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ON CIVIL AND
POLITICAL RIGHTS**



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SUMMARY RECORD OF THE 77th MEETING

Held at Headquarters, New York,
on Wednesday, 12 July 1978, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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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

Norway (CCPR/C/1/Add.5)

1. At the invitation of the Chairman, Mr. Vraalsen (Norway) took a place at the Committee table.
2. Mr. VRAALSEN (Norway), introducing the initial report of Norway (CCPR/C/1/Add.5), said that the Norwegian Government regarded the entry into force of the International Covenant on Civil and Political rights as an important step towards the more effective implementation of human rights. Norway had not only ratified the Covenant, but had also recognized the competence of the Human Rights Committee to receive and consider communications from States in accordance with article 41, as well as from individuals under the Optional Protocol. It was his Government's view that the establishment of the Human Rights Committee represented an important milestone in United Nations efforts to ensure the effective protection of basic human rights.
3. As a significant example of the importance which his Government attached to work in the field of human rights, he noted that in 1977 it had submitted to the parliament a detailed report on the international protection of human rights. That report had specifically stated that the Government would continue to place great emphasis on the endeavours to secure consistent and effective procedures for dealing with human rights in the Human Rights Committee. The report had been thoroughly discussed in the Storting and was strongly supported by the Norwegian people.
4. In the report before the Committee (CCPR/C/1/Add.5), the Norwegian Government asserted that its municipal law was now in conformity with the requirements of the Covenant. It should be noted, however, that the report had been transmitted before the Committee had prepared its guidelines for reporting under article 40. The Norwegian Government hoped that its report met the requirements of those provisions, but it was prepared to supply any additional information that might be needed. It looked forward to fruitful collaboration with the Human Rights Committee, in the conviction that a constructive dialogue between the Committee and the States parties to the Covenant would provide valuable contributions to the work of achieving universal respect for human rights.
5. Mr. GRAEFRATH commended the Norwegian report for providing much useful and detailed information on how the provisions of the International Covenant on Civil and Political Rights were guaranteed in Norwegian municipal law through corresponding Norwegian law, a method admissible under article 2 of the Convention. However, the report was somewhat deficient in indicating the specific measures taken to ensure the enjoyment of human rights. He regretted that it contained

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(Mr. Graefrath)

nothing about the implementation of article 3 of the Covenant and that, in dealing with article 6, the Government only explained its reservation without indicating specific measures relating to the reduction of infant mortality, life expectancy, criminality, and so on. Information about such measures would illustrate how effectively the right to life was being protected.

6. With respect to article 7, he wondered whether there were any rules in Norway regarding medical and scientific experiments on individuals. As to the reservation expressed in the report regarding article 10, paragraph 3, he noted that the purpose of that paragraph was not to exclude common activities for juveniles and adults but merely to ensure recognition of the special situation of juveniles. With respect to the report's comment on article 14, paragraph 7, he noted that the reservation expressed was not necessary, since all legal codes recognized the fact that a procedure for resumption of a case might be required.

7. He wondered whether any efforts were being made in Norway to reintroduce the bill prohibiting war propaganda in compliance with article 20, and what measures were being taken for the protection of children in accordance with article 24. Finally, he would like to know how Norwegian law guaranteed the equal right to participate in public affairs under the terms of article 25 and whether the members of certain political parties were excluded.

8. Sir Vincent EVANS said that it was very important to provide a full description of the specific measures in force regarding each right and the restrictions imposed on the limitation of those rights, both for comparative purposes and to provide a useful exchange of experience, although he recognized that the report had been submitted before the Committee had prepared its guidelines. The report was nevertheless very frank in dealing with areas in which the Norwegian Government had had difficulty in giving effect to the provisions of the Covenant; that was helpful and necessary in order to promote a constructive dialogue between the Committee and the reporting States. The report showed Norway's scrupulous regard for human rights and raised a number of points regarding the interpretation of the Covenant which the Committee should consider.

9. The dualistic method described in the introduction to the report, whereby Norwegian law and practice were stated to be in conformity with Norway's obligations under the Covenant even though the provisions were not directly applicable as part of its domestic law, was common and legitimate, but some clarification was required. Firstly, although the provisions of the Covenant were not incorporated in Norway's domestic law, could they nevertheless be invoked as an aid to interpreting the provisions of domestic legislation and as a standard for the administrative authorities, specially in the exercise of discretionary powers? Secondly, the "principle of 'legality'" referred to in paragraph 1 on page 2 was extremely important in ensuring the protection of human rights, and he would like some clarification as to how that principle operated. With respect to the statement that "the authorities must be empowered by statutory law ... in order to intervene in the sphere of legal rights of citizens," he wondered what the term "legal rights" meant for that purpose. Did the principle of "legality" mean, for

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(Sir Vincent Evans)

example, a legally enforceable principle of the right of association except in so far as it was subjected to restrictions under a law adopted by the parliament?

10. In connexion with article 2, the report stated that anyone who felt his rights had been violated might take legal action before the courts. That did not mean, however, that such a person could invoke the provisions of the Covenant, because the Covenant was not incorporated into domestic law. He also wondered whether the Ombudsman referred to in the same section of the report was empowered to make decisions only on the basis of Norwegian domestic law or whether he could apply the provisions of the Covenant directly.

11. He was surprised that the report made no reference to article 3 of the Covenant, and wondered whether the problem referred to in that article did not exist in Norway. He noted the reservation expressed with respect to article 6, paragraph 4, but was concerned that there seemed to be no provision for a review of the conviction and the sentence.

12. He suggested that the section of the report dealing with article 8, paragraph 3, should be referred to the International Labour Organisation. With regard to article 9, paragraph 5, the report stated that the Norwegian authorities assumed that the Covenant did not prevent domestic law from stipulating specific terms and conditions for the award of compensation for deprivation of liberty. That was clearly inconsistent with the provisions of article 9, paragraphs 1, 4 and 5. The report made no reference to article 11, which he assumed was being observed.

13. With respect to article 14 of the Covenant, the report made no mention of the provision in paragraph 1 stipulating that "in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". It merely provided assurance that Norwegian municipal law complied with the letter and spirit of the Convention. It would be helpful to know how the independence and impartiality of the judiciary was ensured in Norway and whether or not the press and public could be excluded from a trial. The Committee should also consider the question of interpretation of the Convention raised in connexion with article 14, paragraph 3 (d). With regard to the right of persons accused of criminal offences to be tried in their presence, to receive legal assistance and to be informed of their right to legal assistance, he noted that mention was made in the report of parallel provisions in article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, if the provisions of article 14, paragraph 3 (d), of the Covenant were compared with those of article 6 of the European Convention, it would be seen that the latter did not stipulate that an accused person must be tried in his presence or be informed of the right to legal assistance. The report stated that in Norway the

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(Sir Vincent Evans)

there accused was not summoned to, or informed of, appeal proceedings before the Supreme Court; he asked what were the reasons for that practice. Whether the presence of the accused at ~~legal~~ proceedings could be dispensed with without violating the provisions of the Covenant depended on the interpretation given to the phrase "to be tried in his presence" and on whether the appeal process was regarded as an integral part of the trial. He would appreciate the views of the Norwegian Government on that matter.

14. Article 23, relating to protection of the family, was of great importance at a time when the concept of the family as the basic unit of society was ~~under constant attack and was~~ being weakened in some countries. Accordingly, he sought information concerning the measures adopted by the Norwegian Government in pursuance of that article. Article 24, concerning the protection of children, was also important, especially in view of the growing number of mothers who were employed full-time. He requested information regarding the efforts of the Norwegian Government to deal with the problems of the children of working mothers.

15. Mr. URIBE VARGAS observed that the institution of ombudsman was widely advocated as an alternative means of strengthening human rights. Since many developing countries were considering the establishment of such an institution, it would be helpful to have information on the role played by the Ombudsman in Norway in protecting individual rights and freedoms. In many Latin American countries, for example, the institution of ombudsman would provide citizens with a most useful alternative to expensive litigation and would supplement the traditional machinery for the protection of human rights. He inquired to what extent Norwegian citizens could invoke the provisions of the Covenant in calling for action by the Ombudsman, in view of the fact that the Covenant was not automatically incorporated into Norwegian municipal law.

16. Mr. KOULISHEV said that the report submitted by the Government of Norway provided useful information concerning not only the application and interpretation of the Covenant by that country but also the general question of the relation between international law and Norwegian municipal law. He noted with interest the mechanism referred to in the report as the "ascertainment of normative harmony", which had been used in Norway to ensure that domestic law was in conformity with the provisions of the Covenant. He hoped that the amendments proposed to existing legislation, or new legislation that was under consideration, might enable Norway to withdraw some of the reservations it had entered with regard to various provisions of the Covenant.

17. He would like to know whether the principle of "legality", which seemed to play an important role in Norway in guaranteeing human rights, was a constitutional principle or simply a rule of customary law, and how the principle was put into practice. He also inquired what the functions and competence of the Ombudsman were and how the institution worked in practice.

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(Mr. Koulishev)

18. It was regrettable that the report contained no information regarding the implementation of article 3 of the Covenant, relating to equality of the sexes. There was hardly a country in the world which did not have some problem in that area, and he therefore requested further information on the situation in Norway.

19. With regard to article 6, he noted the reservation entered by the Norwegian Government with regard to paragraph 4 and asked whether the death sentence had ever been pronounced by a court martial in the post-war period and, if so, how many times.

20. He asked whether the revisions to the Criminal Procedures Act referred to in the report in connexion with article 9 and article 14, paragraph 3 (d), had been adopted. The report indicated that, under the existing Act, no appeal could be lodged before the Supreme Court in respect of the assessment of evidence in connexion with the question of guilt. He asked whether any changes had been made in Norwegian law so as to comply with article 14, paragraph 5. With regard to article 14, paragraph 7, he asked in what cases it was possible to institute a resumption of a case to the disadvantage of an individual who had already been convicted.

21. As to religious equality, he sought further information regarding the precise privileges enjoyed by the national church in Norway.

22. It was regrettable that Norway had entered a reservation with regard to article 20, paragraph 1, of the Covenant, on the ground that its provisions might be contrary to the principle of freedom of expression. Freedom of expression in Norway was in fact already subject to a number of restrictions in cases such as defamation of character, the publication of obscene materials and incitement to racial, national or religious hatred, and it would be only logical to impose similar restrictions on propaganda for war. Such action would, moreover, be in keeping with the trend in international law to prohibit the threat or use of force.

23. The Norwegian Government indicated, in reference to article 22, that not all trade unions enjoyed the right of negotiation. That right had been established for all in article 8 of the Covenant on Economic, Social and Cultural Rights, and he asked in which specific cases trade unions in Norway did not enjoy it.

24. Lastly, he requested further information regarding measures adopted to protect the family and children in pursuance of articles 23 and 24 of the Covenant.

25. Mr. HANGA said that he would have welcomed comments by the Norwegian Government on the articles of the Covenant that were not dealt with in its report (CCPR/C/1/Add.5). He noted with interest the mechanisms employed in Norway to harmonize international law and municipal law. It was particularly interesting that, in cases in which there seems to be a conflict between the provisions of the Covenant and Norwegian law, the courts either presumed that municipal law conformed to international law or interpreted it in such a manner that it fulfilled the requirements laid down in international law. He asked whether the courts were

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required to decide in such a manner in all cases, since the application of the provisions of the Covenant in Norway could be effectively assured only if the presumption or interpretation referred to in the report was obligatory. With regard to the principle of "legality", he asked whether there existed in Norway any administrative remedies which could be sought by individuals when their rights in accordance with that principle were infringed.

26. Article 1 of the Covenant proclaimed the right of all peoples to self-determination. He would like to know whether under the Norwegian legal system that right was considered to be an essential condition of international legal order and peace.

27. With regard to capital punishment, he asked in what circumstances the death penalty could be imposed in Norway and whether Norwegian law on that point was in conformity with article 6, paragraph 2. He welcomed the fact that Norwegian law was fully consistent with the provisions of article 7. That article did not, however, deal expressly with an important matter that was of increasing relevance, namely, the sale of human organs for medical purposes, and he sought information regarding the relevant case law in Norway, if any. With regard to article 8, he asked whether Norway had ratified ILO Convention No. 105 concerning the abolition of forced labour.

28. He would like to know whether there were any legal remedies in Norway for defendants in criminal cases when judicial proceedings dragged on excessively. He noted that Norwegian law provided for monetary compensation to individuals who had been wrongly convicted of crimes and asked whether any form of moral compensation existed there, as it did in many countries.

29. Referring to article 14, he asked whether there were any specialized tribunals which dealt with labour disputes or financial, social and administrative matters, and whether every effort was made to ensure the application of the principle of equality before the law. With regard to article 17, the 1915 Act regulating the right to monitor postal and telegraphic dispatches and telephone conversations in Norway would seem to be out of date, in view of technical developments since that time. He therefore sought information concerning the contemporary case law relating to the right to privacy.

30. Referring to article 18 of the Covenant, he noted that there was no equality of religion in Norway. He wondered what the legal or political implications of that situation might be.

31. With regard to freedom of expression, he wondered whether the broadcasting media were a government monopoly and whether all sectors of the population were afforded an opportunity to present their views. Where the prohibition of war propaganda was concerned, he could see no contradiction between the provisions of article 20 of the Covenant and those of article 19 concerning freedom of expression.

32. With respect to article 21 of the Covenant, he wondered what effect the principle of "legality" referred to in that connexion in the Norwegian report had

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(Mr. Hanga)

on guarantees of the right of assembly. It would be helpful to have further information on measures adopted in Norway to implement the provisions of article 22. For example, the report referred to the right of negotiation of some trade union bodies. Did that mean that trade unions had the right to conclude collective agreements? A clarification was needed.

33. He wondered what legal provisions existed in Norway to ensure equality of rights and responsibilities of spouses, as called for in article 23, paragraph 4, of the Covenant. With regard to article 26, it would be helpful if the representative of Norway could provide some clarification of the meaning of the words "objective grounds" used in the report. Finally, in connexion with article 27 of the Covenant, he noted that the English text of the Norwegian report used the term "Gypsies" while the French version referred to "nomades"; he wondered whether the two terms corresponded completely.

34. Mr. TARNOPOLSKY expressed the hope that, following the distribution of the Committee's guidelines, Norway would provide the Committee with copies of legislative and constitutional provisions relating to the Covenant. He commended the Government of Norway for having been among the first to ratify the Covenant and the Optional Protocol and to make the declaration under article 41 of the Covenant.

35. The Norwegian Constitution appeared to contain provisions constituting a bill of rights. He wondered what was the status of such provisions in Norway. For example, could an individual who wished to challenge the right of the authorities to restrict his movements or activities invoke a constitutional principle as a basis for invalidating legislation? What remedies did he have in order to convince a court that a given statutory provision was in conflict with a fundamental right?

36. It would be helpful to know if any legislation existed in Norway ensuring equal civil and political rights for men and women and, if so, what machinery had been set up to enforce it.

37. Further information was needed regarding the significance of the term "special legislation" used in the Norwegian report in connexion with article 4 of the Covenant, in order to determine whether such legislation was consistent with paragraph 2 of that article. Similarly, some clarification was needed of the words "under normal conditions", used in connexion with article 6; for example, were death sentences ever imposed in peacetime and, if so, for what crimes?

38. Where article 7 of the Covenant was concerned, it would be useful to have additional information regarding the treatment of prisoners in solitary confinement and to know whether it was possible for an individual to argue that the sentence imposed on him was so excessive as to constitute cruel and unusual punishment. With regard to article 9, he wondered whether it would be possible for the Committee to be given further information on the standard rules of criminal procedure referred to in the report. It would also be useful to know what were the circumstances outside the scope of criminal proceedings in which an individual

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(Mr. Tarnopolsky)

might be deprived of his liberty. With respect to article 10, further details were needed concerning the procedures for trial and treatment of juvenile offenders. Further information should also be provided regarding the laws referred to in the paragraphs of the report relating to articles 12 and 13 of the Covenant. In connexion with article 14, he wondered what provisions existed regarding the independence of the judiciary and whether any procedure existed for the provision of legal assistance.

39. Further details should be provided regarding the legal provisions referred to in connexion with article 17 of the Covenant. It would also be useful to have additional information concerning legislation which imposed restrictions on the right to privacy and on the rights set forth in articles 19, 20, 21 and 22 of the Covenant. As for article 18 of the Covenant, he asked what was the situation in Norway with regard to the treatment of conscientious objectors.

40. Further details should be provided regarding measures to ensure equality of rights of spouses, as called for in article 23 of the Covenant, and on any provisions existing in Norway for the removal of a child from the family with a view to his protection in accordance with article 24.

41. With regard to article 25, he asked whether any special procedures existed in Norway to enable an individual to appeal against unreasonable restrictions, or whether such cases were handled by the ordinary courts.

42. He had some doubt as to whether section 135a of the Norwegian General Civil Penal Code, the text of which was reproduced in the report, specifically prohibited discrimination as required under article 26 of the Covenant. He wondered whether there was any other legislation specifically prohibiting discrimination.

43. He recalled that, in ratifying the Optional Protocol to the Covenant, Norway had expressed a reservation to the effect that it did not consider the Committee competent to consider a communication from an individual if the same matter had already been examined under other procedures of international investigation or settlement. A further explanation of that reservation would be useful.

44. Mr. LALLAH said that the initial report submitted by Norway was generally very satisfactory. However, it would have been helpful if more information had been provided concerning legislation designed to give effect to the Covenant, particularly since the provisions of the Covenant were not regarded as having the force of law in themselves. It would also be useful to know the extent to which such legislation restricted the scope of the provisions of the Covenant. It might be worth while to request the Government of Norway to provide a supplementary report containing such details.

45. It would also be useful to have further information regarding the remedies available to individuals not provided with legal assistance, the time-limit for prosecution of an accused, the maximum length of time for which individuals could be detained without trial and the conditions governing the granting of bail.

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(Mr. Lallah)

46. Referring to the section of the Norwegian report relating to article 23 of the Covenant, he said that further information should be given regarding legislation governing the equality of rights of spouses, the treatment of individuals who married foreigners and the rights of residence of spouses not possessing Norwegian nationality. He would also like information on the allocation of public funds to ensure equal treatment of men and women in such institutions as universities and the civil service, as well as the number of men and women respectively employed at supervisory levels in the civil service.

47. With regard to article 17 of the Covenant, he noted that the Norwegian legislation regulating the right to monitor postal and telegraphic dispatches and telephone conversations had been enacted as long ago as 1915. He wondered whether judicial permission was needed for such activities and whether the individuals concerned were informed that they were under surveillance.

48. With regard to article 19, he asked what measures had been taken to ensure that all shades of political opinion were reflected by the media.

The meeting rose at 1.05 p.m.