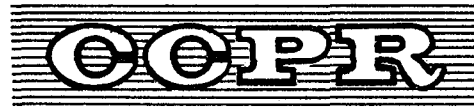


**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



Distr.
GENERAL

CCPR/C/SR.94
27 July 1978

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fourth session

SUMMARY RECORD OF THE 94th MEETING

Held at Headquarters, New York,
on Tuesday, 25 July 1978, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant: initial reports of States parties due in 1977 (continued)

Status of submission of reports by States parties under article 40 of the Covenant

Future meetings of the Committee

This record is subject to correction.

Corrections should be submitted in one of the working languages, preferably in the same language as the text to which they refer. They should be set forth in a memorandum and also, if possible, incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room A-3550.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.55 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 (continued)

Federal Republic of Germany (continued) (CCPR/C/1/Add.18)

1. At the invitation of the Chairman, Mrs. Maier (Federal Republic of Germany) and Mr. Merkel (Federal Republic of Germany) took places at the Committee table.
2. Mr. MOVCHAN said the initial report of the Federal Republic of Germany (CCPR/C/1/Add.18) had been drawn up in accordance with the Committee's guidelines and provided data on how the Federal Republic implemented the International Covenant on Civil and Political Rights. However, it also included a great deal of general discussion, especially when dealing with the self-determination of Germans in the comments on article 1 of the Covenant on page 6. What was the point of including comparative analyses - which were the responsibility of the Committee - as well as considerations which were basically irrelevant and did not correspond to reality? A notable example was contained in paragraph 1 (b) on page 1 of the report, which presented a completely inaccurate account of the rise of the Hitler régime and ignored the general principles of international law. The verdict of the Nuremberg Tribunal, which was a recognized part of international law, explained the reasons for the rise of Hitler and condemned the contributing role of international capital.
3. With regard to article 15 of the Covenant, he noted that paragraph 3 on page 5 of the report, dealing with acknowledgement of the principle of international control, stated that under international law the protection of human rights was not only a domestic matter, but also the basis of peace and justice in the world. Article 15 emphasized the importance of international law, but that aspect of the article was dismissed in a few lines in the report. The Constitution of the Federal Republic embodied the principle of nulla poena sine lege, but by confining itself to arguments relating to that principle, the report failed to provide adequate information in the sense of article 15, which clearly required reference to the general principles of international law. He therefore wished to have more information concerning the implementation of article 15, bearing in mind the fact that the punishment of war criminals was a requirement of international law. He wondered how the Basic Law dealt with that matter and how the Nuremberg decisions were reflected in it. He would like to know what social position war criminals held in the Federal Republic and what access they had to the professions and to the civil service. He also wished to know how the principle of Berufsverbot (prohibition from practising a profession) was being implemented, what relationship existed between the Basic Law and the emergency legislation of the 1970s, and how Berufsverbot applied in that context.

/...

4. He noted that in connexion with article 5 of the Covenant, the report stated on page 8 that the Constitution of the Federal Republic acknowledged human rights as the basis of peace and justice in the world. Furthermore, in connexion with article 20, paragraph 1, of the Covenant, the report, on page 26, quoted the Basic Law to the effect that acts tending to and undertaken with intent to disturb peaceful relations between nations were unconstitutional and a punishable offence. The report also stated that the acts described in article 20, paragraph 2, were punishable under the penal provisions relating to demagoguery, incitement to racial hatred and disturbance of religious peace. Article 20 of the Covenant was not, however, covered by Federal German legislation, for paragraph 2 of that article stated that any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence should be prohibited by law, and the report indicated no suppression of racial hatred and mentioned no legislation prohibiting the advocacy of national hatred. Propaganda fomenting national hatred and the organization of fifth columns had paved the way for German imperialism in the Second World War and the suppression of national hatred, including the prohibition of Nazi propaganda and SS-type organizations, was therefore extremely important. He wondered how the activities of Radio Free Europe in Munich could be reconciled with the above-mentioned provision of the Basic Law regarding acts tending to and undertaken with intent to disturb peaceful relations between nations.

5. In connexion with article 17 of the Covenant, on privacy, the report referred on page 22 to the need to determine priorities among conflicting rights. He would appreciate receiving clarification on that point. Concerning article 18 of the Covenant, the report referred on page 24 to the State's neutrality in questions of ideology and religion and indicated that religious beliefs did not affect civil and political rights or admission to public office. The same clearly did not apply to ideology, which had effects in that regard, even when not accompanied by action, and he wondered why the State was not neutral in that connexion too.

6. With regard to article 19 of the Covenant, the report stated on page 25 that only the right to freedom of expression allowed a permanent spiritual discussion without tutelage and without fear of reprisals, which was a characteristic of a liberal democracy. He wondered whether the application of Berufsverbot for the expression of one's views was consistent with liberal democracy. He also wanted to know what kind of convictions - socialist, communist, Nazi - were used to justify Berufsverbot and what kind of posts and professions it covered.

7. The report stated on page 4 that the most important instrument in protecting basic rights in the Federal Republic was the constitutional complaint, and noted that of the 33,707 complaints lodged between 1952 and 1976, 400 had been successful. In that connexion he drew attention to the references on pages 15 and

(Mr. Movchan)

16 of the report to the binding force and primacy of the law and the provisions for appeals against decisions of State authorities, and inquired how the figure of 400 successful complaints out of 33,707 had been calculated.

8. Mr. URIBE VARGAS said that technological advances had made the right to privacy an increasingly sensitive and important matter. The formal right to freedom was insufficient if the essential dignity of man and respect for the quality of life could be violated through technology. The right of the individual not to be manipulated was of concern to countries at every stage of development and not just highly developed ones like the Federal Republic of Germany, and it was useful to know what provisions of that country's law the developing countries might adopt. The right of privacy was a synthesis of individual rights and equally important for all countries.

9. Mr. PRADO VALLEJO said he welcomed the fact that article 25 of the Basic Law established that the general rules of public international law were an integral part of Federal law and took precedence over it. However, the existence of article 25 of the Basic Law gave rise to certain concerns.

10. First, under a law dated 30 September 1977, persons deprived of their liberty could be kept in isolation for 30 days. However, it appeared that that period could be renewed almost indefinitely. He therefore wondered how that law could be reconciled with article 10 of the Covenant. Furthermore, such isolation made it very difficult for persons deprived of their liberty to obtain legal assistance for their defence, as guaranteed by article 14, paragraph 3 (d), of the Covenant.

11. With regard to article 19 of the Covenant, concerning freedom of expression, he noted that the Criminal Code of the Federal Republic of Germany restricted the effect of that article in respect of the defamation of the Federal Republic, the meaning of which term was not clear. The only restrictions were those enumerated in article 19, paragraph 3, of the Covenant. The provision in the Criminal Code could be interpreted too widely.

12. He also noted from the paragraph of the report concerning article 19, paragraph 3, of the Covenant that the free expression of opinion was limited under article 5 of the Basic Law by the provisions of the "general laws". In his view, that provision was very wide.

13. Turning to article 22 of the Covenant, concerning freedom of association, he noted from page 27 of the report that the right to form political parties was limited to the extent to which such association was in the interests of the Republic or one of its Laender. He therefore wondered what those interests were. While the Federal Republic had entered a reservation on article 22 of the Covenant for the purposes of conformity with article 16 of the European Convention on Human Rights and Fundamental Freedoms, it was not clear whether the European Convention could permit such restriction of article 22 of the Covenant. Since, as indicated in article 25 of the Basic Law, international law took precedence over domestic law, he wondered how such restrictions could be more restrictive than those laid down in article 22 of the Covenant.

14. Mr. KOULISHEV, referring to section A, paragraph 1 (a) of the report of the Federal Republic of Germany (CCPR/C/1/Add.18), said he wished to know what rights laid down in the Covenant did not occur with those contained in the Basic Law, and what their status was in domestic law.

15. He noted from article 25 of the Basic Law that the general rules of public international law were an integral part of federal law. However, the rights laid down in the Covenant were not general rules, since they were contained in a treaty. It was not clear, therefore, how the provisions of the Covenant could take precedence over legislative texts. Their status would seem to be based more on article 59 of the Basic Law, which laid down the manner in which treaties were incorporated in domestic law. However, he wondered whether the text of treaties incorporated in domestic law had a status equal to that of other legislative texts. Thus, the principle of lex posterior derogat priori would seem to apply.

16. Noting that the existence of a federal State introduced complications in the implementation of treaties in domestic law, he wished to know how treaties were implemented in the domestic law of the Federal Republic, given the existence of the Laender. He also wondered how cases of contradiction between treaties and the law of the Laender were resolved.

17. Turning to the brief historical review in section A, paragraph 1 (b) of the report, he expressed the view that the placing of the forces of the left and the right on an equal footing had to some extent freed from responsibility those who were actually responsible for the events in the interwar period. He felt particularly sensitive about the matter, since he would not like a shadow to be cast over the memory of his compatriot, Georgi Dimitrov. In general, more clarity was needed in recounting the events of the interwar period.

18. Concern had been expressed about the possibility of prohibiting certain political parties under article 21 of the Basic Law, and about the restrictions under article 33 (4) of the Basic Law, and their interpretation by the Federal Constitutional Court, that might affect the equal right of access to public office. While such restrictions might be justified if clearly directed against forces which used violence with a view to overthrowing the constitutional régime, in practice they could often be interpreted more widely and applied to groups or individuals that remained strictly within the law and whose activities were not aimed at overthrowing the régime.

19. As to the reference in section A, paragraph 2 (a), to the constitutional complaints that had been lodged with the Federal Constitutional Court, he wished to know what proportion of the complaints related to alleged violations of human rights and freedoms.

20. With regard to article 18 of the Covenant, concerning the right to freedom of thought, conscience and religion, he noted that the relevant paragraphs of the report appeared to be confined to religious matters. The conclusion might therefore easily be drawn that the enjoyment of civil and political rights,

/...

(Mr. Koulishev)

particularly the right of equal access to public office, might be affected by the exercise of the right to freedom of thought and conscience.

21. Lastly, he welcomed the fact that, in accordance with article 20, paragraph 1, of the Covenant, propaganda for war was prohibited by federal law. In contrast, however, it was not clear whether a similar prohibition by law existed in the case of any advocacy of national hatred, as required under article 20, paragraph 2.

22. Mr. MORA ROJAS noted, in connexion with article 15 of the Covenant, that the report stated on page 21 that the prohibition of criminal laws with retroactive effect was the basis of criminal proceedings in the Federal Republic of Germany. In that respect, he wished to know whether the principle of retroactivity was absolute or whether it referred only to those cases where new criminal law might prejudice the situation, since, in general, where a new criminal law might benefit the accused, the principle of retroactivity was usually permitted.

23. With regard to legal capacity, which was covered by article 16 of the Covenant, he noted from page 21 of the report that the legal capacity of a human being began with the completion of birth. However, legal capacity implied two possibilities, namely the exercise of legal capacity or simply the enjoyment thereof. Furthermore, legislations usually introduced an extension of legal capacity even before birth. He therefore wished to know the scope of the Federal law in that respect.

24. With regard to article 24 of the Covenant, he noted that the report stated on page 31 that pursuant to article 6 (5) of the Basic Law, illegitimate children must be given the same conditions as legitimate children. It was not clear, however, whether in reality the rights of legitimate and illegitimate children were the same. Moreover, the very term "illegitimate" was discriminatory.

25. He was also concerned to note from section A, paragraph 2 (c) of the report - according to his interpretation - that, if the person subject to a norm did not respect it, he was not permitted to enjoy certain fundamental rights. That could have incalculable consequences, since there could be many cases where a group or individual did not feel bound by certain norms. That question needed to be clarified, since the report had been widely publicized in the Federal Republic, thereby constituting an important instrument of interpretation of the law. It was becoming increasingly important to determine whether a democratic system should permit the functioning on an equal footing of organizations dedicated to the abolition of fundamental freedoms. The provision in question would seem to violate articles 19, 21, 22, 25 and 26 of the Covenant.

26. Mrs. Maier (Federal Republic of Germany) and Mr. Merkel (Federal Republic of Germany) withdrew.

/...

STATUS OF SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

27. The CHAIRMAN recalled that the Committee had decided to send reminders to States parties whose reports had not been received. Accordingly, he read out the draft of a note verbale to be sent to States parties whose reports, due in 1977 under article 40 of the Covenant, were still outstanding.
28. Mr. OPSAHL suggested that, to encourage submission of reports, the note verbale might also inform States parties that the Committee wished to deal with as many reports as possible at its sixth session.
29. The CHAIRMAN said the Committee had enough reports to occupy it at its fifth session. There would be sufficient time to call for reports for the sixth session.
30. Sir Vincent EVANS said he feared that Mr. Opsahl's suggestion might be counterproductive. Governments might put off work on their reports, feeling that they had another six to nine months to prepare them.
31. Mr. OPSAHL said that, on the other hand, it would be undesirable to send a later reminder informing Governments that time was running out.
32. The CHAIRMAN suggested that the Committee should devote some time at a later meeting to Mr. Opsahl's suggestion, as well as to other ideas, e.g. the new practice adopted by the Committee on the Elimination of Racial Discrimination of contacting States parties to inquire how work on their reports was proceeding. For the time being, he proposed that the Committee should adopt the draft note verbale without change and dispatch it.
33. It was so decided.

FUTURE MEETINGS OF THE COMMITTEE

34. The CHAIRMAN said the Committee had to take a decision regarding its future meetings. He asked the Chairman/Rapporteur of the Working Group to inform the Committee of the possible dates for future meetings.
35. Mr. TARNOPOLSKY, speaking as Chairman/Rapporteur of the Working Group, said the Working Group, together with other members of the Committee, had discussed the issue of future meetings and adopted the following recommendations.
36. In response to comments favouring a larger interval between the spring and summer sessions, the Working Group recommended that the spring session for 1979 should begin one week earlier than originally proposed: the Committee would meet from 9 to 27 April 1979 and the Working Group would convene a week earlier, on 2 April.

/...

(Mr. Tarnopolsky)

37. The Working Group recommended that the second 1979 session to be held in Geneva, should also be deferred for one week: the Committee would meet from 30 July to 17 August, and the Working Group would convene a week earlier, on 23 July.

38. With regard to the Committee's third 1979 session, to be held in Geneva, the Working Group had agreed that it should begin on Monday, 15 October. However, it had not resolved the question of whether the session should last for two weeks or three.

39. For 1980, the Working Group had agreed to recommend that the Committee should hold three sessions: one in New York in March, one in Geneva in July, and one in Geneva in October.

40. Mr. MAZAUD (Assistant Director, Division of Human Rights) said that services and facilities would be available to the Committee in New York and Geneva on the proposed dates. Since the Committee normally held only two sessions a year, it was not yet clear what the financial implications of holding a third session would be. It was desirable to determine whether the Committee would in future years hold two four-week sessions or two three-week sessions and one two-week session.

41. The CHAIRMAN said that, if the Committee wished to set up a Working Group for its fifth session, to be held in October 1978, that Working Group would have to work within the time allotted to the Committee.

42. Sir Vincent EVANS said that, at its previous session, the Committee had decided that it would be necessary for the Working Group to meet before the session. The Committee should therefore now consider whether that Working Group should be convened prior to the fifth session.

43. With regard to the dates for 1979, he asked whether Good Friday or Easter Monday were holidays in New York and, if so, whether that would disrupt the Committee's schedule.

44. Mr. MAZAUD (Assistant Director, Division of Human Rights) said those days were not official holidays at Headquarters.

45. The CHAIRMAN said that, if there was no objection, he would take it that the Committee approved the proposed schedule of meetings.

46. It was so decided.

47. The CHAIRMAN said that, since the financial implications of the Committee's fifth session had been calculated on the assumption that it would last for only two weeks, the Committee could either seek authorization from the Committee on Conferences for additional meeting time for its Working Group, or establish a Working Group during that session to deal with any communications requiring urgent action. Alternatively, it might be possible to set aside one day of the session for the Working Group.

/...

48. For the sake of future planning, he said that there appeared to be a consensus in the Committee that its future meetings should be held mainly in March, July and October.

49. Sir Vincent EVANS said it was not practicable for the Working Group to meet during the fifth session. If it did so, it would become necessary to defer work on a number of communications until April 1979. It was important that the Committee should keep its work on communications up to date, and there would not be enough time for the Working Group to meet during the Committee's session. The Working Group might not require a full week, but it should meet for at least three days.

50. Mr. LALLAH recalled that a suggestion had been made in the Committee for the establishment of an intersessional working group, as Sir Vincent Evans had stated. However, the Committee had decided that, rather than establish an intersessional working group, it should hold a third session in 1978, precisely to deal with the volume of reports which had accumulated.

51. He felt that it would be a waste of time to try to obtain authorization for the Working Group to meet prior to the session. Perhaps the best solution would be to preserve the continuity of the Committee's existing Working Group. For his part, he was prepared to continue in the Working Group even if it meant working additional time.

52. Mr. MOVCHAN said he fully supported the view of Mr. Lallah that the Committee's October 1978 session should be devoted to the consideration of reports. Since the Committee, in dealing with reports, found itself obliged in practice to observe certain intervals, in order to give representatives of reporting States time to prepare their answers, those intervals might be used for meetings of the Working Group, which would thus have more time than was expected.

53. With regard to the question of whether the Committee should hold two or three sessions a year, he agreed with the recommendations of the Working Group but felt the financial implications should be given further consideration and that the matter should be discussed again at the fifth session.

54. The CHAIRMAN said the Committee should perhaps decide whether it wished to maintain its present Working Group, on an open-ended basis, for the fifth session.

55. Mr. TARNAPOLSKY speaking as Chairman-Rapporteur of the Working Group, said that, if it were possible, he would favour the suggestion of Sir Vincent Evans. However, since it was not, perhaps Mr. Lallah's suggestion should be adopted. If it were, it would be necessary to appoint alternates. Moreover, in order to prepare materials for the Working Group, its Chairman should arrive in Geneva two or three days before it convened to begin preparing drafts.

56. He informed the Committee that the Working Group intended, at a later stage, to propose that individual rapporteurs be appointed to deal with specific cases. It was likely that, by the Committee's fifth session, it would begin to receive

/...

(Mr. Tarnapolsky)

some replies from States parties involved in communications which it had declared admissible at its third session. The Committee should consider appointing rapporteurs for those cases. With that in mind, it might be possible to proceed without setting aside time for the Working Group at the Committee's fifth session.

57. The CHAIRMAN said that, with regard to the question of appointing alternates, the Committee might wish to adopt a decision on the proposal that it empower the Chairman to call on Committee members, not necessarily members from the same region, to act as alternates. At the fifth session, there should be no difficulty: if neither a Committee member nor his alternate were present at the session, appropriate action could be taken at that time.

58. With regard to the proposal that the Chairman of the Working Group should begin work a few days prior to the session, he requested that the representative of the Secretary-General inform the Committee of the financial implications.

59. Mr. MAZAUD (Assistant Director, Division of Human Rights) said the proposal involved only subsistence costs, which should not exceed some \$300. Moreover, even that modest expenditure might later be offset through savings on travel and subsistence costs of other members of the Committee who might be unable to attend all or part of a session.

60. Mr. LALLAH said he saw no need for a decision on the suggestion that individual rapporteurs be appointed, since that practice was already being used in the Working Group.

61. Mr. MORA ROJAS said that, before adopting the suggestion that the Chairman of the Working Group should arrive in Geneva a few days early, the Committee should ascertain whether the staff members of the Geneva Office necessary for the work in question would be available to work on those days.

62. The CHAIRMAN said that, if there was no objection, he would take it that the Committee approved the proposal that its existing Working Group should be maintained.

63. It was so decided.

64. The CHAIRMAN said that if there was no objection, he would take it that the Committee adopted the proposal to request the Chairman/Rapporteur of the Working Group to travel to Geneva a few days before the fifth session to prepare drafts for the Working Group, provided that the necessary staff members in Geneva would be available to help him.

65. It was so decided.

66. The CHAIRMAN noted that the Committee had taken no final decision regarding its October 1979 session and would revert to that question later.

/...

(The Chairman)

67. The Committee had also taken no decision on the question whether it should send reminders to States which had promised the Committee additional information; it would revert to that question too at a later time. The Committee might find that it was in a better position to judge the question once it had taken up the case of a country which had submitted additional information. For the time being, however, only States which had submitted initial reports would be sent reminders.

68. He suggested that, at its fifth session, the Committee should take up the reports of the Union of Soviet Socialist Republics, Mauritius and Chile, which might be wholly or partially postponed from its current session, as well as the two new reports it had received from Bulgaria and the Byelorussian Soviet Socialist Republic. It might also deal with two of the four countries which had submitted additional information, namely Cyprus, Ecuador, Finland and the Syrian Arab Republic.

69. Mr. TOMISCHAT said the Committee might have time to deal with either Bulgaria or the Byelorussian Soviet Socialist Republic, but not both.

70. The CHAIRMAN said the Committee normally took up reports in order of arrival. He therefore suggested that at its fifth session the Committee should take up: first, the three reports postponed; second, the report of Bulgaria or that of the Byelorussian Soviet Socialist Republic, whichever had arrived first; and third, the additional information from Ecuador, and from one of the three other countries which had submitted additional information, to be selected by the Chairman at a later time on the basis of the date of submission.

71. It was so decided.

The meeting rose at 1.05 p.m.