of article 36 of the Covenant and rule 70, paragraph 2, of the rules of procedure. The Secretary-General could certainly provide valuable assistance to the Committee in carrying out its task and in making Governments aware of their responsibilities under the Covenant. The rules of procedure provided a basis for requesting further information from States parties in order to ensure that the discussions in the Committee were useful. Providing technical assistance could also be valuable; even some developed countries were not aware of the Committee's procedures and of what the Committee expected from them. The provision of technical assistance to States in preparing their reports would expedite the work of the Committee.

37. Mr. ERMACORA said that he did not share the optimism which had been expressed about the fulfilment of the formal obligation to submit reports in accordance with article 40 of the Covenant. The system for submitting reports was good, but it should be improved. He was not sure whether the Committee was competent to invoke article 36 of the Covenant and request the assistance of the Secretary-General, but if members were generally agreed that that was possible, he would not object.

38. The Committee was free to change its rules of procedure concerning States parties which had not submitted reports. He proposed that a third paragraph should be added to rule 69, reading as follows:

"3. If, after the reminder and the insertion of the reminder in the annual report, the report of the State Party or the additional information is not provided, the Committee may indicate to the State Party the specific questions which should be answered with regard to article 40 (1) of the Covenant."

It would generally be easier to respond to a list of questions than to draw up a substantive report. Although the periodicity rule was a good rule, it did not help the Committee when special situations arose. New ways must be found to deal with such situations. In general, the Committee should discuss new methods for dealing, in accordance with rule 69 of the rules of procedure, with States parties which had not submitted reports and the possibility of drawing up a questionnaire to be sent to States parties in the event of special situations.

39. Mr. AGUILAR said the Committee should feel gratified that most States parties had complied with the obligation to submit reports in accordance with article 40 of the Covenant. States should be allowed time to grasp the importance of fulfilling their obligations. Some of those which had not submitted reports, such as Lebanon, El Salvador and Nicaragua, were experiencing difficult domestic situations and were unable to carry out the reporting obligation. Other countries had failed to do so because of bureaucratic inertia and lack of awareness of the obligations imposed by the Covenant. It was not a question of technical competence or of lack of qualified personnel. Furthermore, many States parties had ratified other international agreements and had to submit lengthy reports on other subjects also. It was encouraging that more than 80 per cent of the States parties had, in fact, complied with the obligation to submit reports. The reporting system had yielded excellent results and was a means of putting pressure on States to carry out their obligations.

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(Mr. Aguilar)

40. He did not consider it appropriate for the Committee to request the Secretary-General to provide various types of assistance under article 36 of the Covenant. On the other hand, the Committee should use the means at its disposal to request States parties which had not submitted reports to appear before the Committee at a public meeting and explain the reasons why they had not carried out their obligations under the Covenant. Furthermore, in accordance with rule 69, paragraph 2, of the rules of procedure, the Committee could inform the international community in its annual report to the General Assembly that certain States parties had failed to comply with the obligations they had assumed under the Covenant. When the report was considered by the Assembly, States interested in promoting human rights and strengthening the role of the Committee could request an explanation from the defaulting States. Lastly, in accordance with rule 70 of the rules of procedure, if a report of a State party, in the opinion of the Committee, did not contain sufficient information, the Committee might request that State to furnish the additional information required, indicating by what date the said information should be submitted. In short, the Committee should exert as much moral pressure as possible by using the means already available to it.

The meeting rose at 1.10 p.m.