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Human Rights Committee
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Summary record of the 2170th meeting
Held at Headquarters, New York, on Wednesday, 17 March 2004, at 11 a.m.

Chairperson: Mr. Amor

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

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

Fifth periodic report of Germany
(CCPR/C/DEU/2002/5)

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*

2. **Mr. Pleuger** (Germany), introducing the fifth periodic report of Germany, said that the report covered the period from September 1993 to July 2002 and highlighted the new focus of the German Government on human rights issues, which cut across traditional policy lines. He emphasized that the protection of human rights was not a matter for Governments alone: a host of other actors, including the courts, non-governmental organizations and international organizations, could make significant contributions. In that connection, he welcomed the establishment of contacts between the United Nations Security Council and the High Commissioner for Human Rights and the governing bodies of various other human rights treaty-based organizations; such cooperation should be further developed, particularly in the area of counter-terrorism activities. He also welcomed the Secretary-General's intention to appoint a special adviser on the prevention of genocide.

3. The principle of the universal and indivisible nature of human rights guided Germany's actions in that sphere and the Government was working to ensure that that principle was respected throughout the world. Since becoming a party to the Covenant, Germany had viewed closed cooperation with the Committee as a priority and, in that respect, recognized that the task of giving practical effect to international human rights obligations was an ongoing process that required transparency and continuous assessment at both the national and the international levels.

4. **The Chairperson** invited the delegation to address the list of issues (CCPR/C/80/L/DEU).

5. **Mr. Stoltenberg** (Germany) said that, before proceeding to Germany's replies to the list of issues, he would like to outline a number of recent developments in the area of human rights policy. The Federal Government's activities in that sphere were guided by two principles: first, a credible human rights policy must begin with the protection of those rights at the domestic level. Only a State that was persistently concerned with human rights protection at home could legitimately call for the respect of those rights in other States. Secondly, only those States that were aware of human rights violations within their own borders would succeed in improving the situation.

6. In 1998, the Federal Parliament (*Bundestag*) had set up its own independent Committee on Human Rights and Humanitarian Aid, which was concerned not only with human rights in the context of foreign relations but also with the domestic situation. Furthermore, the Government had decided to restructure the biannual human rights report submitted by the Government to the *Bundestag*. A focal point of the sixth report, which could be accessed via the Internet pages of the Federal Ministry of Justice and the Ministry of Foreign Affairs, was the suppression, at the national level, of racism and xenophobia, and the next report, due in 2004, would contain a national action plan for the protection of human rights.

7. The German Human Rights Institute had been established in March 2001 and was presently focusing on publicizing its activities and mapping out its position in the public domain. One of its core responsibilities was the monitoring of the domestic human rights situation, in accordance with the Paris principles. The independence of the Institute was of primary importance, since only as a civil society institution could it effectively fulfil its mandate, hence the Government was confining itself to a supporting role. To that effect, representatives of the Federal Government had no voting rights on its governing bodies. The funding of the Institute, which amounted to 1.5 million euros per year, was covered under the Federal Budget and, crucially, non-governmental organizations, the Committee on Human Rights and the Federal Government had reached a consensus on the mandated tasks of the Institute and its organizational structure.

8. All three of those developments were intended to help raise awareness of the importance of protecting human rights at the domestic level and to contribute towards establishing a critical public with enlightened attitudes.

9. With regard to specific government officials working in the area of human rights, he said that the

position of Commissioner for Human Rights in the Ministry of Foreign Affairs had been upgraded, meaning that the incumbent now acted on behalf of the entire Federal Government. The Commissioner's duties included following developments in human rights at the global level, helping to shape bilateral and multilateral dialogue on human rights and making proposals for the formulation of the Federal Government's human rights policy.

10. He himself had been appointed Federal Government Commissioner for Human Rights Matters at the Federal Ministry of Justice in 2000, but the position had existed since 1971. An important aspect of his work was the protection of human rights in the United Nations context and, in that connection, he was responsible for monitoring compliance with the majority of the international legal instruments in that domain. He had been particularly supportive of Germany's recognition of the communications procedures under a number of those instruments and stressed that it was important for the Federal Government to set a good example in that area.

11. With reference to question 22 on the list of issues, concerning the dissemination of information on the submission of reports and their consideration by the Committee, particularly the concluding observations, he said that, for the first time, the Human Rights Forum, the umbrella organization that brought together all non-governmental organizations concerned with human rights, had been given the opportunity to submit its observations on the report prior to its adoption by the Federal Cabinet. The involvement of non-governmental organizations at such an early stage augured well for an early start to the national discussion on internal human rights problems. The fifth periodic report had also been adopted by the Federal Cabinet and brought to the attention of all Federal Ministries and, for the first time, discussed by the parliamentary Committee on Human Rights.

12. The concluding observations would be forwarded to the *Bundestag*, all Federal Ministries and the Länder and there were plans to publish them on the web sites of the Federal Ministry of Justice and the Ministry of Foreign Affairs. After the adoption of the observations, the Federal Ministry of Justice would invite the Federal Ministries concerned to participate in a follow-up discussion. In addition, the German Human Rights Institute had decided to organize a follow-up conference, involving representatives of the Federal Ministries, non-governmental organizations and the Länder, in order to discuss issues arising from the consideration of the report and the concluding observations. Similar conferences would be held following the consideration of subsequent reports.

13. Lastly, he wished to inform the Committee about the most recent developments in the so-called Daschner case. Mr. Daschner had been Deputy Chief of the Frankfurt Police and had instructed a policeman to threaten an accused person with torture in order to ascertain the whereabouts of a missing boy whose life had been in danger. Criminal proceedings had been initiated against him and, two weeks previously, the Office of the Public Prosecutor had announced that Mr. Daschner and the other policeman concerned had been indicted on the grounds of coercion and incitement to coercion. Mr. Daschner had subsequently been removed from office and transferred to another position.

Implementation of the Covenant and right to an effective remedy (article 2) of the Covenant

14. With reference to question 1 on the list of issues, he said that, over the reporting period, the Federal Constitutional Court and the other highest Federal courts had referred to the Covenant in a series of judgements and decisions. He would provide the members with a written overview of those decisions at the end of his statement; the written replies contained further details.

15. Turning to question 2, on the relationship between Germany's federal structure and the Covenant, he said that the Covenant was binding on all agencies of the German Federation and the Länder. It therefore enjoyed the same validity as other human rights instruments ratified by Germany, and any Land law violating the human rights covenants was invalid. Furthermore, whenever a legal norm was open to more than one interpretation, it was the interpretation that met the demands of public international law that prevailed. Human rights laws thus enjoyed a higher status than those of the Federation or the Länder. In accordance with the Basic Law, all violations of the law, whether by the Federation or by a Land, could be brought before an independent court. Whenever a Land issued legal norms that conflicted with Federal law (the Covenant, for example), the Federation could ask the Federal Constitutional Court to declare them invalid.

16. However, the Federation had not yet been obliged to take such measures, because the Länder themselves were committed to the protection of human rights. With respect to article 26 of the Covenant, on protection against discrimination, the Länder had over recent years taken a range of measures to educate the population, discourage discrimination and combat right-wing extremism and anti-Semitism. Several Länder had also been making strenuous efforts to employ foreign nationals as policemen, and others — including Bavaria and Rhineland-Palatinate — were taking steps to improve the situation of the elderly. In Thuringia, cases of remand detention lasting longer than three months had been cut almost by half over the past 10 years. Lastly, the constitutions of certain Länder, such as Bremen, made specific reference to human rights, thus subjecting the Land in question to a corresponding obligation.

17. With regard to question 3, concerning the application of the Covenant to armed forces deployed internationally, he said that it could not be excluded that the Covenant might be applicable where States parties were acting on foreign territory. However, that was a complex legal issue, which had not yet been clarified. Moreover, when exercising the powers granted to them under operations abroad, Germany's armed and police forces ensured compliance with all humanitarian and human rights standards arising in customary international law. In times of armed conflict, international human rights protection should also be seen in connection with international humanitarian law. Protection from crimes against humanity must also be guaranteed. Human rights training was part of the leadership philosophy of Germany's armed forces. All those participating in foreign operations of the armed forces attended training before deployment abroad. German and international criminal law and international humanitarian law applicable to operations abroad were also included in the training. Police officers to be deployed in international peacekeeping operations received human rights education as part of their preparation. Those deployed in Afghanistan had received one week of preparatory training, although the curriculum did not contain a specific module on human rights. However, respect for basic and human rights constituted a standard element of every German police training syllabus, and human rights formed an integral part of the training given by German police officers at Kabul Police Academy. Lastly, there had been no indications of any human rights violations by German soldiers or armed forces during foreign operations. Senior personnel were supported, during foreign deployment, by experienced legal advisers on questions relating to criminal and disciplinary law.

18. Turning to question 4, concerning anti-terrorism measures, he said that the security situation had undergone dramatic changes, and that international terrorism had become a serious global threat. As a result, it had been necessary to develop further legal instruments. Following the terrorist attacks of 11 September 2001, Germany had adopted its Counter-Terrorism Act (*Terrorismusbekämpfungsgesetz*), which had come into force on 1 January 2002. The Act included changes to several specialized legal provisions in Federal police law, intelligence services law and law on foreigners. As a result, the authorities concerned had been able to improve data exchange, visa procedures and border patrols. A new offence had been added to the Criminal Code in order to facilitate prosecution for the formation and support of criminal and terrorist actions abroad. Following a change in the Law governing Private Associations it was now possible to ban extremist religious associations, under certain strict conditions. The Islamic association *Kalifatsstaat* had been banned on 12 December 2001 because it had incited its members to fight democracy, those who held other beliefs and the Republic of Turkey. The ban had since been upheld by the Federal Constitutional Court, which had also considered the conflict between the right to ban associations and the principle of religious freedom. The banning of an association was justifiable only if it was absolutely essential according to the proportionality principle — generally the case if the association actively opposed the core principles of the German Constitution — and could only be an act of last resort. Lastly, at the European level, Germany had created a national law for implementing the European Union Council Framework Decision of 13 June on combating terrorism. Germany believed that the laws enacted following the attacks of 11 September 2001 had established an appropriate balance between new security demands and individual freedoms. The provisions of the Covenant had not been violated in consequence, and the security authorities had made responsible and careful use of their new powers.

Equality of men and women (article 3 of the Covenant)

19. With regard to question 5, on Germany's 2001 Federal Equality Act, he said that the aim of the Act, which had come into force on 5 December 2001, was to make it easier for men and women to lead a family life and be gainfully employed. Initial data suggested that the Act had been having a distinctly positive impact. The number of women serving as Director General had risen from 8.9 per cent in 2001 to 12.0 per cent in 2002, and the corresponding figure for female divisional heads had risen from 13.4 per cent to 15.9 per cent. However, Germany was aware that legislation alone did not bring about a change in conditions. Those concerned had to be comprehensively informed about the new provisions and helped with their implementation. In that regard, a brochure had been produced, for those involved in the practical application of the law, especially the Equality Commissioners and personnel managers. There had been numerous inquiries about training. For assistance with questions of fundamental importance, Equality Commissioners could turn to the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. In addition, the Federal Academy of Public Administration offered a broad range of further training on the Federal Equality Act. The achievement of equality for women and men in all spheres of life remained the declared objective of the Federal Government. In the light of article 3, paragraph 2, of the Basic Law, stipulating the obligation to promote real enforcement of the equality of men and women and to work to eliminate existing disadvantages, the Federal Government would be undertaking further legislative steps in that area. The Federal Armed Forces would be given modern statutory provisions on equality, and equality would be vigorously promoted in the private sector, as part of efforts to implement the European Union's Equal Treatment Directive. Lastly, the legislative projects of all Federal Ministries and new European Union proposals for Directives were being monitored in terms of equality policy, with a view to gender mainstreaming.

Right to life (article 6 of the Covenant)

20. **Mr. Stoltenberg** (Germany), replying to question 6, said that the Federal Government took reports of deaths in police custody extremely seriously. Incidents must be thoroughly investigated without delay, and the officials responsible must be held accountable. Preventive measures were especially important, including human rights education and behavioural training for police officers.

21. Turning to the death of Stephan Neisius, he referred the Committee to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2003/3/Add.1), and said he would recount the developments following the submission by the Federal Government of its replies to the report.

22. Following preliminary investigations, the Director of Public Prosecutions in Cologne had pressed charges against six police officers accused of beating Mr. Neisius so brutally that he had died from his injuries two weeks later. Mr. Neisius had been in police custody at the time of the beating. The officers had subsequently been found guilty of bodily injury resulting in death, and given suspended prison sentences of one year to one year and four months. In sentencing the officers, the court had taken into account their automatic dismissal from service and its serious consequences for their future. Also, the trial had revealed that the victim might not have died had he been given proper medical treatment without delay. The authorities in Cologne had since charged the doctors in the case with negligent homicide; preliminary investigations were being conducted. The officers had lodged an appeal against the judgement, which was still pending; disciplinary measures had been suspended until a final verdict was reached. Meanwhile, the officers had been suspended from service and their salaries had been reduced by up to 25 per cent.

23. In a separate incident, two police officers had taken a known alcoholic in a state of helpless intoxication and released him in an uninhabited area on the outskirts of the Hanseatic City of Straslund, on a very cold night. Their purpose had been to teach the man a lesson. The following night the victim had died of alcohol intoxication and hypothermia. The officers had subsequently been charged, tried and sentenced to three years and three months in prison, and stripped of their status as public officials.

24. Not all cases had resulted in successful prosecution. In another incident, a police officer in Nordhausen had been violently attacked by a suspect. Seeking to subdue him by a gunshot aimed at his leg, the officer had instead shot the suspect in the lower back, killing him. The officer had been charged with

negligent homicide, and acquitted. The court had found that his life had been in danger and there had been no time to fire a warning shot. An appeal was pending.

25. In another incident involving the Nordhausen police, a hotel guest who had been incorrectly identified as the "Murderer of Remagen" had tried to prevent four armed police officers entering his room. In the ensuing altercation, the guest had been shot dead. The public prosecutor had sought to charge the two officers who had used their firearms with negligent homicide. The proceedings had been terminated twice under a provision of the Penal Code that prohibited trial of cases in which there was little likelihood of a conviction.

26. Finally, in two separate incidents, one in Düsseldorf and one in Hamburg, involving suspects who had been arrested on drugs charges and had died while in police custody, the cases against the officers had been dismissed. In the first case, it had been impossible to ascertain the cause of death; in the second, there had been insufficient evidence against the officers.

27. Turning to question 7 concerning injuries and death during deportations, he said that the Federal Government took the matter very seriously, and prosecuted any such cases. It was possible, however, that some complaints of ill-treatment were filed to prevent or postpone deportations. Some deportees put up vigorous resistance, and some Federal Border Guards had sustained very serious injuries. He would address only the two cases cited in the question, but would provide further information to the Committee, on request.

28. Mokhtar Bahira, an Algerian national, and his wife and children had applied for asylum. The claim had been rejected and deportation ordered. When the police had arrived at their home to begin the deportation operation, Mr. Bahira had taken a knife and approached one of the officers in a threatening manner. Then, holding the knife towards his own throat, he had climbed onto the sill of an open window. When he had refused to drop the knife, one of the officers had fired two shots, to prevent Mr. Bahira committing suicide. The second shot had caused him serious injury. The officer had been charged with negligent bodily injury, but the case had not been prosecuted on grounds that the injury had been unavoidable under the circumstances. Mr. Bahira's injuries had been deemed sufficient grounds for revocation of the deportation order.

29. Aamir Ageeb, a Sudanese national, had died on the plane while being deported to Khartoum, of injuries sustained when three officers of the Federal Border Guard had tried to force him into his seat during take-off. The officers had been charged with negligent homicide, the case had gone to trial and the judgement was still pending.

30. Mr. Ageeb's death had caused careful examination of the entire deportation mechanism, resulting in the enactment of regulations on procedures to be observed by Federal Border Guards during deportation, including rules to be followed when force was used, and the implementation of updated and extended training programmes that emphasized practical skills required in difficult situations.

Rights to be free from torture or cruel, inhuman or degrading treatment or punishment and to be treated, as a prisoner, with dignity (articles 7 and 10 of the Covenant)

31. **Mr. Stoltenberg** (Germany) said, in reply to question 8, that there were no official statistics relating to allegations of ill-treatment by the police. The Government was aware of fewer than 100 cases, many of which had been documented by non-governmental organizations or the media. Criminal investigations had been opened in almost all the cases. Of the cases that had been concluded, approximately two thirds had either not been prosecuted or had resulted in the acquittal of the police officer charged. Convictions had resulted in fines or terms of imprisonment, and, in some cases, disciplinary proceedings and dismissal from the police force.

32. The primary aim of the Federal Government was to prevent incidents of ill-treatment by police officers, and the Federation and the Länder had taken measures to that end. Constitutional rights and human rights were central aspects of initial and higher training of police officers. Criminal proceedings against officers were subsequently analysed with a view to revising service law and reducing the risk that such incidents would reoccur.

33. With reference to question 9, despite publicly expressed opinions by members of the police and the judiciary that torture should be permissible in extreme circumstances, there was an absolute ban on torture in

Germany. In addition to Germany's obligations under international law as party to the relevant international and European conventions, the German constitution, or Basic Law, affirmed in article 1 the inviolability of human dignity and human rights and provided in article 104 that persons in custody could not be subjected to mental or physical mistreatment. Section 136(a) of the Code of Criminal Procedure prohibited the use of certain practices, including those that would commonly be called torture, in examining accused persons. The Criminal Code provided severe penalties for torture; under section 343, for example, extortion of testimony in criminal proceedings was subject to up to 10 years' imprisonment.

34. Not least because of the impression left by the atrocities committed by the Nazi regime, the authors of the Basic Law had established in article 79, paragraph 3, that any amendments that would affect the basic human rights principles laid down in article 1 would be inadmissible. That meant that the guarantee of respect for human dignity and inalienable human rights was secured even against a majority sufficient to amend the Basic Law.

35. With respect to question 10 on protection against forcible return to a country where there existed a specific danger of torture or killings by non-State actors, section 53, paragraph 6, of the Aliens Act provided protection against deportation to a country in which the individual concerned faced a specific danger to life, limb or freedom. That would include a threat from non-State actors. In the case of general threats to an entire population or group, the Land (state) authorities could issue a general ruling that deportations were to be temporarily discontinued. Even when there was no individual threat, in some cases the Federal Administrative Court could make an exception if an extremely serious general threat of death or serious injury existed (including the likelihood of death due to starvation) and the highest Land authorities had failed to make use of their authority to authorize a general halt to deportation.

36. Although the Federal Administrative Court decisions cited in the question held that article 3 of the European Convention on Human Rights related only to protection against State actors, in its judgement of 15 April 1997 the Court had expressly drawn attention to the fact that the protection offered in section 53, paragraph 6, of the Aliens Act applied to threats from both State and non-State actors. If the latter provision was correctly interpreted, there was no loophole in protection. Moreover, section 60 of the Immigration Act envisaged threats posed by non-State actors as a reason for recognition of refugee status.

37. With regard to question 11 on asylum, it was true that pursuant to article 16a, paragraph 2, of the Basic Law and section 26a of the Asylum Procedure Act no person could invoke the right to asylum in the Federal Republic of Germany if they entered it from a member State of the European Union or from another State in which application of the Geneva Convention relating to the Status of Refugees and the European Convention on Human Rights was assured. The legislature determined which non-European Union States were to be classified as "safe third countries", and its designation could not be refuted. Aliens could therefore be turned away at the border or deported back to the safe third country without examination of their case. However, the Federal Constitutional Court in a decision of 14 May 1996 had ruled that an alien entering from a safe third country might remain in Germany pending examination of his or her case if there were obstacles to deportation: if the alien was faced with the death penalty in the third country; if the alien faced a serious, real danger of being the victim of a crime in the third country; if there had been sudden changes in the conditions on the basis of which the country had been classified as safe; if the third country had begun persecuting asylum-seekers or subjecting them to inhuman treatment or if it had became known that the third country would refuse to provide a specific alien with protection by examining his or her application for asylum. The Federal Office for the Recognition of Foreign Refugees was responsible for making such decisions, which could be appealed to the competent administrative court, but the examination was generally limited to determining whether the alien had entered from a third safe country.

38. In any case, the Dublin II Regulation for determining the European Union member State responsible for examining an asylum application took precedence over national regulations. And from 1 May 2004 when Poland and the Czech Republic were to accede to the European Union, the regulations governing safe third countries would no longer have practical significance.

39. **The Chairperson** invited the Committee to put further questions to the delegation concerning its replies to the list of issues.

40. **Mr. Kälin** said that he had been pleased by the remark made in the introduction to the effect that a credible human rights policy must begin at home. The State party was to be commended for its comprehensive report and in particular for the regular reference to the Committee's concluding observations on the fourth periodic report. In areas where the report had been lacking in detail on the problems encountered, the replies to the list of issues had filled the gap.

41. There had been advances in several areas, notably in the establishment of the National Human Rights Institute and the parliamentary Committee on Human Rights. He was pleased to note that, despite problems, progress had been made in combating right-wing, anti-Semitic and xenophobic violence. Important measures had been taken to achieve gender equality in public service, and legislation protecting the rights of children had been improved. Constitutional court decisions had strengthened recognition of the rights of religious communities and protection of privacy.

42. With regard to the problems associated with federalism in regard to the implementation of human rights conventions, he had been pleased to hear that remedies were available to individuals against human rights violations by the Länder and that the federal Government could intervene to ensure implementation of federal laws by the Länder. However, experience had shown that the main problem was not where the Länder committed specific violations of human rights but where they refrained from taking active measures to ensure the application of human rights norms or questioned the right of the federal Government to dictate policy in certain areas. He wondered how the Government addressed such situations.

43. With regard to the extraterritorial application of the Covenant, he was troubled by the statement that Germany was not in a position to affirm the applicability of the Covenant in Afghanistan, but that its armed forces there could apply only those human rights standards that arose from international customary law. Much of the content of customary law was undefined apart from certain core values. Moreover, Germany was not a party to the conflict in Afghanistan and was not an occupying force; hence, international customary law might not apply. He wondered whether Germany applied the content of article 9 of the Covenant, for example, when its forces carried out arrests and detentions in Afghanistan. On the same issue, the Committee had heard complaints that German troops in Quebec executing low-level training flights over indigenous lands were affecting the health and traditional culture of the indigenous people, and he wondered whether Germany would agree that the Covenant applied in such a case.

44. He wished to thank the delegation for the detailed information provided concerning the deaths that had occurred during the deportation of foreigners. With regard to the use of firearms by police, he was pleased to note that the number of persons killed or injured in the use of firearms had declined in recent years, but would like to have an update of the statistics provided in paragraph 56 of the report. According to the report, use of firearms by the police was permissible only in extreme circumstances, but in some of the cases reported in reply to question 6, the conditions for using firearms had not been met. He would like to know in more detail what steps were being taken to ensure that police did not use firearms in inappropriate circumstances.

The meeting rose at 1 p.m.