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POLITICAL RIGHTS**



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HUMAN RIGHTS COMMITTEE

Fourteenth session

SUMMARY RECORD OF THE 317th MEETING

held at the Wissenschaftszentrum, Bonn-Bad Godesberg,
on Monday, 19 October 1981, at 10.30 a.m.

Chairman:

Mr. MAVROMMATIS

CONTENTS

Opening of the session

Adoption of the agenda

Organizational and other matters

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The meeting was called to order at 10.35 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the fourteenth session of the Human Rights Committee. On behalf of the Committee and on his own behalf, he thanked the Government of the Federal Republic of Germany for inviting the Committee to meet at Bonn - the first time it was holding a session away from New York or Geneva. He expressed the Committee's wishes and his own for the speedy recovery of Chancellor Schmidt.

2. The Committee had always believed that all nations should have a clearer idea of how the various mechanisms for the promotion of human rights functioned. Therefore, it had always been the Committee's intention to give the peoples of the world the opportunity to observe its work at close quarters and to see the importance members attached to it. For the first time, its wishes had been realized, and it was to be hoped that in the future the Committee would be able to hold meetings in developing countries.

3. The 1970s had been hailed as the decade of human rights not only because of the promulgation or entry into force of many international human rights instruments but also because individuals had become more aware of those rights during that decade and thus more prepared to demand their implementation. It was no longer possible for any political consideration to stem or retard that awareness or for any sophistry to differentiate between human rights violations according to where they occurred. Human rights were inalienable and belonged to the human being from the moment of his birth or even from the time of his conception. It was imperative for everyone to be familiar with those rights so that he could demand that they should be respected. It was the duty of Governments to create international or national machinery, principally in the form of independent, impartial judiciaries, in order to ensure respect for human rights.

4. It was in time of internal or external conflict that human rights most needed protection. The worst enemy of that protection was the application of double standards based on alliances or similar considerations.

5. Composed of independent experts from different systems, the Committee had none the less succeeded in forging excellent working relations between all its members, to the point that all important decisions to date had been taken by consensus. It was to be hoped that such would be the case for many years to come.

6. He thanked the Government of the Federal Republic of Germany for the excellent arrangements which had been made to ensure the smooth conduct of the Committee's work. He also expressed thanks to Mr. Tomuschat.

7. Mr. SCHMUDE (Minister of Justice of the Government of the Federal Republic of Germany) welcomed the members of the Committee and said that he was all the more gratified that the Committee was meeting at Bonn since it was the first time that it was holding a session outside the two cities where it usually met.

8. In proclaiming the Universal Declaration of Human Rights on 10 December 1948, the United Nations had considered that disregard and contempt for human rights had resulted in barbarous acts which had outraged the conscience of mankind, and it had expressed the hope that a world would be created in which human beings would enjoy freedom of speech and belief and freedom from fear and want.

9. The Committee was meeting in a country with a special responsibility for the events that had led to the Universal Declaration of Human Rights. It was in reaction to the Nazi régime that article 1 of the Constitution of the Federal Republic of Germany stated that the German people considered human rights, which were inviolable and inalienable, to be the basis of every community, of peace and justice in the world. However, since the solemn proclamation of human rights alone was not a sufficient guarantee for their inviolability, the Constitution also provided for a system of protection so that a person whose rights were violated by the public authorities could have recourse to the courts and, if one of his basic rights was violated, he could petition the Federal Constitutional Court.

10. The Federal Republic of Germany had energetically supported efforts to establish international tribunals for human rights. It did not regard the controls emanating from such tribunals as interference in its internal affairs. On the contrary, it regarded that openness as an additional protection for the people of the country. It had therefore ratified the European Convention on Human Rights at an early date and, as early as 1953, had recognized that any of its nationals could apply to the Strasbourg control agencies if he considered his human rights to have been violated. Shortly after becoming a Member of the United Nations, the Federal Republic of Germany had ratified the International Covenant on Civil and Political Rights. In so doing, it had supported the efforts of the United Nations to ensure respect for the Universal Declaration of Human Rights.

11. His Government's invitation to the Committee to hold its session at Bonn was a reflection of its readiness to support the Committee's work. Moreover, it was following attentively the Committee's efforts to summarize in the form of general comments, under article 40, paragraph 4, of the Covenant, the experience it had gained in examining the manner in which States parties to the Covenant fulfilled their obligations in the field of human rights.

12. The press was still reporting cases of torture and persecution of persons for political reasons, and even cases involving the murder of children. The state of affairs described in the preamble to the Universal Declaration of Human Rights, namely the advent of a world in which human beings would enjoy freedom of speech and belief and freedom from fear and want, was still a long way off. It was still necessary to resist attacks on human dignity and on the right to physical integrity and freedom. He therefore expressed the wish that public conscience in all countries and in all Governments would generate a political climate in which such violations would be impossible.

13. Mr. van BOVEN (Director, Division of Human Rights), speaking on behalf of the Secretary-General of the United Nations and on his own behalf, welcomed the fact that the Human Rights Committee was meeting for the first time away from United Nations Headquarters and Geneva and expressed the gratitude of the United Nations to the Government and people of the Federal Republic of Germany for their kind offer to host the Committee's session at Bonn.

14. As human rights were for the people - for the individual in his or her daily life - it was extremely important that United Nations bodies concerned with human rights, and indeed any international human rights organ, should not restrict themselves to functioning in an isolated world of international diplomacy but should place themselves in proximity to human beings in their every day lives. It was equally important for the citizens of the world to become familiar with the activities of international human rights organs and know their procedures at first hand, not only in order to gain a deeper understanding of the work of such organs and thereby contribute to broader public support for their activities but also to enable the public to have a better appreciation of how those organs, their activities and their procedures could be used for the benefit of human rights.

15. The International Covenants on Human Rights occupied a special place in the efforts of the United Nations to promote and protect human rights. The Covenants were a major part of the International Bill of Human Rights, since they contained obligations which were legally binding on Member States. In that connection, he mentioned the specific obligations incumbent upon each State party to the International Covenant on Civil and Political Rights under part II, article 2.

16. In accordance with the procedures established under the International Covenant on Civil and Political Rights, the Human Rights Committee periodically examined reports from States parties on the measures they had adopted to give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. Under the Optional Protocol to the Covenant, the Human Rights Committee could receive and consider communications from individuals within the jurisdiction of the States parties which had accepted the Protocol, who claimed to be victims of human rights violations by a State party. Under article 41 of the Covenant, the Human Rights Committee was also competent to receive and consider communications in which one State party claimed that another State party was not fulfilling its obligations under the Covenant, provided that those States parties had explicitly recognized the competence of the Committee to deal with such inter-State complaints.

17. It would thus be seen that the Covenant itself and the work of the Human Rights Committee under the Covenant represented a forward-looking contemporary practice, since they sought to ensure that the behaviour of States conformed to internationally recognized human rights standards. To date, the International Covenant on Civil and Political Rights had been ratified by 68 States, and the Optional Protocol, which provided for a system of individual petitions, by 26 States. A hallmark of the activities of the Human Rights Committee was that a system of international co-operation had been set in motion whereby countries with different economic, social, cultural or legal systems or ideologies subjected their laws and practices affecting the human rights of the individual to international scrutiny by an independent committee of experts, namely the Human Rights Committee.

18. It was fitting that alongside the activities of the Human Rights Committee, related activities were also undertaken under the International Covenant on Economic, Social and Cultural Rights, since both Covenants recognized in their preamble the need to create conditions "whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights". All human rights were interdependent and interrelated, as had often been demonstrated in the practice of the Human Rights Committee itself. As many members of the Committee had frequently pointed out, the right to life, for example, did not only involve issues of capital punishment, abortion or euthanasia, but also issues such as the quality of life, life expectancy or infant mortality rates.

19. In his opinion, the public at large should be enlightened as to the difference between the activities of the United Nations Commission on Human Rights and those of the Human Rights Committee. The activities of the United Nations in the human rights field could be grouped into two main categories: first, those which found their legal basis in the Charter of the United Nations and, second, those which were provided for in special treaties concluded by States. The United Nations Commission on Human Rights fell into the first category and was indeed the only commission expressly mentioned in Article 68 of the Charter of the United Nations. It was composed of representatives of Governments, its current membership being 43, and was the most important policy-making organ of the United Nations in the field of human rights. It was the Commission that had over-all responsibility within the United Nations for the promotion and protection of human rights. It dealt, inter alia, with gross and consistent patterns of violations of human rights. It was also the Commission that had prepared the first draft of the International Covenants on Human Rights, including the International Covenant on Civil and Political Rights.

20. The Human Rights Committee, on the other hand, was an organ which had been established under article 28 of the International Covenant on Civil and Political Rights. It was composed of 18 members who were not representatives of Governments but, rather, independent experts of high moral character and recognized competence in the field of human rights. The functions of the Committee were basically to consider reports submitted by Governments and petitions received from individuals under the Optional Protocol. While having different responsibilities, the Commission and the Committee carried out complementary tasks. While the general function of the Commission on Human Rights was to promote and protect human rights, the task of the Human Rights Committee went somewhat further in that it gave specific content to the rights recognized in the International Covenant on Civil and Political Rights.

21. Consideration of the written reports submitted periodically by States parties in accordance with the guidelines drawn up by the Committee, and the explanations and clarifications given by the representatives of those States parties who came to introduce the reports to the Committee, had enabled it to establish an important and very useful dialogue with States parties to the Covenant. The exchanges of views which took place in the Committee on such occasions were very open, and there was little doubt that all States, no matter how developed their system for the protection of human rights or their economic, social, cultural, legal or ideological system, had benefited from that dialogue with the Human Rights Committee. The Committee was continuously developing its work and had been considering how it could deepen the reporting exercise as well as forms of follow-up action which needed to be taken after its consideration of the reports of States parties.

22. Proceeding to address his remarks not only to the members of the Committee and to the dignitaries attending the meeting but also to the public at large, he said that the Human Rights Committee should not let the occasion offered by the first session held in the territory of a State party go by without considering the role of the people in the processes engaged in their Governments under the International Covenant on Civil and Political Rights. To what extent, for example, should measures be taken to provide for participation by the people or by representative groups of society in the drafting of the reports of States parties? To what extent might it be useful to

include, among the representatives of Governments who introduced those reports to the Committee or provided clarification on them, persons representing different sectors of society within the State party concerned? Was the public at large informed of the results of the examination of reports in the Committee and did it have the possibility of participating in the consideration given to any follow-up action taken by the State party in the light of comments made by members of the Committee? He considered those questions to be of crucial importance, for the dialogue between the Committee and States parties - important as it was - was not an end in itself, and the ultimate aim of the dialogue was to benefit the people themselves and to advance the promotion and protection of their rights. That objective could be realized only if the States parties took appropriate measures to involve the people in the various stages of the processes engaged in under the International Covenants.

23. The Human Rights Committee itself had recognized that the activities undertaken under the Covenant should not be abstract exercises but should, rather, be concretely related to the needs of individuals. In the general comments adopted on 28 July 1981, the Committee had stated that it "considers that the reporting obligation embraces not only the relevant laws and other norms relating to the obligations under the Covenant, but also the practices and decisions of courts and other organs of the State party as well as further relevant facts which are likely to show the degree of the actual implementation and enjoyment of the rights recognized in the Covenant, the progress achieved and factors and difficulties in implementing the obligations under the Covenant." The Committee had also stated that "it is very important that individuals should know what their rights under the Covenant (and the Optional Protocol, as the case may be) are and also that all administrative and judicial authorities should be aware of the obligations which the State party has assumed under the Covenant. To this end, the Covenant should be publicized in all official languages of the State and steps should be taken to familiarize the authorities concerned with its contents as part of their training. It is desirable also to give publicity to the State party's co-operation with the Committee."

24. While it was essential, in accordance with the provisions of article 2 of the International Covenant on Civil and Political Rights, that the rights and freedoms recognized under the Covenant should be implemented first and foremost at the national level and that they could be invoked before domestic courts or other competent judicial, administrative or legislative authorities, it should also be stressed that the facilities available under the Optional Protocol for international recourses could constitute a valuable additional safeguard for the rights and freedoms of individuals. During the consideration of reports, members of the Human Rights Committee often asked whether a particular aspect of national law or a particular practice was in fact in conformity with the Covenant. Experience had shown that if such matters were raised in a communication submitted under the Optional Protocol, the Human Rights Committee had an opportunity of going a significant stage beyond the procedure for the consideration of reports and to offer its views as to whether a law, a practice, an act or an omission was in compliance with the Covenant. Some of the views delivered by the Human Rights Committee under the Optional Protocol on questions such as discrimination between the sexes, for example, undoubtedly contained major pronouncements of principle which were of the utmost importance for the promotion and defence of human rights. He therefore sincerely hoped that the Optional Protocol,

which had to date been ratified by 26 States parties, would receive wider adherence and that more people would thus have the opportunity to avail themselves of that additional international safeguard.

25. In conclusion, he expressed the hope that the current session of the Committee would not only be successful, in the usual sense of the term, but would also mark a step further in relating the activities undertaken under the International Covenant on Civil and Political Rights to the needs and aspirations of individual human beings in their everyday lives.

The meeting was suspended at 11.10 a.m. and resumed at 11.40 a.m.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda)

26. The CHAIRMAN suggested that the Committee should adopt the provisional agenda, as contained in document CCPR/C/17.

27. Mr. SADI said he considered that, for the sake of its credibility, the Committee must examine the particularly serious question of the mass execution in Iran, which was a State party to the International Covenant on Civil and Political Rights.

28. The CHAIRMAN replied that that concern indeed fell within the province of the Committee, but that, owing to the absence of some members, it was not yet possible to set the time and framework for a discussion of the question.

29. Mr. DIEYE said that he fully shared the concern expressed by Mr. Sadi. The situation in Iran had become so serious that it could no longer be ignored and the time had come to discuss it in whatever seemed to be the most appropriate framework. Such a discussion would, moreover, be salutary for everyone, for the Iranian Government as well as for the Committee.

30. Mr. ERMACORA said it was regrettable that, unlike the European Convention on Human Rights, the International Covenant on Civil and Political Rights - and other United Nations instruments too, for that matter - contained no provision indicating the procedure to be followed when the majority of members of the Committee felt that a country was not fulfilling or did not seem to be fulfilling its obligations under the Covenant. He was aware of the difficulties created by that problem but considered that the gravity of events in Iran made it necessary for the Committee to act.

31. Mr. SADI stressed once again the need to make world public opinion aware of the concern with which the Committee viewed the exceptionally serious situation in Iran, which made it necessary to give that question the priority it deserved. It was not a matter of condemning Iran, since the Committee was not a court, but of appealing to it to put an end to the mass executions, which were without precedent in recent history, thereby perhaps saving a few human lives.

32. Mr. GRAEFRATH said he thought that the Committee would be working more efficiently if it postponed to Thursday, 29 October, the first item on the agenda for Thursday, 22 October; namely "Organizational and other matters", and replaced it by the submission of the report on communications, the consideration of which would be continued on the afternoon of Monday, 26 October, instead of the afternoon of Friday, 30 October, when there might not be a quorum. It would thus be possible to begin the consideration of communications earlier, provided that the Chairman of the Working Group on Communications was in a position to introduce its report on Thursday, 22 October.

33. Mr. TOMUSCHAT recalled, with regard to communications, that the Committee had been requested to take measures to ensure a specific follow-up to its discussions; that was a question which affected the very existence of the Committee and it should therefore be discussed in public session. However, communications were considered in closed session.

34. The CHAIRMAN said he recognized the great importance of the question raised by Mr. Sadi. He had discussed the matter with Mr. van Boven in New York and thought that it should be examined, either under "other matters" or as a separate item.

35. Sir Vincent EVANS said that one of the Committee's main objectives in holding its session away from Headquarters and the United Nations Office at Geneva was to make its work better known and, in particular, to arouse the interest of members of the public, whether human rights specialists or representatives of the mass media; that aim had prompted the suggestion that half a day, or perhaps only a part of a meeting, should be devoted to a kind of dialogue between the members of the Committee and members of the public, who would make comments, express views and ask questions. The meeting might be an informal one.

36. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to adopt the provisional agenda.

37. It was so decided.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

38. The CHAIRMAN observed that the programme of work left little room for modification.

39. Mr. OPSAHL welcomed Mr. Sadi's proposal concerning the situation in Iran but stressed that it was essential not to study the substance of the question in the absence of a representative of the State party, which might otherwise complain, as had already happened in the past. He hoped that the question could be discussed at the current session, but felt that the State party should be informed of the discussion other than by the press.

40. The CHAIRMAN said that it was possible to hold a preliminary discussion on the question of the situation in Iran in the absence of a representative of the State party; to do so, the Committee could invoke the fact that the State party had not submitted its report. He requested the Secretariat to find out whether Iran had a diplomatic mission in Bonn, with which the officers of the Committee might have informal contacts so as to indicate the Committee's intentions.

41. Sir Vincent EVANS said he whole-heartedly endorsed Mr. Graefrath's proposal concerning communications. He (Sir Vincent Evans) was Special Rapporteur for a specific case concerning an individual who might be expelled in early 1982, in other words before the Committee's next session; he therefore thought it important for the Committee to envisage taking a decision on that communication at the current session and therefore allow him to introduce his report, which was lengthy and detailed owing to the complexity of the case, as soon as possible.

42. With regard to the report submitted by the Netherlands, he asked whether the addendum to the report, which concerned the Netherlands Antilles (CCPR/C/10/Add.5), would be considered at the same time as the report on the situation in the Netherlands.

43. He drew attention to the statement in the annual report of the Committee concerning the work of its most recent session that the Committee had postponed a more detailed study of the question of States which provided supplementary information before the date of submission of their second report, and of the consideration of such information; he hoped that the Committee would give some attention to that important aspect of its procedure.

44. The CHAIRMAN said that Sir Vincent Evans could introduce his report on the communication in question on Thursday, 22 October. As for the report of the Netherlands and that concerning the Netherlands Antilles, the Netherlands authorities had indicated that they could be examined together. Finally, in reply to the last comment of Sir Vincent Evans, he stressed that consideration of that aspect of the procedure would depend on the time available.

45. Mr. TOMUSCHAT said that he would be able to submit the report of the Working Group on Communications at the meeting on Thursday 22 October. It would be useful if the members of the Committee had the list of communications available, since without them there would hardly be any point considering the item.

46. Mr. OPSAHL said that at the previous session the Committee had made progress in its study of procedural questions relating to reports submitted by States parties; nevertheless, in spite of its heavy schedule, it should devote some attention to that point at its current session.

47. Mr. MOVCHAN endorsed the proposal made by Mr. Graefrath and supported by Sir Vincent Evans to bring forward consideration of the item relating to communications. In that regard, he thanked Mr. Tomuschat for the application with which he had prepared his reports on the work done recently at Geneva. It was essential to study the question of communications as soon as possible, particularly since some members would perhaps already have returned to their countries on Friday; moreover, it was not advisable for the last meeting of the Committee to be a closed one.

48. With regard to Mr. Sadi's proposal, he pointed out that nothing in the International Covenant on Civil and Political Rights, which was the legal basis of the Committee's powers, authorized it to consider the situation in a particular country. The same comment applied to the proposal for a dialogue with the mass media put forward by Sir Vincent Evans, a proposal which could not be supported by any article of the Covenant. The Committee worked with States, yet at no time had it given them an opportunity to express an opinion on its work. While the General Assembly for its part had on several occasions expressed satisfaction with the Committee's work, it had not given the Committee an opportunity to participate in discussions of concern to it either. He stressed that the Committee had been established to ensure the implementation of all the provisions of the Covenant and that its public image depended on the strictness with which the Committee itself applied them in carrying out its work.

The meeting rose at 12.40 p.m.