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Fifteenth session

SUMMARY RECORD OF THE 351st MEETING

Held at Headquarters, New York,
on Friday, 2 April 1982, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 11.05 a.m.

ORGANIZATIONAL AND OTHER MATTERS

1. The CHAIRMAN said that, in accordance with the decision taken by the Committee at its fourteenth session, held in Bonn, he had represented the Committee at a seminar held in Nicaragua in December 1981 on recourse procedures available to the victims of racial discrimination. He had made a statement on behalf of the Committee at the seminar on the basis of a text prepared by the Secretariat describing the Committee's work, with special reference to its experience in dealing with communications relating to indigenous populations. A copy of the statement was with the Secretariat and was available for consultation. A representative of the Committee on the Elimination of Racial Discrimination had also attended the seminar.

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

2. The CHAIRMAN said that he was pleased to inform members that the report of Nicaragua had been received by the Secretariat and that, as a result, it was not necessary for the Committee to send a reminder.

3. He informed the Committee that he had received a letter dated 29 March 1982 from the Permanent Representative of Chile to the United Nations, which was addressed to him in his capacity as Chairman. In the letter, the Permanent Representative stated that Chile had submitted its initial report on 5 August 1977, one year after the entry into force of the Covenant, and that a new initial report had been prepared to conform to the guidelines of the Committee in April 1978. Since that report had not been considered by the Committee as at 16 March 1979, the Government of Chile had, on its own initiative, submitted a supplementary report detailing the new legislative provisions enacted since 1978. In April 1979, the Committee had invited the Government of Chile to submit a report in accordance with article 40 and to furnish specific information regarding measures taken which affected human rights guaranteed under the Covenant. The Permanent Representative of Chile further informed the Committee in his letter that, in accordance with the Committee's decision on the periodicity of reports, his Government intended to submit additional information within the prescribed five-year period following consideration of the initial report, namely, in April 1984.

4. In deciding how to deal with the letter from the Permanent Representative of Chile, the Committee should weigh the possible responses against the overriding concern of securing the co-operation of Chile with the Committee.

5. He had met the preceding day with the Permanent Representative of Iran to the United Nations. The tone of the meeting had been quite positive and differed from the exchange which the Committee had had with the representative of Iran in the

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(The Chairman)

public meeting at its fourteenth session. He had explained in detail to the Permanent Representative his country's reporting obligations and appealed strongly to him to induce his Government to submit a report. He had given him a letter for the Foreign Minister of Iran and had asked that the Government inform the Committee shortly as to when it would submit its report.

6. A telegram had also been addressed to the Government of Zaire requesting a specific response to the Committee's offer of closer co-operation in the form of direct contacts. Copies of the telegram had also been provided to the permanent missions of Zaire in New York and Geneva. It was to be hoped that a report would be submitted shortly.

7. The Permanent Mission of Lebanon had over the months kept him apprised of the situation in that country but he had suggested that it would be best for the Permanent Representative to address a letter to the Committee. A letter had been received on 1 April in which the Permanent Representative of Lebanon informed the Committee that his Government's report was still under preparation and that the delay was due to difficulties beyond his Government's control. The Permanent Representative emphasized in his letter that Lebanon was governed under the oldest operative constitution in the Middle East, that its bill of rights strictly upheld the rights of both the individual and the community. Law enforcement agencies were strictly prohibited from resorting to torture or degrading, cruel or inhuman treatment of prisoners, and they had never resorted to kidnapping or arbitrary arrest. Imprisonment could be sanctioned only after a fair and public trial, with legal defence required and guaranteed for the accused. Homes were inviolable according to the law. Freedom of conscience had always been assured and traditionally respected, and no one had ever been put in prison in Lebanon for religious, political or ideological reasons. Similarly, freedom of the press and of education had been guaranteed. Free and periodic elections were assured by the Constitution, and the right to political association was respected. Since 1953, women had had the right to vote and to run for public office and occupy senior government jobs without discrimination. Despite the state of war existing in the country since 1975, constitutional authority and institutions had been preserved, and the Government was doing everything in its power to prevent the predictable excesses of war. Lebanese citizens had been the victims of various forms of aggression violating many of those basic human rights. Lebanon had played a major part in the drafting of the Universal Declaration of Human Rights and remained committed to it.

8. He (the Chairman) suggested that the Committee should convey its appreciation to the Permanent Representative of Lebanon for the letter, which reflected a commendable effort to provide some information, however summary, on the human rights situation in that war-torn country, and that the Committee should review the situation at its next session.

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9. Mr. HANGA said that his statement at the 349th meeting was not accurately reflected in the relevant press release. He had stated that the Committee was not competent to interpret article 4 and that only the States parties had the power to do so. He had also expressed disagreement with the proposal, to the effect that the Committee should establish ad hoc bodies. Lastly, he had expressed the view that the Committee could not require States parties to submit reports if they were not due in accordance with its previous decision on periodicity. He requested that the press release be corrected.

10. Mr. GRAEFRATH said that he too regretted having to correct the press release relating to the 349th meeting. The main point he had made in his statement was that a derogation under article 4 of the Covenant entailed the temporary suspension of certain of the States parties' obligations, while the obligation of States parties under article 40 clearly related to rights recognized in the Covenant, namely, rights in force. Article 40 did not, therefore, relate to rights that were temporarily suspended.

11. Mr. BOUZIRI said that, as Chairman of the working group on general comments under article 40, paragraph 4, he was pleased to announce that draft general comments on articles 6, 7 and 9 had been completed and would be available shortly for discussion in the Committee.

12. Sir Vincent EVANS said that the Committee had had a very positive experience in considering the periodic report of Rwanda because of the high calibre of the representative sent by the State party to attend the Committee's meetings. As a general rule, the quality of the representatives of reporting States was at least as important as the quality of the report itself. He suggested that in future every effort should be made, by both the Secretariat and the members of the Committee themselves, to encourage States to send suitably senior, experienced and knowledgeable representatives. States parties should be contacted as early as possible before the session at which the Committee proposed to take up their reports so that the necessary arrangements could be made.

13. The French and Spanish versions of his proposal regarding the periodicity of reports were now available. That was an urgent matter which he hoped the Committee would decide upon at the current session. The recent communication from Chile underlined the need to modify the Committee's previous decision on periodicity.

14. The CHAIRMAN said that the Committee had on previous occasions discussed the first point which Sir Vincent Evans had raised. It might be useful for the Secretariat to revise the form used to invite States parties to send representatives to present their country's report so as to emphasize the importance of sending senior officials. He would authorize the Secretariat to do so as from the next session. The note verbale notifying States parties that their reports were to be taken up at the next session of the Committee would be sent out immediately upon the return to Geneva.

15. He personally supported Sir Vincent Evans' proposed amendment to the rules of procedure and agreed that the Committee should take up that proposal as soon as it completed its discussion on article 4. As he was obliged to leave New York that very day, he hoped that the Committee would, in his absence, consider that he was in favour of Sir Vincent's proposal.

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16. Mr. LALLAH said that he was grateful to Mr. Opsahl and Mr. Graefrath for their contributions in analysing the problems encountered by the Committee in connexion with article 4 of the Covenant. In particular, Mr. Graefrath's enumeration and discussion of cases in which a state of emergency had been declared by a State party was consistent with what the Committee would have expected from the Secretariat if the latter had been requested to carry out such a task. However, Mr. Graefrath had failed to mention two cases, namely, Mauritius and Poland. The omission of the latter State party had been due perhaps to the fact that notification under article 4 had been sent only recently. In that connexion, he was impressed by both the celerity with which Poland had complied with the requirement laid down in article 4 and the contents of its notification. In the case of Mauritius, a representative of the State party had informed the Committee that the state of emergency which had existed for a number of years had come to an end, although notification had not been given through the proper channel. In his view, the fact that the Committee was discussing article 4 shortly after notification had been received from Poland under article 4 was strictly coincidental. The motives of Committee members were beyond question but it was also important that the Committee should be seen to be acting with impartiality.

17. Article 1 was rather special. Many members had asked questions pertaining to that article, and not only with reference to South Africa and self-determination in Palestine. The situation with regard to self-determination in southern Africa was even graver than a state of emergency, since it represented the institutionalization of the negation of humanity by law. South Africa was not a party to the Covenant, but it was the duty of the Committee to bring the situation in that country to the attention of States parties. The Committee should be seen to act, not because it contained members from third world countries or because it wished to politicize matters or react selectively, but because its deliberations reflected the provisions of the Covenant.

18. The Committee might wish to try to understand those people who thought that sanctions were desirable where the victims were white but not where they were non-white. The Committee should not just react to human rights situations, but should attempt to view them in an objective manner.

19. In considering situations under article 4 of the Covenant, the Committee had the task of considering reports from States parties under article 40, in addition to which there were the provisions of article 41 and of the Optional Protocol. For the time being, however, the Committee could only consider article 4 in terms of its functions under article 40. The Committee might devise methods of work which would allow it to consider situations more expeditiously, since States parties might wish to be enlightened by the Committee.

20. When a public emergency was declared the problems which might arise were not always immediately apparent. If the Committee requested a report on the situation it would merely receive some indication of the legal framework. It might be better for the Committee to bide its time in such cases before taking action. The Committee could only hope that States were aware of their obligations under the Covenant and applied administrative and legal measures within the framework it imposed. It might be that States considered the obligations they had accepted

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(Mr. Lallah)

under the Covenant before declaring a state of emergency, but it seemed unlikely. The Committee should do everything possible to make States aware of those obligations, perhaps by altering the rules for the submission of reports or by making general comments. Certainly action had to be taken, and not merely with regard to article 4. Mr. Opsahl's proposal was thus welcome, although the Committee could not take a decision at the current session.

21. Mr. BOUZIRI said that he regretted that consideration of article 4 had begun at a time when there were states of emergency in some States parties to the Covenant. That had not, however, come about by design. The matter was important and had to be discussed, yet the Committee should not be too hasty in its deliberations, which could be continued at Geneva, thus allowing more time for reflection. There were clearly differences of opinion within the Committee, reflecting varying degrees of understanding of its role. In fact, the Committee's role was determined by the Covenant itself, to which article 4 was the key.

22. The Covenant did not deal with the balance between the State and its powers and civil and political rights, but rather gave priority to such rights, which, in general, should not be limited. Thus, the protection of civil and political rights should predominate for the Committee. The Covenant attempted to safeguard the status of the Committee by stipulating that its members should be independent of their respective States. The role of the Committee was not limited to taking note of reports which had been submitted; if that had been the case, there would have been no need for its independence to be safeguarded by the Covenant.

23. Article 4 was the cornerstone, since it imposed limits on States even in time of public emergency. Nevertheless, such limits had to be kept within bounds if there was to be a balance between civil and political rights and the need to preserve the life of the State. It should be recalled that no derogation was possible under certain articles.

24. It had been stated that the Committee had failed to make any response to the declaration of a state of emergency in certain States in the past. That was true, but a certain amount of time had been necessary for members of the Committee to fully appreciate the range of possibilities open to them. The situation had evolved, and the time had arrived for a decision to be taken. The Covenant had accorded an important role to the Committee, whose duty it was to monitor situations in which States imposed limitations on civil and political rights. States might have legitimate reasons for declaring states of emergency, but equally they might serve as a pretext for serious abuses. It was not a question of interpreting the Covenant, but rather of a sense of duty. Further discussion of the question in an endeavour to reach common ground was essential. The Committee had tried to interpret the articles and establish limits which States parties as well as the Committee would respect. Such questions had to be debated in detail, even if a decision could not be taken until later.

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25. Mr. OPSAHL said that he had introduced his proposal in an endeavour to facilitate progress by the Committee. The introduction of the proposal coincided with certain events in certain States parties, but it should be clearly understood that he had not been motivated by any desire to infuse cold war attitudes into the Committee's deliberations. On the contrary, the Committee should endeavour to nurture the concepts of détente and coexistence.

26. His proposal was modest and the minimum which could be done to develop the Committee's procedures. The response from members had been encouraging. It should be realized that the proposal did nothing to resolve the question of de facto derogations of which the Secretary-General was not notified.

27. It had been asked in the Committee what developments there had been to prompt some members to try to establish new procedures. In fact, nothing had changed, it was merely that the Committee now had greater experience and could attempt to establish policies to resolve questions which it had faced since its creation. Clearly, any attempts to make progress in that area might arouse suspicion, but the question had faced the Committee for many years, which was why he had submitted the proposal.

28. The main point made by Mr. Graefrath had been that the declaration of an emergency had the effect of suspending obligations under the Covenant, so that measures taken by States were not wrongful, and that derogations, in time of public emergency, did not amount to violations of human rights, as was frequently implied by the press. That analysis was accurate as far as it went. Under article 4 States could suspend their obligations under the Covenant to some extent. The obligations which were suspended in such circumstances were substantive, but Mr. Graefrath had failed to draw the further conclusion that procedural obligations could also be suspended. It seemed clear that in extreme circumstances a State might simply be unable to comply with time-limits and other technical demands even if the Committee requested a report. Its obligations under article 40 could thus be limited, but there could be no question of suspending substantive obligations.

29. It would be in the interests of States parties to co-operate with the Committee in such situations, rather than exposing themselves to accusations without having a fair hearing. There was a risk that the Covenant might become a dead letter in times of public emergency, and it was to be hoped that the Committee would adopt proposals to prevent that from happening.

30. Mr. HERDOCIA ORTEGA said that he supported the views expressed by Mr. Opsahl, Mr. Graefrath and Mr. Bouziri with regard to the safeguarding of human rights and the role of the Committee, particularly in the context of article 4, paragraph 3, of the Covenant. State parties had the sovereign right to declare a public emergency in accordance with the provisions of article 4. The implementation of article 4 by States parties was the legitimate concern of the Committee. Nevertheless, although he considered that the proposal made by Mr. Opsahl would enhance the role of the Committee, he felt that its ramifications should be considered in greater depth and that a decision could be taken on it at the summer session in Geneva.

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31. Sir Vincent EVANS said that the discussions which had taken place in the Third Committee, particularly concerning the background to the adoption of article 4 of the Covenant, would not be of great value in solving the problems which arose during the current debate. His position was that article 4 was clearly intended to permit a State party to suspend or limit its normal obligations under the Covenant in an abnormal situation. The extent to which it was permitted to do so was defined in article 4, paragraphs 1 and 2. Article 4, paragraph 3, was of particular significance to the matter under consideration. Paragraph 3 required merely that certain information about an emergency situation should be conveyed to other States parties. Neither article 4 nor the Covenant in general gave the Committee any special role as far as monitoring emergency situations was concerned. Whatever functions the Committee had in emergency situations, therefore, must be derived from articles 40 and 41 and the Optional Protocol. It would not be wise for the Committee to establish special procedures on the assumption that it had a special right to monitor emergency situations. Such situations were often of great sensitivity and there were limits to the extent to which authorities could be expected to compile and submit special reports and send representatives to appear before the Committee. On the other hand, in the course of the exercise of its functions under article 40, the Committee could consider emergency situations in terms of their relevance to the implementation by the reporting State of its obligations under the Covenant. Much depended, however, on the way in which that was done. It should be kept in mind that emergency situations did occur and that it was essential for Governments to take the appropriate measures to deal with them. Obviously Governments must not abuse the right of derogation, but they had to use their judgement in deciding what measures should be taken under the circumstances.

32. Mr. PRADO VALLEJO said that he agreed with the statement made by Mr. Bouziri that article 4 of the Covenant was the cornerstone of the entire system for protecting human rights. In drafting the Covenant, the authors had obviously intended that the civil and political rights should be effectively implemented and observed. It was clear that any State party could avail itself of the right of derogation in time of public emergency and had the right to determine the scope of the emergency situation and decide on the measures to be taken to deal with it. The Committee could in no way infringe that right. Nevertheless, the measures taken by the State party were limited by the conditions set forth in article 4. Experience had shown that there were several types of conduct by States parties in that regard. Certain States had not officially derogated from their obligations under the Covenant; but had suspended the implementation of certain rights de facto. Other States had given official notification of derogation from obligations, but had not specified the date on which they would terminate such derogation. Another category of States had given notification of derogation from certain rights, but had violated other rights from which there was no derogation. Lastly, there was the institutionalization of a state of emergency in certain countries over a number of years. In his view, the Committee had a role to play in safeguarding human rights in such circumstances. Although article 4 made no mention of the Committee, that did not mean that the Committee had no responsibility or obligation when confronted with special situations.

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(Mr. Prado Vallejo)

33. The Committee should demand that States parties should comply with the requirements set forth in article 4 whenever rights were derogated from in time of public emergency and should inform the Committee through the Secretary-General of the specific nature of the situation. The Committee should take a decision along those lines. Whenever a State party resorted to measures under article 4, it should send the Committee a special report in which it specified which rights had been derogated from, what causes had brought about the public emergency and what the reasonable date was on which it would terminate such derogation.

34. Furthermore, article 4, paragraph 1, spoke of "other obligations under international law", not only those of the Covenant. That was an important point which the Committee should consider carefully. It was not only a question of informing other States parties of derogations. Under article 40, paragraph 1 (b), the Committee could request additional information when a State party invoked article 4. That was a matter of paramount importance for the Committee and should be given further consideration so that a decision could be taken in that regard.

35. Mr. ERMACORA said that it had been his suggestion to consider the possibility of setting up an intersessional working group to deal with public emergencies since the questions which arose under article 4 were part of a very general problem. The conclusion outlined by Mr. Graefrath the previous day seemed to be that emergency situations were not subject to any international control. His views and those of Sir Vincent Evans seemed to indicate that the Committee was not competent to consider matters directly relating to article 4 in a specific manner, but only within the context of periodicity. Nevertheless, it was evident from the Committee's experience in the Chilean case that a quick response was the best way of preventing cases of excès de pouvoir. The proposal made by Mr. Opsahl was the minimum which should be done in that regard. The advantage of an intersessional working group was that it could consider an emergency situation and report to the Committee promptly. He would draft an addendum to the observations and recommendations of Mr. Opsahl for consideration by the Committee at its next session. In that way, the Committee could reach an agreement which was in conformity both with article 4 of the Covenant and with its general obligations.

36. Mr. JANCA said that, judging from the exchange of views, it did not seem appropriate for the Committee to take a decision at that time on the matter under consideration. More time should be given to the consideration of a solution which would be in full conformity with the Covenant and at the same time ensure the implementation of the provisions of article 4. Under article 40, paragraph 1 (b), the Committee was empowered to request a State party which had officially proclaimed a public emergency and had sent notification to the Secretary-General to submit to the Committee an appropriate report on that matter. The questions which the Committee could ask a State party in connexion with such a report should be strictly limited to the provisions of article 4, paragraphs 2 and 3. The Committee should defer taking a decision on that matter until its next session in order to find a meaningful and legally correct solution to that extremely sensitive problem.

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37. Mr. AL DOURI said that article 4 of the Covenant should not be interpreted so restrictively as to render it ineffective or so broadly as to infringe the sovereignty of States parties. He could support the proposal made by Mr. Opsahl if his interpretation of article 4 was somewhat more restrictive. On the other hand, he felt that the conclusions of Mr. Graefrath and Sir Vincent Evans with regard to the interpretation of article 4 were too restrictive.

38. The CHAIRMAN said that the Committee would defer until its summer session further consideration of that question, which, in accordance with normal procedure, could be placed on the agenda at the request of any member of the Committee.

The meeting rose at 1 p.m.