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HUMAN RIGHTS COMMITTEE

Fourteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)*/
OF THE 326TH MEETING

Held at the Wissenschaftszentrum, Bonn-Bad Godesberg,
on Monday, 26 October 1981, at 3 p.m.

Chairman: Mr. MAVROMMATIS

CONTENTS

Submission of reports by States parties under article 40 of the Covenant (continued)

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

*/ The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.326/Add.1.

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The meeting was called to order at 3.20 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 3) (continued)

1. At the invitation of the Chairman, Mr. Nawab (Iran) took a place at the Committee table.

2. The CHAIRMAN said that he had informed the Permanent Representative of Iran at Geneva and the Iranian Embassy at Bonn of the Committee's intention to discuss the question of overdue reports by States parties and had invited them to arrange for a representative of the Iranian Government to attend the meeting if they so wished. On behalf of the Committee, he welcomed the Ambassador of Iran and stressed that the Committee was a body of independent experts dealing with the question of human rights and fundamental freedoms one of whose main tasks was the consideration of reports submitted by States parties to the Covenant under article 40. In that connection, he said that the initial and supplementary reports of Iran (CCPR/C/1/Add.16 and 26) had been submitted on 9 August 1977 and 29 May 1978, respectively, and had been considered at the Committee's fourth session in 1978.

3. At the Committee's sixth session, the representative of Iran, appearing before the Committee at his own request, had informed members that the initial and supplementary reports submitted by the former régime did not reflect the reality of the situation in his country regarding the status of civil and political rights; that Iran was currently passing through a revolutionary process which was laying the foundations of a new society; and that, to that end, a new Constitution would be drafted and elections for a constituent assembly held. The representative of Iran had said that, as a State party to the Covenant, Iran would in due course submit its report to the Committee in conformity with article 40.

4. At its ninth session, the Committee had decided to send a reminder to Iran regarding its promise to submit a report, and that reminder had been dispatched on 5 May 1980.

5. At the Committee's eleventh session, it had been decided to hold an informal meeting with the representatives of all States parties which had undertaken at the sixth session to submit new reports.

6. The representative of Iran had appeared before the Committee at its twelfth session in 1981 and had referred to the abnormal situation which existed in the country and which made it difficult for his Government to submit the report in question. The Committee had stressed that the Covenant was designed to apply in both normal and abnormal times and that article 4 and article 40, paragraph 2, of the Covenant contained appropriate provisions concerning particular situations. In difficult situations, the reports which States parties had undertaken to submit became all the more important inasmuch as derogations from certain fundamental rights were not permissible, even in times of emergency. The Committee had therefore expressed the wish that Iran's report should be submitted with some urgency and should indicate, where appropriate, the factors and difficulties affecting the enjoyment of the rights provided for in the Covenant and the extent to which particular rights,

if any, had been derogated from within the purview of article 4 of the Covenant. The representative of Iran had undertaken to convey the Committee's wish to his Government.

7. Unfortunately, no reply had yet been received and it would therefore be appreciated if the Ambassador of Iran could provide further information on the question.

8. Mr. NAWAB (Iran) said that his Government repudiated the reports prepared by the previous régime. It intended to prepare a document on the activities of the Shah and to submit it to the Committee as soon as possible.

9. His Government had begun to collect information with a view to preparing a report of its own for submission to the Committee. However, members would be aware of the events that had taken place in Iran during the past three years. His Government was faced with new problems every day, and now had to wage a war that had been forced upon it. Moreover, the persons originally responsible for drafting the report had been killed in bomb attacks. Consequently, the failure of the Iranian Government to finalize its report was due to factors beyond its control.

10. Mr. DIEYE said the fact that the Ambassador of Iran had agreed to appear before the Committee was a welcome sign of his Government's desire to co-operate with the Committee.

11. There was no question of passing judgement on the events taking place in Iran, even though there might be a temptation to do so in view of the news reports coming out of that country. Account should be taken of the serious problems to which the Ambassador had referred, including the fact that persons responsible for the preparation of Iran's report had been assassinated. However, he wished to stress that all States parties had a reporting obligation under the Covenant, whatever the difficulties they faced, and to inquire when the Committee could expect to receive Iran's report. It was essential for more light to be shed on the situation in the country. While members fully understood the difficulties involved, they would be obliged to draw the necessary conclusion from a continued failure to submit the report.

12. Mr. SADI said that, while recognizing the difficulties which Iran was experiencing, the Committee felt concerned at the reports of trials and mass executions taking place in that country. It would welcome clarification in that regard from the Iranian Government. As a State party to the Covenant, Iran was under an obligation to submit a report providing information on the recent events reported in the press.

13. Mr. TOMUSCHAT said that the Committee could not discuss the situation in Iran and that its task was confined to consideration of the question of the report from the Iranian Government.

14. The Covenant allowed for some delay in submission of reports during periods of emergency. However, article 4 stated that there could be no derogation from certain articles, including article 6 relating to the inherent right to life of every human being. He would like to know what steps were being taken by the Government of Iran to protect that right. Such information was essential in order to enable the Committee

to discuss the Government's compliance with the Covenant. If the Iranian Government was not currently in a position to provide full information, it might perhaps produce a brief report, which would facilitate the Committee's work.

15. Mr. ERMACORA stressed the need for States parties to comply with their obligations under the Covenant, including the obligation to submit reports. It was only on the basis of those reports that the Committee could assess the adherence of States to the provisions of the Covenant and ensure its proper implementation. The news about executions and trials in Iran made it all the more necessary for the Government of that country to submit a report without delay.

16. Mr. BOUZIRI said that, in previous statements, he had remarked that the revolutionary situation obtaining in Iran made it difficult for the Government to submit a report regarding the enjoyment of human rights. Whatever the problems confronting the Government, however, recent reports by the mass media indicating a deterioration in the situation in Iran and a growing number of cases of imprisonment, execution and exile made it essential for the Committee to request a report on that situation.

17. Mr. OPSAHL recalled that the Committee had also discussed the present item at its thirteenth session and had concluded that it was necessary to urge States parties which had not done so to submit their reports. Notwithstanding the difficulties facing the Government of Iran, he hoped that it would be able to provide the Committee with information concerning the situation obtaining there - if necessary, as suggested by Mr. Tomuschat, submitting a brief report only.

18. He stressed that the Committee had to act within the limits of the Covenant and that it must treat all States parties equally and fairly. In that connection, he referred to the case of El Salvador and expressed the hope that the Salvadorean Government would submit a report on the situation in that country before the end of the year.

19. Mr. PRADO VALLEJO welcomed the presence of the Iranian Ambassador, which was evidence of Iran's desire to fulfil its obligations and co-operate with the Committee.

20. He wished to express his concern at the events taking place in Iran, including political trials, courts martials, etc., just as he had, in the past, voiced concern over the situation in certain Latin American countries including Chile. All States parties had an obligation under the Covenant to submit reports, an obligation which the Government of Iran had thus far failed to perform. The Committee had a responsibility towards the international community to ensure that such reports were forthcoming, and he hoped that the Government of Iran would help the Committee to carry out its duty by submitting a report in the near future.

21. Mr. NAWAB (Iran) said that he had taken note of the views expressed by members and would convey them to his Government. It was difficult for him to say when his Government would be able to submit a report, although he would certainly request it to do so. It could have produced and submitted a report of some 10 or 20 pages but had refrained from doing so because, as a member of the international community, it had wanted the Committee's discussions concerning Iran to be conducted on a sound basis.

22. It had been said that his Government had not complied with its obligations under the Covenant. It should be reiterated, however, that his country had faced many difficulties during the past few years and that it was due to circumstances beyond their control that the competent authorities had been unable to prepare a report.

23. Virtually all the reports in the media concerning Iran were slanderous propaganda. Iran had been vulnerable to such a world campaign and perhaps not forceful enough in explaining its achievements over the previous three years. As for the death penalty, it was enshrined in Iranian legislation; persons involved in assassination attempts were executed. In his view it was not Iran that should be put on trial, but the United States.

24. The CHAIRMAN thanked Mr. Nawab for appearing before the Committee and providing explanations and said that, once the necessary information was submitted to it, the Committee would be able to determine the amount of truth in the media reports on Iran.

25. Mr. Nawab (Iran) withdrew.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Netherlands (continued) (CCPR/C/10/Add.3 and Add.5)

26. At the invitation of the Chairman, Mr. Braam (Netherlands) took a place at the Committee table.

27. Mr. BRAAM (Netherlands) replied to points raised by members of the Committee in connection with the report on the Netherlands Antilles (CCPR/C/10/Add.5). With respect to remedies to enforce basic rights, Sir Vincent Evans had been correct in concluding that any request for information regarding the violation of such rights in the Netherlands Antilles would have to be addressed to the Government of the Kingdom of the Netherlands, since it was the Kingdom of the Netherlands that was a party to the Covenant. As to which court was competent to decide on a complaint from an individual concerning violation of his basic rights, such a complaint was decided by the Antillean court in the first instance, followed by the Court of Appeal of the Netherlands Antilles, and in the last instance by the Supreme Court of the Netherlands acting as Supreme Court of the Netherlands Antilles. In his view a person in the Netherlands Antilles who had not been the victim of a violation of his basic rights could not institute court

proceedings, since a plea must generally be based on article 1386 of the Civil Code, under which an individual would file suit if an unlawful act resulting in the infringement of his basic rights had been perpetrated against him by the authorities. If Sir Vincent Evans' question on the matter had referred to third-party applicability, he should be advised that the opinion expressed on page 5 of the report on the Netherlands (CCPR/C/10/Add.3) was also the opinion of the Government of the Netherlands Antilles.

28. Replying to a number of questions by Sir Vincent Evans on related subjects, he said that his personal view was that an applicant under the Optional Protocol must first have exhausted all available domestic remedie before submitting a written communication to the Committee. He was of the opinion that the Queen could not make use of her power to suspend or annul a Government measure claimed to violate someone's basic rights, if the court did not regard a particular provision of the Covenant as directly applicable and that provision was not incorporated in domestic law. Law enforcement personnel and Government officials in the Netherlands Antilles were aware of the contents of the Covenant, and the Government of the Netherlands Antilles agreed that widespread knowledge of the Covenant should be promoted among the population. Though it had no immediate plans for instituting an Ombudsman, the Government of the Netherlands Antilles would pay close attention to the development of that institution in the Netherlands.

29. In reply to requests from Mr. Graefrath and Mr. Aguilar for more information on the report of the Kingdom Working Party mentioned on page 4 of the report on the Netherlands Antilles, he said that the representatives of the four island territories in the Working Party had taken different positions concerning the exercise of the right of self-determination, a principle which had been endorsed by all participants. The representatives of Aruba had opted for independence for that territory, with the possibility of a close co-operative relationship with the other islands and a dominion relationship with the Netherlands. The representatives of Bonaire had expressed the opinion that it should exercise its right of self-determination by forming a close constitutional relationship with the other islands of the Netherlands Antilles and should maintain a constitutional relationship with the Netherlands. The representatives of Curacao had preferred the formation of a federal State consisting of the six islands. The representatives of the three Windward islands had been of the opinion that they should not opt for independence, either jointly, separately, or as part of an Antillean State, but for the time being should maintain the existing constitutional relationship with the Netherlands. Representatives of the Netherlands had considered that the Netherlands had the right to participate in the adoption of decisions concerning future relations with those islands which preferred to maintain constitutional relations with the Netherlands. In view of the Committee's interest in the question, he would arrange for each member to receive a copy of the English translation of the report and the points on which a consensus had been reached during the 1981 round-table conference.

30. Further developments had taken place concerning Aruba which would perhaps change the course of the independence process. A few months before, a dispute had resulted in the withdrawal from the Cabinet of the Netherlands Antilles of the ministers of the largest Aruban party, the MEP and a consequent strengthening of the MEP's demands for Aruba's independence. A meeting of representatives of the Antillean Government and representatives of the Kingdom was currently taking place at The Hague, at which representatives of Aruba would have an opportunity to express their wishes regarding independence. The Committee would be kept informed of further developments.

31. In reply to Sir Vincent Evans, who had asked whether article 3 of the Constitution of the Netherlands Antilles covered all the aspects of non-discrimination referred to in article 2, paragraph 1, of the Covenant, and whether the term "property" also covered political rights, he said that article 3 should be read in conjunction with other provisions of the Constitution such as articles 100 and 103 and seen in the light of the over-all constitutional system of the Netherlands Antilles, which assigned direct legal consequences for individuals to appropriate treaty provisions. Article 3 was the leading guide for the legislature, administration and judiciary, though it did not cover every aspect of article 2 of the Covenant. As to the second question, he said that protection of one's person included protection of the rights granted to one as a person. Article 2, paragraph 1, of the Civil Code of the Netherlands Antilles protected "civil rights" which, taking account of the historical background to that article, included what were now known as "political rights".

32. In reply to a question by Mr. Graefrath in connection with article 6 of the Covenant, he stated that the rate of infant mortality in the Netherlands Antilles according to statistical reports for 1979 was 15.5 per 1,000 live births.

33. In connection with article 7 of the Covenant, he stated in reply to Mr. Graefrath, Sir Vincent Evans and Mr. Ermacora that Netherlands Antillean law did not contain a specific provision prohibiting capital punishment. Ill-treatment of any kind, however, was a criminal offence under articles 313-316 of the Criminal Code of the Netherlands Antilles; since those articles were similar to articles 300-303 of the Netherlands Criminal Code, reference could be made to pages 11 and 12 of the Netherlands report (CCPR/C/10/Add.3). In his opinion the provisions of article 7 were directly applicable and therefore a part of Netherlands Antilles law. However, a final decision as to whether provisions of the Covenant were directly applicable was for the courts to make.

34. In reply to questions put by Sir Vincent Evans in connection with article 9 of the Covenant, he pointed out that the rules stated in article 106 of the Antillean Constitution were elaborated upon in the Antillean Code of Criminal Procedure in the same way as was article 171 of the Netherlands Constitution in the Netherlands Code of Criminal Procedure. With slight differences, therefore, the explanation given on page 13 of the Netherlands report regarding pre-trial detention was applicable to the Netherlands Antilles.

35. In reply to questions by Sir Vincent concerning article 10 of the Covenant, he said that every house of detention in the Netherlands Antilles had a Board of Supervisors, which consisted of three to seven members appointed by the Minister of Justice, and which received complaints from prisoners who believed that their rights had been violated. The information on protection of detainees which was given in the Netherlands report was also generally applicable to detainees in the Netherlands Antilles. With regard to arbitrary detention of mentally ill persons in mental institutions, he stated that, within five months of the date of a temporary confinement, the Attorney-General was required to request authorization from the Court of Appeals to have that confinement made definite, in which case it could last only one year, with possible extension by the court. If the court denied the Attoney-General's request, the person concerned must be freed.

36. With regard to questions put by Sir Vincent Evans and Mr. Tomuschat concerning the implementation of article 14 in Antillean legislation, he stated that the requirements of paragraph 1 were met by articles 3 and 104 of the Constitution and by article 2 of the Criminal Code of the Netherlands Antilles. The requirements of paragraph 2 were met by article 301 of the Antillean Code of Criminal Procedure. Since Antillean legislation on the minimum guarantees required by paragraph 3 was almost identical to Netherlands legislation, he referred members of the Committee to pages 20 and 21 of the Netherlands' report. With regard to article 14, paragraph 3 (g) of the Covenant, the Antillean Code of Criminal Procedure did not contain an article identical to article 29 of the Netherlands Code of Criminal Procedure, but it was standard practice in the Netherlands Antilles that an accused person was not required to incriminate himself. Concerning article 14, paragraph 4, of the Covenant, he stated that although the Antillean Code of Criminal Procedure did not contain specific provisions on the prosecution of juvenile persons, article 115 of that Code and articles 40 and 41 of the Criminal Code enabled the courts to discharge juveniles against whom proceedings were taken. The principle expressed in article 14, paragraph 5, of the Covenant was also contained in Antillean legislation. In view of the fact that most of the provisions in article 14 were covered by domestic law, the implementation of its provisions would not give rise to any problems.

37. He was pleased to inform members that article 7 of the Governor's Decree of 15 October 1955 had been repealed on 27 March 1980. Accordingly, Antillean legislation now complied fully with article 19 of the Covenant.

38. In reply to a question by Mr. Herdocia Ortega concerning article 22 of the Covenant, he stated that the Netherlands Antilles had no difficulty in applying ILO Conventions Nos. 29 and 87.

39. Replying to a question by Mr. Aguilar in connection with article 23, paragraph 1, of the Covenant, he said that though the de facto family as such was not protected by Antillean law, institutions had been set up to give aid to all families, including de facto families, and that children born in that kind of relationship had an enforceable right to financial support from their father.

40. Mr. Aguilar had also asked about the reservation made by the Netherlands for the Netherlands Antilles with regard to article 25 (c), concerning the restrictions on the appointment to the public service of married women who were not considered to be "breadwinners". The law stated that the restrictions were not applicable to married women when they contributed to a great extent to the necessary cost of living of the family. Moreover, the restrictions were not applicable to married women who were employed in public service under a labour contract. However, the Netherlands Antilles, as part of its efforts to end all forms of discrimination against women, was reviewing all existing legal provisions which could be considered discriminatory and was taking care that bills and other new measures should not contain any such provisions. In addition, the Antillean Government had decided to enter no reservation when ratifying the International Convention on the elimination of all forms of discrimination against women.

41. In reply to a question by Mr. Ermacora concerning article 25 of the Covenant, he stated that the Netherlands Antilles did not have a "job reservation" system either in public service or in private enterprise. With regard to the same article, Sir Vincent Evans had expressed the opinion that the exclusion of persons mentioned on page 14, paragraph (c), of the Antillean report from exercising the right to vote did not constitute a reasonable restriction; he would bring that observation to the attention of the Government of the Netherlands Antilles.

42. With regard to minorities in the Netherlands Antilles, a question referred to by Mr. Ermacora, he pointed out that although there were foreigners of various nationalities residing in the country, their numbers were extremely small In any case, domestic law did not prohibit anyone from enjoying his own culture, professing and practising his own religion or using his own language.

43. The CHAIRMAN thanked the Government and delegation of the Netherlands for their constructive contribution to the establishment of a fruitful dialogue with the Committee.

The public meeting rose at 4.45 p.m.