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Forty-first session

SUMMARY RECORD OF THE 1042nd MEETING

Held at Headquarters, New York,
on Wednesday, 27 March 1991, at 3 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.10 p.m.

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

Second periodic report of India (CCPR/C/37/Add.13) (continued)

1. At the invitation of the Chairman, Mr. RANASWAMY (India) took a place at the Committee table.

2. The CHAIRMAN invited members of the Committee to make their closing comments on the second periodic report of India.

3. Mr. ANDO, referring first of all to the question of reservations, said that, while a Government had the right to enter reservations when acceding to a treaty or covenant, and to require that the provisions of the international instrument be consonant with those of domestic legislation, too legalistic an approach could be counter-productive in the field of human rights, particularly where domestic law was clearly at variance with international human rights standards.

4. With regard to minorities and their rights (art. 27 of the Covenant), he said that, while he could see the need in a country such as India for a criterion which would encourage assimilation and social cohesiveness, and had duly noted the comment (in para. 134 of the report) that the reference to "ethnic" minorities did not apply to Indian society, there were, in fact, many such minorities, particularly in the border regions, and it was important to enable them to enjoy the right to self-development, both culturally and in policy-making.

5. In conclusion, he said that, while India remained what had been termed "the largest democracy in the world", it was evident that much remained to be done to bring about de facto equality of rights between the individuals who made up society as a whole.

6. Ms. CHANET said that the second periodic report had highlighted some of the difficulties India had experienced in implementing the Covenant, partly as a result of the country's sheer size, economic problems and demographic composition, and its relatively brief period of independence.

7. Also evident from the report was the fact that, although the Indian Government attached due importance to the Covenant as a basic human rights document, there were a number of divergent interpretations of the Covenant's scope, and many of its provisions, especially those in articles 19 and 22, did not seem to apply in India. Similarly, the system of preventive detention seemed to fall within the scope of the reservations entered by the Government of India, and she noted that detainees did not have the right to claim compensation from the authorities even if their detention had been unlawful. The effect of the reservations was that the Government did not have to make a statement of derogations, as was required under article 4 of the Covenant.

(Ms. Chanet)

8. The Government did not consider that it was derogating in the case of article 6, and maintained that deprivations of the right to life under the special powers granted to the police and the armed forces could not be construed as arbitrary. She agreed with the views expressed by Mr. Lallah and Mr. Wako on the use of firearms by such forces in the preservation of public order, and regarded the provisions of the Armed Forces (Special Powers) Act as incompatible with article 6 of the Covenant.

9. With regard to article 14, she said that it seemed from the replies given by the representative of India that jurisdictions in which terrorist acts occurred were regarded as exceptional and therefore outside the scope of the article. They were, however, defined not by law but by means of a simple notification; in her view such exceptions must be made on a case-by-case basis, if they were to be compatible with the terms of article 14.

10. Finally, she was pleased to note the progress made in eliminating "dowry deaths" and the legislation recently enacted to prohibit the practice of sati. In the former case, she thought that legislation under civil law to do away with dowries altogether would solve the problem once and for all.

11. Mr. WENNERGREN said that he had the impression from the report that, generally speaking, the human rights situation in India was favourable, even if some deficiencies persisted. He drew attention, however, to the absence of any provisions in the Constitution dealing expressly with torture: such provisions, based on those in the Covenant, were of fundamental importance. In that regard, article 21 of the Constitution was too general in scope. He also considered that the reservations entered by the Government tended to make it difficult to see clearly to what extent the Covenant was actually being implemented in India.

12. Mrs. HIGGINS said that members would be sympathetic to the Indian Government's endeavours to control terrorism, and she paid tribute to the independence and impartiality of India's Supreme Court. Other positive aspects emerging from the report included the new provisions on legal aid, the measures to prevent "dowry deaths" and sati and the efforts being made on behalf of the scheduled castes and tribes.

13. However, it should be pointed out that rights limited other than by a specific limitation clause in the Covenant could only be restricted by means of a derogation. The National Security (Amendment) Act and the Terrorist and Disruptive Activities (Prevention) Act contained provisions which were clearly incompatible with certain articles of the Covenant: in the case of article 9, for example, there was no limitation clause which would cover those two Acts. It must therefore be concluded that a formal derogation under article 4 was required, and that it could not be avoided merely by a decision not to categorize those Acts as emergency legislation.

14. The representative of India had said in his replies that article 9 of the Covenant was to be interpreted in the light of article 22 of the Constitution because of the reservations entered by the Government. She felt some misgivings

(Mrs. Higgins)

about such reservations, the effect of which was to render certain provisions of the Covenant inapplicable in India. It had yet to be determined whether that was the case with article 9. A derogation, of course, would have to be justified by reference to the exigencies of the situation within the meaning of article 4 of the Covenant: she doubted whether the two Acts she had mentioned could be so justified.

15. Mr. FODOR said that during the consideration of the report the Committee had identified a number of fields in which legislation and practice in India were not compatible with the terms of the Covenant, such as the implementation of the Covenant in "disturbed areas", arbitrary killings and arrests in some States, the excessive powers granted to the security forces, and the failure to bring proceedings against police offenders. At the same time, he felt confident that India, with its democratic traditions and institutions, would succeed in overcoming its difficulties with regard to implementation of the Covenant and that the Government's next periodic report would reflect continuing progress towards that goal.

16. Mr. AGUILAR said that it was his impression that the reservations to the Covenant showed that it was not being fully implemented in India. Other articles, in respect of which no reservations had been entered, were also at variance with such domestic legislation as the Terrorist and Disruptive Activities (Prevention) Act and the Armed Services (Special Powers) Act. In particular, the authority conferred by the latter Act on the security forces with regard to the use of firearms was clearly excessive and in contravention of article 6 of the Covenant, while article 14 was contravened by the provisions in the former Act which invalidated the concept of due process by denying presumption of innocence. In the case of article 14, the Committee should have been notified of any derogation. He hoped, however, that the constructive dialogue with the Government of India would continue and that the next periodic report would go some way towards allaying the concerns voiced by the Committee.

17. Mr. WAKO said that the report had followed the Committee's reporting guidelines but did not provide sufficient factual information on the human rights situation in India. In large part, the Attorney-General had spoken to the concerns of Committee members, and it was clear that India was genuinely attempting to overcome the human rights problems created by its cultural, social and religious diversity. He welcomed the role of the Supreme Court in upholding provisions of the Covenant which were not contained in the Indian Constitution. While, under article 41 (1) of the Indian Constitution, Supreme Court decisions became law, he wondered whether such jurisprudence carried the same weight as express constitutional provisions.

18. He, too, hoped that the Indian Government would consider ratifying the Optional Protocol so that its citizens would have the added protection of being able to petition the Committee. He shared the views of other Committee members concerning the Terrorist and Disruptive Activities (Prevention) Act and National Security (Amendment) Act and was particularly concerned about the Armed Forces (Special Powers) Act, which broadly empowered police officers and the Army to kill. The representative of India had maintained that those powers had not been

(Mr. Wako)

used to any great extent, but the Committee had seen reports to the contrary. Neither was there convincing evidence - apart from one covert case on death in custody - that such violations had been sufficiently investigated or prosecuted.

19. Mr. MAVROMMATIS reaffirmed that India, as the world's largest democracy, had a significant role to play in international politics and the promotion of human rights and freedoms. He fully understood the dangers confronting India, but it was precisely in times of difficulty that democracy was put to the supreme test. India should therefore exercise caution in taking measures to preserve its territorial integrity. In conclusion, while great strides had been made, the Indian Government could enhance the protection of human rights and freedoms by reviewing some of its current practices and reconsidering its reservations to the Covenant.

20. Mr. MYULLERSON said that the independence of the Indian judiciary, the role of attorneys in Indian society, the guarantees of freedom of expression and the press, and a number of Acts passed by the Indian Parliament, were impressive. However, the Armed Forces (Special Powers) Act as applied to Jammu and Kashmir in 1990, derogated from article 6 of the Covenant, which was not permissible.

21. Mr. LALLAH urged the Indian Government to reconsider its reservations to articles 9, 12, 19, 21 and 22 of the Covenant. In keeping with its long tradition of constitutional amendments, India should consider further amendments that would incorporate provisions of the Covenant. He shared the concerns of other Committee members with regard to the emergency legislation in force in certain States.

22. He commended the provisions designed to ensure equality between men and women. Religious leaders should be mobilized to that end, as their assistance could be very valuable in dealing with certain issues, such as sati and "dowry death".

23. In conclusion, he wondered whether the two-volume publication on the Optional Protocol circulated to Indian attorneys had been made available to judges as well.

24. Mr. PRADO VALLEJO said that police excesses and the mistreatment of detainees tarnished India's human rights record. Cases of police abuse did not appear to be sufficiently investigated and punished. Effective measures must be taken in order to prevent and control excesses by the police. Greater efforts must also be made to eliminate discriminatory practices rooted in India's social and ethnic diversity. He welcomed India's efforts made to protect its democratic system, particularly in view of its need to maintain unity and territorial sovereignty. As a national or a third world country, he was particularly sensitive to those concerns.

25. Mr. SERRANO CALDERA noted the problems inherent in implementing the provisions of the Covenant, which were universal in nature, in a country which was anything but homogeneous. Based on reports the Committee had received from both international and non-governmental organizations, he, too, was concerned about the mistreatment of detainees by police.

(Mr. Serrano Caldera)

26. He was also concerned that the suspension of certain rights in exceptional circumstances could, in effect, become a means of circumventing the guarantees embodied in the Covenant, or even become general practice. He referred, in particular, to the emergency legislation in force, such as the Armed Forces (Special Powers) Act and the Terrorist and Disruptive Activities (Prevention) Act.

27. It was unclear whether, under the law of preventive detention, the 24-hour period of police custody could be extended by a court order. He wondered whether, in all cases, detainees must be turned over to the court of the magistrate within a certain time-limit.

28. The effective implementation of the Covenant was placed in doubt by the reservations the Indian Government had entered, and by the fact that the provisions of the Covenant had not been fully incorporated in the Indian Constitution and ordinary law. He also wondered how forcefully the ordinary courts upheld the rights guaranteed by the Covenant. There seemed to be no available remedy in cases where a law, such as the Terrorist and Disruptive Activities (Prevention) Act, derogated from the Covenant.

29. He, too, recommended that India should ratify the Optional Protocol, lift the reservations it had entered to the Covenant, take additional measures to restrict the powers of certain organs of Government, and bring its general legislation into line with the provisions of the Covenant. He welcomed the role of the Supreme Court in defending human rights, and hoped that, in future, such jurisprudence could facilitate the incorporation of the provisions of the Covenant in the Indian Constitution and legislation.

30. Mr. HERNDL noted that the information contained in the report was, understandably, more legal than factual. It was to be hpoed that the Indian Government would review its reservations to the Covenant and the emergency legislation in force, taking into account the Committee's recommendations.

31. The CHAIRMAN thanked the Attorney General and requested him to urge his Government to ratify the Optional Protocol. The Committee would have to reschedule the July 1990 deadline for the submission of India's third periodic report.

32. Mr. RAMASWAMY (India) said that he valued the suggestions made by members of the Committee. Most of the questions raised had been in connection with the Armed Forces (Special Powers) Act and the Terrorist and Disruptive Activities (Prevention) Act. Since neither had been referred to in the list of issues, his delegation had not had available all the supporting documentation necessary to explain the need for such legislation. He assured members that there had been no misuse of the powers conferred under those Acts; the misgivings expressed by the Committee were purely theoretical. With regard to the reservations entered by India, the Committee would understand that the matter was essentially political.

(Mr. Ramaswamy, India)

The Government of India would ensure that its third periodic report contained updated information on those matters of concern to the Committee.

33. Mr. Ramaswamy withdrew.

The meeting was suspended at 4.45 p.m. and resumed at 4.55 p.m.

Third periodic report of Sweden (CCPR/C/58/Add.7)

34. At the invitation of the Chairman, Mr. Corell, Mr. Rundqvist, Mr. Lempert and Ms. Jagander (Sweden) took places at the Committee table.

35. Mr. CORELL (Sweden) said that since the Committee had last considered reports submitted by his Government, Sweden had increased its international undertakings in the field of human rights. The abolition of the death penalty and the protection of the rights of the child were of particular concern to his Government. Sweden had worked actively for the adoption of the second Optional Protocol to the Covenant, aimed at the abolition of the death penalty, and had ratified the new Protocol in May 1990. His Government had also sought to improve the situation of children, and had ratified the Convention on the Rights of the Child.

36. For an international convention to be implemented in Sweden it had to be incorporated into Swedish law by an act of Parliament. Such an act could either provide that a convention should apply as such or could incorporate the substantive content of the convention into Swedish law. In the case of the Covenant, the relevant domestic legislation had been reviewed and found to be in conformity with its provisions.

37. As noted in the report, a study had been conducted of various amendments, in 1988, to the Code of Judicial Procedure in order to review the impact of new provisions on deprivation of liberty in criminal cases. About 90 per cent of cases involving such provisional detention were examined by a court within three days of arrest, in comparison with 50 per cent within six days of arrest prior to the reform. The report also referred to the Act regarding Judicial Review of Certain Administrative Decisions, to which amendments were currently under consideration.

38. Since Swedish laws were not necessarily structured in the same way as the Covenant, a law might cover more than one of its articles, as in the case of the legislation pertaining to aliens, described at length in the report. In 1989 Sweden had incorporated those sections of its legislation on aliens which related to presumed terrorists into a separate Act on Terrorists. New legislation on terrorism was under consideration in order to ensure a safe and controlled judicial procedure. Under the proposed legislation execution of an expulsion order would be prohibited if a presumed terrorist risked persecution, and the movements of presumed terrorists within the country would not be restricted. In that connection the report referred to the cases of nine Turkish citizens of Kurdish descent suspected of terrorism, all of which had now been resolved.

(Mr. Corell, Sweden)

39. The Government was currently considering a new act on freedom of expression, which would ultimately form part of the Constitution. The report also covered legislation relating to the care of young persons and legislation governing compulsory psychiatric care.

40. Information had been provided regarding the frequency of telephone tapping in the case of serious offences. Lastly, the report referred to measures taken to give effect to the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination.

List of issues to be taken up in connection with the consideration of the third periodic report of Sweden (CCPR/C/58/Add.7)

Constitutional and legal framework within which the Covenant is implemented (Article 2 (2) and (3) of the Covenant) (Section I of the list of issues)

41. The CHAIRMAN read out section I of the list of issues concerning the third periodic report of Sweden, regarding: (a) whether there was a procedure whereby Swedish legislation could be questioned on grounds of inconsistency with the Covenant; and (b) the application of the amendments in chapter 22, section 2, of the Code of Judicial Procedure relating to the obligation of the public prosecutor to prepare and present an injured party's claim for damages.

42. Mr. CORELL (Sweden) said that no question of inconsistency arose since international conventions had to be incorporated into Swedish legislation before they became applicable. Accordingly, a court could not present arguments on the basis of a convention which had not been so incorporated. In order to ensure that domestic legislation was in conformity with international law, it was scrutinized from the standpoint of Sweden's international commitments. Further, there was a general rule that domestic legislation was to be interpreted in the light of the country's international obligations, so that in the event of differing interpretations, that which accorded with, for example, the Covenant, would prevail. One such recent instance had involved oral hearings in the Court of Appeal, in connection with which the Supreme Court had taken into account the case law of the European Court of Human Rights.

43. With regard to the amendments to chapter 22 of the Code of Judicial Procedure, the changes represented an attempt to strengthen the position of the victims of crime, by making it easier for a victim to pursue a claim for damages. Prosecutors were required to present an injured party's claim for damages at a preliminary stage, thus expediting a thorough investigation. However, prosecutors were not required to so present claims if the procedure would result in essential inconvenience or if the claim was manifestly ill-founded. It should be noted that the prosecutor did not serve as an injured party's counsel, and that if a claim became separated from the criminal aspects of a case, the victim would no longer be represented by the prosecutor. The initial impact of the amendments had been felt in a drop in the number of cases in which claims for damages were separated from criminal aspects.

44. Mr. SADI, noting that Sweden's domestic legislation was construed in the light of its international obligations, asked what would happen if the Committee were to find that a particular piece of legislation was incompatible with the Covenant.

45. Mr. CORELL (Sweden) said that judgements pronounced by the European Court of Human Rights could be taken into consideration in the interpretation of Swedish laws which reflected the contents of the Covenant. However, the principal effect of such judgements and of views expressed by the Human Rights Committee was to alert the Swedish Government to possible flaws in its legislation. If Sweden was found by the European Court to be in violation of the Covenant, it would react by analysing whether the violation consisted of the improper application of Swedish law to a particular case, or whether the law itself was faulty. Therefore, in the interest of keeping its legislation consistent with its international obligations, Sweden would consider the views of the Committee in its interpretation of laws which reflected provisions of the Covenant.

Section II: Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26 of the Covenant)

46. The CHAIRMAN read out section II of the list of issues, concerning: (a) the activities of the Ombudsman against Ethnic Discrimination and of the Advisory Committee on Questions concerning Ethnic Discrimination, the effectiveness of those institutions and the linkage between the functions of that Ombudsman and those of the Parliamentary Ombudsman; (b) the results of the evaluation of the Equal Opportunities Act by the special committee established by the Government, and the committee's main recommendations; and (c) employment opportunities for aliens, including employment in the civil service.

47. Mr. LEMPERT (Sweden) said that the office of Ombudsman against Ethnic Discrimination had been established by the 1986 Act against Ethnic Discrimination. The Ombudsman's activities fell into three categories: (1) advice and assistance in individual cases of alleged discrimination (700 to 800 such cases were reported each year); (2) general investigative and informational activities, including discussions with enterprises, organizations, universities and other entities to mobilize public opinion against ethnic discrimination; and (3) advisory services to the Government, including suggestions for changes to legislation.

48. The office of Ombudsman against Ethnic Discrimination had been investigated by a special committee, which had not suggested any extensive modifications. However, the Ombudsman himself had proposed that anti-discrimination measures should refer not only to the workplace, but to society in a broad sense, and in May 1990 a committee had been appointed by the Government to review Swedish legislation in that light. In the interest of avoiding any controversy which could jeopardize the position of respect in which the Ombudsman was held by ethnic minorities and by the public at large, the Act against Ethnic Discrimination had not authorized him to take action in court, nor had it given him supervisory powers over other authorities. The Parliamentary Ombudsman, on the other hand, did enjoy such powers, and there was close cooperation between the two institutions.

(Mr. Lempert, Sweden)

49. With respect to employment opportunities for aliens, a newly established committee was considering possible legislation to ban discrimination against aliens in the workplace. As of 1989, about 456,000 persons on the Swedish labour market, or 10 per cent of the work force, had been born outside Sweden. In 1989, about 44,000 non-Nordics had been granted permanent residence in Sweden, principally in connection with the asylum process; the figure for 1990 was about 36,000. With the exception of security-related posts and certain professions such as those of judge and lawyer, which were not available to aliens unless they became Swedish citizens, the Swedish labour market was completely open to aliens. However, the unemployment rate for non-Nordics remained much higher than that for Nordics - 4.5 per cent versus 2 per cent - and special allocations had therefore been made under labour market assistance programmes for activities to secure job opportunities for aliens. Funds had also been allocated to set up employment offices at refugee centres, and a vocational testing system for immigrants had been introduced in order to establish equitable assessments of the qualifications they had acquired in other countries. Finally, special programmes for immigrant women had been designed to provide them with information on their rights in Swedish society.

50. Mr. CORELL (Sweden) said that with reference to section II (a) of the list of issues, he wished to clarify that the Parliamentary Ombudsman, in contrast to the Ombudsman against Ethnic Discrimination, could take initiatives in any sphere of official life. He could, for example, act in the capacity of a prosecutor, or he could formulate proposals to the Government for amendments to legislation.

51. Ms. JAGANDER (Sweden) said that with reference to section II (b) of the list of issues, the special committee to evaluate the Equal Opportunities Act had made a number of proposals in its final report of 1990 in order to enhance the Act's effectiveness: (1) expanding the prohibition on sex-based discrimination in employment to include cases in which it could be presumed that the employer had had a discriminatory intent; (2) establishing additional means of determining what jobs should be considered as work of equal value; (3) explicitly including sexual harassment and harassment of persons having filed complaints under the Act in the definition of sex-based discrimination; (4) applying the Act to both direct and indirect discrimination, i.e. to proceedings which disproportionately favoured one sex over the other; (5) obliging all larger employers to set up an annual scheme for equality in the workplace; and (6) instructing the Equal Opportunities Ombudsman to take steps to ensure compliance with the Act as amended.

52. After various organizations had expressed their views on the report, the Government had submitted a bill to Parliament in February 1991 which included a proposal for a new Equal Opportunities Act imposing stricter obligations on employers to strive towards greater equality in the labour market. The bill also included steps to combat violence against women, such as better coordination among authorities which dealt with the problem, and a proposal to establish a committee to investigate and to recommend measures to rectify the differences in salaries between women and men.

53. Mr. ANDO said that Sweden's report gave the impression that, in the decision-making process for policies to combat sex-based discrimination, emphasis was placed on numerical equality between women and men. Although that was an important consideration, he wondered whether it represented the only means of achieving the goal of equality of the sexes. He asked whether the Swedish authorities took any other factors into consideration, such as the control which many women exercised over household finances, in determining whether the country's political and economic systems addressed the interests of both sexes on an equal basis.

54. With respect to the issue of racial equality, he understood that the indigenous Sami population of northern Sweden had been given decision-making powers which could enable it to discriminate against its own people. He asked how the Swedish Government maintained a balance between the goal of non-discrimination and respect for indigenous cultures.

55. Mr. PRADO VALLEJO noted that in paragraph 119 of Sweden's third periodic report, it was stated that in times of war and danger of war, the Swedish Government could issue restrictions concerning the right of aliens to reside in the country and to engage in employment. He wondered whether there had been any cases in which aliens had been allowed to reside in Sweden but had not been allowed to work, and if so, how the aliens and the Government had handled the situation.

56. Ms. JAGANDER (Sweden) said she agreed with Mr. Ando that the number of women participating in various areas of society was not the only possible criterion for evaluating equality of the sexes. However, progress towards that goal required changes in the attitudes of both women and men, which were not easy to measure. Numerical equality was a primary consideration because it was a visible sign of progress; for example, the fact that 38 per cent of the members of the Swedish Parliament were women could only be taken as a sign of the progress made since the 1920s, when women had not even been allowed to vote.

57. Mr. CORELL (Sweden) said that the Sami population to which Mr. Ando had referred consisted of about 20,000 persons, out of a total Swedish population of 8.5 million. About 2,500 Sami were currently engaged in their traditional livelihood of reindeer herding, while the rest either practised traditional trades such as handicrafts or held jobs in the mainstream of Swedish society. Since reindeer herding involved a large proportion (about one third) of Sweden's land area, and since it conflicted with other economic interests such as the construction of hydroelectric power plants, it was essential to limit the number of reindeer and the number of reindeer-herding groups in the country. The Sami people had therefore been authorized to organize themselves into villages, which were legal entities, and to take decisions freely on which persons were to be admitted into the villages as herders. The Government was currently considering the proposals of its Commission on the Legal Position of the Samis with respect to such questions as whether reindeer herding should continue to be restricted to members of Sami villages. Sweden's policy towards the Sami people was the result not of discrimination, but of careful consideration of how to balance the interests of society in general and respect for the Sami culture.

58. Mr. LEMPERT (Sweden) said that the legal provisions to which Mr. Prado Vallejo had referred reflected the Swedish Government's interest in ensuring the rule of law by establishing regulations for all possible contingencies. Sweden had not been at war since 1814, and to date, restrictions on certain categories of persons had been enforced only during the Second World War. The Government's power to restrict the right of aliens to work, which otherwise had never been enforced, was understood to apply only to certain aliens and to certain posts.

59. Mr. CORELL (Sweden) said that in times of war and danger of war, there inevitably were certain geographical areas and certain jobs which were particularly sensitive. If the provision referred to in paragraph 119 of the report were enforced, it would bar aliens only from specific areas and/or jobs. Moreover, in such an event, Sweden's social security system would act as a safeguard against any hardship which aliens could experience as a result.

The meeting rose at 6.10 p.m.