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Seventh session

SUMMARY RECORD THE SECOND PART (PUBLIC)* OF THE 174TH MEETING

held at the Palais des Nations, Geneva,
on 15 August 1979, at 11.40 a.m.

Chairman: Mr. MAVROMATIS

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*/ The summary record of the first part (closed) of the meeting appears as document CCPR/C/SR.174.

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The public meeting was called to order at 11.40 a.m.

CONSIDERATION OF COMMUNICATIONS RECEIVED IN ACCORDANCE WITH THE PROVISIONS OF THE OPTIONAL PROTOCOL TO THE COVENANT (continued)

1. The CHAIRMAN invited the members of the Committee to decide on the membership of its Working Group on Communications, taking due account of geographical distribution.
2. Mr. OPSAHL said that, while the rules of procedure set an upper limit of five members for the Working Group, in his opinion three would be sufficient if the Secretariat provided sufficient facilities for the translation of documents in languages unknown to the members. The question of geographical distribution did not arise.
3. The CHAIRMAN said that the problem was not one of geographical distribution but rather of the need for the Working Group to reflect all shades of opinion.
4. Sir Vincent EVANS said that due account should also be taken of the possibility that some members might be unable to attend all the meetings of the Working Group.
5. The CHAIRMAN suggested that the Committee should authorize him to call upon another member of the Committee if the Secretariat informed him that a particular member of the Working Group or his alternate could not attend the meetings of the Group. He proposed that the Working Group should be composed of the following members: Mr. Opsahl, with Sir Vincent Evans as alternate; Mr. Sadi, with no alternate; Mr. Prado Vallejo, with no alternate; Mr. Movchan, with Mr. Janča as alternate; and Mr. Lallah, with Mr. Tomuschat as an all-purpose alternate.
6. It was so decided.

FUTURE MEETINGS OF THE COMMITTEE (continued)

7. The CHAIRMAN said that it was essential for the smooth functioning of the Committee to establish firm dates for its sessions which should be made known well in advance. Any subsequent rescheduling would inconvenience more members than it helped because they might well have other commitments on the new dates scheduled for meetings of the Committee. As members would recall, he had asked the Secretariat about the possibility of rescheduling the ninth session in New York.
8. Mr. Van BOVEN (Representative of the Secretary-General) said he had been informed that it would be possible to postpone the ninth session from 10-28 March 1980 to 17 March-4 April 1980, with the Working Group meeting from 10 to 14 March 1980. During the final week, however, the Committee might have to meet in the General Assembly Hall, since no other conference room might be available.
9. Mr. DIEYE found the new dates proposed for the Committee's ninth session acceptable. In general, he agreed that the dates of the Committee's sessions should follow a fixed pattern from year to year so as to enable members of the

Committee to make firm engagements for their future activities. In that connexion, he felt that it would be preferable for the Committee to hold its spring session in April rather than March. In any event, it was important that sessions of the Committee should not coincide with sessions of the Commission on Human Rights.

10. Sir Vincent EVANS said that he, too, had no objection to the ninth session of the Committee being held between the dates suggested, but in his opinion, it was important to preserve the intimacy which had always marked the Committee's meetings. Appropriate measures should therefore be taken to ensure that it met in a small committee room rather than a large assembly hall. He agreed that the dates of the Committee's sessions should be firmly planned in advance and should follow a definite pattern. The interval from October of one year to April of the next seemed to him too long for the expeditious processing of communications. With a view to reducing that interval and at the same time avoiding overlapping between sessions of the Committee and the Commission, he suggested that perhaps the latter could be persuaded to advance its spring session by one or two weeks.

11. Mr. OPSAHL drew attention to the varying intervals between the Committee's eighth, ninth, tenth and eleventh sessions as they were scheduled at present. He felt very strongly that the intervals between the Committee's sessions should, as far as possible, be of equal length in order to permit a proper rhythm in its work. He therefore urged that the Committee should as soon as possible reconsider arrangements for its future sessions.

12. The CHAIRMAN said that that point would be taken up at a later stage. As to the ninth session, he undertook personally to ensure that a suitable room would be made available for the meetings of the Committee at United Nations Headquarters. He took it that all members of the Committee were prepared to agree to the convening of the ninth session from 17 March to 4 April 1980, it being understood that the Working Group on Communications would start its work on 10 March 1980.

13. It was so decided.

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

14. The CHAIRMAN stated that during the month of June he had made personal contact at United Nations Headquarters with the permanent representatives of the Governments of States parties whose initial reports had been due in 1977 but which had not submitted them, namely, Colombia, Costa Rica, Jamaica, Kenya, Lebanon, Mali, Rwanda, the United Republic of Tanzania and Uruguay. He had similarly made contact with the permanent representatives of the Governments of States parties which had failed to send supplementary information, namely, Denmark and the Libyan Arab Jamahiriya. He had personally transmitted aides-mémoires to the permanent representatives concerned. In general, the response had been very encouraging, and he believed that the Committee would in almost all cases receive the initial or supplementary report in the fairly near future. One notable exception was the report due from the Government of Lebanon, from which a letter had recently been received expressing regret at its delay in submitting a comprehensive report under article 40 of the Covenant, explaining the difficulties hampering it in the preparation of such a report and promising to submit the report at the earliest possible date. In those circumstances, the Committee could do no more than take note of the situation prevailing in Lebanon, which had effectively prevented the Government of that country from submitting the report due. It could perhaps mention that special situation in its annual

report. The Committee's annual report would, in any event, name those States which, despite reminders, had failed to submit the reports due from them under article 40 of the Covenant; and reflect the response to the personal efforts he had just reported to the Committee.

15. In reply to a question by Sir Vincent Evans, he said that while, at the sixth session of the Committee, the representative of the Government of Iran had promised that a further report would be submitted by his Government, he had made no commitment as to time and had pleaded constitutional changes in explanation of the delay. He noted that additional information had also been promised by the Governments of Jordan, Madagascar, Mauritius, Norway and Yugoslavia.

16. Mr. OPSAHL wished to reiterate the suggestion he had made at an earlier meeting that, for the purposes of the efficient conduct of the Committee's work, every effort should be made to persuade States parties to submit their reports in time for given sessions. He would suggest that the Committee should adopt an appropriate procedure to ensure the submission of, say, three reports from States parties in time for consideration at each session.

17. The CHAIRMAN said that the Committee would discuss that proposal at its next session.

QUESTION OF THE CO-OPERATION BETWEEN THE COMMITTEE AND THE SPECIALIZED AGENCIES CONCERNED

18. The CHAIRMAN proposed that the Committee should defer consideration of that item until the next session.

19. It was so decided.

ORGANIZATIONAL AND OTHER MATTERS (continued)

20. The CHAIRMAN informed the members of the Committee that he had received an invitation from the Government of Costa Rica to attend the inauguration of the Inter-American Court of Human Rights in San José in September 1979. Since he himself would be unable to attend, he suggested that the Committee should authorize Mr. Prado Vallejo to deputize for him.

21. It was so decided.

22. Mr. GRAEFRATH said he wished to avail himself of the opportunity of thanking the Director of the Division of Human Rights for opening the session and for attending many of the meetings; his presence had been very helpful in promoting co-operation between the Committee and the Secretariat. Such co-operation was absolutely necessary to enable the Committee to fulfil its functions and he wished to stress that he had very much appreciated the information given by the Director in his opening statement on work in other international bodies in the human-rights field and on other matters which directly touched upon the Committee's work. In his opinion, however, when the Director, who at the current session had acted as the representative of the Secretary-General, addressed the Committee, which was not a United Nations body, he should refrain from taking sides on controversial issues which were currently before the Committee and on which Committee members were involved in consultations. Such interference in the most difficult sphere of the Committee's work would not be helpful and might make its work more difficult. It would be quite normal for members who did not share the views of the representative of the Secretary-General to feel that, in taking sides with

other members, the Secretariat was not fulfilling its functions impartially. If such an impression was created, the result would be a sapping of the basic confidence which prevailed in the Committee's work and was absolutely necessary.

23. If anyone felt that the Committee needed guidelines in order to fulfil its functions in a fairly uniform manner, he should say so. For his part, however, he could not accept that the representative of the Secretary-General should give such advice. The function of the Secretariat was to serve the Committee and not to monitor its activities. He could not accept the procedure under which a list of eight largely substantive items had been introduced by the representative of the Secretary-General under the item "Organizational and other matters" without even prior discussion in the Bureau. When the Committee had drawn up its provisional rules of procedure, it had been made quite clear that the right of the Secretary-General to propose items for its agenda was defined in the Covenant.

24. In his opinion, it was not the function of the representative of the Secretary-General to explain to States how they should incorporate the provisions of the Covenant in such a way that it would have a full impact on their national systems. He should refrain from such explanations because, as was well known, States followed different practices and he should refrain from advocating a particular procedure as he had done in his opening statement. He (Mr. Graefrath) also considered that the Committee had defined its procedures regarding co-operation with the specialized agencies and that it had not asked the representative of the Secretary-General for recommendations in that area. It was true that the representative of the Secretary-General had stated that he did not wish to enter into a discussion or to influence members of the Committee, but in his (Mr. Graefrath's) opinion, he was in fact entering into a discussion and he was seeking to influence the members of the Committee. Document CCPR/C/CRP.2, which purported to provide the Committee with information concerning decisions taken by it in relation to the specialized agencies, had been strongly influenced by the position taken by the representative of the Secretary-General; it did not reflect the decisions which had been taken and tried to re-open discussions on subjects with which the Committee had already dealt. Of course, any member of the Committee was entitled to take such a course, but if the representative of the Secretary-General did so, it raised questions of impartiality and confidence, and immediately tended to undermine the basis for co-operation within the Committee.

25. In his opening statement, the representative of the Secretary-General had suggested that the Committee might give special attention to Governments which used various ways and means to prolong the consideration of communications or to engage in procedural filibustering. Of course, the Committee should do so; the problem was that up to now the Committee had not found any States that engaged in such practices. Since the representative of the Secretary-General had not specified which Governments he had in mind, his statement could be construed to refer to any of the Governments that had ratified the Optional Protocol. He (Mr. Graefrath) did not believe that it was useful to level such general reproaches against States and thought that the Committee should not follow that course. In conclusion, he wished to state that he had tried to explain his point of view in general terms and to avoid legalistic arguments, because he was anxious to maintain and strengthen the friendly and confidential basis of the co-operation which had always existed in the Committee.

26. Mr. KOULISHEV said that he wished to comment on the statement made by the representative of the Secretary-General at the beginning of the session. In his view, that statement had created a certain uneasiness about the Secretariat's conception of, first, its own role in the Committee's activities and, second, the functions and attributions of the Committee itself. In the two years of the Committee's existence, the Secretary-General and his collaborators had furnished competent and effective assistance to the Committee, in accordance with article 36 of the Covenant, and during that time the Committee had benefited from a number of proposals and suggestions by the Secretariat which it had found to be reasonable and acceptable. However, the Committee had always required, and rightly so, that such proposals should be made to it within the framework of the Secretariat's functions and, more particularly, within that of the Covenant and the Optional Protocol, which regulated the Committee's functions as well as those of the Secretariat. It was the normal United Nations practice for the Secretariat to draw the attention of the different organs to a particular subject and to make official proposals to them only when it was required to do so as part of its functions or at the express request of the organ concerned. Needless to say, the most complete impartiality was required of the Secretariat in its official proposals and its informal suggestions.

27. Such a prudent approach was still more important in the Secretariat's relations with an organ such as the Human Rights Committee, which was not a United Nations body and for which the confidence of States was a very important factor. That prudent approach was particularly desirable since it was clear that the opinions of members of the Committee on the matters raised by the representative of the Secretary-General did not concur and that, in fact, wide divergencies existed. Such controversial problems should not have been officially raised by the representative of the Secretary-General without the invitation of the Committee, without prior consultation with its members or without their consent. Furthermore, the whole question did not even appear on the agenda for the session. The matters raised were not even within the competence of the Secretary-General under the Covenant, the Optional Protocol or the provisional rules of procedure. If such action was unwarranted and regrettable from a procedural standpoint, it was even more unwarranted from the legal standpoint in view of the substance of many of the proposals which had been made.

28. First of all, he could not agree that the Committee had "supervisory" functions; such an idea was quite alien to the principles established in the Covenant and the Optional Protocol, and was not likely to gain the confidence of Governments. The term did not describe the real functions of the Committee, which was an organ for co-operation with States in implementing the Covenant.

29. The representative of the Secretary-General had also alluded to the question whether the Committee should seek to develop for itself some internal guidelines to assist it to approach supervision in a fairly uniform manner. He was not sure which guidelines the representative of the Secretary-General had had in mind, but he had the impression that the matter had never been discussed in the Committee. The representative of the Secretary-General had mentioned a number of alternative procedures reflecting the extent to which the Committee should perform a supervisory role. Those alternatives were either contrary to the Covenant or even the Charter of the United Nations, or were in contradiction with the viewpoint on which there was tacit agreement within the Committee.

30. He was thinking, first, of the suggestion that the Committee should go beyond legalisms in its supervision of compliance with the Covenant and that it should also examine the de facto situation. Clearly, the implementation of that suggestion would lead the Committee to adopt a position on de facto situations, a situation envisaged under the Optional Protocol but not under the Convention. He had been even more surprised by the second suggestion that representative sectors of the population of a country should be involved in drawing up reports and should be informed of the reports submitted by the Government concerned to the Committee, of the questions put to the Government by the members of the Committee and of the answers given. It was quite clear from the Covenant that the dialogue which the Committee had established should be with Governments, which submitted reports to it, and not with other sectors of public opinion. The difficulties and misunderstandings to which the acceptance of that suggestion would give rise could easily be imagined. He personally found it completely unacceptable. The third suggestion that sources of information other than Governments should be sought was equally unacceptable to him. He also had problems with the suggestion that the Covenant should be made an integral part of the legal order of each State. Such a possibility had been envisaged in the Covenant, as had other possibilities, but it was not for the Committee to propose that States should take up one possibility rather than another, when the Covenant left them entirely free to make their own arrangements in that regard.

31. The problems to which the representative of the Secretary-General had alluded were of great importance but the fact remained that they were problems which had been settled in the Covenant, in the Optional Protocol or in the provisional rules of procedure, or on which there was tacit agreement within the Committee. The practices of the Committee were directed towards winning the confidence of States and he did not think that those practices should be changed. It was with those considerations in mind that he had examined the suggestions made by the representative of the Secretary-General.

32. Mr. TARNOPOLSKY said it was unfortunate that the question under discussion had been taken up at such a late hour; the Committee had heard two more or less prepared statements to which it was very difficult to reply off the cuff. In his opinion, it was unfair to raise, at the present stage, an issue which could not be debated fully, whereas it could have been dealt with during the first week of the following session. However, since the matter had been raised, he wished to state his own views on it.

33. First of all, he did not agree with some of the suggestions made in the opening statement by the representative of the Secretary-General and he would certainly be prepared, at an appropriate time, to discuss some of them. It seemed to him, however, that the real issue raised was not whether the Committee agreed or disagreed with some of the points, but whether the representative of the Secretary-General should have made them at all. He was not sure that he understood the significance of the suggestion that, because the Committee was not a United Nations body, the position of the Secretary-General was, in some way, being called in question. The Covenant was perfectly clear as to the involvement of the Secretary-General with the Committee. In article 36 it was stipulated that the Secretary-General should provide the necessary staff and facilities for the effective performance of Committees' functions. Under article 30 the Secretary-General assisted in the organization of the committee's elections. It was quite clear that under article 40, paragraph 3, consultations were envisaged

between the Secretary-General and the Committee on the transmission of material to the specialized agencies, and in his opening statement the representative of the Secretary-General had alluded to the question of relations with the specialized agencies. The Division of Human Rights had many contacts, including contacts with the specialized agencies, and he, for his part, would be extremely interested to know how the specialized agencies regarded the issues which came within the purview of article 40.

34. Turning to the involvement of the Secretary-General in the Committee's agenda, he noted that rule 24 of the provisional rules of procedure stated that, subject to rule 38 of those rules, the Secretary-General or his representative might make oral or written statements at meetings of the Committee or its subsidiary bodies. The representative of the Secretary-General's opening statement was clearly admissible under rule 24 and he personally welcomed the participation of the representative of the Secretary-General. He thought it might be more useful, however, for the Committee to turn its attention to the question of the services provided by the Secretary-General. He considered that the obligations towards the Committee set out under article 36 of the Covenant had never been properly complied with. However, he did not believe that the fault lay with the Division of Human Rights. It was the fault of the overall administration under the Secretary-General that the Committee had never received either adequate staff or adequate facilities for its work. He was not referring to the capacities or abilities of individuals but to overall numbers. There had never been adequate staff to handle communications; for instance, there was no one to deal with the key Spanish-speaking area of the world and that situation had lasted for over a year. There was a similar problem in other respects. The facilities available to the members of the Committee were totally inadequate; there was no reason why there should not be offices and secretarial services available to them.

35. Mr. GRAEFRATH, speaking on a point of order, noted that the previous speaker had used the word "unfair". He was sure that it could not be in connexion with the statement he had made, because he had given notice of that statement two weeks previously.

36. Mr. TARNOPOLSKY said that he wished to apologize if his comments had been taken to imply that the action of any particular individual had been unfair; he had merely felt that at the current stage of the session and in the current circumstances it was unfair to take up the question.

37. Mr. DIEYE said that, in his view, the bodies of the United Nations could not function without the Secretariat, but it was quite certain that the decisions of those bodies were taken by them alone, without the intervention of the Secretariat. He also considered that it was helpful for the Secretariat, which was widely conversant with human-rights issues, to transmit certain ideas and information to the Committee. He did not understand how such activities, which were perfectly justifiable under the provisional rules of procedure, should be viewed as intolerable interference in the Committee's affairs. He did not believe that the Secretariat could influence the members of the Committee or that its actions were in any way binding on them. It was up to the Committee, as a body consisting of experts, to formulate its own rules and to take its own decisions. He had used the services of the United Nations Secretariat on various occasions at different levels. Its role had always been one of assistance; of course, the desire to influence was only human, but he would prefer a dynamic and enterprising secretariat to an amorphous and robot-like one.

38. A point on which he was in complete agreement with previous speakers was that the members of the Committee were independent and impartial experts who needed no guidance from anyone or from any quarter. However, they must remain open-minded. He believed that a dynamic approach or a passive approach could be adopted on human-rights issues. The Committee had to choose which approach it intended to take. He considered that it had chosen its approach in the particular case of the report submitted by the Government of Chile and that its action in respect of that report had constituted progress in the direction of respect for human rights. Human rights, after all, were the Committee's *raison d'être* and its task was to ensure compliance with the provisions of the Covenant.

39. In conclusion, he was in favour of the Secretariat offering advice and information when it was considered appropriate for it to do so, but he, for his part, did not and would not regard the views of the Secretariat as sacrosanct. The Secretariat could not guide or influence him; he was entirely independent, even of his own Government. The members of the Committee were experts independent of the Secretariat and of everyone else, and their sole objective was the advancement of human rights.

40. Mr. BOUZIRI said that, although he respected the right of everyone to raise issues, to raise such an important issue at the present juncture created a problem because not all members would have an opportunity of stating their views on it. The role of the Secretary-General was the subject of eternal discussion: he was the chief administrator of the United Nations but did not execute orders mechanically, and every Secretary-General had taken certain political positions and played a certain political role. Representatives of the Secretary-General, therefore, might also take certain political positions, but he was not sure that when the representative of the Secretary-General in the Committee had made his statement, he had directly touched upon political matters or taken a political stance.

41. Like Mr. Dieye, he (Mr. Bouziri) was an independent expert and completely independent of his own Government. He could not be influenced by the Secretariat and hoped that Mr. Graefrath had weighed the responsibility of stating that the experts in the Committee could be influenced by the Secretariat. For his part, he could not accept that statement. He had not been aware that the representative of the Secretary-General had touched upon certain areas on which consultations were taking place. In his opinion, the statement by the representative of the Secretary-General had been useful because it had raised a number of important subjects for reflection. The statement amounted, as it were, to technical assistance and as such he did not attach any greater significance to it than that. In conclusion, he wished to remind the Committee that its main task was to ensure compliance with the provisions of the Covenant and he did not believe that the statement by the representative of the Secretary-General had had any other purpose than to help the Committee in its task.

42. Mr. LALLAH suggested that the matter under discussion should be taken up at the Committee's next session.

43. Mr. van BOVEN (Representative of the Secretary-General) said that he was particularly glad to have the opportunity to speak to the Committee since at the Committee's next session he was likely to have to fulfil duties elsewhere and might not have a chance to reply to what had been stated. First of all, in the statement to which speakers had referred, it had been his intention to raise certain issues

and certain questions which might be of importance for the future direction of the Committee's work. It had not been his intention to make proposals or recommendations. In his judgement, the questions he had raised reflected cross-sectional views within the Committee. It had not been his intention to take sides. In fact, many of the issues raised in his introductory statement had been touched upon in relation to other agenda items during the session and he therefore thought that events had testified to their relevance. He wished to assure the members of the Committee that he had raised various issues in the interests of partnership between the Committee and the Secretariat. He recognized that the Secretariat should be impartial and objective, but did that mean that the Secretariat was neutral? He did not think that the Secretariat should be a neutral and amorphous organ. In his opinion, that would not be in keeping with the provisions of the Charter. He cared greatly for the independent responsibility of the Secretariat as laid down in Article 100 of the Charter. It was in the spirit of the Charter that all organs established in pursuance of the Charter should promote human rights and fundamental freedoms, and it was against that background and in that spirit that he had raised those issues at the opening meeting of the current session.

44. Sir Vincent EVANS said that he was not convinced of the advantage of including a special item on the matter under discussion in the agenda for the Committee's next session. If it was thought desirable to discuss the matter further, it could be done under the general heading of "Organizational and other matters".

45. The CHAIRMAN said that ample time would be scheduled at the next session for the discussion of general matters of organization and members would be able to take up the question under consideration if they so wished.

The meeting rose at 1.35 p.m.